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

NEXT UPDATE: SUPPLEMENT MAY 18, 1992

RULEMAKING IN THIS ISSUE

EXECUTIVE ORDERS

OFFICE OF THE GOVERNOR
- Executive Order No. 59(1992): Delegation of Governor's authority to Commissioner of Transportation for Highway Project improvements to Route 21 and portions of Routes 46 and 20 between Clifton and Elmwood Park ..... 2105(a)
- Executive Order No. 60(1992): Use of rail passes by Executive Branch officers and employees ..... 2105(b)

RULE PROPOSALS

Interested persons comment deadline 2104

BANKING
- Debt adjustment and credit counseling ..... 2106(a)

PERSONNEL
- Reinstatement of permanent employee following disability retirement ..... 2107(a)
- Sick leave injury (SLI) benefits: carpal tunnel syndrome and asbestosis ..... 2108(a)

COMMUNITY AFFAIRS
- Housing and Mortgage Finance Agency: project cost certification ..... 2208(a)

EDUCATION
- Pupil transportation: school bus and small vehicle standards ..... 2109(a)
- Attendance at school by pupils or adults infected by HIV ..... 2124(a)
- Public, school, and college libraries ..... 2126(a)

ENVIRONMENTAL PROTECTION AND ENERGY
- Air pollution by oxygenated vehicular fuels: public meeting on proposed rules for control program ..... 2128(a)

HEALTH
- Health care facilities and services: Certificate of Need application and review process ..... 2222(a)

HUMAN SERVICES
- New Jersey Care: Special Medicaid Programs Manual .... 2145(a)
- Public Assistance Manual: Family Development Program and REACH/JOBS provisions ..... 2147(a)
- Assistance Standards Handbook: AFDC program requirements ..... 2155(a)
- Assistance Standards Handbook: DYFS monthly foster care rates ..... 2160(a)
- General Assistance Manual: Family Development Program and work training requirements ..... 2160(b)
- Family Development Program Manual ..... 2161(a)

INSURANCE
- Appeals from denial of automobile insurance: failure to act timely on written applications for coverage; premium quotation ..... 2128(b)
- Real Estate Commission: extension of comment period regarding fee cap for mortgage services; transmittal of funds to lenders ..... 2129(a)

LABOR
- Wage and Hour: employment of learners; sub-minimum wage ..... 2129(b)

COMMERCE AND ECONOMIC DEVELOPMENT
- Small businesses, minorities', and women's enterprises: direct loan and loan guarantee programs ..... 2131(a)

PUBLIC UTILITIES
- Relocation or closing of utility office ..... 2132(a)

TRANSPORTATION
- Permits for work or activities involving State highway rights-of-way ..... 2237(a)

(Continued on Next Page)

INTERESTED PERSONS

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

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.

RULEMAKING IN THIS ISSUE—Continued

TREASURY-GENERAL
- Background checks and training of lottery agents and employees ... 2238(a)
- Sale of lottery tickets at specific locations licensed ... 2239(a)
- Redemption of winning lottery tickets ... 2239(b)

CASINO CONTROL COMMISSION
- Renewal of employee licenses ... 2133(a)
- Baccarat staffing requirements ... 2136(a)
- Coin vault security ... 2136(b)
- Hopper storage areas in slot machines ... 2137(a)
- Slot machine density ... 2138(a)
- Implementation of game of pokette ... 2140(a)

RULE ADOPTIONS

AGRICULTURE
- Sire Stakes Program ... 2241(a)

BANKING
- Entity examination charges ... 2242(a)
- Qualified corporations as fiscal or transfer agents ... 2242(b)

COMMUNITY AFFAIRS
- Uniform Construction Code: special inspections ... 2243(a)
- Elevator Safety Subcode: enforcement ... 2244(a)
- New home warranty and builders' registration: violations and penalties; claim eligibility ... 2244(b)

ENVIRONMENTAL PROTECTION AND ENERGY
- Water supply loan programs ... 2245(a)
- Freshwater Wetlands Protection Act rules: Statewide general permits ... 2252(a)

HEALTH
- SHARE Hospital system: rebasing and Minimum Base Period Challenge ... 2255(a)
- Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine ... 2256(a)
- Controlled dangerous substances: correction regarding anabolic steroids ... 2256(b)

HUMAN SERVICES
- IV-A "At Risk" Child Care Program: new client eligibility income schedules ... 2257(a)
- Public Assistance Manual: administrative correction to N.J.A.C. 10:81-14.21 concerning REACH assistance ... 2257(b)
- Assistance Standards Handbook: AFDC program revisions regarding Standard of Need, prospective budgeting, and AFDC-N equalization ... 2258(a)
- General Assistance allowance determination: household size concept ... 2263(a)

INSURANCE
- Automobile insurance: Excess Profits Report ... 2264(a)

LAW AND PUBLIC SAFETY
- Replacement license plates fee upon verification of motor vehicle liability coverage ... 2283(a)
- License plate identifying marks ... 2283(b)
- Board of Professional Engineers and Land Surveyors: fee schedule ... 2285(a)
- Board of Respiratory Care: fee schedule ... 2285(b)

TREASURY-GENERAL
- State Planning Rules: letters of clarification; consistency review of plans; Resource Planning and Management Map ... 2287(a)

ELECTION LAW ENFORCEMENT COMMISSION
- Legislative agent annual registration and filing fee ... 2294(a)

CASINO CONTROL COMMISSION
- Fees for services of Commission and Division of Gaming Enforcement ... 2295(a)
- Application for casino service industry license ... 2296(a)
- Slot machine jackpot payout slips ... 2296(b)
- Slot machine hopper fill procedure ... 2297(a)
- Minibaccarat betting areas ... 2298(a)
- Blackjack and use of MAXTime card reader device: experimental implementation ... 2298(b)

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION AND ENERGY
- Noise control at motor vehicle race tracks: agency response to petition to amend N.J.A.C. 7:29-1.4 ... 2299(a)
- Delaware and Raritan Canal State Park: public hearing on proposed construction and utility easements ... 2299(b)
- Northeast water quality management: Chatham Township ... 2299(c)
- Monmouth County water quality management: Holmdel ... 2300(a)
- Ocean County water quality management: Jackson Township ... 2300(b)
- Tri-County water quality management: Logan Township ... 2300(c)
- Lower Delaware water quality management: Cumberland County College ... 2301(a)

(Continued on page 2313)

NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 59(1992)
Delegation of Governor's Authority to Commissioner of Transportation Concerning Improvements to Route 21, the Crooks Avenue Interchange between Routes 46 and 20 and the Route 46 Bridge over the Passaic River between Clifton and Elmwood Park

Issued: May 14, 1992.
Effective: May 14, 1992.
Expiration: Indefinite.

WHEREAS, the Federal Intermodel Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), acknowledges a 1987 authorization of improvements to Route 21, the Crooks Avenue interchange between Routes 46 and 20 and the Route 46 bridge over the Passaic River between Clifton and Elmwood Park ("Highway Project"); and

WHEREAS, the Intermodel Surface Transportation Efficiency Act authorizes the Governor of the State of New Jersey to carry out all of the responsibilities of the Secretary of the United States Department of Transportation pursuant to Title 23 of the United States Code, and all other provisions of law, with respect to the construction of the Highway Project; and

WHEREAS, in order to provide for expedited completion of the Highway Project, the Intermodel Surface Transportation Efficiency Act authorizes the Governor to waive any and all Federal requirements relating to the scheduling of activities associated with the Highway Project, including final design and right-of-way acquisition activities; and

WHEREAS, Title 27 of the New Jersey Statutes establishes the New Jersey Department of Transportation as the lead State agency with regard to all matters and things incident to the acquisition, improvement, betterment, construction, reconstruction, maintenance and repair of State highways;

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

1. The Commissioner of the Department of Transportation is designated to act on behalf of the Governor and is hereby delegated the powers of the Governor in carrying out, in accordance with applicable law, all responsibilities of the Secretary of the United States Department of Transportation, pursuant to Title 23 of the United States Code, and all other provisions of law, with respect to the construction of the Highway Project.

2. The Commissioner is designated and delegated the authority to act on behalf of the Governor with respect to the waiver of any and all Federal requirements relating to the scheduling of activities associated with the Highway Project, including final design and right-of-way acquisition activities.

3. The Commissioner shall not delegate to any other person or entity the authority received from the Governor pursuant to paragraphs 1 and 2 of this Executive Order.

4. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 60(1992)
Use of Rail Passes by Executive Branch Officers and Employees

Issued: May 27, 1992.
Effective: May 27, 1992.
Expiration: Indefinite.

WHEREAS, *N.J.S.A.* 48:12-109 *et seq.* authorizes certain officers and employees of the State of New Jersey to utilize rail service within the borders of the State, free of charge; and

WHEREAS, this statute, enacted in 1903, which is outdated and no longer necessary, should be repealed; and

WHEREAS, the number of railroad passes issued under the authority of this statute has been reduced over the past two years to approximately 234, a reduction from 433 in 1989; and

WHEREAS, rail travel is a cost-effective and environmentally-sound mode of transportation for State officials to utilize while conducting official State business; and

WHEREAS, unauthorized personnel of the State have used such rail passes without providing a detailed accounting for their usage; and

WHEREAS, the use of these rail passes should be curtailed and specific guidelines and provisions adopted to limit and monitor their use; and

WHEREAS, the use of these passes by members of the Executive Branch should be limited to transportation for purposes related strictly to State business; and

WHEREAS, this Executive Order is being executed as a part of continuing efforts to curtail inefficiencies in State government; and

WHEREAS, it is necessary during tough economic times to maximize New Jersey Transit's revenues to avoid any unnecessary costs being passed on to the commuting public; and

WHEREAS, Governor Thomas H. Kean, on January 19, 1983, signed Executive Order No. 31 (Kean) which directed that *N.J.S.A.* 48:12-109 *et seq.* be construed so that no rail pass may be issued to any State officer or employee not specifically entitled to such a pass under this statute, but permitted personal commutation to and from work; and

WHEREAS, Executive Order No. 31 (Kean) also placed the responsibility for issuing rail passes with the Secretary of State without conferring upon him adequate authority to monitor and enforce this process;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and statutes of this State, do hereby ORDER and DIRECT that:

1. The terms of *N.J.S.A.* 48:12-109 *et seq.* shall continue to be strictly applied to ensure that no rail pass is issued to any person not specifically entitled to such a pass under the statute.

2. No Executive Branch officer or employee of the State of New Jersey shall be permitted to use such rail passes for personal commutation to and from work. The use of these rail passes shall be limited solely to purposes directly related to the conduct of official State business.

3. Rail passes shall no longer be individually assigned, but shall be issued to the various State Departments which are responsible for their use. The passes shall be held in the Office of the Commissioner/Secretary or their designees to be assigned on an as-needed basis. Each office shall maintain a log of the usage of these passes which shall include specific information to be set forth in a form determined by the Secretary of State.

4. The Secretary of State shall continue to have the responsibility of issuing rail passes, and shall also be responsible for overseeing the usage of the passes as well as promulgating guidelines in furtherance of the intentions of this Order.

5. The directives of this Order shall not apply to members of the Legislative or Judicial branches of State government who are statutorily entitled to rail passes. Also, this Order shall not apply to employees, their spouses and retirees of New Jersey Transit who have a right to these rail passes through their collective bargaining agreement under law.

6. Executive Order No. 31 of 1983 (Kean) is rescinded.

7. This Order shall take effect immediately.

RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Debt Adjustment and Credit Counseling

Proposed Readoption with Amendments: N.J.A.C. 3:25

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1, 17:1-8.9, 17:16G-4, 5 and 6.

Proposal Number: PRN 1992-255.

Submit comments by July 15, 1992 to:

Robert M. Jaworski, Deputy Commissioner
Office of Regulatory Affairs
Department of Banking
20 W. State Street, CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department's rules at N.J.A.C. 3:25, regarding debt adjustment and credit counseling, are scheduled to expire on August 17, 1992 pursuant to Executive Order No. 66(1978). The Department has reviewed the rules and has found them satisfactory for the purposes for which they were promulgated. Therefore, the Department proposes to readopt them. The rules were originally promulgated, pursuant to N.J.S.A. 17:16G-1 et seq., to establish maximum fees charged by nonprofit social service organizations or nonprofit consumer credit counseling agencies for debt adjustment and credit counseling services in the public interest. The rules also required that prior notice of the fees be provided to the client. In addition, the Department proposes to amend the rules in a manner which will better protect the public and will improve the supervision of the industry.

A definition of "billing cycle" would be added to the present definitions so that debt adjustment and credit counseling agencies may schedule their billing as is convenient to them rather than according to the beginning and end of calendar months. For the same reason, the definition of "month" would be removed and the references to "month" replaced by "billing cycle" in N.J.A.C. 3:25-1.2 and 1.3.

Amendatory language would be added to the end of the definition of "debt adjustment" to make this definition consistent with the statute. A definition of "debtor" would be added which is identical to the definition in the statute.

Several new sections would be added as subchapter 2 of the chapter. The new rules would require that licensees establish a principal place of business in this State and would permit them to establish branch offices in this State upon application to the Department. Each office must be licensed and a biennial fee of $500.00 paid for each.

The current bond amount is $25,000. The proposed provision would raise the amount of the bond to at least $50,000 for each principal office and $25,000 for each branch office. Those who are currently licensed are allowed a 60-day period to comply with the new bond requirement.

Finally, the new rules would provide specific authorization for the Commissioner to investigate and examine licensees and others to determine compliance with the Act (P.L.1979, c.16), regulations and orders.

Social Impact

Readoption of the existing rules and adoption of these proposed new rules and amendments is important for the continued regulation of debt adjustment and credit counseling agencies. While this industry provides a valuable service for its customers, it is important that the Department have sufficient regulatory authority to protect against potential abuses and to deal effectively with any abuses which may occur.

Economic Impact

The Department currently requires licensees to have a bond of at least $25,000. This amount was considered too small considering the large numbers of customers which these agencies usually service. Therefore, the new section would raise the amount of the bond for a principal office from $25,000 to $50,000 and would require the amount of the bond to be raised an additional $25,000 for each branch office. The amendments would also establish a biennial license fee of $500.00 for each office. This represents an increase of $100.00 over the current license fee; however, the Department concludes that this increase is necessary because of the rising administrative expenses of the Department.

Regulatory Flexibility Analysis

All of the agencies which are engaging in debt adjustment and credit counseling activities are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. Therefore, no differentiation is made on the basis of size of institution.

These amendments do not impose any reporting or recordkeeping requirements on the entities which are regulated. However, the economic burden on licensees would be increased because the amount of the bond is raised. This increase was thought advisable in order to provide greater protection to customers of the agency. Also, the amount of the licensing fee has been increased to help defer the Department's costs of regulating these licensees.

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

SUBCHAPTER 1. DEBT ADJUSTMENT AND CREDIT COUNSELING FEES

3:25-1.1 Definitions

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

"Act" means P.L.1979, c.16.

"Billing cycle" means the period between successive billing dates, when the client is charged by the licensee. For the purpose of determining the maximum amount of the fees which may be charged, it is assumed that the length of the billing period is approximately 30 days. If the billing cycle is substantially longer or shorter than 30 days, the amount of the maximum fee which may be charged shall be adjusted accordingly.

...

"Commissioner" means the Commissioner of Banking.

...

"Debt adjustment" means either acting or offering to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or, to that end, receiving money or other property from a debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor, **but shall not include the activities of an attorney-at-law of this State who is not principally engaged as a debt adjuster, a person who is a regular full-time employee of a debtor and who acts as an adjuster of his or her employer's debts, a person acting pursuant by any order or judgment of court, or pursuant to authority conferred by any law of this State or the United States, a person which is a creditor of the debtor or an agent of one or more creditors of the debtor and whose services in adjusting the debtor's debts are rendered without cost to the debtor, or a person who at the request of a debtor arranges for or makes a loan to the debtor and who at the authorization of the debtor acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting those debts.**

"Debtor" means an individual debtor or two or more individuals who are jointly and severally indebted.

"Department" means the Department of Banking.

"Licensee" means an agency licensed to provide debt adjustment [and/or] **and** credit counseling services pursuant to N.J.S.A 17:16G-2.

["Month" means a calendar month.]

"Office" shall include a principal office and a branch office.

3:25-1.2 Debt adjustment fees

The maximum fee that may be charged by a licensee to a client for debt adjustment services is $25.00 per [month] **billing cycle.**

3:25-1.3 Credit counseling fees

The maximum fee that may be charged by a licensee to a client for credit counseling services is $60.00 per [month] **billing cycle.**

3:25-1.4 Prior notice

With respect to the fees that may be charged pursuant to this subchapter, it is the responsibility of the licensee to provide to the client in writing, prior to **providing** any debt adjustment or consumer credit counseling **service**, a statement of the fees to be charged.

SUBCHAPTER 2. OFFICES, LICENSING, BONDS, INVESTIGATIONS, EXAMINATIONS

3:25-2.1 Principal and branch offices

(a) A licensee shall establish a place of business in this State which shall be designated as the principal office. The license for the principal office shall be prominently displayed in the public area of the office.

(b) In addition to the principal office, an applicant or licensee may establish a branch office or offices elsewhere in this State for the conduct of debt adjusting and credit counseling activities. The license for the branch office shall be prominently displayed in the public area of the office.

(c) An applicant shall apply for a principal office license and may apply for a branch office license by making application to the Department. A licensee may apply for a branch office license by making application to the Department. Such application shall be made on forms as prescribed by the Commissioner and shall include, but shall not be limited to, the name of the applicant or licensee, the location of the proposed principal or branch office, the license fee for each office, and proof of bond in the amount set forth in N.J.A.C. 3:25-2.3. The Commissioner shall issue the license upon determining that the applicant is qualified to be licensed and possesses the necessary financial resources to sustain its operation.

(d) No licensee shall engage in debt adjusting or credit counseling activities at an office until it has received a license for that office.

3:25-2.2 License fees

Each licensee shall pay to the Department a biennial license fee of not more than $500.00 for each office it maintains. The fee shall be due on January 1 of each even numbered calendar year. When the initial license or certificate is issued in the second year of the biennial period, the fee shall be an amount equal to one-half the fee for the biennial period.

3:25-2.3 Bond

(a) A licensee shall maintain a bond in an amount not less than $50,000 for each principal office and $25,000 for each branch office from a surety company authorized to do business in this State. The bond shall run to the State, pro rata, for its benefit and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the licensee in the course of activity as a licensee. The bond shall not be payable for claims made by business creditors. No bond shall comply with this section unless it contains a provision that it shall not be cancelled for any cause unless notice of intention to cancel is filed with the Department at least 30 days before the day upon which cancellation shall take effect.

(b) Those persons who hold a license pursuant to the Act on August 17, 1992 shall not be required to comply with this section until October 16, 1992.

3:25-2.4 Refusal to issue, revocation and suspension of licenses

(a) The Commissioner may revoke or suspend a license if, after notice and hearing conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the Commissioner determines that the licensee:

1. Has violated any provision of the Act or any order rule or regulation issued pursuant to the Act;

2. Has failed to pay any fee, penalty, or other lawful levy imposed by the Commissioner;

3. Has withheld information or made a material misstatement in an application for a license or in any other submission to the Department;

4. Has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or has had a final judgment entered against him or her in a civil action upon grounds of fraud, misrepresentation or deceit;

5. Is associating with, or has associated with, any person who has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or who has had a final judgment entered against him or her in a civil action upon grounds of fraud, misrepresentation or deceit;

6. Has become insolvent or has acted in a way that indicates that the licensee's debt adjustment and credit counseling business would not be operated in a financially responsible manner;

7. Has demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise; or

8. Has engaged in any other conduct which would be deemed by the Commissioner to be grounds to deny a license.

(b) The Commissioner may refuse to issue a license for any reason for which he or she could revoke or refuse to renew a license.

3:25-2.5 Right of investigation and examination

The Commissioner may make such investigations and examinations of any licensee or other person as he or she deems necessary to determine compliance with the Act, regulations issued pursuant to the Act, or orders. For such purposes, he or she may examine, or compel by subpoena, the production of all relevant books, records, and other documents and materials relative to an examination or investigation. The costs of examination shall be borne by the licensee.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Reinstatement Following Disability Retirement

Proposed Amendment: N.J.A.C. 4A:4-3.7

Reproposed Amendment: N.J.A.C. 4A:4-7.10

Reproposed New Rule: N.J.A.C. 4A:4-7.12

Authorized By: Merit System Board; Anthony J. Cimino, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:4-1 et seq.

Proposal Number: PRN 1992-247.

A **public hearing** concerning the reproposal and proposed amendment will be held on:

Wednesday, July 8, 1992 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by July 15, 1992 to:

Janet Share Zatz, Director
Division of Appellate Practices
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Merit System Board previously published a proposed new rule, N.J.A.C. 4A:4-7.12, and a proposed amendment to N.J.A.C. 4A;4-7.10, concerning reinstatement of a permanent employee following disability retirement, on October 7, 1991 at 23 N.J.R. 2907(a), and conducted a public hearing on Wednesday, October 23, 1991. Henry Maurer served as hearing officer. No comments were received at that time and no recommendations were made by the hearing officer.

One written comment on the proposal was received from the Director of Personnel for the Department of Environmental Protection and

Energy. He commented that N.J.A.C. 4A:4-7.12(a) should include language permitting the appointing authority to examine the disability retiree or otherwise comment on the ability of that person to perform appropriate duties prior to his or her reinstatement. In reviewing this comment, the Merit System Board noted that the Attorney General's Office had previously advised that the intent of N.J.S.A. 43:16A-8 is that a disability retiree who regains the ability to perform his or her duties must be returned to his or her position. Thus, the issue of whether such a retiree is fit to return to the job at issue is between the appointing authority and the applicable retirement system, and is not addressed under merit system rules.

However, following a departmental review based on the recent Merit System Board decision of *In the Matter of John J. Allen, Hazlet Township* (decided 1/7/92), the Board has decided to repropose the new rule and amendment with changes, and also to propose an amendment to existing rule N.J.A.C. 4A:4-3.7.

The reproposed new rule and amendment and proposed amendment would take out all references to reinstatement following disability retirement from the existing N.J.A.C. 4A:4-7.10 and would place them, and provisions on seniority relevant to such reinstatement, in a new N.J.A.C. 4A:4-7.12. It would ensure, through the new N.J.A.C. 4A:4-7.12, and an amendment to N.J.A.C. 4A:4-3.7 (priority of eligible lists), that an affected employee's reinstatement would take priority over appointments from eligible lists with the exception of a special reemployment list.

The reproposed new rule and amendment and proposed amendment would clarify that the reinstatement process in these situations is unrelated to regular reemployment. In particular, it is intended to codify the decision noted above, *In the Matter of John J. Allen, Hazlet Township,* which found that a disability retiree's reinstatement should be effected as a specific exception to general list certification and appointment procedures and that such reinstatements have priority over appointment from all eligible lists, except a special reemployment list. The proposal is also intended to clarify the seniority rights of employees who are found fit for service following a period of disability retirement. The existing practice codified in the proposal is to aggregate the seniority of such employees accumulated prior to retirement with that to be accumulated following reinstatement.

Social Impact

This reproposed new rule and amendment and proposed amendment would affect primarily police officers and firefighters in local service. They would not change current practice; rather, they are intended to eliminate confusion about the process for returning these individuals to employment, as well as clarify reinstated employees' seniority rights. To that end, the new rule and amendments would have the beneficial effect of ensuring that any employee reinstated following a period of disability retirement would be credited with the seniority to which he or she is entitled. Further, the new rule and amendments would clarify for the benefit of all parties that such reinstatements have priority over appointment from all eligible lists, except a special reemployment list.

Economic Impact

Insofar as an accurate crediting of seniority to a reinstated employee would assist him or her in layoff rights determinations and promotional examination scoring, the new rule and amendments would have a positive economic impact on the employee.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the reproposed new rule and amendment and proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:4-3.7 Priority of eligible lists

(a) (No change.)

(b) Reinstatement of a permanent employee following disability retirement shall have priority over appointment from any eligible list, except a special reemployment list. See N.J.A.C. 4A:4-7.12.

4A:4-7.10 Regular reemployment

(a) (No change.)

[(b) A permanent employee who has been placed on disability retirement may be reinstated following a determination from the Division of Pensions that the retiree is no longer disabled.]

[(c)](b) Seniority commences as of the date of regular reemployment.

4A:4-7.12 Reinstatement following disability retirement

(a) A permanent employee who has been placed on disability retirement may be reinstated following a determination from the Division of Pensions that the retiree is no longer disabled.

(b) The employee's reinstatement shall have priority over appointment from any eligible list, except a special reemployment list.

(c) Seniority for an employee who is reinstated following a period of disability retirement shall be the aggregate of permanent service in the employee's permanent title prior to retirement and following reinstatement. Seniority shall not be granted for the period of retirement.

(a)

MERIT SYSTEM BOARD

Leaves of Absence; Sick Leave Injury (SLI)

Proposed Amendment: N.J.A.C. 4A:6-1.6

Authorized By: Merit System Board, Anthony J. Cimino, Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:2-6(d) and 11A:6-8.
Proposal Number: PRN 1992-248.

A **public hearing** concerning the proposed amendment will be held on:

Wednesday, July 8, 1992 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by July 15, 1992 to:

Janet Share Zatz, Director
Division of Appellate Practices
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Merit System Board has found that current rules on sick leave injury (SLI) benefits do not adequately address claims arising from disorders such as carpal tunnel syndrome. Carpal tunnel syndrome is a disorder of the hands caused by injury to the median nerve inside the wrists, and often results from repetitive exertion of the hands while the wrists are in a flexed position. Use of data entry or word processing equipment has been cited as a cause of this condition.

Proposed amendments to N.J.A.C. 4A:6-1.6 were published for comment in the October 7, 1991 New Jersey Register. See 23 N.J.R. 2907(b). However, at its meeting on October 1, 1991, the Board decided to withdraw those amendments to allow time for the receipt and review of information requested from the Commissioners of Health and Labor concerning carpal tunnel syndrome among State employees. See 23 N.J.R. 3093(a).

In response to the request for information, Commissioner of Health Frances Dunston advised that her department had not conducted studies of the occurrence of carpal tunnel syndrome among State employees. However, guidelines were prepared in 1989 and made available to all State agencies on measures to reduce or prevent adverse health effects, such as carpal tunnel syndrome among employees who use video display terminals. In response to a survey conducted in the Spring of 1991, seven State departments indicated they had taken steps to implement the guidelines. Commissioner of Labor Raymond Bramucci responded that there were some statistical disparities in reporting, but it appeared that less than 15 claims were presented by State employees per year in the past three years based on carpal tunnel syndrome. Commissioner Bramucci also noted that a successful training program has been im-

plemented in the Department of Labor to address problems associated with the use of video display terminals.

The information obtained from the Commissioners of Health and Labor appears to indicate that avenues other than regulatory changes are available to address the issue of carpal tunnel syndrome. Nevertheless, the Board believes that changes in the rules governing SLI are necessary, and is proposing two alternate options for comment.

The current policy of the Merit System Board, expressed in several appeal decisions, is that SLI benefits are available for injuries resulting from a specific work accident or event, but that SLI is not available for illness or injury not caused by a specific, discrete incident. Option 1 would clarify this policy. The current rule refers to injuries or illnesses resulting from a work-related accident or condition of employment. The amendment would substitute the word "event" for "condition of employment."

Option 2 would allow SLI benefits for disorders such as asbestosis and carpal tunnel syndrome, but only when medical documentation clearly establishes that the disorder would not have occurred but for the performance of specific work duties.

Social Impact

The proposed amendment affects only State employees and agencies, since the rule does not apply to local government service.

It is anticipated that Option 1 would not have a substantial impact, since it merely codifies current policy expressed through numerous decisions issued by the Merit System Board. Under this option, SLI benefits would generally be denied in cases of carpal tunnel syndrome.

Option 2 would allow State employees with disorders such as asbestosis and carpal tunnel syndrome to obtain SLI benefits only where medical documentation shows that the disorder is work related. Employees who have such disorders due to causes unrelated to work would not receive SLI benefits.

Economic Impact

As noted above, Option 1 merely codifies current policy, and therefore no substantial economic impact is anticipated. Option 2 may result in additional payment of SLI benefits; however, the actual cost to State government cannot be predicted, especially in view of the absence of data on the incidence of carpal tunnel syndrome among State employees. Moreover, by providing clearer standards for SLI in the rules, either option would help resolve more SLI cases at the appointing authority level, thus avoiding the costs associated with appeals to the Merit System Board.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:6-1.6 Sick Leave Injury (SLI) requirements: State service

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

OPTION 1

(c) The disability must be due to an injury or illness resulting from the employment.

1. Injuries or illnesses which would not have occurred but for a specific work-related accident or [condition of employment] **event** are compensable.

2. Preexisting illnesses, diseases and conditions aggravated by a work-related accident or [condition of employment] **event** are not compensable when such aggravation was reasonably foreseeable.

3. Illnesses which are generally not caused by a specific work-related accident or [condition of employment] **event** are not compensable except when the claim is supported by medical documentation that clearly establishes the injury or illness is work related.

4. and 5. (No change.)

OPTION 2

(c) The disability must be due to an injury or illness resulting from the employment.

1.-3. (No change.)

4. Progressive, degenerative or repetitive motion disorders, such as asbestosis or carpal tunnel syndrome, are compensable only when the claim is supported by medical documentation clearly establishing that the disorder would not have occurred but for the performance of specific work duties.

Recodify existing 4. and 5. as **5. and 6.** (No change in text.)

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

EDUCATION

(a)

STATE BOARD OF EDUCATION

Pupil Transportation

School Bus and Small Vehicle Specifications

Reproposed New Rules: N.J.A.C. 6:21-6, 6A, 6B and 6C; 9.2 and 9.13

Reproposed Amendments: N.J.A.C. 6:21-5, 8 and 9

Authorized by: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 4-15, 39-21, 7D-18 and 39:3B-5.

Proposal Number: PRN 1992-250.

Submit written comments by July 15, 1992 to:

Irene Nigro, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

On March 16, 1992, new rules and amendments were proposed in the New Jersey Register at 24 N.J.R. 898(a) regarding school bus and small vehicle specifications. Three individuals spoke at the March 18, 1992 public testimony session provided by the State Board of Education and four letters with comments were received. The State Board of Education has decided to repropose these new rules and amendments to allow for further deliberation. There will be an additional 30-day public comment period and a public testimony session on June 17, 1992. Except for the following changes, the reproposal is identical to the original proposal. A summary of the comments and responses received regarding the original proposal will be published with the adoption of this reproposal. Based upon public comment, the following revisions have been made.

- At N.J.A.C. 6:21-6A.6, the color "white" was added for the wheels and rims and the colors "gray and silver" were added for the grille to allow the manufacturers more color options.
- At N.J.A.C. 6:21-6B.2, the use of back-up alarms which was previously optional is now mandatory. This change was approved by the State Board of Education to ensure the safety of students when a bus is backing up.
- At N.J.A.C. 6:21-6B.48(b), the requirement for carrying two extra fuses was changed to one extra fuse. It is clear that one fuse is sufficient.
- At N.J.A.C. 6:21-9.9, the original proposal required a "trunk compartment mounted spare tire." The reproposal requires a "securely mounted spare tire." This change was necessary to include vehicles without a trunk compartment.

Due to this reproposal, the original language in N.J.A.C. 6:21-9.2(c) which eliminates the use of small vehicles with a gross vehicle weight rating of less than 3,000 pounds "as of September 1, 1992" is no longer appropriate. Therefore, this reproposal changes that date to 60 days after the adoption of this rule.

The summary that follows details the original proposal. The Social Impact, Economic Impact and Regulatory Flexibility Analysis are still applicable. The only change is based upon the mandatory use of back-up alarms which will increase the cost of a school bus by approximately twenty dollars over the cost estimated in the original economic impact statement.

Pursuant to N.J.S.A. 18A:-39-21 and 24, and N.J.S.A. 39:3B-5, the State Board of Education must adopt rules that govern the use and safety standards of school buses to ensure the safe travel of students riding to and from schools in New Jersey. The New Jersey Division of Motor Vehicle Services inspects all buses and vehicles based on these standards.

In 1932, the State Board of Education first adopted rules governing school bus specifications. These rules were amended to cover any new developments or safety features on the average of every five years.

For the first time in New Jersey, in 1983, as part of the "sunset" revisions to N.J.A.C. 6:21 pursuant to Executive Order No. 66 (1978), the State Board adopted by reference the National Minimum Standards for School Buses, 1980 revised edition with enhancements. The 1980 edition was the result of the Ninth National Conference on School Transportation. This conference, which has been conducted every five years since 1939, is made up of official representatives of State Departments of Education, local school district personnel and contract operators. Consultants from the manufacturing industry, the National Highway Traffic Safety Administration, and the National Transportation Safety Board were also participants. The existing regulations will remain operative in Subchapter 5 as they still apply to all vehicles manufactured in accordance with those rules and will continue to apply to said buses and vehicles until their retirement.

The proposed new rules update the current vehicle specifications in a new subchapter and include additional requirements that further enhance the safety of students, for example, stop arms, push-out windows, back-up warning alarms and roof safety hatches. These new rules apply to buses manufactured 200 days from the date of adoption until the buses retire. They incorporate the 1990 recommendations of the National Standards for School Buses and Operations Conference as they are applicable to New Jersey. These recommendations were not incorporated by reference with enhancements as they were in 1983 because experience has shown that it is confusing for the manufacturer to use two separate documents when referring to these rules.

A school bus is generally manufactured in two sections—the chassis and the body. Therefore, the vehicle standards have been divided into two subchapters—Body and Chassis—to clearly identify the responsibilities of each manufacturer.

Subchapter 6—Standards for Buses Used for Pupil Transportation

This subchapter contains the scope and purpose of these standards and includes the definitions of all relevant terms.

Subchapter 6A—Chassis Standards

These new rules establish standards for the equipment provided by chassis suppliers for the manufacture of school buses.

Subchapter 6B—Body Standards

These new rules establish standards for the equipment provided by the bus body suppliers for the manufacture of school buses.

Subchapter 6C—Specially Equipped School Bus Standards

These new rules regulate modifications to buses designed for transporting students with special transportation needs. These standards are supplementary to the chassis and body standards.

Subchapter 8—Use of Vehicles as School Buses Under the Jurisdiction of the Department of Transportation

These amendments remove obsolete code references and specify the application of the rule.

Subchapter 9—Small Vehicle Standards

This subchapter, which regulates vehicles with a capacity of less than 10 passengers used for the transportation of students to and from school, has been revised to clarify the application of the rules and to enhance student safety. Vehicles with a gross vehicle weight rating of less than 3,000 pounds can no longer be used for pupil transportation 60 days after the adoption of this rule.

Social Impact

These new rules and amendments will have a positive social impact upon school bus transportation in New Jersey. The sole purpose of this proposal is to ensure the safety of the students and drivers. These rules impact upon all transporting school districts, manufacturers, and contractors. The only anticipated objection to this proposal may be from the vendors who manufacture equipment that does not conform to these standards. However, they will be given 200 days from adoption to comply with these safety standards. Advancements in equipment design and new equipment available warrant these new rules and amendments.

Economic Impact

These new rules and amendments will have an economic impact on all transporting districts in New Jersey, vehicle manufacturers and transportation contractors. The new rules will increase the cost of purchasing a school bus approximately $2,020, but this is minimal considering the additional safety features provided for the passengers and driver. The school district budget will be slightly affected because of this increased cost. The Division of Motor Vehicle Services and Department of Transportation will not be affected. Pursuant to the Quality Education Act, the Department will study all transportation costs every two years and make recommendations to the Governor on the transportation weights used to calculate state aid. If increased vehicle costs result in an overall increase in transportation costs, this may result in some slight economic impact on the State budget amount for transportation aid.

Regulatory Flexibility Analysis

These proposed rules will impact on certain small business, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which manufacture vehicle equipment or contract with public school districts to provide pupil transportation services. All buses used to transport students to and from school under the jurisdiction of a local board of education must meet the compliance requirements established in this proposal. There is no recordkeeping required. The vendors certification statement (N.J.A.C. 6:21-6.3) is the only reporting requirement. Exceptions or differing standards to these new rules and amendments cannot be established for these small businesses because they are necessary for the safety and welfare of the driver and passengers of buses used for the transportation of students to and from school and school-related activities. The additional costs will be minimal and 200 days from the adoption have been allotted to allow time for compliance.

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

SUBCHAPTER 5. STANDARDS FOR SCHOOL BUSES **MANUFACTURED BETWEEN** (Upon adoption, dates will be inserted.)

6:21-5.1-5.24 (No change.)

SUBCHAPTER 6. [(RESERVED)] **STANDARDS FOR BUSES USED FOR PUPIL TRANSPORTATION**

6:21-6.1 Scope and purpose

(a) To ensure the safety of students, buses originally designed to carry 10 or more passengers used in the transportation of public school students to and from school and school related activities shall comply with the rules established in N.J.A.C. 6:21-6, 6A, 6B, 6C and all applicable Federal Motor Vehicle Safety Standards.

(b) The rules established in N.J.A.C. 6:21-6, 6A, 6B and 6C also apply to buses used for the transportation of nonpublic school students when services are provided by a district board of education.

(c) The rules established in N.J.A.C. 6:21-6, 6A, 6B and 6C do not apply to buses approved for school use under the jurisdiction of the Department of Transportation unless otherwise noted.

(d) The rules established in N.J.A.C. 6:21-6, 6A, 6B and 6C shall apply to buses manufactured after (200 days from the adoption of this rule). Buses manufactured prior to this date shall comply with the rules in effect when the bus was manufactured or converted.

6:21-6.2 Words and phrases defined

The following words and phrases, when used in N.J.A.C. 6:21-6 through 6C shall have the following meanings unless the context clearly indicates otherwise. Any reference to direction is relative to the driver in a seated position.

"Completed vehicle" means a vehicle that requires no further manufacturing operation to perform its intended function.

"Curb weight" means the weight of a school bus or vehicle including a maximum capacity of all fluids.

"Driver" means the authorized licensed operator of the vehicle.

"Emergency brake" means the mechanism designed to stop a school bus or vehicle in case of service brake failure.

"FMVSS" means Federal Motor Vehicle Safety Standards.

"FMCSR" means Federal Motor Carrier Safety Regulations.

"GVW" means Gross Vehicle Weight. GVW is the total weight of a single vehicle plus its load.

"GVWR" means Gross Vehicle Weight Rating. GVWR is the value specified by the manufacturer as the maximum loaded weight of a single vehicle.

"Kph" mean kilometers per hour.

"Mph" means miles per hour.

"NSFSB" means National Standards for School Buses.

"Parking brake" means a mechanism designed to prevent the movement of a stationary vehicle.

"Passenger" means any person riding in a school bus or vehicle other than the driver.

"Passenger seat" means a seat other than the driver's seat.

"SAE" means Society of Automotive Engineers, Inc.

"SBMI" means School Bus Manufacturers Institute.

"School bus" or "bus" when used in this subchapter shall refer to Types A, B, C and D buses and shall be classified in the following manner:

1. A Type "A" school bus is a conversion or body constructed upon a van-type compact truck or a front-section vehicle, with a GVWR of 10,000 pounds or less, designed for carrying 10 to 16 passengers;

2. A Type "B" school bus is a conversion or body constructed and installed upon a van or front-section vehicle chassis, or stripped chassis, with a GVWR of more than 10,000 pounds, designed for carrying 10 to 25 passengers. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels;

3. A Type "C" school bus is a body installed upon a flat back cowl chassis with a GVWR of more than 10,000 pounds, designed for carrying 10 to 54 passengers. The engine is in front of the windshield, or part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels;

4. A Type "D" school bus is a body installed upon a chassis, with the engine mounted in the front, midship, or rear, with a GVWR of more than 10,000 pounds, designed for carrying 10 to 54 passengers. The engine may be behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels, or midship between the front and rear axles. The entrance door is ahead of the front wheels;

5. A Type "I" school bus is any vehicle with a seating capacity of 17 or more passengers used for the transportation of students to and from school or school related activities. This identification regulates the type of vehicle registration required by the New Jersey Division of Motor Vehicles; and

6. A Type "II" school bus is any vehicle with a seating capacity of 16 passengers or less used for the transportation of students to and from school or school related activities. This identification regulates the type of vehicle registration required by the New Jersey Division of Motor Vehicles.

"School bus warning lamps" are eight alternately flashing red or amber lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform other users of the highway that the vehicle is stopped or about to stop.

"Service brake" means the primary mechanism designed to stop a motor vehicle.

"Strobe school bus warning lamps" means a school bus warning lamp system utilizing eight electronic sealed beam flash tubes.

"Webbed belt" means a narrow fabric belt woven with continuous filling yarns and finished salvages.

6:21-6.3 Certification

(a) The chassis and/or body manufacturer and any manufacturer of school bus equipment required by this subchapter shall, upon request, provide evidence and/or certify to the Department of Education, Bureau of Pupil Transportation and the user that their product meets the minimum standards of this subchapter and all applicable FMVSS.

(b) Any person who alters, converts, or modifies a certified "completed vehicle" used to transport students shall certify to the New Jersey Department of Education, Bureau of Pupil Transportation and the user that all modifications conform to applicable design, construction, testing, and performance standards contained in this chapter.

(c) School bus vendors who sell or lease buses for student transportation shall issue a "Vendor Certification Statement", to the buyer or leasee, signed by an authorized agent or officer of the company certifying that the bus meets all State and Federal requirements.

SUBCHAPTER 6A. CHASSIS STANDARDS

6:21-6A.1 Air cleaner

(a) The engine intake air cleaner system shall be furnished and properly installed by the chassis manufacturer to meet engine manufacturer's specifications.

(b) The intake air system for diesel engines may have an air cleaner restriction indicator properly installed by the chassis manufacturer to meet engine specifications.

6:21-6A.2 Axles

The front axle and rear differential, including suspension assemblies, shall have a gross axle weight rating at ground at least equal to that portion of the load as would be imposed by the chassis manufacturer's maximum gross vehicle weight rating.

6:21-6A.3 Brakes

(a) A braking system, including service brake and parking brake, shall be provided.

(b) Buses using air or vacuum in the operation of the brake system shall be equipped with warning signals, readily audible and visible to the driver, that will give a continuous warning when the air pressure available in the system for braking is 60 pounds per square inch or less or the vacuum in the system available for braking is eight inches of mercury or less. The audible warning signal shall be capable of alerting the driver while the bus is being operated in traffic. An illuminated gauge shall be provided that will indicate to the driver the air pressure in pounds per square inch or the inches of mercury vacuum available.

1. Vacuum-assist brake systems shall have a reservoir used exclusively for brakes that shall be adequate to ensure loss in vacuum at full stroke application of not more than 30 percent when the engine is not running. The brake system on gas-powered engines shall include suitable and convenient connections for the installation of a separate vacuum reservoir.

2. The brake system dry reservoir shall be safeguarded by a check valve or equivalent device, that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored dry air or vacuum shall not be depleted by the leakage or failure.

(c) Buses using a hydraulic assist-brake system shall be equipped with warning signals, readily audible and visible to the driver, that will provide continuous warning in the event of a loss of fluid flow from the primary source or loss of the electric source powering the backup system.

(d) The brake lines and booster assist lines shall be protected from excessive heat and vibration and shall be installed to prevent chafing.

(e) The brake system shall be designed to permit visual inspection of brake lining wear without removal of any chassis components.

(f) The parking brake shall hold the vehicle stationary, or to a limit of traction of the braked wheels, on a 20 percent grade under any condition of legal loading and on a surface free from snow, ice and loose material.

(g) When applied, the parking brake shall remain in an applied position with the capacity set forth in (f) above despite exhaustion of the source of energy used for the application or leakage of any kind.

(h) A parking brake lever shall be mounted to the right of the driver in a position that is easily accessible.

1. On Types A and B buses, the parking brake lever may be mounted in accordance with the chassis manufacturer's standards.

(i) The parking brake shall be equipped with a warning device visible to the driver which will indicate that the parking brake is on.

6:21-6A.4 Bumper, front

(a) The front bumper shall be furnished by the chassis manufacturer as part of the chassis.

1. The Type D bus front bumper may be furnished by the body or chassis manufacturer.

(b) The front bumper shall be of pressed steel channel or equivalent material at least 3/16 inch thick and not less than eight inches high and shall extend beyond the forward-most part of the body, grille, hood, and fenders and shall extend to outer edges of the fenders at the bumper top line.

(c) The front bumper, except breakaway bumper ends, shall be of sufficient strength to permit pushing a vehicle of equal gross

vehicle weight without permanent distortion to bumper, chassis, or body.

(d) An energy absorbing front bumper, which conforms to current FMVSS test requirements, may be used. Its design shall incorporate a self-restoring energy absorbing system of sufficient strength to:

1. Push another vehicle of similar GVW without permanent distortion to the bumper, chassis, or body; and

2. Withstand repeated impacts without damage to the bumper, chassis or body according to current NSFSB.

(e) Tow eyes or hooks shall be furnished and attached so as not to project beyond the front bumper. Tow eyes or hooks attached to the chassis frame, shall be furnished by the chassis manufacturer. This installation shall be in accordance with the chassis manufacturer's standards.

6:21-6A.5 Clutch

The clutch torque capacity shall be equal to or greater than the engine torque output.

6:21-6A.6 Color

The chassis, including front bumper, shall be black. The cowl, fenders and hood shall be National School Bus Yellow. The hood may be painted non-reflective National School Bus Yellow. Wheels and rims shall be black, gray, white, or silver. The grille shall be chrome or National School Bus Yellow.

6:21-6A.7 Drive shaft

Each segment of the drive shaft shall be equipped with a metal guard or guards around its circumference to prevent the drive shaft from whipping through the floor or dropping to the ground if broken.

6:21-6A.8 Electrical system

(a) Buses shall be equipped with a battery or batteries as specified by the manufacturer.

1. The storage battery shall have a minimum cold cranking capacity rating equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit (-17.8°c) and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be required depending upon optional equipment and local environmental conditions.

2. When a battery or batteries are to be mounted by the body manufacturer on a sliding tray rather than the standard installation provided by the chassis manufacturer, the battery(s) shall be temporarily mounted on the chassis frame by the chassis manufacturer. In this case, the final location of the battery(s) and the appropriate cable lengths shall be according to current SBMI design objectives.

(b) Buses shall be equipped with an alternator.

1. A Type A bus shall have a minimum 60 ampere per hour alternator.

2. A Type B bus shall have a minimum 80 ampere per hour alternator.

3. Types C and D buses shall have an alternator with a minimum output rating of at least 100 amperes capable of producing a minimum of 50 percent of its maximum rated output at manufacturer's recommended engine idle speed.

4. Buses equipped with an electrical power lift, shall have a minimum 100 amps per hour alternator.

5. A direct-drive alternator is permissible in lieu of belt drive. Belt drive shall be capable of handling the rated capacity of the alternator with no detrimental effect on the other driven components.

6. Estimating the required alternator capacity shall be according to current SBMI design objectives.

(c) Wiring shall use a standard color and number coding and conform to current SAE standards.

1. The chassis shall be delivered to the user with a wiring diagram that coincides with the wiring of the chassis.

2. The chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or at an accessible location in the engine compartment of buses designed without a cowl, that shall contain the following terminals for the body connections:

i. Main 100 amps. body circuit;
ii. Tail lamps;
iii. Right turn signal;
iv. Left turn signal;
v. Stop lamps;
vi. Back up lamps; and
vii. Instrument panel lights which are rheostat controlled by the headlamp switch.

6:21-6A.9 Engine fire extinguishers

Gasoline powered buses may be equipped with a fire extinguisher system for the engine compartment.

6:21-6A.10 Exhaust system

(a) The exhaust pipe, muffler, and tailpipe shall be outside the bus body compartment and attached to the chassis.

(b) The exhaust system components shall not be located where their location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the bus.

1. The exhaust system on a gas-powered chassis shall be properly insulated from fuel tank connections by a securely attached metal shield at any point where it is 12 inches or less from fuel tank or tank connections.

i. When a metal shield is required, the metal shield shall provide a minimum of two inches clearance between the exhaust system components, the fuel system, and/or combustible components.

(c) The tailpipe diameter from muffler to the end shall comply with the chassis manufacturer's standard and shall be constructed of a corrosion resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.

1. The exhaust system tailpipe shall terminate to the rear of all doors and windows designed to be opened for ventilation.

2. The exhaust sysem shall not discharge to the atmosphere immediately below an emergency exit, fuel tank or fuel tank fill pipe.

3. The exhaust system tailpipe of a bus powered by a gasoline engine shall extend to the rear bumper or to the left or right perimeter sides of the bus body and discharge to the atmosphere either:

i. At or within six inches forward of the rearmost part of the bus on either side; or

ii. Beyond the rear bus bumper up to a maximum of two inches.

4. The exhaust system tailpipe of a bus using fuel other than gasoline shall extend to the rear bumper or to the perimeter of the sides of the bus body and discharge to the atmosphere either:

i. At or within 15 inches forward of the rearmost part of the bus on the sides; or

ii. Beyond the rear bus bumper up to a maximum of two inches.

(d) The muffler shall be constructed of corrosion-resistant material.

6:21-6A.11 Fenders, front, Type C buses

(a) The total spread of the outer edges of the front fenders, measured at the fender line, shall exceed the total spread of front tires when front wheels are in straight-ahead position.

(b) Front fenders shall be properly braced and free from any body attachments.

6:21-6A.12 Frame

(a) The frame or its equivalent shall be of such design and strength characteristics to correspond with the standard practice for trucks of the same general load characteristics.

(b) Any frame modification shall not be for the purpose of extending the wheelbase.

(c) Holes in the top or bottom flanges, or side units of the frame, shall not be permitted except as provided in the original chassis frame. Welding to the frame shall be by the chassis manufacturer or as approved by the chassis manufacturer.

(d) Frame lengths shall be provided in accordance with current SBMI design objectives.

6:21-6A.13 Fuel tank

(a) The fuel tank or tanks of minimum 30 gallon capacity shall have a 25 gallon actual draw. If a fuel tank size, larger than 30

gallons is supplied, the actual draw shall be 83 percent of the tank capacity. The fuel tank(s) shall be filled and vented to the outside of the body, the location of which shall ensure that accidental fuel spillage will not drip or drain on any part of the exhaust system.

(b) No portion of the fuel system which is located to the rear of the engine compartment, except the filler tube, shall extend above the top of the chassis frame rail. Fuel lines shall be mounted to obtain maximum possible protection from the chassis frame.

(c) A fuel filter with replaceable element shall be installed between the fuel tank and the engine.

(d) The fuel tank installation shall be in accordance with current SBMI design objectives.

(e) An auxiliary tank may be added in accordance with current SBMI design objectives.

(f) A bus constructed with a power lift unit may have the fuel tank mounted on the left chassis frame rail or behind the rear wheels.

6:21-6A.14 Governor

(a) An engine governor may be installed.

(b) When an engine is mounted in the midship or rear of a bus, a governor shall be installed to limit engine speed to the maximum revolutions per minute recommended by the engine manufacturer, or a tachometer shall be installed so the engine speed may be known to the driver.

(c) A road-speed governor may be installed to limit road speed.

6:21-6A.15 Heating system

The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The opening shall be suitable for attaching a ¾ inch pipe thread/hose connector. The engine shall be capable of supplying water having a temperature of at least 170 degrees Fahrenheit at a flow rate of 50 pounds per minute at the return end of 30 feet of one inch inside diameter automotive hot water heater hose.

6:21-6A.16 Horn

Buses shall be equipped with dual horns of a standard make. Each horn shall be capable of producing a complex sound in a band of audio frequencies between 250 and 2,000 cycles per second.

6:21-6A.17 Instruments and instrument panel

(a) The chassis shall be equipped with the following instruments and gauges. Lights in lieu of gauges are not acceptable except as noted:

1. Speedometer;

2. Odometer which will give accrued mileage to seven digits including tenths of miles;

3. Voltmeter;

i. An ammeter with graduated charge and discharge with ammeter and its wiring compatible with generating capacities is permitted in lieu of a voltmeter;

4. Oil-pressure gauge;

5. Water temperature gauge;

6. Fuel gauge;

7. Upper beam headlight indicator;

8. Vacuum or air brake indicator gauge;

i. A light indicator in lieu of a gauge is permitted on buses equipped with a hydraulic-over-hydraulic brake system;

9. Turn signal indicator; and

10. Glow-plug indicator light, where appropriate.

(b) All instruments shall be easily accessible for maintenance and repair.

(c) Above instruments and gauges shall be mounted on an instrument panel in such a manner that each is clearly visible to the driver while in normal seated-belted position in accordance with current SBMI design objectives.

(d) The instrument panel shall have lamps of sufficient candlepower to illuminate all instruments, gauges and the shift selector indicator for an automatic transmission.

(e) All gauges and instruments must be appropriately identified.

6:21-6A.18 Oil filter

An oil filter with replaceable element shall be provided and shall be connected by flexible oil lines if it is not of built-in or engine mounted design. The oil filter shall have a minimum capacity of one quart.

6:21-6A.19 Openings

All openings in the floorboard or firewall between chassis and passenger compartment, such as for gearshift selector/lever and parking brake lever, shall be sealed.

6:21-6A.20 Passenger load

(a) The gross vehicle weight (GVW) is the sum of the chassis weight, plus the body weight, plus the driver's weight, plus total seated pupil weight.

1. For purposes of calculation:

i. The driver's weight is 150 pounds; and

ii. The pupil weight is 120 pounds per pupil.

(b) The GVW shall not exceed the chassis manufacturer's GVWR for the chassis.

(c) Buses with a GVWR in excess of 26,001 pounds shall display the GVWR on the sides of the bus as required by the Division of Motor Vehicles.

6:21-6A.21 Power and gradeability

The GVW shall not exceed 185 pounds per published net horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.

6:21-6A.22 Retarder system

A retarder system may be used which shall maintain the speed of the fully loaded school bus at 19.0 mph or 30 kph on a seven percent grade for 3.6 miles or six km.

6:21-6A.23 Shock absorbers

Buses shall be equipped with front and rear double-action shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

6:21-6A.24 Springs

(a) The capacity of the springs or suspension assemblies shall be commensurate with the chassis manufacturer's GVWR.

(b) If leaf type rear springs are used, they shall be of a progressive type.

6:21-6A.25 Steering gear

(a) The steering gear shall be approved by the chassis manufacturer and designed to assure safe and accurate performance when a vehicle is operated with maximum load and at maximum speed.

(b) The steering mechanism shall be accessible for external adjustment.

(c) No changes shall be made in the steering apparatus which are not approved by the chassis manufacturer.

(d) There shall be a clearance of at least two inches between the steering wheel and the cowl, instrument panel, windshield, or any other surface.

(e) Power steering is required and shall be of the integral type with integral valves.

(f) The steering system shall be designed to provide a means of lubrication for all wear points, if wear points are not permanently lubricated.

6:21-6A.26 Tires and rims

(a) Tires and rims of proper size and tires with load rating commensurate with chassis manufacturer's GVWR shall be provided.

(b) Tubeless tires mounted on one-piece drop center rims may be used.

(c) All tires shall be of the same size, construction and load rating. The load rating shall meet or exceed the GAWR in accordance with current applicable FMVSS.

1. Tires on Types C and D buses may be of more than one type construction provided all tires on the same axle are the same type of construction.

(d) If a bus is equipped with a spare tire and rim assembly, it shall be of the same size as those mounted on the bus.

(e) If a bus is equipped with a tire carrier, it shall be suitably mounted in an accessible location outside passenger compartment.

(f) The tire tread depth shall at no time be less than 4/32 of an inch on the front tires and 2/32 of an inch on the rear tires as measured on two adjacent treads by a Dill gauge or its equivalent.

(g) Regrooved or recapped tires shall not be used on the front wheels of a bus.

(h) Dual rear tires shall be provided on Types B, C, and D buses.

(i) Tire chains, snow tires or all weather tires shall be used for the drive wheels to enhance the safe operation of the bus in areas of snow and ice.

6:21-6A.27 Transmission

(a) When an automatic transmission is used, it shall provide for not less than three forward speeds and one reverse speed.

(b) When a manual transmission is used, second gear and higher shall be synchronized except when incompatible with engine power. A minimum of three forward speeds and one reverse speed shall be provided.

(c) A diagram of the shifting control pattern shall be located in a position easily visible to the driver.

(d) There shall be a detent on the automatic transmission shift lever to insure that the transmission cannot accidentally move from neutral to a drive gear without driver effort.

(e) Buses which are not equipped with a park position on the shift control selector for automatic transmissions shall be equipped with a heavy duty parking brake.

(f) The transmission shift control lever/mechanism shall be mounted to the right of the steering column.

6:21-6A.28 Turning radius

(a) A chassis with a wheel base of 264 inches or less shall have a right and left turning radius of not more than 42½ feet, curb to curb measurement.

(b) A chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44½ feet, curb to curb measurement.

6:21-6A.29 Undercoating

The undersides of steel or metallic-constructed front fenders shall be coated with rust-proofing compound.

6:21-6A.30 Weight distribution

The weight distribution of a fully loaded bus on a level surface shall not exceed the manufacturer's front and rear GAWR.

SUBCHAPTER 6B. BODY STANDARDS

6:21-6B.1 Aisle

(a) The minimum clearance of all aisles shall be 12 inches.

1. The aisle leading to an exit door or a rear emergency exit shall be a minimum width of 12 inches.

2. The aisle leading from the center aisle to a side emergency door shall be a minimum width of 24 inches.

3. The aisle leading to an emergency or lift door from a wheelchair position shall be a minimum width of 30 inches.

(b) Aisles shall be unobstructed at all times by any type barrier, seat, or other object.

(c) The seat backs shall be slanted sufficiently to give aisle clerance of 15 inches at the tops of seat backs.

(d) This rule also applies to buses under the jurisdiction of the Department of Transportation, approved for school use, contracted by a local board of education for transportation to and from school.

6:21-6B.2 Back up warning alarm

An automatic audible alarm shall be installed behind the rear axle of the bus and shall comply with current applicable SAE standards for rubber tired vehicles.

6:21-6B.3 Battery

(a) A battery is to be furnished by the chassis manufacturer.

(b) When the battery is mounted as described in the chassis standards of N.J.A.C. 6:21-6A.8(a), the body manufacturer shall securely attach battery on a slide-out or swing-out tray in a closed, vented compartment in the body skirt, so that the battery may be exposed to the outside for convenient servicing. The battery compartment door or cover shall be hinged at the front or top and secured by an adequate and conveniently operated fastening device.

6:21-6B.4 Bumpers

(a) The front bumper shall be provided by the chassis manufacturer.

1. The bumper on a Type D bus may be furnished by the body or chassis manufacturer.

2. A front safety shield attached directly under the bus front bumper may be used. It shall be constructed of rigid plastic, fiberglass, steel or equivalent material designed to withstand abnormal vibration, severe atmosphere conditions and removable to permit towing. The shield's overall width shall not exceed maximum front tire width, when bus wheels are in a straight ahead position and shall terminate 12 to 14 inches above the road surface. Front surface may be either solid, perforated or louvered and shall be black.

(b) A rear bumper shall be provided which is constructed of pressed steel channel or equivalent material at least 3/16 inch thick.

1. The bumper on a Type A bus shall be a minimum of eight inches high.

2. The bumper on Types B, C, and D buses shall be a minimum of 9½ inches high.

(c) The bumpers shall be of sufficient strength to permit pushing by another vehicle without permanent distortion.

(d) The rear bumper shall be wrapped around the back corners of the bus. It shall extend forward at least 12 inches, measured from the rear-most point of the body at the floor line.

(e) The rear bumper shall be attached to the chassis frame in such a manner that it may be easily removed. It shall be braced to withstand rear or side impact, and shall be attached to discourage hitching of rides.

(f) The rear bumper shall extend at least one inch beyond the rear-most part of the body surface measured at the floor line.

1. A Type A bus may conform to chassis manufacturer's specifications.

(g) Energy-absorbing bumpers which conform to current applicable FMVSS test requirements may be used. Its design shall incorporate a self-restoring energy absorbing bumper system so attached to discourage the hitching of rides and of sufficient strength to:

1. Permit pushing by another vehicle without permanent distortion to the bumper, chassis, or body; and

2. Withstand repeated impacts without damage to the bumper, chassis, or body according to current NSFSB.

6:21-6B.5 Color

(a) The school bus body shall be painted National School Bus Yellow.

(b) The body exterior paint trim, bumper, lamp hoods, emergency door arrow, exterior mirror assembly and support brackets shall be black.

1. The words "EMERGENCY DOOR" shall be applied both inside and outside the door in red lettering at least two inches high and at least 3/16 inch wide.

(c) Reflective material may be applied to the bus. The material used shall be automotive engineering grade or better, meeting initial reflectance values as specified by NSFSB and retaining at least 50 percent of those values for a minimum of six years. Reflective materials and markings, if used, may include any or all of the following:

1. The bumpers may be marked diagonally 45 degrees down to the centerline of the pavement with stripes evenly spaced of National School Bus Yellow or non-contrasting reflective material two inches wide.

2. The rear of bus body may be marked with a strip of reflective National School Bus Yellow material no greater than two inches in width to be applied to the back of the bus, extending from the left lower corner of the "SCHOOL BUS" lettering, across to left side of the bus, then vertically down to the top of the bumper, across

the bus on a line immediately above the bumper to the right side, then vertically up to a point even with the strip placement on the left side, and concluding with a horizontal strip terminating at the right lower corner of the "SCHOOL BUS" lettering.

3. The sides of the bus body may be marked with reflective National School Bus Yellow material at least six inches but not more than 12 inches in width, extending the length of the bus body and located (vertically) as close as practicable to the beltline.

4. The "SCHOOL BUS" signs may be marked with reflective National School Bus Yellow material comprising background for lettering of the front and/or rear "SCHOOL BUS" signs.

6:21-6B.6 Communications

(a) School buses may be equipped with an electronic voice communication system, preferably not citizen band equipment.

(b) A public address sound system with interior speakers and exterior horn may be installed.

6:21-6B-7 Construction

(a) The bus construction shall be of prime commercial quality steel or other metal or material with strength at least equivalent to all-steel as certified by the body manufacturer.

(b) The construction shall provide a reasonably dustproof and water-tight unit and the exterior shall be designed to discourage the hitching of rides.

(c) The bus body joints shall conform to current applicable FMVSS. This does not include the body joints created when body components are attached to components furnished by the chassis manufacturer.

(d) Restraining barriers shall conform to current applicable FMVSS requirements for buses with a GVWR of more than 10,000 pounds.

(e) Buses may be equipped with steel side panel skirts between the front and rear axles of the bus and shall extend to the bottom-most evaluation of any chassis component located within the center section of a wheel base measurement apportioned into three equal sections. The side panel skirt shall terminate no less than twelve inches above a level road surface. Beyond the rear axle, the bottom of the side panel skirts shall taper upward to the bottom-most part of the rear bumper.

(f) Buses shall not be equipped with stanchions, an interior luggage rack, a roof luggage rack, or luggage access ladder.

1. This rule also applies to buses under the jurisdiction of the Department of Transportation, approved for school use, contracted by a local board of education for transportation to and from school.

6:21-6B.8 Defrosters

(a) Defrosting and degfogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow. The defroster unit shall have a separate blower motor in addition to the heater motors.

1. A Type A bus shall be equipped with defogging and defrosting equipment which will direct a sufficient flow of heated air onto the windshield to eliminate frost, fog, and snow.

(b) The defrosting system shall conform to SAE standards.

(c) The defroster and defogging system shall be capable of furnishing heated outside ambient air except that part of the system furnishing additional air to the windshield, entrance door, and step-well which may be of the recirculating air type.

(d) Auxiliary fans are not to be considered as a defrosting and defogging system.

(e) Portable heaters shall not be used.

6:21-6B.9 Doors, entrance

(a) The entrance door shall be under control of driver, and designed to afford easy release and prevent accidental opening. When a hand lever is used, no part shall come together so as to shear or crush fingers.

(b) The entrance door shall be located on the right side of the bus opposite the driver and within direct view of the driver.

(c) The entrance door on Types B, C, and D buses shall have a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches. The entrance door on a Type A bus shall have a minimum opening of 1,200 square inches.

(d) The entrance door shall be of split-type, sedan-type, or jack-knife type. A split-type door includes any sectioned door which divides and opens inward or outward. If one section of split-type door opens inward and the other opens outward, the front section shall open outward.

(e) Door panels shall be of approved safety glass. The bottom of each lower glass panel shall not be more than 10 inches from the top surface of the bottom step. The top of the upper glass panel shall not be more than six inches from top of door.

1. A Type A bus which is not equipped with a split-type door shall have an upper panel window of safety glass with an area of at least 350 square inches.

(f) The vertical closing edges on a split-type door shall be equipped with a flexible material to protect children's fingers.

1. A Type A bus which is not equipped with a split-type door may conform to the chassis manufacturer's specifications.

(g) There shall be no entrance door to the left of the driver on Types C and D buses. Type A and B buses may conform to chassis manufacturer's specifications.

(h) All doors shall be equipped with a padding at the top edge of each door opening. Pad shall be at least three inches wide and one inch thick and extend the full width of the door opening.

(i) When a bus is equipped with air doors or other air operated assemblies, excluding windshield wipers, an additional air tank is needed for the operation of those assemblies.

6:21-6B.10 Doors, emergency

(a) The emergency door shall be hinged on the right side if in rear end of the bus and on the front side if on either side of the bus. All emergency doors shall open outward and be equipped with a device to hold the door open during emergencies and school bus evacuation drills.

1. A Type A bus equipped with double emergency doors shall be hinged on the outside edge and have a three point fastening device.

(b) The emergency door shall be labeled inside and outside to indicate how it is to be opened.

(c) The upper portion of emergency door shall be equipped with approved safety glazing, exposed area of which shall be not less than 400 square inches.

1. A rear view wide angle lens may be attached to one rear bus window. The lens shall not cover more than one third of the glass area.

(d) The lower portion of the rear emergency door on Types B, C, and D buses shall be equipped with a minimum of 350 square inches of approved safety glazing.

(e) There shall be no steps leading to emergency door.

(f) The words "EMERGENCY DOOR" shall be applied to the emergency door both inside and outside in red letters at least two inches high and 3/16 inch wide, shall be placed at top of or directly above the emergency door or on the door in the metal panel above the top glass.

(g) The emergency door shall be designed to be opened from the inside and outside of the bus and shall be equipped with a quick release fastening device designed to prevent accidental release. Control of the fastening device from the driver's seat shall not be permitted.

(h) The emergency door and the rear emergency window fastening device shall be equipped with a buzzer located in the driver's compartment which will indicate to the driver that the slide bar has moved and the emergency door is about to open. The switch which operates the buzzer shall be enclosed in a metal case and the wires leading from the switch shall be concealed in the bus body.

(i) The emergency door may be equipped with a locking system which incorporates an interlocking electrical circuit that will prevent the bus from being started while the emergency door is locked.

(j) The emergency door windows shall not be covered by any metal bars or screening.

(k) The emergency door shall be equipped with padding at least three inches wide and one inch thick, at top edge of each door opening, which shall extend the full width of the door opening.

(l) There shall be no obstruction higher than ¼ inch high across the bottom of any emergency door opening.

6:21-6B.11 Emergency exits

(a) Buses shall be equipped with emergency push-out split sash side windows which are vertically hinged on the forward side of the bus and roof safety hatches as follows:

1. One emergency push-out exit window per side.

i. Push-out windows shall not be placed directly opposite each other.

ii. Each emergency push-out side exit window shall be equipped with a warning buzzer, located in the driver's compartment to alert the driver when the latch for the emergency push-out window is released.

2. A roof safety hatch shall be installed in the forward half of the bus roof.

i. The roof safety hatch shall be constructed of metal, fiberglass or equivalent and equipped with an interior and exterior latch release. Each roof safety hatch shall provide a minimum opening of 20 inches by 20 inches.

ii. Each roof safety hatch shall be equipped with a warning buzzer, located in the driver's compartment to alert the driver when the latch for the roof safety hatch is released.

(b) Additional push-out windows and roof safety hatches may be used.

(c) An additional roof safety hatch may be installed in the rear half of the bus roof on Types C and D buses.

6:21-6B.12 Emergency equipment

(a) A pry bar at least 24 inches in length shall be securely mounted in the bus in a location readily accessible to the driver.

(b) Each school bus shall contain at least three reflectorized triangle road warning devices in compliance with FMVSS and be mounted in an accessible place in the driver's compartment.

1. The mounting location in a Type A bus is optional.

(c) Buses may be equipped with an identified body fluid clean-up kit that is removable, moisture proof and mounted in an accessible place in driver's compartment.

6:21-6B.13 Fire extinguishers

(a) The bus shall be equipped with at least one pressurized, dry chemical type fire extinguisher, complete with hose, mounted in a bracket located in the driver's compartment and readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher which can be easily read without removing the extinguisher from its mounted position.

(b) The fire extinguisher shall be approved by the Underwriters Laboratories, Inc. with a total rating of 2 A-10 BC or greater. The operating mechanism shall be sealed with a type of seal which will not interfere with the use of the fire extinguisher.

6:21-6B.14 First aid kit

(a) A removable first aid kit shall be provided. It should be moisture and dust proof and be mounted in an accessible place within the driver's compartment. When the first aid kit is stored in a storage compartment, the location of the kit shall be identified by the words "First Aid" in red letters two inches high and $^{3}/_{16}$ inch wide.

(b) The kit shall contain, but is not limited to, the following items:

1. Two, one inch × 2½ yards adhesive tape rolls;
2. Twenty-four sterile gauze pads three inches × three inches;
3. One hundred ¾ inch × three inches adhesive bandages;
4. Eight, two inch bandage compresses;
5. Ten, three inch bandage compresses;
6. Two, two inch × six yards sterile gauze roller bandages;
7. Two nonsterile triangular bandages approximately 40 inches × 54 inches with two safety pins;
8. Three sterile gauze pads 36 inches × 36 inches;
9. Three sterile eye pads;
10. One pair latex gloves;
11. One pair rounded end scissors;
12. One mouth-to-mouth airway;
13. One sharpened pencil; and
14. One small writing pad.

6:21-6B.15 Floor

(a) The floor in the underseat area, including tops of the wheelhousing, drivers compartment, and the toe board, shall be covered with rubber floor covering or equivalent having minimum overall thickness of .125 inch.

1. The toe board floor covering on Types A and B buses may be the chassis manufacturer's standard.

(b) The floor covering in the aisle shall be rubber or equivalent, wear-resistant, and ribbed. Minimum overall thickness shall be .187 inch measured from the tops of the ribs.

(c) The floor covering must be permanently bonded to the floor and shall not crack when subjected to sudden changes in temperature. The bonding or adhesive material shall be waterproof and shall be the type recommended by the manufacturer of floor covering material. All seams must be sealed with waterproof sealer.

(d) A secured insulated screw-down plate to access the fuel tank sending unit shall be provided.

6:21-6B.16 Heaters

(a) Heaters shall be of hot water type and/or combustion type.

(b) If only one heater is used, it shall be of fresh air or combination fresh air and recirculating type.

(c) If more than one heater is used, additional heaters may be of the recirculating air type.

(d) The heating system shall be capable of maintaining a temperature of not less than 40 degrees Fahrenheit throughout the bus at average minimum January temperature as established by the U.S. Department of Commerce, Weather Bureau, for the area in which the bus is to be operated.

(e) All heaters installed by the body manufacturers shall bear a name plate that indicates the heater rating is in accordance with SBMI standards. The plate shall be affixed by the heater manufacturer which will constitute certification that the heater performance is as shown on the plate.

(f) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hose shall conform to SAE standards. Heater lines on the interior of the bus shall be shielded to prevent scalding of the driver or passengers.

(g) Each hot water heater system installed by the body manufacturer shall include one shut-off valve in the pressure line and one shut-off valve in the return line with both valves at or near the engine in an accessible location. There shall also be a water flow regulating valve installed in the pressure line for convenient operation by the driver while seated.

1. The hot water heater system in a Type A bus may conform to the chassis manufacturer's standard.

(h) Combustion type heaters shall comply with current applicable FMCSR.

(i) Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company-installed heaters to remove air from the heater lines.

(j) Access panels shall be provided to make heater motors, cores, and fans readily accessible for service. Outside access panel may be provided for the driver's heater.

(k) A rear engine bus shall be equipped with a hot water heater booster pump.

6:21-6B.17 Identification

(a) The words "SCHOOL BUS" shall be applied to the bus body in black letters at least eight inches high on both the front and rear of the bus between the warning lamp signals or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Lettering shall conform to Series "B" of standard alphabets for highway signs.

1. An illuminated front and rear destination sign with "SCHOOL BUS" in eight inch black letters on background of National School Bus Yellow may be used.

(b) When attached signs are used, they shall comply with the following:

1. The sign on the front of the bus shall have the words "SCHOOL BUS" printed in black letters not less than eight inches on a background of National School Bus Yellow;

2. The sign on the rear of the bus shall be at least 10 square feet in size and shall be painted National School Bus Yellow and have the words "SCHOOL BUS" printed in black letters not less than eight inches high; and

3. Attached signs shall be removed or covered whenever the bus is not being used for to and from school transportation.

(c) The standards in (a) and (b) above also apply to buses under the jurisdiction of the Department of Transportation, approved for school use, contracted by a local board of education for transportation to and from school.

(d) There shall be no lettering on the front or rear of the bus unless specified in this subchapter.

(e) Only signs and lettering limited to the name of owner or operator and any marking necessary for identification shall appear on the sides of the bus.

1. The owning or operating organization shall be conspicuously identified in letters at least three inches high, located on each longitudinal side of the exterior of the bus. The identification shall be below the window line, completely horizontal and shall be black or National School Bus Yellow.

2. Identification letters or numbers, up to a maximum height of six inches, shall be in prominent locations on the front and rear of the bus below the window line. The color of the letters or numbers shall be either white, black or National School Bus Yellow.

(f) No advertisement of any kind shall be exhibited either on the interior or exterior of the bus, except for the manufacturer's and vendor's trade names which may be exhibited on the bus.

6:21-6B.18 Inside height

(a) The inside body height shall be 72 inches or more, measured from the ceiling to the floor metal, at any point on longitudinal center line from front vertical bow to rear vertical bow.

1. A Type A bus shall have a minimum of 62 inches inside body height.

6:21-6B.19 Insulation

(a) The ceiling and walls shall be insulated with adequate material to deaden sound and to reduce vibration to a minimum. If thermal insulation is specified, it shall be of fire-resistant material approved by the Underwriters Laboratories, Inc.

(b) Floor insulation may be used and shall be either five ply $^{19}/_{32}$ inch thick plywood, or a material of equal or greater strength with an insulation R value and shall be equal or exceed properties of exterior-type softwood plywood, C-D Grade as specified in standards issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed.

1. Type A bus shall be insulated with a minimum of one-half inch exterior grade plywood securely fastened to the steel floor of the bus in the passenger compartment.

6:21-6B.20 Interior

(a) The interior of the bus shall be free of all unnecessary projections, such as luggage racks, which may cause injury. This standard requires inner lining on ceilings and walls. If ceiling is constructed with lapped joints, the forward panel shall be lapped by the rear panel and the exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges.

(b) The driver's area forward of the foremost padded barriers shall permit the mounting of required safety equipment and vehicle operation equipment.

(c) Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to NSFSB.

6:21-6B.21 Lamps and signals

(a) The lamps on the exterior of the bus shall conform to current applicable FMVSS.

1. Each clearance, marker, or identification lamp shall be of the two bulb design and shall automatically be activated, whenever the headlights or parking lamps are activated, in a steady burning state.

2. Two parking lamps shall designate the front of the bus.

3. Two backup lamps shall be installed on the rear of Types B, C, and D buses. These lamps shall be illuminated when either the shift control lever for the transmission is placed into reverse gear or the rear emergency door is unlatched.

4. An armored marker-type amber lamp connected to the turn signals shall be installed on each side of the bus body immediately behind the entrance door on the right and symmetrically opposite on the left side of all Type C and D buses.

(b) Interior lamps shall be provided which adequately illuminate aisle and stepwell. Stepwell light shall be illuminated by the service door operated switch, which will illuminate only when headlights and clearance lights are on and the service door is open.

(c) Body instrument panel lights shall be controlled by an independent rheostat switch.

(d) A telltale light, plainly visible to the driver, shall be installed to give a positive indication of the operation of the stop lights.

(e) Alternately flashing signal lamps shall be provided as follows:

1. Red signal lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform other users of the highway that the bus is stopped to take on or discharge school children.

i. Buses shall be equipped with two front and two rear red lamps located approximately six inches below the top of the bus, as near the sides as is possible, and equidistant from the center.

2. Amber signal lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform other users of the highway that the bus is about to stop on the highway to take on or discharge school children.

i. In addition to the four red lamps described in (e)1 above, four amber lamps shall be installed with one amber lamp located near each red signal lamp, at same level, but closer to vertical centerline of bus.

ii. The amber lamps shall be activated, approximately 300 feet prior to each school bus stop, either by a hand button that is identified and easily accessible to the belted bus driver or by a foot switch located on the floor board directly in front of where a clutch pedal normally would be located.

3. The system of red and amber signal lamps shall be wired so that amber lamps are energized manually, and red lamps are automatically energized (with amber lamps being automatically deenergized) when stop signal arm is extended or when bus service door is opened.

4. All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a readily accessible location.

5. Each school bus shall be equipped with a system which monitors the front and rear alternately flashing signal lamps and the monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker.

6. The area around the lens and extending outward approximately three inches from each alternately flashing signal lamp shall be black in color. In those installations where there is no flat vertical portion of the body immediately surrounding the entire lens of lamp, a circular or square band approximately three inches wide, immediately below and to both sides of the lens, shall be black in color on the body or roof area against which the signal lamp is seen from a distance of 500 feet along axis of vehicle.

7. Visors or hoods, black in color, with a minimum depth of four inches shall be provided.

8. If strobe alternately flashing signal lamps are utilized, the front and rear signal lamps shall be equipped with eight seven inch sealed beam electronic strobe lamps, four red and four amber, working in an automatic integrated system. The exterior surface of lens shall be smooth and meet SAE color requirements. Strobe alternately flashing signal lamps are only permitted on Type C and D buses.

i. The solid-state strobe power supply shall provide the electrical power to energize the sealed beam flash tubes. The power supply shall energize the lamps at a combined alternating flash rate of 120-128 flashes per minute. The power supply shall be fully enclosed

in a metal container, with a minimum metal wall thickness of .060 inches, and mounted within the front or rear bulkheads.

(f) The requirements in (e) above also apply to buses under the jurisdiction of the Department of Transportation, approved for school use, contracted by a local board of education for transportation to and from school.

(g) The bus body shall be equipped with rear turn signal lamps that are at least seven inches in diameter or if a shape other than round, a minimum 38 square inches of illuminated area and meet SAE standards. These signals must be connected to the chassis hazard wiring switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. Turn signal lamps are to be placed as wide apart as practical and their centerline shall be approximately eight inches below the rear window.

1. On Type A buses, the lamps must be at least 21 square inches in lens area.

(h) Buses shall be equipped with four combination red stop/tail lamps as follows:

1. Two combination lamps with a minimum diameter of seven inches, or if a shape other than round, a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus just inside the turn signals.

2. Two combination lamps with a minimum diameter of four inches, or if a shape other than round, a minimum 12 square inches of illuminated area shall be placed on the rear of the body between the beltline and the floor line. Rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated.

3. Type A buses may conform to the chassis manufacturer's standard.

6:21-6B.22 Metal treatment

(a) All metal used in construction of bus body shall be zinc coated or aluminum coated or treated by equivalent process before bus is constructed. Included are such items as structural members, inside and outside panels, door panels, and floor sills; excluded are such items as door handles, grab handles, interior decorative parts, and other interior plated parts.

(b) All metal parts that will be painted shall be chemically cleaned, etched, zinc-phosphate coated, and zinc-chromate or epoxy primed or conditioned by equivalent process.

(c) In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas, and surfaces subjected to abrasion during vehicle operation.

(d) As evidenced that the above requirements have been met, samples of materials and sections used in the construction of the bus body shall not lose more than 10 percent of material by weight when subjected to 1,000 hour salt spray test as provided for in the NSFSB.

6:21-6B.23 Mirrors

(a) An interior mirror shall be provided which is either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage. Mirror shall be a minimum of six inches by 30 inches. The mirror shall have rounded corners and protected edges.

1. On a Type A bus, the mirror shall be a minimum of six inches by 16 inches.

(b) Buses shall be equipped with a system of exterior mirrors which conform to current applicable FMVSS as follows:

1. A rear vision mirror system which shall be capable of providing a view along the left and right sides of the vehicle which will provide the driver with a view of the rear tires at ground level, a minimum distance of 200 feet to the rear of the bus and at least 12 feet perpendicular to the side of the bus at the rear axle line; and

2. A crossview mirror system which shall provide the driver with indirect vision of an area at ground level from the front bumper forward and the entire width of the bus to a point where the driver can see by direct vision. The crossview system shall also provide the driver with indirect vision of the area at ground level around the left and right front corners of the bus to include the tires and entrance door on all types of buses to a point where it overlaps with the rear vision mirror system.

i. No portion of the crossview mirror assembly shall project more than six inches forward or laterally from the outer-most limits of the vehicle at point of installation.

ii. No portion of the crossview mirror assembly shall unduly obstruct the light emitted from any required lamp or the driver's view of vehicular traffic.

3. Stick-on convex mirrors shall not be attached to any mirror surface.

6:21-6B.24 Mounting

(a) The chassis frame shall support the rear body cross member. The bus body shall be attached to the chassis frame at each main floor sill, except where chassis components interfere, in such manner as to prevent shifting or separation of body from chassis under severe operation conditions.

1. The distance between the fasteners which secure the body to the chassis shall not exceed 42 inches.

2. The fasteners shall be located directly opposite each other along the longitudinal length of the chassis frame.

(b) Insulation material shall be placed at all contact points between the body and the chassis frame on body on chassis type buses, and shall be attached to the chassis frame or body so that it will not move under severe operating conditions.

6:21-6B.25 Overall length

Overall length of bus shall not exceed 40 feet.

6:21-6B.26 Overall width

Overall width of bus shall not exceed 96 inches excluding accessories.

6:21-6B.27 Reflectors

(a) Reflectors are required on buses which comply with current applicable FMVSS as follows:

1. On the rear: Two red reflectors, equally spaced as far from the center as practical and at the same height.

2. On each side: Two reflectors on each side, one amber, at or near the front and one red at or near the rear.

3. One amber reflector on each side of the bus body as near the center as practical shall be provided on buses 30 feet or more in length.

6:21-6B.28 Rub rails

(a) There shall be one rub rail located on each side of bus approximately at seat level which shall extend from rear side of entrance door completely around bus body (except emergency door) to point of curvature near outside cowl on left side.

(b) There shall be one rub rail located approximately at floor line which shall cover same longitudinal area as upper rub rail, except at wheelhousing, and shall extend only to radii of right and left rear corners.

(c) Each rub rail shall be attached at each body post, and all other upright structural members.

(d) Each rub rail, in their finished form, shall be four inches or more in width. They shall be of 16 gauge steel or suitable material of equivalent strength, and shall be constructed in corrugated or ribbed fashion.

(e) Both rub rails shall be applied outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this requirement.

(f) On Type A and B buses with a chassis manufacturer's body, or Type C and D buses with a rear luggage or a rear engine compartment, rub rails are not required to extend around rear corners.

6:21-6B.29 Sanders and traction device

(a) When used, sanders shall:

1. Be a hopper cartridge-valve type;

2. Have a metal hopper with all interior surfaces treated to prevent condensation of moisture;

3. Be of at least 100 pound (grit) capacity;

4. Have a cover on the filler opening of the hopper, which screws into place, sealing unit airtight;

5. Have discharge tubes extending to front of each rear wheel under fender;
6. Have no-clogging discharge tubes with slush-proof, non-freezing rubber nozzles;
7. Be operated by an electric switch with a telltale pilot light mounted on the instrument panel;
8. Be exclusively driver-controlled; and
9. Have a gauge to indicate that hoppers need refilling when they are down to one-quarter full.
(b) Automatic traction chains may be used.

6:21-6B.30 Seat belt for driver
(a) A type 2 lap belt/shoulder seat belt shall be provided for the driver. The assembly shall be equipped with an emergency locking retractor for the continuous belt system. The lap portion of the belt shall be guided or anchored where practical to prevent the driver from sliding sideways under it.
(b) The seat belt shall have a button type latch and the floor anchored belt section shall be booted to keep the buckle within driver's reach.

6:21-6B.31 Seats and crash barriers
(a) All seats shall have minimum depth of 15 inches.
(b) Seat backs shall be a minimum of 24 inches high and a minimum 20 inches above the seating reference point.
(c) Seat, seat back cushion and crash barrier shall be covered with a material having 42-ounce finished weight, 54 inches width, and finished vinyl coating of 1.06 broken twill, or other material with equal tensile strength, tear strength, seam strength, adhesion strength, resistance to abrasion, resistance to cold, and flex separation, and meets the criteria contained in the NSFSB Fire Block Test for school bus seat upholstery.
1. Damaged or vandalized covers of seat cushions, seat backs, and crash barriers equipped with flame-retardant materials shall be repaired in a manner to maintain the original flame-retardant protection.
(d) All seats shall be forward facing.
(e) Each seat leg shall be secured to the floor by a minimum of two bolts, washers, and nuts.
(f) All seat frames attached to the seat rail shall be fastened with two bolts, washers and nuts or flange-headed nuts.
(g) The driver's seat shall be of the highback type with a minimum seat back adjustment of 15 degrees and with a head restraint to accommodate a 95 percentile adult male. The driver's seat shall be secured with nuts, bolts, and washers or flange-headed nuts.
1. The space between the back of the driver's seat, in the rearmost position, and the front surface of the restraining barrier located directly behind the driver shall comply with FMVSS for barrier deflection.

6:21-6B.32 Spray suppressant and mud flaps
Spray suppressants or mud flaps are required when an angle found by a level road surface and a line projected from the point of contact of the rearmost tire with the ground and the bottom edge of the rear bumper exceeds an angle of 22½ degrees.

6:21-6B.33 Steps
(a) First step at the entrance door shall not be less than 10 inches and not more than 14 inches from the ground, based on standard chassis specifications.
1. Type D buses shall have the first step at the entrance door 12 to 16 inches from the ground.
(b) Step risers shall not exceed a height of 10 inches. When plywood is used on the steel floor or step, the riser height may be increased by thickness of the plywood used.
(c) Steps shall be enclosed to prevent accumulation of ice and snow.
(d) Steps shall not protrude beyond side body line.
(e) A grab handle not less than 20 inches in length shall be provided in unobstructed location inside the doorway.

6:21-6B.34 Step treads
(a) All steps, including floor line platform area, shall be covered with 3/16 inch rubber floor covering or other materials equal in wear resistance and abrasion resistance to top grade rubber.
(b) The rubber step treads shall be permanently bonded to the step well metal, minimum 24 gauge cold roll steel, and the ribbed rubber grooved design shall run at 90-degree angles to long dimension of the step tread.
(c) Three-sixteenth inch ribbed step tread shall have a 1½ inch white nosing integral piece without any joint.
(d) The rubber portion of step treads shall have the following characteristics:
1. Special compounding for good abrasion resistance and high coefficient of friction;
2. Flexibility so that it can be bent around a one-half inch mandrel both at 130 degrees Fahrenheit and 20 degrees Fahrenheit without breaking, cracking, or crazing; and
3. Show a durometer hardness of 85 to 95.

6:21-6B.35 Stirrup steps
There shall be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the bus body for easy accessibility for cleaning the windshield and lamps except when windshield and lamps are easily accessible from the ground. A step, in lieu of the stirrup steps, is permitted in or on the front bumper.

6:21-6B.36 Stop signal arm
A stop signal arm shall be provided on the left side of the body which meets the applicable requirements of FMVSS. The stop arm shall be an octagonal shape with white letters and border on a red background. The flashing lamps in stop arm shall be connected to the alternately red flashing signal lamp circuits. Vacuum, electric or air operation of the stop signal arm is optional.

6:21-6B.37 Storage compartment
If tools, tire chains and/or tow chains are carried on the bus, a container of adequate strength and capacity may be provided. Such storage container may be located either inside or outside the passenger compartment but, if inside, it shall have a cover (seat cushion may not serve as this purpose) capable of being securely latched and be fastened to the floor convenient to either the entrance or emergency door.

6:21-6B.38 Sun shield
(a) Interior adjustable transparent sun shield not less than six inches by 30 inches with a finished edge shall be installed in a position convenient for use by driver.
1. A Type A bus may be equipped with a sun shield not less than six inches by 16 inches.

6:21-6B.39 Tailpipe
(a) The tailpipe diameter from muffler to the end shall comply with the chassis manufacturer's standard and shall be constructed of a corrosion resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.
(b) The tailpipe shall terminate to the rear of all doors and windows designed to be opened for ventilation.
(c) The tailpipe shall not terminate immediately below an emergency exit, fuel tank, or fuel tank fill pipe.
(d) The tailpipe of a bus powered by a gasoline engine shall extend to the rear bumper or to the left or right perimeter sides of the bus body and discharge to the atmosphere either:
1. At or within six inches forward of the rearmost part of the bus on the left or right side; or
2. Beyond the rear bus bumper up to a maximum of two inches.
(e) The tailpipe of a bus using fuel other than gasoline shall extend to the rear bumper or to the left or right perimeter sides of the bus body and discharge to the atmosphere either:
1. At or within 15 inches forward of the rearmost part of the bus on the left or right side; or
2. At or beyond rear bus bumper up to a maximum of two inches.

(f) Tailpipe(s) which terminate at either the left or right side of the bus shall extend to but not beyond the perimeter of the bus body side.

6:21-6B.40 Tow eyes or hooks

Tow eyes or hooks may be furnished on the rear and attached so they do not project beyond the rear bumper. Tow eyes or hooks attached to the chassis frame shall be furnished by either the chassis or body manufacturer. The installation shall be in accordance with the chassis manufacturer's specifications.

6:21-6B.41 Undercoating

(a) The entire underside of the bus body, including floor sections, cross member, and below floor line side panels, shall be coated with rust-proofing compound for which the compound manufacturer has issued a notarized certification of compliance to the bus body builder that the compound meets or exceeds all performance and qualitative requirements of applicable Federal specifications.

(b) Undercoating compound shall be applied with suitable airless or conventional spray equipment to recommended film thickness and shall show no evidence of voids in cured film.

6:21-6B.42 Ventilation

(a) The body shall be equipped with a suitable, controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without opening of windows except in extremely warm weather.

(b) A static-type nonclosable exhaust vent shall be installed in the low-pressure area of roof.

(c) One six inch diameter, two speed auxiliary fan with protective cage shall be installed on each side of the driver position on Types C and D school buses. Each fan shall be controlled by a separate switch.

1. If an auxiliary fan is used on Types A and B buses, it shall be a nominal six inch diameter fan with the blades covered with a protective cage. Each fan shall be controlled by a separate switch.

6:21-6B.43 Walking control arm

(a) A walking control arm may be installed on buses. The construction and design of this equipment shall offer a safe and trouble free operation. The control unit shall be installed on the right side of the front bumper. Equipment shall not obstruct the view of any sign or license plate on the bus. The open crossing gate shall extend forward on the front bumper at least 60 inches up to a maximum of 96 inches.

1. The walking control arm shall be powered by either vacuum, air pressure, or electric. No manual operation of the arm is permitted.

2. The walking control arm shall be activated automatically to the fully extended position when the red school bus warning lights are in operation. It shall be maintained in operating condition at all times or removed.

6:21-6B.44 Wheelhousing

(a) The wheelhousing opening shall allow for easy tire removal and service.

(b) Wheelhousing shall be attached to floor sheets in such a manner to prevent any dust, water, or fumes from entering the body. Wheelhousing shall be constructed of at least 16 gauge steel, or other material of equal strength.

(c) The inside height of the wheelhousing above the floor line shall not exceed 12 inches.

(d) If tire chains are used, the wheelhousing shall provide clearance for installation and use of tire chains on single and dual power driving wheels.

(e) No part of a raised wheelhousing shall extend into the emergency door opening.

6:21-6B.45 Windows and windshield

(a) Each full side window shall provide an unobstructed emergency opening at least nine inches high and 22 inches wide, obtained by lowering window.

1. Push-out type, split-sash windows may be used.

(b) Push out windows shall be provided in accordance with the emergency exit requirements of this subchapter.

(c) Glass in all side and rear windows shall be of AS-2 or better grade. Equivalent plastic AS-4 or better shall only be used in side windows of the bus behind the driver.

(d) The windshield shall have a horizontal gradient tinted band starting slightly above the line of a driver's vision and gradually decreasing in light transmission to 20 percent or less at the top of the windshield. Glass in the windshield shall be of AS-1 grade.

1. Glass in the windshield shall be heat-absorbent, laminated plate. The windshield shall be large enough to permit the driver to see the roadway clearly, shall be slanted to reduce glare, and shall be installed between the front corner posts that are so designed and placed as to afford minimum obstruction to the driver's view of the roadway.

(e) All glass in the windshield, windows and doors shall be approved safety glass, so mounted that a permanent mark is visible, and of sufficient quality to prevent distortion of the view in any direction.

(f) All exposed edges of glass shall be banded.

(g) The windows in the rear of the bus shall be stationary.

(h) Windows shall be free of window guards or bars both inside and outside.

6:21-6B.46 Windshield washers

A windshield washer system shall be provided.

6:21-6B.47 Windshield wipers

(a) A windshield wiping system, two-speed or more, shall be provided.

(b) The wipers shall be operated by one or more air or electric motors of sufficient power to operate wipers. If one motor is used, the wipers shall work in tandem to give full sweep of windshield.

6:21-6B.48 Wiring

(a) All wiring shall conform to current applicable SAE standards.

(b) Wiring shall be arranged in circuits as required with each circuit protected by a fuse or circuit breaker. One extra fuse for each size fuse which is used on the bus shall be conveniently located in the fuse area unless the bus is equipped with circuit breakers. A system of color and number coding shall be used.

1. The following body interconnecting circuits shall be color coded as follows:

FUNCTION	COLOR
Left Rear Directional Light	Yellow
Right Rear Directional Light	Dark Green
Stoplights	Red
Back-Up Lights	Blue
Taillights	Brown
Ground	White
Ignition Feed, Primary Feed	Black

2. The color of the cables shall correspond to current applicable SAE standards.

3. Wiring shall be arranged in at least six regular circuits, as follows:

i. Head, tail, stop (brake), and instrument panel lamps;

ii. Clearance and step-well lamps (step-well lamp shall be actuated when entrance door is opened);

iii. Dome lamp;

iv. Ignition and emergency door signal;

v. Turn signal lamps; and

vi. Alternately flashing signal lamps.

4. Any of above combination circuits may be subdivided into additional independent circuits;

5. Whenever heaters and defrosters are used, at least one additional circuit shall be installed;

6. Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

7. Each body circuit shall be coded by number or letter on a diagram of circuits and shall be attached to the body in readily accessible location.

(c) The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

(d) All wiring shall have an amperage capacity equal to or exceeding the designed load. All wiring splices shall be in an accessible location and noted as splices on the wiring diagram.

(e) An easily readable body wiring diagram shall be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel.

(f) The main power supply to the body shall be attached to a terminal on the chassis.

(g) Wires passing through metal openings shall be protected by a grommet.

(h) Wires not enclosed within the body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors.

(i) A heavy duty solenoid switch shall be installed in main electric power supply line to body circuits on Types B, C and D buses. The solenoid switch shall be energized by the bus ignition switch. Hazard and directional signal lamp circuits shall operate independently of the ignition switch.

SUBCHAPTER 6C. SPECIALLY EQUIPPED SCHOOL BUS STANDARDS

6:21-6C.1 Scope

(a) The following standards address modifications to buses designed for transporting students with special transportation needs. These standards are supplementary to the chassis and body standards established in N.J.A.C. 6:21-6A and 6B.

(b) Specially equipped buses shall meet the body and chassis standards of N.J.A.C. 6:21-6A and 6B prior to any modifications made for mobile seating device positions or special equipment such as a power lift.

(c) A bus used for the transportation of children confined to a wheelchair or other mobile positioning device, or who require life support equipment which prohibits the use of the entrance door, shall be equipped with a power lift.

6:21-6C.2 Aisle

The aisle leading to an emergency or power lift door from a wheelchair position shall be a minimum width of 30 inches.

6:21-6C.3 Communications

Buses shall be equipped with an electronic voice communication system, preferably not citizen band equipment.

6:21-6C.4 Doors

(a) Buses with a power lift shall be equipped with a special entrance door to accommodate the power lift.

1. The door shall be located on the right side of the bus and designed so as not to obstruct the regular entrance door.

2. The opening may extend below the floor through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor. This opening shall be the same strength as other floor openings.

3. A drip molding shall be installed above the door opening to divert water from the entrance.

4. The door posts and headers shall be reinforced to provide support and strength equivalent to the sides of the bus.

5. A single door or double doors may be used.

6. The doors shall have fastening devices to hold the doors open.

7. The doors shall be weather sealed.

8. When manually operated dual doors are provided, the rear door shall have at least a one point fastening device to the header. The forward mounted door shall have at least three point fastening devices; one to the header, one to the floor line of the body, and one into the rear door.

i. The door and hinge mechanism strength shall be equivalent or greater than the strength of the emergency exit door.

9. The door material, panels and structural strength shall be equivalent to the entrance and emergency doors. The rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

10. The door shall have windows set in rubber compatible within one inch of the lower line of the adjacent sash.

11. Doors shall be equipped with a device that will actuate an audible or flashing visible signal, located in the driver's compartment, when the doors are not securely closed and the ignition is in the "on" position.

12. A switch shall be installed so that the lifting mechanism will not operate when the lift platform door is closed.

13. Doors shall be equipped with padding at the top edge of the door opening. The padding shall be at least three inches wide and one inch thick. It shall extend the full width of the door opening.

6:21-6C.5 Glass

(a) Tinted safety glass or tinted plastic may be installed in side windows of the bus to the rear of the driver which complies with applicable Division of Motor Vehicle requirements.

(b) Tinted safety glass shall be AS-3 or better grade.

6:21-6C.6 Identification

(a) A bus equipped with a power lift shall display at least one universal handicapped symbol on the back of the bus and below the windowline.

1. The symbol shall not exceed 12 inches in size, be white on a blue background, and be of a high intensity reflectorized material as specified in NSFSB.

6:21-6C.7 Lights

Lights shall be placed inside the bus to sufficiently illuminate the lift door area.

6:21-6C.8 Power Lift

(a) The power lift with a skid resistant platform shall be located on the right side of the bus body and confined within the bus body when not extended.

(b) The lifting mechanism and platform shall be capable of lifting a minimum weight of 800 pounds. The lift platform shall have a minimum of 30 inches clear width unobstructed by the required handrail. The minimum clear length of the platform between the outer edge barrier and inner edge shall be 40 inches.

(c) When the platform is stored, it shall be securely fastened.

(d) Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the bus.

(e) The lift platform shall be designed to prevent the platform from falling while in operation due to a power failure or a single component mechanical failure.

(f) The power lift shall be equipped with a manual back-up system for use in the event of a power failure.

(g) The lift shall be designed to allow the lift platform to rest securely on the ground.

(h) The outboard platform edge and sides shall be designed to restrain a wheelchair or other mobile seating device from slipping or rolling off the platform. The platform outer edge barrier shall be designed to be automatically or manually lowered when the platform is at ground level, but shall not be equipped with any type of latch which could result in a lowered barrier when the platform is above ground level.

(i) The platform shall be equipped with at least one handrail. The handrail shall be approximately 25 to 34 inches in height and a minimum of 18 inches in length and designed to fold when it is in a stored position.

(j) A self-adjusting, skid resistant plate shall be installed on the outer edge of the platform to minimize the incline from the lift platform to the ground level. This plate, if so designed, may also serve as the restraining device described in (h) above.

(k) A circuit breaker shall be installed between the power source and lift motor if electrical power is used.

(l) The lift design shall prevent excessive pressure that could damage the lift system when the platform is fully lowered or raised.

(m) The lift mechanism shall be designed to prevent the lift platform from being folded or stored when occupied.

(n) An interlock shall be provided to prevent the operation of the bus while the lift or ramp is not in its fully stored and locked position.

6:21-6C.9 Ramp

(a) When a power lift system is not adequate to load and unload students with a special needs, a ramp device may be used.

1. When a ramp is used, it shall be of sufficient strength and rigidity to support the mobile device, occupant, and attendant(s). It shall be equipped with a protective flange on each longitudinal side to keep the mobile device on the ramp.

2. The ramp floor shall be of non-skid construction.

3. The ramp shall be equipped with handles and of a weight and design that enables one person to lift or move the ramp.

4. The ramp shall have at least three feet of length for each foot of incline.

6:21-6C.10 Restraining devices

Seat frames may be equipped with attachments or devices to which belts, restraining harnesses or other devices may be attached. Attachment framework or anchorage devices, if installed, shall conform with FMVSS.

6:21-6C.11 Seating arrangements

Flexibility in seat spacing to accommodate special devices shall be permitted to meet passenger requirements. All seating shall be forward facing.

6:21-6C.12 Securement system for mobile seating device and occupant

(a) The body shall be designed for positioning and securement of mobile seating devices and occupants in a forward facing position. Securement system hardware and attachment points for the forward facing system shall be provided.

(b) The mobile seating device securement system shall utilize four-point tie downs, with a minimum of two body floor attachment points located at the rear and a minimum of two body floor attachment points at the front of the space designated for the mobile seating device.

(c) A type 2 occupant securement system shall be provided for securement of the occupant's pelvic lap area and upper torso area.

(d) The mobile seating device and occupant securement system shall be designed to withstand a sled-test at a minimum impact speed/force of 30 mph/20 G's. The dynamic test shall be performed using system components and hardware (including attachment hardware) which are identical to the final installation in type, configuration, and positioning. The body structure at the attachment points may be simulated for the purpose of the sled test, but the simulated structure used to pass the sled test may not exceed the strength of the attachment structure to be used in the final body installation. The mobile seating device used for test purposes shall be a 150 pound powered wheelchair and the occupant shall be a 50th percentile male test dummy as specified in FMVSS. Measurements shall be made on the test dummy during the test for head acceleration, upper thorax acceleration, and upper leg compressive force. These measurements shall not exceed the upper limits established in applicable FMVSS. The test dummy shall be retained within the securement system throughout the test and forward excursion shall be such that no portion of the test dummy's head or knee pivot points passes through a vertical transverse plane intersecting the forward-most point of the floor space designed for the mobile seating device. All hardware shall remain positively attached throughout the test and there shall be no failure of any component. Each mobile seating device belt assembly including attachments, hardware and anchorages shall be capable of withstanding a force of not less than 2,500 pounds. This will provide equal mobile seating device securement when subjected to forces generated by forward, rear or side impact.

(e) The belt material at each space designated for the mobile seating device and the occupant restraint system shall be similar in size and fabric.

(f) The floor track or anchorage system shall be recessed into the floor with the top of the track or anchorage level with the floor surface or be surface mounted. If surface mounted, the maximum track or anchorage height above the floor surface shall not exceed 3/4 inch and be ramped on all sides with a ramp run/rise ratio not less than three to one.

(g) The occupant securement belt assemblies and anchorages shall meet the requirements of applicable FMVSS.

(h) The occupant securement system shall be designed to be attached to the bus body either directly or in combination with the mobile seating device securement system, by a method which prohibits the transfer of weight or force from the mobile seating device to the occupant in the event of an impact.

(i) Securement system attachments or coupling hardware not permanently attached shall be designed to prohibit it from being accidentally disconnected.

1. The following fasteners shall not be used for any occupant restraint or equipment securement:

i. T-bar or T-hook fasteners; or

ii. Touch fasteners, vinyl lap and shoulder belts.

(h) All attachment or coupling systems shall be accessible and operable without the use of tools or other mechanical assistance.

(i) All securement system hardware and components shall be free of sharp or jagged areas and shall be of a non-corrosive material or treated to resist corrosion.

(j) The occupant securement system shall be made of materials which do not stain, soil, or damage an occupant's clothing.

(k) The mobile seating device or securement system hardware shall not block the access to the lift door.

(l) The following information shall be provided with each bus equipped with a securement system:

1. Detailed instuctions regarding installation and use of the system, including a parts list; and

2. Detailed instructions, including a diagram, regarding the proper placement and positioning of the system, including correct belt angles.

6:21-6C.13 Steps

(a) The first step at the entrance door shall be not less than 10 inches and not more than 14 inches from the ground, based on standard chassis specifications.

1. The first step on a Type D bus at the entrance door shall be 12 to 16 inches from the ground.

(b) Step risers shall not exceed a height of 10 inches. When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

(c) On buses equipped with a power lift, the steps shall be the full width of the stepwell, excluding the thickness of the doors in an open position.

(d) The steps shall be enclosed to prevent the accumulation of ice and snow.

(e) The steps shall not protrude beyond the sides of the body line.

(f) Grab handles, not less than 20 inches in length, shall be provided inside the doorway on both sides in unobstructed locations.

6:21-6C.14 Support equipment and accessories

(a) Portable student support equipment or special accessory items (crutches, walkers, oxygen bottles, ventilators) shall be securely fastened at a mounting location able to withstand a pulling force of five times the weight of the item, or shall be retained in an enclosed, latched compartment.

1. The bus shall contain a belt cutter for use in emergencies, including evacuations. The belt cutter shall be designed to prevent injuries during use and secured in a safe location.

6:21-6C.15 Wheelchair and other mobile seating device requirements

(a) A wheelchair or other mobile seating device shall be equipped with an occupant restraint belt and hand brake which is furnished and maintained by the owner.

(b) An electric powered wheelchair shall be equipped with gelcel (non-liquid electrolyte) battery. Batteries with liquid electrolyte are not permitted in the passenger compartment of the bus.

SUBCHAPTER 8. USE OF [P.U.C.] VEHICLES AS SCHOOL BUSES **UNDER THE JURISDICTION OF THE DEPARTMENT OF TRANSPORTATION**

6:21-8.1 Scope of exceptions and exemptions

The exceptions and exemptions hereinafter provided in this [Subchapter] **subchapter** shall apply only to buses approved **for school use** by the [Board of Public Utility Commissioners] **Department of Transportation prior to (insert date of adoption of these amendments)**.

6:21-8.2 Exceptions and exemptions

(a) (No change.)

(b) [N.J.A.C. 6:21-6.30 (Seats)] **The seat requirements pursuant to N.J.A.C. 6:21-5.1 and 5.23** shall not apply to longitudinal seats seating not more than four pupils.

(c) The entrance door and the emergency door with aisles leading to each shall be accepted as meeting the requirement for doors [under N.J.A.C. 6:21-6.12 (Service door) and N.J.A.C. 6:21-6.13 (Emergency door and emergency window)] **pursuant to N.J.A.C. 6:21-5.1 and 5.6.**

(d) [Buses shall not be required] **The requirement pursuant to N.J.A.C. 6:21-5.1 and 5.6** to have **the words "Emergency Door"** printed on the outside of the ["Emergency Door"] **emergency door** [unless so prescribed by the Board of Public Utility Commissioners] **shall not apply**.

(e) In lieu of the lettering [required by N.J.A.C. 6:21-6.20 (Identification)], Type I school vehicles that are operated by a privately or publicly owned local transit system and used for regular common carrier transit route service as well as special school route service, shall meet all the requirements of [this standard] **N.J.A.C. 6:21-5.1 and 5.7**, except as follows:

1. (No change.)

(f) The **requirements for the** main aisles and the aisle to the emergency door, [if approved by the Board of Public Utility Commissioners, shall be held to meet the requirements of N.J.A.C. 6:21-6.1] **pursuant to N.J.A.C. 6:21-5.1 and 5.12 shall not apply.**

(g) [Bumpers which are approved by the Board of Public Utility Commissioner shall be held to meet the requirement of N.J.A.C. 6:21-5.8 (Bumpers) and N.J.A.C. 6:21-6.6 (Bumper, rear); provided, they are so constructed that children may not ride on them] **The requirement pursuant to N.J.A.C. 6:21-5.1 for bumpers shall not apply.**

(h) Window requirements [under N.J.A.C. 6:21-6.42 (Windshield and windows)] **pursuant to N.J.A.C. 6:21-5.1 and 5.11** shall not apply.

(i) The color requirements [under N.J.A.C. 6:21-6.9 (Color)] **pursuant to N.J.A.C. 6:21-5.1, 5.14 and 5.15** shall not apply.

6:21-8.3 Certificate of inspection

(a) No autobus under jurisdiction of the [Board of Public Utility] **Department of Transportation** shall be used for school pupil transportation services, as defined in N.J.S.A. 18A:39-1 and under contract with a local board of education **for transportation to and from school**, unless such autobus is authorized on the certificate of inspection issued by the [Public Utility Commission] **Department of Transportation.**

(b) Owners or operators of buses approved by the [Board of Public Utility Commissioner] **Department of Transportation** shall submit evidence of such approval to the county superintendent at such times as [he] may [deem] **be deemed** necessary.

6:21-8.4 Inspection by county superintendent

(a) The county superintendent may inspect any bus approved by the [Board of Public Utility Commissioners] **Department of Transportation** for any item not covered by the approval of that [board] **department** and from which they are not specifically exempted by these rules.

(b) (No change.)

SUBCHAPTER 9. SMALL VEHICLE [AND EQUIPMENT SPECIFICATIONS] **STANDARDS**

6:21-9.1 Definition

[All vehicles transporting pupils, under the jurisdiction of a local board of education, having a capacity less than 17 pupils, shall be considered a small vehicle. Where 17 pupils or more are transported the conveyance must be considered a school bus and comply with all the specifications prescribed for a school bus by the State Board of Education.] **A small vehicle is defined as any vehicle with a capacity of less than 10 passengers.**

6:21-9.2 Scope

(a) These standards apply to a small vehicle used for the transportation of public school pupils to and from school and school related activities.

(b) These standards also apply to small vehicles used to transport nonpublic school pupils to and from school when services are provided by a district board of education.

(c) Small vehicles which have a gross vehicle weight rating (GVWR) of less than 3,000 pounds shall not be used after (date to be inserted of 60 days after date of publication of adoption). The GVWR is the value specified by the manufacturer as the maximum loaded weight of the vehicle.

6:21-[9.2]**9.3** Capacity

(a) The **maximum** number of pupils [allowed] **who may be transported** in each vehicle shall be determined by the seat measurement. Fifteen inches of seat length shall be [allowed] **provided** for each pupil.

(b) (No change.)

6:21-[9.3]**9.4** Chains or snow tires

The drive wheels of the vehicle shall be equipped with tire [Chains] **chains, all weather tires,** or snow tires [shall be provided] and [must be] used for safe operation in areas of snow and/or ice.

6:21-[9.4]**9.5** Fire extinguisher

A **fully charged dry chemical** fire extinguisher [properly filled] **with a pressure guage approved by the Underwriters Laboratories, Inc.** with the minimum Underwriters rating of [B-2, C-2 (or 1/2 B.C.) must] **10 B.C. shall** be provided. **The extinguisher shall be mounted in a bracket in a convenient location.**

6:21-[9.5]**9.6** First aid kit

(a) **A removable** first aid kit **shall be provided.** [which is a] **It should be a moisture and** dust proof [metal unit] **container** without a lock, with the words FIRST AID printed on the cover. [must be provided with the] **The** contents **shall be** maintained as follows:

1. Six single unit sterile **gauze** pads, three inches × three inches;
2. Two one-inch × [ten] **10** yards **gauze** bandages;
3. One one-inch × 2½ yards adhesive **tape rolls**;
4. 12 bandaid plastic strips;
5. One triangular bandage **approximately 40 inches by 54 inches with a safety pin;** and

[6. Two paper cups;]

[7.]**6.** One **pair rounded end** scissors[;].

[8. One first aid guide book.]

6:21-[9.6]**9.7** Floor covering

A **securely attached nonskid material** floor covering [which must be a nonskid material and which is securely attached must] **shall** be provided.

6:21-[9.7]**9.8** Heater capacity

The heater [capacity must have the ability to bring] **shall be capable of bringing** the interior temperature of the vehicle up to and maintain a minimum of 50 degrees Fahrenheit.

6:21-[9.8]**9.9** Minimum emergency equipment

Minimum emergency equipment consisting of a **securely mounted** spare tire, jack, and [at least] three red [reflector] **reflectorized triangle** warning devices [must] **shall** be provided.

6:21-[9.9]**9.10** Rear-view mirrors

Approved rear-view mirrors [must] **shall** be provided inside and outside the vehicle. [The outside mirror must] **Outside mirrors shall** be mounted on [the driver's side] **both sides** of the vehicle.

6:21-[9.10]**9.11** Seats and back rests

(a) Securely fastened seats and back rests [must] **shall** be provided which are forward facing and spring or foam rubber upholstered.

(b) [(No) **A** "jump type" or folding seat [will be approved.)] **is not permitted.**

(c) The exit from any seat in the vehicle [must] **shall** be clear of all obstructions.

(d) [No] **A** vehicle [will be approved] **shall not be used** where the exit requires the folding of any seat ahead.

(e) A seat belt shall be provided for the driver and all passengers. Belts shall be properly maintained.

6:21-[9.11]**9.12** Sun visor

An adjustable sun visor [must] **shall** be provided.

6:21-9.13 Rear window

The rear window shall be nonventilating.

6:21-[9.12]**9.14** Windshield wipers

Dual windshield wipers [must] **shall** be provided.

(a)

STATE BOARD OF EDUCATION

Attendance at School by Pupils or Adults Infected by Human Immunodeficiency Virus (HIV)

Proposed Amendment: N.J.A.C. 6:29-2.4

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:36-19, 42 CFR 2 and N.J.S.A. 26:1A-15.

Proposal Number: PRN 1992-251.

Submit written comments by July 15, 1992 to:

Irene Nigro, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

On November 4, 1991 the Department of Health adopted regulations concerning the attendance at school by pupils or adults infected by the Human Immunodeficiency Virus (HIV)(see 23 N.J.R. 3332). These rules amended N.J.A.C. 8:61 to:

- Eliminate the list of conditions that could lead to the exclusion of a pupil with HIV from attending school;
- Eliminate the Medical Advisory Panel, which was established to evaluate pupils when there was a dispute between the pupil's physician with the school medical inspector as to whether a pupil had an HIV-related excludable condition; and
- Eliminate the mechanism by which the Medical Advisory Panel would report to the Commissioner of Education.

As a result of the changes made by the Department of Health to N.J.A.C. 8:61, the Department of Education must amend its provisions in N.J.A.C. 6:29-2.4 to bring them into conformity with the health rules.

Currently, N.J.A.C. 6:29-2.4 requires that no pupil be denied admission to school because of infection with HIV, unless they manifest those exceptional conditions identified in N.J.A.C. 8:61-1.1. These conditions were lack of toilet training, incontinence, inability to control drooling, or that the pupil was unusually aggressive with a documented history of biting or harming others. N.J.A.C. 6:29-2.4(e) also included the use of a Medical Advisory Panel to evaluate pupils when there was a dispute between the pupil's physician and the school medical inspector as to whether a pupil has an HIV-related excludable condition, and set up the mechanism by which the Medical Advisory Panel would report to the Commissioner of Education.

The proposed amendments to the rules are as follows:

The section heading has been changed to "Attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV)." This new heading better reflects the subsection's provisions. Throughout the text of this section, language has been added to include employees who may be HIV infected.

A definition section has been added to N.J.A.C. 6:29-2.4 which includes a definition for adult and pupil. N.J.A.C. 6:29-2.4(a) defines adult to mean a teacher, administrator, food service employee or other school staff member compensated or uncompensated. Pupil has been defined to mean an individual who is entitled to attendance at school in grades K through 12, as well as a pre-kindergarten child who is entitled to attendance at school.

Scientific knowledge related to transmission of HIV since the time of the original promulgation of both the Departments of Education and Health rules have shown that urine, feces and saliva are not significant vehicles of transmission of HIV. In addition, biting is not considered a significant method by which HIV can be transmitted. Therefore, the possible reasons for exclusion of HIV-infected pupils from school in the original rules are no longer scientifically valid and have been removed.

There is no HIV-related reason for exclusion of a pupil with HIV infection, or a pupil who is symptomatic and/or diagnosed with AIDS. There are no medical grounds for disputes related to HIV infection between the school medical inspector and the pupil's physician, thus the Medical Advisory Panel, which was established to aid in the resolution of such disputes, is therefore no longer necessary. The provisions of the rule establishing the Medical Advisory Panel and delineating procedures for the panel have been eliminated. Any disputes that might arise in the future can be handled through Department of Education procedures established in N.J.A.C. 6:24.

The portion of the rule that states it is not necessary that the school be notified if an HIV-infected individual is a pupil registered to attend school or is an employee of the school has been expanded to provide rules of confidentiality to schools should a school learn that an HIV-infected individual is present. These rules of confidentiality bring the handling of such information by schools in conformity with N.J.S.A. 26:5C-5 et seq.

Social Impact

In the past, there have been attempts to exclude HIV-infected children and adults from a school setting, including attempts at exclusion of members of a household where an HIV-infected person lives. These exclusionary attempts have resulted in serious and documented harm to some of the involved individuals. There is no evidence that HIV is transmitted in the school setting, and even exceptional situations where transmission was thought theoretically possible in the past are not today considered to pose any significant risk of HIV transmission.

Despite scientific evidence to the contrary, some people continue to fear any contact with HIV-infected individuals. Since N.J.A.C. 6:29-2.4 prohibits any actions that a district may take to exclude a student from attending school, these rules might add to the fear of such persons. However, there are many HIV-infected persons now in a school setting, and the fear appears to be lessening. These rules will not increase the danger of HIV transmission, and will serve the beneficial purpose of preventing unwarranted discrimination and harm to HIV-infected pupils and HIV-infected adults employed in schools.

The amendments will also offer greater protection to HIV-infected pupils and adults by emphasizing the confidentiality procedures that must be observed under New Jersey law on information related to AIDS and HIV-infection. HIV-infected pupils will also benefit because the rules provide a mechanism for sharing necessary information to enhance the educational program of the pupil.

Economic Impact

The proposed amendments will have little if any economic impact on the local boards of education. Some small administrative costs for awareness training may be incurred by the districts.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This chapter impacts solely upon New Jersey school districts, their pupils attending approved private schools for the handicapped, and schools operated by the Department of Education. Private schools and day care centers may be guided by

these rules, but the rules do not have direct regulatory impact on these agencies.

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

6:29-2.4 Attendance at school by **pupils or adults infected by** [HIV (]Human Immunodeficiency Virus[)] **(HIV)** [infected children]

(a) The following words when used in this section shall have the following meanings unless the context clearly indicates otherwise:

1. "Adult" means a teacher, administrator, food service employee or other school staff member compensated or uncompensated; and

2. "Pupil" means an individual who is entitled to attendance at school in grades K through 12, as well as a pre-kindergarten child who is entitled to attendance at school.

[(a)](**b**) For purpils with HIV infection who are enrolled or seeking enrollment in a school program, the regulations and procedures in this section shall apply.

1. All information about the identity of a [student] **pupil** with HIV infection shall be kept confidential and shall comply with the provisions of N.J.A.C. 6:3-2.

[(b)](**c**) Pupils with HIV infection shall not be excluded from attending school [unless they manifest those exceptional conditions identified by the State Department of Health and contained in N.J.A.C. 8:61-1.1. A district board of education must reach a determination on the admissibility of a pupil to school no later than 10 days after the request to admit such pupil.] **for reason of the HIV infection in accordance with N.J.A.C. 8:61-1.1.**

[(c) In accordance with N.J.A.C. 8:61-1.1:]

1.-2. (No change.)

[3. No sibling or other person in the same household as a pupil who has been diagnosed to have HIV infection shall be excluded from attendance at school.]

[(d) A district board of education may act to exclude a pupil with HIV infection only when:

1. The district medical inspector, the pupil's parent(s) or guardian(s) and physician agree that he or she manifests those exceptional conditions delineated in N.J.A.C. 8:61-1.1. In such cases, the pupil must be provided an appropriate education pursuant to N.J.A.C. 6:28.

2. Conflicting medical opinion exists between the district medical inspector and the pupil's personal physician as to whether the pupil manifests those exceptional conditions set forth in N.J.A.C. 8:61-1.1. In such instances, the procedures delineated in (e) below must be immediately followed. A district board of education may not avoid compliance with the procedures in (e) below by excluding a pupil for reasons other than those listed herein.

(e) If, based upon advice of the district medical inspector, the pupil is deemed to manifest any of the exceptional conditions contained in N.J.A.C. 8:61-1.1 and the pupil's personal physician is in disagreement, the district board of education shall immediately submit a request for a review by the Medical Advisory Panel established by the Department of Health in accordance with the following procedures:

1. When conflicting medical opinion as to the admissibility of a pupil with HIV infection exists, the district board of education shall submit the entire medical record of the pupil and other pertinent information to the county superintendent of schools for transmission to the Department of Education which shall include but not be limited to:

i. All information and data submitted to the district board of education by the pupil's parent(s) or guardian(s) and physician.

ii. A written statement of reasons for denying admission under the exceptional conditions for exclusion contained in N.J.A.C. 8:61-1.1.

iii. An evaluation of current behaviors which specifically addresses those characteristics which might be a basis for exclusion as contained in N.J.A.C. 8:61-1.1. An evaluation conducted within six months from the date of submission of information to the county superintendent shall be considered as being current.

iv. All medical information, both current and historical, which is available to the district board of education from its medical inspector and the pupil's physician and upon which the district board of education made its determination to exclude the pupil.

(1) A statement of the qualifications/credentials, including board certification, of all experts whose evaluations/reports were reviewed by the district board of education/medical inspector shall be provided.

v. In the case of a classified pupil, full child study team evaluation reports, recommendations, the Individualized Education Program (IEP) and any other pertinent information which is available.

vi. All references to the names of the pupil and parent(s) or guardian(s) must be obliterated when submitted to the county superintendent. The Department of Education shall assign a numerical code number and advise the district board of education of such for all reference purposes.

vii. The district board of education shall provide the parent(s), guardian(s) or other legally responsible party(ies) with a list of all documents submitted to the county superintendent of schools. Any document so listed and not already in the possession of the parent(s), guardian(s) or legally responsible party(ies) shall be provided by the district board of education.

2. Home instruction shall be provided as specified below during the pendency of a Commissioner's determination.

i. Home instruction shall commence immediately upon the district board of education's determination to exclude the pupil.

ii. The teacher providing instruction shall be appropriately certified for the subject or level in which instruction is given.

iii. The pupil shall receive a program that meets the requirements of the district board of education for promotion and graduation.

iv. Instruction shall be provided for no fewer than five hours per week. The five hours of instruction per week shall be accomplished in no fewer than three visits by a teacher on three separate days. When instruction is provided by direct communication to a classroom program by telephone or television, such instruction shall be in addition to the basic five hours of instruction by a teacher.

3. Upon receipt of the information required above, the county superintendent shall immediately notify the assistant commissioner, Executive Services of the need for a review by the Medical Advisory Panel and shall transmit to him or her the information submitted by the district medical inspector.

4. The assistant commissioner shall immediately request the designated official within the State Department of Health to convene the Medical Advisory Panel according to N.J.A.C. 8:61-1.1(c) at the earliest possible time and shall transmit the information required in (e)1 above to the designated official for panel consideration.

5. The Medical Advisory Panel shall consider all written information submitted by the district board of education and such testimony as may be necessary to render its determination.

i. The district board of education shall be responsible for demonstrating that the pupil exhibits the behavior or manifests the symptoms deemed justifiable for exclusion contained in N.J.A.C. 8:61-1.1(b).

ii. The panel shall call for any oral and/or written information it deems necessary for it to reach a determination.

iii. Each party shall be permitted to submit to the panel any additional written information to provide support for its position.

6. The Medical Advisory Panel shall render a written determination to the Commissioner as to whether the district board of education has demonstrated that the exclusion is warranted.

i. The Medical Advisory Panel's written determination shall include, but not be limited to, its conclusions, a statement as to how it reached those conclusions and its reasons for so concluding.

ii. The full details of the Medical Advisory Panel's determination shall be confidential, except to the parties, but a general summary of the conclusions shall be available.

7. The written determination of the Medical Advisory Panel shall be transmitted to the Commissioner who shall forward the determination to the parties.

8. Within 10 days of the receipt of the Medical Advisory Panel's written determination, the parties may file with the Commisioner written exceptions to those findings of the panel which the parties believe to be based upon disputed issues of fact or conclusions of law.

9. The Commissioner shall review the determination of the Medical Advisory Panel and the exceptions of the parties and within 10 days of the receipt of the exceptions or the expiration of the time for so filing issue a written determination which shall:

i. Direct the immediate enrollment of the pupil in to an appropriate educational setting; or

ii. Confirm the district board of education's determination to exclude the pupil from such setting and direct an alternative program of education; or

iii. Determine that the matter is a contested case and direct that it be transmitted to the Office of Administrative Law for further determinations. If the Commissioner determines the matter is a contested case, the exceptions filed by the parties to the Medical Advisory Panel's determination shall constitute the pleadings which shall establish the issues for the proceeding before the Office of Administrative Law. The hearing in the matter shall be conducted on an expedited basis.

10. Copies of the Commissioner's determination shall be forwarded to the parties, the Commissioner of Health, the Medical Advisory Panel and the county superintendent of schools.]

(d) Pupils with HIV infection who are symptomatic and/or diagnosed with AIDS shall not be excluded by virtue of the diagnosis. The only medical grounds for exclusion from school shall be those established in N.J.S.A. 18A:40-7 and 8 and N.J.A.C. 8:61-1.1(e). Pursuant to N.J.A.C. 8:57-2.5, AIDS or HIV infection shall not be considered a communicable disease for purposes of admission to or attendance in an education facility, or eligibility for educational transportation.

(e) In accordance with N.J.A.C. 8:61-1.1:

1. Adults with HIV infection in all school settings shall not be restricted from their normal employment for reason of HIV infection unless they have another illness which would restrict that employment;

2. No pupil or adult shall be excluded from school solely by virtue of the fact of living with or being related to an HIV-infected individual;

3. Any pupil or adult, with or without HIV infection, shall be removed from school if and when the individual has weeping skin lesions that cannot be covered, in accordance with N.J.A.C. 8:61-1.1;

4. It is not necessary that anyone in the school be specially notified that an HIV infected individual is registered to attend school or is an employee of the school. Therefore, HIV/AIDS status is an exception to records required pursuant to student physical examinations, N.J.A.C. 6:29-2.1 and school employee examinations, N.J.A.C. 6:29-7. If school officials receive notification of the presence of an HIV infected individual, records containing identifying information regarding the HIV status of the individual shall be kept confidential as required by N.J.S.A. 26:5C-5 et seq. Information regarding an HIV infected pupil can be shared, only with the written consent of the pupil's parent or guardian, with those who need to know the status to determine the educational program for the pupil, N.J.A.C. 8:61-1.1.

(f) District boards of education shall annually provide pupils and their parents/guardians and district employees and/or volunteers with HIV/AIDS awareness information.

(g) District boards of education shall provide HIV/AIDS awareness information to their school communities. This may be accomplished in cooperation with State and local agencies, and in consultation with the county superintendent of schools, and may include utilization of district newsletters, bulletins or other media.

(a)

STATE BOARD OF EDUCATION

Public, School and College Libraries

Proposed Readoption with Amendment: N.J.A.C. 6:64

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 4-15, 40:9A-4, 40:33-13.2d through 40:33-13.2n.

Proposal Number: PRN 1992-252.

Submit written comments by July 15, 1992 to:

Irene Nigro, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:64, Public, School and College Libraries, expires on January 11, 1993. The Department of Education has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order. Pursuant to the authority of N.J.S.A. 18A:1-1 et seq., specifically, 18A:4-15 and 40:9A-4, and 40:33-13.2d through 13.2n, the Department of Education proposes to readopt rules concerning public, school and college libraries. The rules implement the provisions of P.L.1956, c.108 (N.J.S.A. 40:9A-1 et seq.), which permits county and municipal governments maintaining public libraries to enter into cooperative arranagements to expand local library service. The rules also implement the provisions of P.L.1981, c.489 (N.J.S.A. 40:33-13.2h, i, j, k, and n), which sets forth in detail three voluntary options for county library reorganizations: the branch development option, the service contract option and the tax base sharing option.

The rules in N.J.A.C. 6:64-1, Standards for Federation of Free Public Libraries, establish the legal framework for federations, including their advisory council's term of office and their activities. The rules in subchapter 1 also specify the types of cooperative activities which may be undertaken by the federation. These activities include interlibrary loan, reciprocal borrowing and cooperative resource sharing of library materials.

The readoption of N.J.A.C. 6:64-1 will allow this type of cooperative activity to remain among public libraries. The rules provide a legal mechanism which permits local governments to share library materials and resources. These rules have also served as a model for cooperative activities among all types of libraries.

The rules in N.J.A.C. 6:64-2, County Library Reorganization, provide counties with a variety of methods for the delivery of library services to their residents and for providing a stable fiscal base. Requirements are set forth in subchapter 2 for each of the three county library options: branch development; service contract; and tax base sharing. A requirement for annual reporting to the State Librarian is included for each option, and an appeal procedure is also provided.

The readoption of N.J.A.C. 6:64-2 is intended to continue to provide guidelines for county and public libraries in counties where citizens vote to reorganize under the provisions of N.J.S.A. 40:33-13.2h through n.

Since the adoption of these rules, one county library has appointed a county library study commission.

This chapter is being readopted with minimal changes.

A review of the proposed amendments follows:

Foreword. The foreword is being eliminated to conform to New Jersey Administrative Code conversion.

N.J.A.C. 6:64-1.2(b) is amended to allow federations needed lead time for contracting purposes in instances when the contracting year is not on a calendar basis.

At N.J.A.C. 6:64-2.2, Definitions, "branch library" is amended to clarify and be consistent with the existing definition of branch library found in N.J.A.C. 6:68-1.2.

N.J.A.C. 6:64-2.3(c), (e) and (f) are amended to reflect the correct existing citation for subchapter and section.

N.J.A.C. 6:64-2.4 is amended to correct the citation for authority of a formal hearing.

It is necessary to readopt N.J.A.C. 6:64 in order to continue to give full force and effect to the existing statutes on public, school and college libraries cited above. If the rules were not readopted, the Department of Education could not implement these statutes successfully.

Social Impact

Since adopted, the rules in N.J.A.C. 6:64-1 have provided for the establishment of library federations. No individual library can meet the challenge of providing all of the informational and recreational materials needed by their clientele. The complexity of modern informational needs demands access to a wider variety of library materials and services. By providing a means for libraries to engage in cooperative activities, these rules have enabled libraries to expand the materials available to their clientele. Such cooperative activities have enhanced libraries' ability to provide a wider variety of materials than otherwise could be purchased by an individual library.

Federation activities, as provided by the rules, have also allowed libraries to plan for the future. Through the development of coordinated acquisition and resource sharing policies, federation libraries can insure their clientele access to a variety of materials in the future.

Since adopted, N.J.A.C. 6:64-2 has provided for the improvement of library services to residents by establishing criteria for library service under each of the three reorganization options in P.L.1989, c.489.

Readoption of N.J.A.C. 6:64 will ensure that libraries may continue to provide enhanced access to materials and services through cooperative activities or through election by county libraries of a reorganization plan.

Economic Impact

Fiscal restraints on a local level often limit a library's ability to provide for all of the needs of its clientele through a local library budget. The variety of materials available today could not be purchased by any one library. The activities of a federation as provided in N.J.A.C. 6:64-1 have allowed local libraries to provide a larger selection of materials to their clientele without the necessity of purchasing all of the materials from local budgets.

Since the adoption of N.J.A.C. 6:64-1, federations have also provided for cost effective operation of library service by allowing libraries to engage in cooperative activities which would be cost prohibitive if undertaken by a single library. No cost to the State of New Jersey is involved.

The rules in subchapter 2 affect those county libraries, county library branches and public libraries contracting for service with county libraries that elect any of the three options provided. Increases in financial stability can be expected to result for the county library tax. Since the reorganization options are voluntary and have yet to be demonstrated, exact financial costs and/or benefits cannot be anticipated. No cost to the State of New Jersey is involved.

Regulatory Flexibility Statement

The proposed readopted rules impose no reporting, recordkeeping or compliance requirements for small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All requirements of the proposal impact upon New Jersey public libraries; therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 6:64.

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

[FOREWORD

The State Library carries out the Department's general mission of aid to local agencies through its Public and School Library Services Bureau. Staff members are experts in such areas as library organization, collections, administration and construction and serve as consultants to local public, school, and college libraries. The Bureau administers State and Federal aid programs to public and school libraries, and promotes better library service by conducting workshops, institutions and in-service training programs. It provides interlibrary loan and exhibit services to all requesting libraries and organizations.]

6:64-1.2 Duties of advisory council of federation of free public libraries

(a) (No change.)

(b) Such recommendations shall be delivered to the appointing authorities [on or] **at least three months** before [October 1 of the year preceding] the **fiscal** year for which the proposed contract is designed.

6:64-1.3 Employees of federation of **free** public libraries

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

6:64-1.5 Other cooperative operations of federation of **free** public libraries

(a) Provision shall be made for any or all, but not fewer than two, of the following cooperative or joint services:

1.-5. (No change.)

6. The joint employment of personnel for specialized library services; **and**

7. (No change.)

6:64-2.2 Definitions

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

"Branch library" means an auxiliary outlet of **a** county library[, funded primarily and administered totally by a county library commission.] **which has all of the following, but which is administered from a central unit:**

1. Separate quarters from the central unit;

2. A permanent basic collection of library materials;

3. A permanent paid staff; and

4. A regular schedule for opening to the public.

. . .

"Service contract" means an agreement for library services negotiated among a county library commission, the governing body of a [country] **county** and the governing body of a municipality.

6:64-2.3 General provision

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

(c) A county branch library and a county joint branch library must meet the quantitative State aid criteria for a public library serving the population of the municipality(ies) (see N.J.A.C. 6:68-[1.4]**2.4** to [1.6]**2.6**). Consideration will be given to an adjustment of these requirements if it can be shown that equivalent centralized services are provided.

(d) (No change.)

(e) After the adoption of a service contract, the county library must submit annually to the State Librarian a copy of the service contract with a statement certifying that the services provided to a municipality are as specified in N.J.A.C. 6:68-[1.4]**2.4** to [1.6]**2.6.** The county library may request from the State Librarian a waiver from the requirements of N.J.A.C. 6:68-[1.4]**2.4** to [1.6]**2.6** if it can be established that equivalent centralized services are provided.

(f) After the adoption of the tax base sharing option, the county library must submit annually to the State Librarian a report certifying that it complies with N.J.A.C. 6:68-[1.4]**2.4** to [1.6]**2.6.**

6:64-2.4 Appeal procedure

Appeals from any action of the State Librarian regarding the rules in this subchapter may be requested, and opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such informal hearing, a formal hearing may be requested pursuant to N.J.S.A. 18A:6-[24]**9.** Such hearings shall be governed by the 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[-1 et seq].

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF ENERGY

Notice of Pre-Publication Meeting on Proposal
Control and Prohibition of Air Pollution by Vehicular Fuels
Oxygenated Fuels

Take notice that the Department of Environmental Protection and Energy (Department) intends to propose amendments and new rules at N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels.

The 1990 amendments to the Federal Clean Air Act (CAA) require New Jersey to develop and implement an oxygenated fuels program, in order to reduce emissions of carbon monoxide from motor vehicles. The proposed amendments and new rules establish this program and set standards for the oxygen content of motor vehicle fuel. These standards would apply only during the time of year when areas of New Jersey are prone to exceed the National Ambient Quality Standard for carbon monoxide.

The Department intends to publish the proposal in the July 6, 1992 New Jersey Register, and accept written comments until August 12, 1992. The Department will hold a **public hearing** on the proposal on Wednesday, August 5, 1992, at 10:00 A.M., at:

Department of Environmental Protection and Energy
First Floor Hearing Room
401 East State Street
Trenton, New Jersey

To provide a greater opportunity for public comment, the Department also will conduct a **public meeting** on the proposal. The meeting will be held on Friday, June 26, 1992 at 10:00 A.M., at:

Department of Environmental Protection and Energy
First Floor Hearing Room
401 East State Street
Trenton, New Jersey

To obtain a copy of the proposal, please contact:

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

INSURANCE

(b)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Automobile Insurance
Appeals from Denial of Automobile Insurance
Proposed Amendments: 11:3-33.2; 11:17A-1.2 and 1.7

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e) and 17:33B-13 through 18.
Proposal Number: PRN 1992-257.

Submit comments by July 15, 1992 to:

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

The agency proposal follows:

Summary

The proposed amendments implement provisions of the "Fair Automobile Insurance Reform Act of 1990" (P.L. 1990, c.8, hereinafter the "FAIR Act") relating to insurers and insurance producers with respect to the declination and solicitation of personal private passenger automobile insurance. Specifically, the amendments implement N.J.S.A. 17:33B-13 through 18 by expanding the definition of "declination" to include situations where an insurer, or a producer authorized to bind coverage on behalf of an insurer, fails to respond to a request or application for personal private passenger automobile insurance within a reasonable period of time. Such delay, in effect, serves as a denial of coverage.

The Department of Insurance ("Department") has conducted a survey to review the practices of a number of insurers in order to establish a reasonable time period in which to act upon a written application for insurance. Based upon the Commissioner's review of industry standards, it has been determined that 15 days from receipt of a completed written application for coverage by an insurer or producer, authorized to accept the submission of an application on behalf of the insurer, is a reasonable length of time to either bind or decline coverage.

The rules are also amended to include a definition of the term "premium quotation" and to provide, at minimum, the type of information which must be provided in response to an oral telephone request for a premium quotation.

Social Impact

The proposed amendment to the definition of declination establishes a time frame in which an insurer or producer is required to respond to a written application for personal private passenger automobile insurance. It establishes an industry-wide standard and has the dual purpose of (1) providing consumers with a prompt reply to requests for coverage which will allow them to obtain coverage or to seek alternate insurance, where necessary, without creating a lapse in their present coverage; and (2) requiring all insurers and producers to respond within the same reasonable, set period of time before their inaction is deemed to be a declination of coverage.

The amendment defining the term "premium quotation", particularly in response to an oral request, clarifies an insurer's or producer's obligation when responding to same.

Economic Impact

The proposed rule amendments, as distinguished from the underlying statutory provisions that they implement and the original rules, do not impose any appreciable economic impact on insurers or producers. The 15-day period in which to respond to a written application for insurance should not change the responsibilities of insurers or producers from that originally contemplated by the initial rule proposal. Moreover, the definition of "premium quotation," in response to an oral request for insurance, limits and defines an insurer's or producer's responsibility. This amendatory language serves only to circumscribe the type of information which must be provided to applicants.

Regulatory Flexibility Statement

The proposed amendments will affect insurers authorized to write personal private passenger automobile insurance in New Jersey and insurance producers who service such policies. While few, if any, insurers are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., most insurance producers are "small businesses."

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act and the Department has determined that the amendments impose no additional reporting, recordkeeping or compliance requirements from those already placed upon small businesses by the current rules. A regulatory flexibility analysis is therefore not required herein.

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

11:3-33.2 Definitions

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

...

"Declination," "denied" or "denial" means

1.-4. (No change.)

5. The refusal by an insurer to renew a policy of automobile insurance based on eligible person status, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle pursuant to N.J.A.C. 11:3-8.4(a)2 or that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5; [or]

6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium[.]; **or**

7. Failure of an insurer, or an insurance producer authorized to bind coverage on behalf of an insurer, to either bind coverage or issue a written denial of coverage to an applicant within 15 days of receipt, of a completed written application, by the insurer or producer authorized to accept submission of an application on behalf of an insurer.

11:17A-1.2 Definitions

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

. . .

"Declination," "denied" or "denial" means:

1.-4. (No change.)

5. The refusal by an insurer to renew a policy of automobile insurance based on the eligible person status, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle pursuant to N.J.A.C. 11:3-8.4(a)2 or that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5; [or]

6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium[.]; **or**

7. Failure of an insurer, or an insurance producer authorized to bind coverage on behalf of an insurer, to either bind coverage or issue a written denial of coverage to an applicant within 15 days of receipt, of a completed written application, by the insurer or producer authorized to accept submission of an application on behalf of an insurer.

. . .

"Premium quotation", "quotation" or "quote" means a good faith estimate of the price of insurance by coverage or group of coverages, provided upon the request of an insured, prospective insured, applicant or person, by an insurer or, on behalf of an insurer by a licensed producer, based solely upon information immediately available to the insurer or licensed producer providing the estimate. A premium quotation is not an offer to provide insurance. A premium quotation may be provided either in writing or orally. A premium quotation provided in response to an oral, telephone request shall include, at minimum, the insurer's average rates in the territory for the coverage or coverages requested.

. . .

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

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

1. (No change.)

2. Provide each applicant seeking automobile insurance with premium quotations for the forms or types of coverage requested by the applicant, which are offered by all insurers represented by the agent or broker for personal private passenger automobile insurance or with which the agent or broker places personal private passenger automobile risks. If the request for a quotation was made orally, the agent or broker may provide the applicant with an oral quotation [but shall provide the applicant at minimum with information about rate levels in the territory];

3.-6. (No change.)

(b) (No change.)

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Extension of Comment Period
Funds of Others; Safeguards
Prohibition Against Dual Compensation for Dual Representation in the Sale or Rental Transaction
Proposed Amendments: N.J.A.C. 11:5-1.9 and 1.38

Take notice that the New Jersey Real Estate Commission has extended the comment period until August 3, 1992 for the proposed adoption of rule amendments concerning the form in which real estate licensees may accept payments from prospective purchasers/borrowers for transmittal to mortgage lenders or mortgage brokers and concerning the solicitation or receipt of compensation or reimbursement by real estate licensees for providing mortgage financing services, which were published in the June 1, 1992 New Jersey Register at 24 N.J.R. 1957(a).

Submit comments by August 3, 1992 to:

Robert J. Melillo, Special Assistant to the Director
New Jersey Real Estate Commission, 8th Floor
20 West State Street, CN 328
Trenton, New Jersey 08625

LABOR

(b)

OFFICE OF WAGE AND HOUR COMPLIANCE

Wage and Hour
Employment of Learners; Sub-minimum Wage
Proposed Repeal and New Rules: N.J.AC. 12:56-10

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); 2a:150A-1, and 34:11-56a, specifically N.J.S.A. 34:11-56a17.

Proposal Number: PRN 1992-267.

Submit written comments by July 15, 1992 to:

Linda Flores
Special Assistant for External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Wage and Hour Law, N.J.S.A. 34:11-56 et seq., was enacted to establish the minimum wage rates for employees in the State of New Jersey. To adequately implement this law, the Commissioner proposes to repeal N.J.A.C. 12:56-10 and establish new rules under that subchapter. These new rules serve to prevent the circumvention or evasion of the New Jersey Wage and Hour Laws and safeguard the established wage rates. These proposed new rules are necessary to prevent the erroneous payment of sub-minimum wages by employers who do not meet the criteria necessary to implement the legislative mandate.

The rules, as they currently exist, provide little guidance to the affected community on how to implement N.J.S.A. 34:11-56a17, under which the Commissioner can, by regulation, provide for the employment of learners under special certificates, at wages lower than the statutory minimum wage, subject to prescribed limitations. The proposed rules, however, provide a more equitable and more uniform evaluation system to determine what is a true training program and who qualifies to receive a learner's permit under the statute. Proposed N.J.A.C. 12:56-10 provides the necessary guidance. It addresses the employment of learners at wage rates below the statutory minimum wage, as permitted under N.J.S.A. 34:11-56a17.

The Federal "Fair Labor Standards Act" as amended in 1989 contained additional provisions at Section 214(a) authorizing the payment of sub-minimum wages to employees classified as learners subject to certain terms, conditions and restrictions. The Department of Labor proposes that such similar provisions of the Fair Labor Standards Act

be incorporated under N.J.A.C. 12:56-10 for the sake of clarity and in order to incorporate the numerous federal changes in language, procedures, and format. The implementation of these proposed new rules regarding sub-minimum wages would effectively prevent the erroneous application of the Wage and Hour Laws.

Proposed new rule N.J.A.C. 12:56-10.1 contains definitions pertinent to the subchapter. The procedures for applying for the special learner permit are established at N.J.A.C. 12:56-10.2. The criteria used to determine issuance of the special learner's permit are listed under N.J.A.C. 12:56-10.3. The conditions of compliance are found at N.J.A.C. 12:56-10.4 and the requirements covering cancellation of the permit are located at N.J.A.C. 12:56-10.5.

Social Impact

The proposed new rules will have a significant impact on both employers and workers. If the employers provide approved training programs, the employers will be allowed to train employees at sub-minimum wages for up to 90 days prior to being required to pay the mandated minimum wage. During this training, the employee will gain the necessary skills to become productive within the company, firm, plant or office. The employee will then be entitled to receive at least the statutory minimum wage after the specified period of training. The net effect will be a better trained labor force with greater stability and the lessening of turnover in the employment roster.

Economic Impact

The proposed new rules will be financially beneficial to those employers who meet the requirements for paying sub-minimum wages to their new workers engaged in an approved job-training program. The employer will be able to take the time to train the worker to carry out the job duties prior to its obligation to pay the minimum wage.

The employees will be the recipients of training to perform the assigned work and would then become part of a better trained, more stable work force paid at the statutory minimum or higher wage rates.

Regulatory Flexibility Statement

The proposed new rules do impose an increase in reporting and recordkeeping upon those employers who decide to participate in the training program and to pay wages at levels no less than 85 percent of the statutory minimum wage. Such employers are required to apply for a special learner permit, provide the employees under the program with certain information, and comply with listed requirements concerning the employees and the work performed. An employer who seeks to hire an employee for 90 days at the training wage, when such employee has previously been so employed, must provide a notice to the employee of the on-the-job training positions being provided, and file a copy of such notice annually with the Department. Such "second-time" employees must also be given a written copy of the one-the-job training program, and the employer is to retain a copy of such program on file. Some of the employer businesses are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For the protection of the workers and to ensure that this special exception to the Wage and Hour Laws is being implemented properly, it is essential that all businesses, small or otherwise, adhere to these proposed rules. Granting an exemption to small businesses could compromise and circumvent the purpose of the proposed rules. Since no professional services will need to be employed to meet the new rules and the employer will save up to 15 percent of the minimum wage salaries of those workers in an approved training program, small businesses should be able to comply with very little hardship.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12:56-10.

Full text of the proposed new rules follows:

SUBCHAPTER 10. EMPLOYMENT OF LEARNERS; SUB-MINIMUM WAGE

12:56-10.1 Definitions

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

"Good cause" means any violation of any Federal or New Jersey labor law or regulation, or any Federal or New Jersey law or regulation pertaining to discrimination in the work place.

"On-the-job training" means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

"Special learner permit" means authorization to employ a learner at wages no less than 85 percent of the current minimum wage for such period of time as listed at N.J.A.C. 12:56-3.1.

12:56-10.2 Application for permit

(a) Application for a special learner permit shall be filed for each learner on properly executed prescribed forms with the Office of Wage and Hour Compliance, Division of Workplace Standards of the Department of Labor. Such forms may be obtained from the Office of Wage and Hour Compliance.

1. The application shall include a description of the training program to be conducted by the employer, proof that the learner is 20 years old or younger and a certification by the employer that the learner shall be employed for not less than 14 calendar days and not more than 90 calendar days or for 480 hours of work, whichever comes first, at a training wage of not less than 85 percent of the current minimum wage. In addition, the employer must indicate on the application that it has complied with all of the requirements under the criteria for a permit as provided in N.J.A.C. 12:56-10.3.

12:56-10.3 Criteria for permit

(a) The criteria used in issuing a special learner permit shall be:

1. The employee shall not be older than 20 years of age; and

2. The employee shall be employed for not less than 14 calendar days and not more than 90 calendar days or for 480 hours of work, whichever comes first, at a training wage of not less than 85 percent of the current minimum wage, subject to the following conditions:

i. The employee is immediately provided with a copy of the rules regarding employment of learners at sub-minimum wages;

ii. No other employee has been laid off from the position or a substantially equivalent position;

iii. No other employee has been terminated or had his or her hours of work, wages, benefits, or employment conditions reduced or changed for the purpose of hiring an employee under 20 years of age or any other individual at the training wage;

iv. The employee is not a migrant or seasonal agricultural worker admitted to the United States under the H-2 A Program;

v. The employee has not previously been employed by the current employer at the training wage for up to 90 calendar days;

vi. The employee has furnished the employer with proof of age and a signed statement or documentation about the starting and ending dates of previous employment since January 1, 1992, and the hourly wages they earned, or if none, a signed statement to that effect;

vii. The employee is given information on the hours of work and the type of work permitted under Federal, State, and local child labor laws;

viii. The total number of hours worked by all employees paid at the training wage in any month does not exceed 25 percent of the total number of hours worked by all employees in the establishment. It is the employer's responsibility to assure the training wages do not exceed the 25 percent statutory limitations; and

ix. The employment provided by the employer shall not consist primarily of menial work.

(b) If the employee is age 20 or under and has been employed for up to 90 calendar days at the training wage, the employee may be employed at the training wage for up to an additional 90 calendar days provided that all of the conditions mentioned above are met and that:

1. The employer is not the employer who employed the worker for the initial training period;

2. The employer provides on-the-job training to each worker under the training program;

3. The employer provides a written copy of the on-the-job training program to the employee and retains a copy for the file; and

4. The employer posts in the establishment a notice of the types of jobs for which on-the-job training is being provided, and sends a copy of the same to the New Jersey Department of Labor, Division of Workplace Standards, Office of Wage and Hour Compliance annually.

(c) Unless the employer complies with (b)1 through 4 above, then the employee shall be paid the minimum wage if he or she is age 20 or under and has been employed for up to 90 calendar days at the training wage.

12:56-10.4 Compliance

(a) All terms and conditions shall be complied with under which a special learner permit is granted.

(b) No individual who is not a learner shall be employed under a special learner permit at wages lower than the minimum required by this chapter.

(c) Any violation of the provisions of this sub-chapter shall be considered a violation of the Wage and Hour Regulations, under N.J.A.C. 12:56-1.2, Violations, and the employer shall be subject to the administrative penalties under N.J.A.C. 12:56-1.3, and the administrative fees under N.J.A.C. 12:56-1.4.

12:56-10.5 Cancellation of permit

(a) The Commissioner or his or her designee may cancel any special learner permit for cause as outlined in (b) below.

(b) A special learner permit may be cancelled:

1. As of the date of issuance, if it is found that fraud has been exercised in obtaining the special learner permit or in permitting a learner to work thereunder;

2. As of the date of violation, if it is found that any provisions of the Act, or of the terms of the special learner permit, have been violated;

3. As of the effective date of revocation, if the Commissioner or his or her designee, for good cause, revokes the special learner permit; or

4. As of the effective date of cancellation, if in the judgement of the Commissioner or his or her designee, the special learner permit is no longer in the best interests of the employees covered.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES', AND WOMEN'S ENTERPRISES

Direct Loan Program
Loan Guarantee Program

Proposed Amendments: N.J.A.C. 12A:31-1 and 12A:31-2

Authorized By: New Jersey Development Authority for Small Businesses, Minorities', and Women's Enterprises, Jerome Harris, Acting Chair.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).

Proposal Number: PRN 1992-236.

Submit comments by July 15, 1992 to:

Gary Nadler, Manager of Administration
New Jersey Economic Development Authority
CN 990
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed rule amendments, which are primarily intended to provide clarification of certain aspects of the loan program activities of the New Jersey Development Authority for Small Businesses, Minorities', and Women's Enterprises ("NJDA"), apply to N.J.A.C. 12A:31-1, as well as to the corresponding sections in N.J.A.C. 12A:31-2. A summary of each proposed amendment follows:

1. In N.J.A.C. 12A:31-1.1(c), as well as in N.J.A.C. 12A:31-2.1(c), the mailing address of the NJDA has been changed as a result of the relocation of NJDA's activities to the offices of the New Jersey Economic Development Authority.

2. In N.J.A.C. 12A:31-1.2, as well as in N.J.A.C. 12A:31-2.2, the definition of "Authority" is amended to indicate that certain references to the Authority throughout these rules pertain to functions which can be, and are, handled at the staff level.

3. In N.J.A.C. 12A:31-1.4, subsection (e) is added so that the rule will be more specific as to the interest rate that NJDA charges on its direct loan financings. The rule currently states that the loans will be made "at Authority designated rates." The proposed amendment will specify how the Authority actually determines the interest rate to be charged on a particular direct loan. Related to this, N.J.A.C. 12A:31-1.4(c) and (d) are amended to refer to the proposed new subsection (e) for the specifics on the interest rate to be charged.

4. In N.J.A.C. 12A:31-2.4(c)1 and 2, a reference to interest rates to be charged on Authority loan guarantees, which states that such financings are "at Authority designated rates," is deleted, as the interest rate on such loans is not determined by the Authority, but by the lender.

5. In N.J.A.C. 12A:31-1.6(a) and (b), as well as in N.J.A.C. 12A:31-2.6(a) and (b), references to the Executive Director are deleted, and replaced by references to the Authority. This section discusses the process of evaluation of loan applications, which is a process performed by the staff of the Authority, not necessarily by the Executive Director.

6. In N.J.A.C. 12A:31-1.9(a), as well as in N.J.A.C. 12A:31-2.9(a), the address of the Authority is changed (see item 1 above).

Social Impact

The social impact of these amendments is minimal. The changes merely clarify or make more specific for the benefit of the reader, the process of NJDA loan program administration. The loan program and the processes involved remain unchanged.

Economic Impact

The economic impact of these amendments is minimal, for the same reason mentioned above under Social Impact.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, as these amendments impose no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that did not already exist.

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

SUBCHAPTER 1. DIRECT LOAN PROGRAM

12A:31-1.1 Applicability and scope

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

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small
Businesses, Minorities' and Women's Enterprises
[23 South Warren Street
Third Floor
CN 836]
200 South Warren Street
CN 990
Trenton, New Jersey 08625

12A:31-1.2 Definitions

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

...

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq., **or the staff thereof.**

...

12A:31-1.4 Allocation of direct loan assistance

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

(c) The Authority may provide direct loans to an eligible business for the purpose of fixed asset acquisition, working capital, or contract financing [at Authority designated rates]. The term[s] of the direct loan shall not exceed 15 years. The maximum amount of the loan shall not exceed $1,000,000. **The interest rate shall be as described in (e) below.**

(d) The Authority may provide one direct loan to an eligible business which applies to the Authority pursuant to N.J.A.C.

12A:31-1.3(d) for the purpose of fixed asset acquisition, working capital, or contract financing [at Authority designated rates]. The term[s] of the direct loan shall not exceed six months. The maximum amount of the loan shall not exceed $20,000. **The interest rate shall be as described in (e) below.**

(e) The interest rate on direct loans shall be equal to:

1. For fixed asset loans, the lower of the Federal Discount Rate at the time of approval or at the time of the loan closing, with a minimum of five percent;

2. For working capital loans and contract financing, the lower of the Federal Discount Rate plus 200 basis points at the time of approval or at the time of the loan closing, with a minimum of five percent.

12A:31-1.6 Evaluation of applications for direct loans

(a) The [Executive Director] **Authority** shall evaluate each application for a direct loan considering the following factors:

1.-5. (No change.)

(b) After evaluation of the application[by the Executive Director], the [Executive Director] **Authority** shall forward the application to the Loan Review Committee for its consideration.

(c)-(e) (No change.)

12A:31-1.9 Information confidentiality

(a) All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as nonpublic information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of $.50 for pages 1 to 10, $.25 for pages 11 to 20 and $.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting [the Executive Director of] the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises[at the Mary G. Roebling Building, 20 West State Street, CN 836], **CN 990,** Trenton, New Jersey 08625.

(b) (No change.)

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

12A:31-2.1 Applicability and scope

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

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises
[23 South Warren Street
Third Floor
CN 836]
200 South Warren Street
CN 990
Trenton, New Jersey 08625

12A:31-2.2 Definitions

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

...

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq., **or the staff thereof.**

...

12A:31-2.4 Allocation of loan guarantee assistance

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

(c) The Authority may provide loan guarantees to an eligible business in the following manners:

1. For the purpose of fixed asset acquisition for an eligible business[at Authority designated rates. Term], **the term** of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed $1,000,000 or 90 percent of the loan balance, whichever is less.

2. For the purpose of acquiring working capital for an eligible business [at Authority designated rates. Term], **the term** of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed $600,000 or 90 percent of the loan balance, whichever is less.

12A:31-2.6 Evaluation of applications for loan guarantees

(a) The [Executive Director] **Authority** shall evaluate each application for a loan guarantee considering the following factors:

1.-4. (No change.)

(b) After evaluation of the application [by the Executive Director], the [Executive Director] **Authority** shall forward the application to the Loan Review Committee for their review.

(c)-(e) (No change.)

12A:31-2.9 Information confidentiality

(a) All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as nonpublic information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of $.50 for pages 1 to 10, $.25 for pages 11 to 20 and $.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting [the Executive Director of] the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises [at the Mary G. Roebling Building, 20 West State Street, CN 836], **CN 990**, Trenton, New Jersey 08625.

(b) (No change.)

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

All Utilities

Offices

Location

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

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:2-13.

BRC Docket Number: AX90060555.

Proposal Number: PRN 1992-254.

Submit written comments by July 15, 1992 to:

Edward D. Beslow, Esq.
Legal Specialist
Board of Regulatory Commissioners
44 South Clinton Avenue
CN 350
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will require all utilities to make application to the Board for permission to close or relocate an office as described in N.J.A.C. 14:3-5.1 (a) and (b). The application shall be made 60 days prior to closing or relocation and demonstrate that such office closure or relocation is not unreasonable and will not unduly prejudice the public interest. The application shall also set forth the means by which customers and other interested parties are notified of the closure or relocation. Utilities are also required to notify their customers of the pending application for approval to relocate or close the subject office and to maintain and provide toll free or local exchange numbers for use by the general public and customers affected by an office closing or relocation.

This proposal is similar to one previously published in the August 20, 1990 New Jersey Register at 22 N.J.R. 2404(a).

Social Impact

Requiring a utility to make application to the Board 60 days prior to the closure or relocation of a regional office and to notify its customers

of the pending application will place the Board in a better position to ensure that the customers are given adequate notice of and a reasonable opportunity to be heard in connection with an office closure or relocation.

Economic Impact

Utilities will incur minor administrative expenses associated with submitting an application to the Board for approval to close or relocate an office as well as those costs associated with the posting of notice of the pending application. The required notice shall be by means of newspaper advertisement and by posting notice at the subject office location. There are some costs associated with the provision and maintenance of the toll free or local exchange telephone numbers. However, these costs would be considered legitimate costs of doing business and therefore may be recoverable through rates to customers.

Regulatory Flexibility Analysis

The proposed amendment establishes an administrative process. The requirements of this process must be followed by those utilities seeking approval for the closure or relocation of an office. Parties to such activities may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

There are no small gas or telephone utilities to which this proposed amendment would apply. There are, however, approximately 100 small water and sewer utilities and one small electric utility. While the preparation and filing of formal petitions is normally done by an attorney, such professional representation is not a requirement of this rule; a person or entity may act on its own behalf. Although small businesses will incur expenses associated with the posting of notice of a pending office closure or relocation, such expenses are commensurate with the number of customers served. Also, the provision and maintenance of toll free or local exchange numbers may result in certain costs to both large and small businesses. In both instances the costs may be recoverable through rates to customers. Therefore, the burden of administrative expense falls equally on both small and large businesses and no differentiation in compliance requirements based on business size is provided.

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

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

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

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

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

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

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

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

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

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

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications
Renewal of Employee Licenses
Proposed New Rules: N.J.A.C. 19:41-14

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

Authority: N.J.S.A. 5:12-63, 69, 70(a) and (b), 80, 94 and 95.

Proposal Number: PRN 1992-239.

Submit written comments by July 15, 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 new subchapter, N.J.A.C. 19:41-14, establishes and codifies procedures governing the renewal applications of employee licensees. These procedures create a license renewal system whereby each employee licensee would be provided with a renewal application at least seven months prior to the expiration date of his or her current license. The employee licensee would then be given two months in which to file a completed application for renewal.

Any employee licensee who failed to submit a renewal application by the deadline established in N.J.A.C. 19:41-14.2 would be deemed to have failed to apply for renewal of his or her license and the license would be terminated on its stated expiration date. In order to continue working in a position which requires licensure after this date, the former licensee would have to apply for and obtain a new employee license in the normal course.

If a complete and timely application for renewal is received, the application would be forwarded to the Division of Gaming Enforcement for investigation. The proposed rules provide that the Commission would consider the renewal of a complete and timely application no sooner than one month prior to, but no later than, the expiration date of the current license. If the Division does not file an investigative report on a timely renewal application, the Commission would have the discretion to renew the application unless the Division requests in writing that the renewal not be considered until an investigative report is submitted by the Division. The Division would, of course, retain its statutory right under N.J.S.A. 5:12-94 to request the Commission to reconsider the status of any license at any time.

The primary purpose of the proposed new rules is to establish an employee licensing system which assures, to the greatest extent possible, that all licensed employees in the casino industry possess and display a valid and current license which accurately reflects their present licensing status. Under prior Commission practice, employee licensees have been permitted to file renewal applications up until the date that their current license expires. As a result, the Division has not been able to complete its investigation and the Commission has not been able to make a determination as to whether a license should be renewed until after the expiration of the current license.

Accordingly, the license credentials worn by many casino employees currently employed in the casinos bear expiration dates which have already passed. Although these employees are provided a separate document which evidences their right to continue working, the fact that the license credential itself appears to have expired makes it difficult for the regulatory authorities on the casino floor to readily determine which employees are currently authorized to be employed by a casino licensee. The proposed new rules are intended to make the license credential an effective regulatory control.

The proposed new rules also codify various requirements and procedures currently used by the Commission in the processing of employee license renewals. These include the required contents of renewal application forms, procedures for the modification of employee licenses at renewal and procedures for employees whose licenses have been suspended. In addition, the new subchapter will require that junket representatives file updated service of process forms with their renewal applications.

Social Impact

The Casino Control Act declares that its provisions "are designed to extend strict regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises . . ." N.J.S.A. 5:12-1(b)6. The Act also directs that "the regulatory and investigatory powers and duties [conferred by the Act] shall be exercised to the fullest extent consistent with law to avoid entry of [unqualified] persons into casino operations . . ." N.J.S.A. 5:12-1(b)9. To that end, the Act requires that all employees who are engaged in the conduct or supervision of casino operations be individually licensed by the Commission both prior to and at all times during their employment by a casino licensee. This individual licensure requirement, in combination with the requirement that all such employees display a license credential at all times while on the casino floor, are intended to assist the regulatory authorities in assuring that only qualified persons are engaged in casino operations. To the extent that the proposed new rules will help achieve the enforcement of the statutory objectives, they will have a positive social impact on the citizens of this State.

There is some risk created by the new rules that individual employee licensees, who are used to being permitted to file renewal applications up until the expiration date of their current license, may initially fail to comply with the new renewal procedures and thus lose their right to work in the industry. The Commission is mindful of this potential social impact and intends, should the proposed rules be adopted, to take steps to eliminate, to the greatest extent possible, this concern. If the rules are adopted, the Commission would delay their operative date for at least six months in order to undertake an extensive informational campaign to advise casinos and their employees of the new procedures. In addition, the renewal applications which will be mailed to licensees under the new procedures will contain a clear warning advising renewal applicants of the consequences of failing to file a timely application for renewal.

Economic Impact

The proposed new rules do not require any person involved in the completion, investigation or processing of employee license renewal applications to undertake any new obligations. The rules merely shift the time periods when such obligations must be performed so that renewal applications may be acted upon prior to the expiration of the current license. Accordingly, the proposed rules are not anticipated to have any significant economic impact on individual employee licensees, casino licensees or the regulatory authorities.

Regulatory Flexibility Statement

The proposed new rules will only affect individual natural persons required to hold employee licenses under the provisions of the Casino Control Act. Therefore, a regulatory flexibility analysis is not required pursuant to the provisions of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed new rules follows:

SUBCHAPTER 14. APPLICATIONS FOR THE RENEWAL OF EMPLOYEE LICENSES

19:41-14.1 Scope of subchapter; effect of expiration of license

(a) This subchapter shall govern applications for the renewal of the following employee licenses:

1. Casino key employee;
2. Junket representative;
3. Gaming school—resident director;
4. Casino employee—gaming;
5. Casino employee—nongaming; and
6. Gaming school—instructor.

(b) Except as otherwise provided by N.J.A.C. 19:41-14.4 and 19:42-3.8, no applicant for the renewal of an employee license may, after the expiration date of that license, be employed on the basis of that license by a casino licensee, gaming school or junket enterprise in any position which requires the possession of a current and valid employee license.

19:41-14.2 Time for filing

(a) An application for the renewal of an employee license shall be mailed to each employee licensee at the address on file with the Commission at least seven months prior to the expiration date of his or her license. The completed application for renewal shall be filed with the Commission no later than the last day of the month which is five months prior to the month in which the current license term expires. The filing deadlines for employee license renewal applications are as follows:

If the Current License Term Expires on the Last Day of:	Then the Renewal Application Must be Filed by the Last Day of:
January	August of prior year
February	September of prior year
March	October of prior year
April	November of prior year
May	December of prior year
June	January of current year
July	February of current year
August	March of current year
September	April of current year
October	May of current year
November	June of current year
December	July of current year

(b) No application shall be considered filed in accordance with (a) above unless:

1. The application contains all application materials required by N.J.A.C. 19:41-14.3; and
2. All application materials have been completed in accordance with the requirements of the Act, the Commission's regulations and any instructions included with the materials.

(c) Any applicant for the renewal of an employee license who files an incomplete renewal application within the filing deadline specified in (a) above shall be promptly notified by the Commission of any deficiency in the renewal application. To qualify as an "incomplete renewal application" for purposes of this section, an application must include, at a minimum, the license renewal fee and an Employee License Renewal Application form (see N.J.A.C. 19:41-14.3). Any licensee filing an incomplete renewal application shall have until the filing deadline established in (a) above or 21 days from the date of service of the deficiency notice, whichever is later, to file a complete renewal application.

(d) Failure of a licensee to file a complete renewal application with the Commission in accordance with the requirements of (a) through (c) above shall be deemed a failure to apply for renewal of the license and shall result in the termination of the license on its stated expiration date.

1. Any licensee whose current license will be terminated pursuant to this section may, prior to the expiration date of the current license, apply for a new license of the same type by filing the appropriate renewal application materials identified in N.J.A.C. 19:41-14.3 and paying the initial license application fee required by N.J.A.C. 19:41-9. After the expiration date of the current license, the former licensee shall be required to file a complete application for the issuance of a new license. Under either circumstance, the filing of the application for a new license shall not affect the termination of the former license on its stated expiration date.

2. Any casino key employee licensee whose license expires due to the failure of the licensee to file a complete and timely renewal application in accordance with the provisions of this section shall not be eligible to receive a temporary casino key employee license until one year after the expiration date of the former license.

(e) Any licensee whose license has been suspended by the Commission must continue to file renewal applications during the suspension period in order to remain eligible to return to work immediately should the license be reinstated. The suspended licensee shall be required to file complete renewal applications in accordance with the requirements of this section as if the suspended license were renewed pursuant to the terms of N.J.S.A. 5:12-94 and (a) above; provided, however, the suspended licensee shall only be required to pay one license renewal fee during the suspension period. Failure of a suspended licensee to file a renewal application in accordance with the requirements of this subsection shall be deemed a failure to apply for renewal of the license but shall not affect the validity of any ongoing proceeding concerning the former licensee's qualification for licensure.

19:41-14.3 Contents of renewal application

(a) An application for the renewal of an employee license shall include:

1. A completed Employee License Renewal Application form certified and signed by the applicant. This form shall contain all relevant information since the applicant's initial application for licensure or most recent renewal application concerning the following:

i. Any changes in the name, address or the telephone number of the applicant;

ii. The name and address of the applicant's present employer and the name of his or her supervisor;

iii. The applicant's employment history with casino licensees;

iv. A history of any disciplinary action taken by employers against the applicant;

v. A history of all action taken by any jurisdiction against any license, work permit, or certificate held by the applicant to work in casino gaming;

vi. All criminal arrests, charges, custodial confinements, indictments and convictions of the applicant; and

vii. All civil litigation in which the applicant is named as a defendant or respondent.

2. A Release Authorization signed by the applicant which shall direct all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions, and all governmental agencies, to release any and all information pertaining to the applicant as requested by the Division or Commission; and

3. Payment of the appropriate license renewal fee due in accordance with N.J.A.C. 19:41-9.

(b) In addition to the materials identified in (a) above, an application for the renewal of a casino key employee license, a gaming school-resident director license or a junket representative license shall include:

1. A Personal Financial Statement certified and signed by the applicant containing a detailed, itemized list of the applicant's assets and liabilities in a form required by the Commission; and

2. Copies of any Federal income tax returns filed by the applicant with the Internal Revenue Service since the applicant's initial license was granted or most recent application for renewal was filed, whichever occurred later.

(c) In addition to the materials identified in (a) and (b) above, an application for the renewal of a junket representative license shall include, in a form required by the Commission, designation of an agent to receive service of process in this State and an affirmation that the applicant submits to the jurisdiction of this State.

19:41-14.4 Modification of license at renewal

(a) An applicant for the renewal of an employee license may, in lieu of renewing his or her current license, apply for a modification of his or her current license at renewal to any employee license which is lower in rank. For purposes of this section, the rank of employee licenses, from highest to lowest, is as follows:

1. Casino key employee;
2. Junket representative;
3. Gaming school—resident director;
4. Casino employee—gaming;
5. Casino employee—nongaming; and
6. Gaming school—instructor.

(b) An application for modification of an employee license at renewal shall be in writing and shall be subject to the following requirements:

1. The applicant shall be required to file a complete application for the renewal of the modified license in accordance with the requirements of N.J.A.C. 19:41-14.2 and 14.3; and

2. The applicant shall be required to demonstrate that he or she satisfies the educational or experiential requirements for the modified license and any positions to be endorsed thereon.

(c) Notwithstanding (b)1 above, any applicant who has filed a complete and timely application for the renewal of his or her current employee license may, no later than the last day of the month which is two months prior to the month in which the current license term expires, file a written application for modification of his or her current license at renewal.

1. The application for modification shall include any information necessary to satisfy the requirement of (b)2 above.

2. If the application for modification is submitted by a casino key employee who requests renewal as a junket representative, the application shall also include the form and affirmation required by N.J.A.C. 19:41-14.3(c).

3. An applicant who files an application for modification of an employee license at renewal after the application deadline for the current license shall:

i. Not be entitled to a refund of any license renewal fee previously paid for his or her current license (see N.J.A.C. 19:41-9.19); and

ii. Be obligated to pay any expenses which have been incurred by the Commission and Division in processing the application for renewal of the current license which are in excess of the renewal deposit as of the date that the application for modification was received.

19:41-14.5 Processing

(a) Upon the receipt of a complete renewal application within the time period required by N.J.A.C. 19:41-14.2, the renewal application shall be transmitted to the Division which shall conduct such investigation as it deems necessary to determine the continued qualification of the applicant.

(b) The Commission shall consider each complete and timely application for the renewal of an employee license no sooner than one month prior to, but no later than, the expiration date of the current license. If the Division does not file an investigative report on a complete and timely application for renewal of an employee license, the Commission may grant the renewal of the license unless the Division requests, in writing, no later than 40 days prior to the expiration date of the current license, that such application for renewal not be considered until an investigative report has been submitted by the Division.

(c) Nothing in this section shall be deemed to be inconsistent with the authority of the Division pursuant to N.J.S.A. 5:12-94 to request the Commission to reconsider the status of any license at any time.

(d) If an applicant for renewal requests a hearing in accordance with the provisions of N.J.A.C. 19:42-3, or the Commission finds that the Division has requested that consideration of an application be delayed until an investigative report is submitted, the Commission shall provide the applicant with a document permitting the applicant to remain employed under his or her existing license credential until such application has been finally determined by the Commission; provided, however, nothing herein shall be deemed to relieve an applicant for renewal of the obligation to file any subsequent application for renewal which is due pursuant to N.J.A.C. 19:41-14.2 during the course of the hearing process.

(e) The Commission shall notify an applicant in writing when a renewal application is granted, and the applicant shall appear in person at the Commission's Casino Employee License Information Unit in Atlantic City within 30 days of the notice to obtain his or her new license credential. Should the applicant fail to appear as required by this subsection, the Commission may notify casino licensees that the applicant can no longer be employed in the licensed position after the expiration of the applicant's current license credential until the applicant appears as required and receives his or her new license credential.

19:41-14.6 Duration of renewed licenses

(a) Except as provided in (b) below, all employee licenses shall be renewed for a term of three years.

(b) The first two successive renewal terms of a casino key employee license shall be for one year; successive renewal terms thereafter shall be for two years.

19:41-14.7 Transitional rules governing certain renewals

(a) Notwithstanding any other provision of this subchapter to the contrary, any application for the renewal of an employee license which was scheduled to expire prior to the operative date of this section may be granted if:

1. A complete application for renewal, including the payment of all required fees, was filed in accordance with Commission renewal procedures in effect as of the date on which the license term was scheduled to expire; and

2. The Division has not filed an investigative report with the Commission on the renewal of the license by the last day of the sixth month following the operative date of this section.

(b) Notwithstanding any other provision of this subchapter to the contrary, any application for the renewal of an employee license which is scheduled to expire within six months following the operative date of this section may be granted during the fifth month following the date on which the license term is scheduled to expire if:

1. A complete application for renewal, as defined in N.J.A.C. 19:41-4.3, is filed no later than the date on which the license term is scheduled to expire; and

2. The Division has not filed an investigative report with the Commission on the renewal of the license by the end of the fourth month following the date on which the license term is scheduled to expire.

19:41-14.8 Renewal of license after expiration of license term; relation to previous license term

(a) The term of any employee license which is renewed by the Commission after the date on which the previous license term would normally have expired in accordance with the requirements of N.J.S.A. 5:12-94 shall relate back to and begin on the day following the expiration date of the previous license term.

(b) Notwithstanding (a) above, the term of any employee license which has been suspended by the Commission and which is reinstated and renewed by the Commission after the date on which the previous license term would normally have expired in accordance with the requirements of N.J.S.A. 5:12-94 shall begin on the day following the date of the Commission vote reinstating and renewing the license.

(a)

CASINO CONTROL COMMISSION

Internal Controls
Personnel Assigned to the Operation and Conduct of Gaming and Slot Machines

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

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-70(f) and 70(j).
Proposal Number: PRN 1992-240.

Submit comments by July 15, 1992 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission recently adopted revised staffing requirements for the operation and supervision of table games by licensed casinos, at N.J.A.C. 19:45-1.12. The requisite number of dealers in each of the table games are set forth in paragraphs (c)2 and 3. However, the game of baccarat has always required the presence of three dealers, two dealers to observe the placement of wagers, make payoffs, collect losing wagers and the like, and a third dealer to control the cards. The proposed amendment properly moves the game of baccarat from paragraph (c)2, which requires only one dealer, to paragraph (c)3, which requires three dealers.

Social Impact

The proposed amendment should not have any social impact, since three dealers have always been required in the game of baccarat.

Economic Impact

The proposed amendment should not have any economic impact, since three dealers have always been required in the game of baccarat.

Regulatory Flexibility Statement

The proposed amendments affect 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 therefore not required.

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

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

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

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

1. (No change.)

2. One dealer shall be assigned to each [baccarat,] blackjack, roulette, minibaccarat, sic bo, red dog and big six table;

3. Three dealers shall be assigned to each craps **and baccarat** table;

4.-6. (No change.)

(d)-(i) (No change.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Cashiers' Cage; Master Coin Bank; Coin Vaults

Proposed Amendment: N.J.A.C. 19:45-1.14

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69(a); 70(g), (j) and (l); 99(a)4 and 9.
Proposal Number: PRN 1992-241.

Submit comments by July 15, 1992 to:
Seth H. Briliant, Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments would permit a casino licensee to create "coin vaults" with single-locked doors, rather than double-locked doors. All other security over the coin vault would remain as currently required by the Commission's regulations.

Social Impact

The proposal to eliminate one of the locks on the coin vault door will have no social impact since it only affects a casino licensee's internal operations.

Economic Impact

The economic impact of these amendments upon casino licensees can not be predicted at this time. However, it is hoped that the elimination of one of the locks on the coin vault door will result in a more efficient slot operation. There should be no economic impact upon casino patrons, the Commission or the Division of Gaming Enforcement.

Regulatory Flexibility Statement

The 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. Therefore, a regulatory flexibility analysis is not required.

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

19:45-1.14 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 [two separate locks, the keys to which shall be different from each other. One key shall be maintained by the casino security department in a secure area within the security department. Access to that key may be gained only by a casino security department supervisor. The other key] **one key that** shall be maintained and controlled by the casino accounting department[. Each department], **which** shall establish a sign-in and sign-out procedure for removal and replacement of [these keys] **that key**;
3.-4. (No change.)
(g) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Slot Machines and Bill Changers; Location; Movements
Procedure for Filling Payout Reserve Containers of Slot Machines and Hopper Storage Areas
Hopper Storage Areas
Proposed New Rule: N.J.A.C. 19:45-1.36A
Proposed Amendments: N.J.A.C. 19:45-1.1, 1.38 and 1.41

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69(a), 70(l), 99(a)10 and 11.
Proposal Number: PRN 1992-245.

Submit comments by July 15, 1992 to:
Seth H. Briliant, Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The introduction of 24-hour gaming, the increased usage of bill changers which utilize the slot machine's payout reserve container (hopper) to make change, and the greater volume of slot machine play in general have placed increased demands upon conventional slot machine hoppers, which now require increased numbers of refills in order to pay out jackpots and make change. The proposed amendments and new rule would permit casino licensees to utilize "hopper storage areas" in connection with the operation of their slot machines.

A hopper storage area would be a locked drawer or compartment located in the base of the slot machine, holding bags of coin or slot tokens, to be placed in the slot machine's hopper when necessary, thus permitting the hopper to be refilled quickly and efficiently. The hopper storage areas themselves would normally be replenished when the casino is closed or is less active, thus permitting that process to be accomplished quickly, during the most advantageous periods of time, and with less disruption to patrons and gaming operations.

Social Impact

The use of hopper storage areas should decrease the time required to perform the hopper fill procedure, and thus decrease the length of time that a slot machine is out of service because its hopper is empty. Hopper fills are also sometimes needed to complete the payout of a slot jackpot. To the extent that this hopper fill system may be faster and more efficient, there should be fewer slot machines out of service, faster jackpot payouts, and increased customer satisfaction.

Economic Impact

The use of auxiliary hopper fills may result in a faster, more efficient hopper fill process, and possibly some cost savings for casino licensees. However, the final economic impact of the amendments and new rule on casino licensees is unknown, given the initial costs of implementing the amendments and new rule. The amendments and new rule are not expected to have any economic impact upon the Commission, the Division of Gaming Enforcement or casino patrons.

Regulatory Flexibility Statement

The 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. Therefore, a regulatory flexibility statement is not 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.

...

"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. [The] **Any** coins **or tokens** [contained] 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:

[(a)]**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.)

[(e)]**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.)

[5.]**v.** The slot booth number, if applicable, from which the coins are distributed; [and]

[6.]**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.)

[(g)]**7.** All coins **or tokens** distributed **from a slot booth** to a slot machine [from the slot booth] **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

Slot Machine Areas; Density; Arrangement; Floor Plans; Slot Stools

Reproposed Amendment: N.J.A.C. 19:46-1.27

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

Authority: N.J.S.A. 5:12-63(c), 69 and 100.

Proposal Number: PRN 1992-242.

Submit comments by July 15, 1992 to:

Catherine A. Walker, Senior Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:46-1.27 implement recent legislative amendments to the Casino Control Act, N.J.S.A. 5:12-1 et seq., (Senate Bill 652, signed by Governor Florio on May 19, 1992) which eliminate certain restrictions on the amount of casino floor space a casino licensee may dedicate to slot machines and give the Commission authority to determine, by regulation, the permissible number and density of slot machines. Pursuant to the legislative amendments, the Commission must adopt regulations governing the number and density of slot machines so as to: (1) promote optimum security for casino operations; (2) avoid deception or frequent distraction to players at gaming tables; (3) promote patron comfort; (4) create and maintain a gracious playing environment; and (5) encourage and preserve competition in casino operations by assuring that a variety of gaming opportunities are offered to the public.

N.J.S.A. 5:12-100(h)(2).

This proposal pursuant to the legislative amendments supersedes and replaces that proposal published in the March 2, 1992 New Jersey Register at 24 N.J.R. 706(a). The Commission received comments on that proposal from a number of casino licensees, some of whom supported and some of whom opposed the proposal. The Division of Gaming Enforcement supported the proposal.

Historically, the Casino Control Commission, by regulation, has required that a casino licensee devote 10 square feet of casino floor space to each slot machine and the mandatory walkway between machines. The use of this figure to determine the number of slot machines which a casino licensee may install and operate on its casino floor provides an administratively convenient method for determining the maximum number of slot machines that can be located in the casino. The present proposal retains this long-standing method of calculation.

Subsection 100(h)(2) of the Act also directs the Commission, however, to promulgate rules determining the permissible density of slot machines, so as to satisfy the five legislative requirements listed above. To do that, the proposed regulatory amendments allow up to 45 percent of the total casino floor space to be allocated to slot machines and the walkways between them and up to 30 percent of the total casino floor space to be used for slot circulation and support space. Any casino floor space not occupied by slot machines, walkways and slot circulation and support space is to be allocated to table games and table game circulation and support areas.

For purposes of clarity and consistency, the proposed amendment also reorganizes and recodifies many of the current design requirements, including rules regarding placement of slot stools, slot aisle dimensions, and submission of floor plans. The language of these provisions has been modified so as to clarify and simplify the implementation process.

Social Impact

The proposed amendment is not anticipated to have any significant social impact. The amendment describes the calculation of the maximum number of slot machines that may be located in a casino and the calculation of casino floor space occupied by slot machines and the walkways between them and the circulation and support space allocated to slot machines.

Economic Impact

The proposed amendment is not anticipated to have any significant economic impact. The amendment merely sets forth the method of calculation that is required by subsection 100(h)(2) of the Casino Control Act. Casino licensees may, if they so choose, increase the number of slot machines on their casino floor.

Regulatory Flexibility Statement

The proposed amendment will only affect the operations of New Jersey casino licensees, none of which qualify as a "small business" protected under 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]).

19:46-1.27 [Aisles, grating; electrical outlets; denominations;] **Slot machine areas;** density; [floor space;] 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:

[(a)]**1.** [Unless otherwise approved by the Commission, the] **The slot** aisle [space] **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;

[(b)]**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 [or other] grating **or other type of barrier, as approved by the Commission,** that will prohibit a person from placing his **or her** hand between [said] **the** rows of machines[.];

[(c) No casino licensee shall permit any exposed electrical outlet to exist in the slot machine area of the casino.

(d) Unless otherwise approved by the Commission, no casino licensee shall be permitted to use in the conduct of gaming any number of slot machines which creates a density of greater than one machine for every 10 square feet of the floor space of its casino authorized by the Commission to be occupied by slot machines.

(e) Slot machines, including the walkways between them, may not occupy more than 30 percent of the first 50,000 square feet of floor space of a casino larger than 50,000 square feet.

(f) Slot machines used in the conduct of gaming shall be arranged in such a manner as to promote optimum security for the casino operation and maximum comfort for the patrons and as to create and maintain a gracious playing environment in the casino and avoid deception or frequent distraction to players at gaming tables.]

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 = Maximum Number of Slot Machines Permitted**	**2,700**

(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.

[(g) In requesting Commission approval for its proposed arrangement of slot machines, each] **(h) Each** casino licensee [and] **or** applicant [for a casino license] shall submit to the Commission a detailed floor plan, **drawn to scale,** depicting its proposed arrangement of slot machines [and indicating thereon], **slot stools and table games. Such plan shall indicate** all relevant floor space square footage[,]; density information[, and]; 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.** [and of walkways between rows of slot machines. It shall be the obligation of each] **Each** casino licensee [to] **shall** maintain on file with the Commission a current [such] 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.

[(h) In requesting Commission approval for the installation of slot stools, each casino licensee shall submit to the Commission and the Division an egress study which shall consist of a detailed floor plan depicting:

1. The maximum number of persons that can be reasonably expected to occupy all locations of the casino floor, including the area immediately surrounding all table games and slot machines;
2. The logical flow of traffic through all major egress aisles in emergency circumstances; and
3. The maximum number of people that can pass, travel and/or exit through various points along the major egress aisles.

(i) Prior to the installation of slot stools, the casino licensee shall submit to the Commission for approval a detailed floor plan which depicts, to scale, the proposed location of each slot stool and the remaining aisle space.

(j) The placement of slot stools on the casino floor shall comply with the following requirements:

1. Slot stools shall be located on only one side of a slot aisle that measures less than seven feet in width. A slot aisle shall be defined as the space between a row of slot machines and any obstructions immediately opposite that row;
2. Whenever slot stools are placed in slot aisles, a minimum of four feet clearance shall exist between the back of each slot stool and the slot machine or other obstructions immediately opposite that stool;
3. Slot stools shall only be located in every other slot aisle, unless the aisle width between facing machines is seven feet or greater;
4. Slot stools shall only be of the spindle-type and must be securely fastened to the floor or the slot base; and
5. Slot stools shall not be permitted to be located in major egress aisles unless the casino licensee clearly demonstrates that the placement of the stools in these aisles will not interfere with emergency egress capabilities from the casino floor.]

(a)

CASINO CONTROL COMMISSION

Pokette
Rules of the Game
Gaming Equipment
Accounting and Internal Controls

Proposed New Rules: N.J.A.C. 19:46-1.13D; 19:47-12.1 through 12.10
Proposed Amendments: N.J.A.C. 19:45-1.19, 19:46-1.1, 1.17, 1.18, 1.20; and 19:47-8.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-5, 69(a), 70(f), (j), 99 and 100(e).
Proposal Number: PRN 1992-246.

Submit comments by July 15, 1992 to:
Catherine A. Walker, Senior Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed new rules and amendments are intended to govern the implementation of the game of pokette in Atlantic City casinos. The actual rules of the game are set forth in N.J.A.C. 19:47-12.1 through 12.10. The Commission has found that pokette is a variation of the authorized game of roulette, pursuant to N.J.S.A. 5:12-5.

Briefly, pokette is played with a wheel, that has been divided into 54 sections. A depiction of each of the 52 cards contained in a standard deck of playing cards and two different jokers are located in each of the sections of the wheel in the order described in proposed N.J.A.C. 19:46-1.13D. Players may bet on individual cards or various combinations of cards, as depicted on the layout, which will be determined by each spin of the wheel. Additionally, patrons may place "poker hand bets" on the outcome of three consecutive spins of the wheel, excluding jokers. Jokers have no effect on the outcome of a poker hand bet. Poker hand bets may only be placed when announced by the dealer. The payout odds on the poker hand bets vary, and will be included on the layout.

Proposed new rule N.J.A.C. 19:46-1.13D contains the requirements governing the physical characteristics of the pokette wheel and pokette layout. The remainder of the proposed new rules and amendments are technical proposals which govern the operation of pokette in Atlantic City casinos.

Social Impact

The proposed new rules and amendments are not anticipated to have any social impact independent of that created by the statutory authorization which permits the Casino Control Commission to find that games are variations of authorized games. N.J.S.A. 5:12-5. The proposed new rules do not reflect any social judgments made by the Commission. It is anticipated that the implementation of the new game may generate patron interest in the game, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City as a result of the introduction of pokette.

Economic Impact

Implementation of any game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs will presumably be offset by the increased casino revenues generated by the new game. Moreover, to the extent that the new game does generate increased casino revenues, senior and disabled citizens of New Jersey will benefit from the additional tax revenues which will be collected. As noted above, however, any attempt to quantify the effects of the introduction of pokette on casino revenue would be highly speculative at this time. The proposed amendments and new rules may require the regulatory agencies to incur some costs in preparing to regulate the game. However, these costs are necessary to introduce and test the game of pokette in Atlantic City casinos.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposal will affect the operation of New Jersey casino licensees, none of which qualify as a small business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.19 Acceptance of tips or gratuities from patrons

(a) (No change.)

(b) All tips and gratuities allowed dealers shall be:

1. Immediately deposited in a transparent locked box reserved for that purpose. If non-value chips are received at a roulette **or pokette** table, the marker button indicating their specific value shall not be removed [from the slot or receptable attached to the outer rim of the roulette wheel] until after a dealer, in the presence of a **casino** supervisor, has expeditiously converted them into value chips which [are] **shall then be** immediately deposited in a transparent locked box reserved for that purpose;

2.-3. (No change.)

(c) (No change.)

19:46-1.1 Gaming chips; value and non-value; physical characteristics

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

(h) Nothing in this section shall preclude a casino licensee from using non-value chips approved for use in roulette at the game of pokette.

[(h)](**i**) Non-value chips issued at a roulette **or pokette** table shall only be used for gaming at that table and shall not be used for gaming at any other table in the casino nor shall any casino licensee or its employees allow any casino patron to remove non-value chips from the table from which they were issued.

[(i)](**j**) No person at a routlette **or pokette** table shall be issued or permitted to game with non-value chips that are identical in color and design to value chips to non-value chips being used by another

person at the same table. When a patron purchases non-value chips, a chip of the same color shall be placed in a slot or receptacle attached to the outer rim of the roulette wheel **or, for pokette, in such other device as approved by the Commission.** At that time, a marker button denoting the value of a stack of 20 chips of that color shall also be placed in the slot [or], receptacle **or other device.**

[(j)](k) (No change in text.)

[(k)](l) Each casino licensee shall have the discretion to permit, limit or prohibit the use of value chips in gaming at roulette **and pokette** provided, however, that it shall be the responsibility of the casino licensee and [his] **its** employees to keep accurate account of the wagers being made at roulette **and pokette** with value chips so that the wagers made by one player are not confused with those made by another player at the table.

Recodify existing (l)-(p) as **(m)**-**(q)** (No change in text.)

19:46-1.13D Pokette table; pokette wheel; physical characteristics

(a) Each pokette table shall have the name of the casino licensee imprinted on the cloth covering it and shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location as approved by the Commission.

(b) The cloth covering each pokette table shall be approved by the Commission and shall be marked with:

1. Depictions of each of the 52 playing cards contained within a deck as depicted on the pokette wheel;

2. Two jokers as depicted on the pokette wheel;

3. The following poker hand wagers:

i. Pair in two;

ii. Pair in three;

iii. Three of a kind;

iv. Straight;

v. Flush; and

vi. Straight Flush; and

4. The following non-poker hand wagers:

i. Black;

ii. Red;

iii. Ace-King-Queen rank;

iv. Jack-10-9 rank;

v. 8-7-6 rank;

vi. 5-4-3 rank; and

vii. Each suit.

(c) Pokette shall be played with a card stand and a container to house the cards to be placed in the card stand. The location of the card stand and card container at the pokette table shall be approved by the Commission.

(d) Pokette shall be played with a wheel to be known as a "pokette wheel" which shall be circular in shape and no less than 48 inches in diameter. The rim of the pokette wheel shall be divided into 54 equally spaced sections with 52 sections containing a depiction of each of the 52 playing cards contained within a deck and two sections each containing a depiction of a joker that is different from the other joker. The background of each joker shall be of a different color from each other, so as to be distinguishable from each other, and shall not be red or black. All 54 sections shall be covered with glass or some other transparent covering. The sections shall be arranged around the rim of the pokette wheel as follows: joker, 7 of diamonds, 4 of spades, 9 of hearts, queen of clubs, 5 of diamonds, 8 of spades, ace of hearts, 10 of clubs, 3 of diamonds, king of spades, 6 of hearts, 2 of clubs, jack of diamonds, 7 of spades, 4 of hearts, 9 of clubs, queen of diamonds, 5 of spades, 8 of hearts, ace of clubs, 10 of diamonds, 3 of spades, king of hearts, 6 of clubs, 2 of diamonds, jack of spades, joker, 7 of hearts, 4 of clubs, 9 of diamonds, queen of spades, 5 of hearts, 8 of clubs, ace of diamonds, 10 of spades, 3 of hearts, king of clubs, 6 of diamonds, 2 of spades, jack of hearts, 7 of clubs, 4 of diamonds, 9 of spades, queen of hearts, 5 of clubs, 8 of diamonds, ace of spades, 10 of hearts, 3 of clubs, king of diamonds, 6 of spades, 2 of hearts and jack of clubs.

(e) The location and the necessary security measures over the non-value and value gaming chips at a pokette table shall be approved by the Commission.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat[/], minibaccarat, **pokette** and red dog shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck.

(b)-(h) (No change.)

19:46-1.18 Cards; receipt, storage, inspections and removal from use

(a) When decks of cards are received for use in the casino from the manufacturer or distributor thereof, they shall be placed for storage in a locked cabinet **in the cashiers' cage or within a primary or secondary storage** area by at least two individuals, one of whom shall be from the casino department and the other from the **casino** security department. The cabinet or primary storage area shall be located in the cashiers' cage or in another secure place in or immediately adjacent to the casino **floor**, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee]. **Secondary storage areas shall be used for the storage of surplus cards. Cards maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the cards have been moved to a primary storage area.** [Any] **All** secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].

(b) [The cabinet or] **All primary and secondary** storage areas, **other than the cashiers' cage,** shall have two separate locks. The **casino** security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organizational hierarchy shall have access to the [keys] **casino department key. Cards stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.**

(c) Immediately prior to commencement of each [shift or] gaming day and at such other times as may be necessary, the assistant shift manager or [person above him or her] **casino supervisor thereof,** in the presence of a **casino** security officer, shall [open the cabinet or primary storage area and shall] remove the appropriate number of decks of cards for that [shift or] gaming day **from a primary storage area.**

(d) The assistant shift manager or [persons above him] **casino supervisor thereof and the casino security officer who removed the decks** shall distribute sufficient decks to the pit boss.

1. (No change.)

2. Cards in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy] **casino supervisor thereof.**

(e) [Prior] **With the exception of cards used to game at pokette, which are governed by the requirements of N.J.A.C. 19:47-12.4, prior** to their use at a table all decks shall be inspected by the dealer, and the inspection verified by a floorperson. [(f)] Card inspection at the gaming table shall require each pack to be used to be sorted into sequence and into suit to assure that all cards are in the deck. [1.] The dealer shall also check the back of each card to assure that it is not flawed, scratched or marked in any way.

[i.]**1.** If, after checking the cards, the dealer finds that [certain cards are damaged or improper] **a card is unsuitable for use,** a casino supervisor shall bring [cards in substitution] **a substitute card** from the card reserve in the pit stand.

[ii.] **2.** The [damaged or improper cards] **unsuitable card** shall be placed in **a** sealed envelope or container, identified by table number, date and time and shall be signed by the dealer and casino supervisor. **The casino supervisor shall maintain the envelope or container in a secure place within the pit until collection by a casino security officer.**

[2.](f) All envelopes and containers used to hold or transport cards collected by security [at the end of each shift or gaming day] shall be transparent.

[i.]**1.** The envelopes or containers and the method **used** to seal them shall be designed or constructed so that any tampering shall be evident.

[ii.]**2.** The envelopes or containers and seals shall be approved by the Commission.

[iii. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or gaming day.]

(g) (No change.)

(h) Cards damaged during the course of play shall be replaced by the dealer who shall request a casino supervisor to bring the cards in substitution from the pit stand.

1. (No change.)

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until **collection by** a **casino** security officer [collects them at the end of the shift or gaming day].

(i) At the end of each [shift or] gaming day and at such other times as may be necessary, the casino supervisor shall collect all **used** cards [used to play out the shift or gaming day].

1. These cards shall be placed in a sealed envelope or container. A label shall be attached to each envelope or container which shall identify the table number, date, **and** time and shall be signed by the dealer and casino supervisor.

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until **collection by** a **casino** security officer [collects them at the end of the shift or gaming day].

(j) The casino licensee shall remove any cards at any time [of] **during the** day if there is any indication of tampering, flaws, scratches, marks or other defects that might affect the integrity or fairness of the game, or at the request of [an authorized representative of] the Commission or Division.

(k) (No change.)

(l) At the end of each [shift or] gaming day **or at such other times as may be necessary**, a **casino** security officer shall collect and sign all envelopes or containers with damaged cards, cards used during the [shift or] gaming day, and all extra decks in card reserve with broken seals and shall return the envelopes **or containers** to the **casino** security department.

(m) At the end of each [shift or] gaming day **or at such other times as may be necessary**, [a security officer may] **an assistant shift manager or casino supervisor thereof may** collect all extra decks in card reserve. If collected, all sealed decks shall either be cancelled or destroyed or returned to the [cabinet or primary] storage area.

(n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the **casino** security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. **For cards used in blackjack, red dog, baccarat or minibaccarat, the** [The] casino licensee shall cause to be inspected either:

i. (No change.)

ii. A sample of decks selected at random or in accordance with an approved stratification plan provided that the procedures for selecting the sample size and for assuring a proper selection of the sample [is] **are** submitted to and approved by the Commission;

2. (No change.)

3. The procedures for inspecting all decks required to be inspected under this subsection shall, at a minimum, include:

i. (No change.)

ii. The inspection of the backs with an [infra red filter] **ultra-violet light;** and

iii. (No change.)

4. The individuals performing said inspection shall complete a work order form which shall detail the procedures performed and list the tables from which the cards were removed and [inspected] **the results of the inspection.** The individual shall sign the form upon completion of the [stated] inspection procedures.

5. (No change.)

6. Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be immediately reported to the Commission and Division by the completion and delivery of [an approved] **a** three-part Card Discrepancy Report.

i-ii. (No change.)

iii. The Commission [Inspector] **inspector** receiving the cards shall sign the original, duplicate and triplicate copy of the Card Discrepancy Report and retain the original at the Commission Booth. The duplicate copy shall be delivered to the [Division's] **Division** office located within the casino hotel facility. The triplicate copy shall be retained by the casino licensee.

(o) The casino licensee shall submit to the Commission for approval[,] procedures for:

1. A card inventory system which shall include, at a minimum, the recordation of the following:

i.-iv. (No change.)

v. The signatures of the individuals involved;

2. A reconciliation on a daily basis of the cards distributed, the cards destroyed and cancelled, [or] **the cards** returned to the storage [room] **area** and, if any, the cards in card reserve; **and**

3. (No change.)

(p) Where cards in an envelope or container are inspected and found to be without any indication of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play, those cards [and all other used cards] shall within 48 hours of collection be destroyed or cancelled. Once released by the Commission and Division, the cards submitted as evidence shall immediately be destroyed or cancelled.

1.-3. (No change.)

19:46-1.20 Approval of gaming equipment; retention by Commission and Division; evidence of tampering

(a) The Commission shall have the discretion to review and approve all gaming equipment and other devices used in a casino as to quality, design, integrity, fairness, honesty and suitability including without limitation gaming tables, layouts, roulette wheels, **pokette wheels,** roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, locking devices and data processing equipment.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino including, without limitation, gaming tables, layouts, roulette wheels, **pokette wheels,** roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, data processing equipment, tokens and slot machines have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice and cards may be found at N.J.A.C. 19:46-1.16(g) and 19:46-1.18(n), respectively.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-8. (No change.)

9. Pokette: If the minimum wager at a table is $5.00 or less, the maximum wager shall be at least $40.00. Nothing in this chapter shall preclude a casino licensee from establishing different maximum wagers for each permissible wager at the game of pokette; provided, however, that such limitations are posted at the table.

(c) (No change.)

SUBCHAPTER 12. POKETTE

19:47-12.1 Definitions

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

"Rank" shall mean the four cards of identical value within a single deck of cards. For example, the 5 rank consists of the 5 of diamonds, 5 of spades, 5 of clubs and 5 of hearts.

"Suit" shall mean one of the four categories of cards, that is, diamond, spade, club or heart.

"Pair" shall mean two cards of identical value, regardless of suit.

"Non-poker hand wager" shall mean any of the wagers listed in N.J.A.C. 19:47-12.5(a).

"Poker hand wager" shall mean any of the wagers listed in N.J.A.C. 19:47-12.5(b).

"Winning card" shall mean the card which is depicted in the section of the pokette wheel where the clapper comes to rest after a valid spin of the pokette wheel.

19:47-12.2 Cards; number of decks; value of cards depicted on the pokette wheel

(a) Three decks of cards shall be used in the game of pokette. The cards shall be used to indicate, through placement on the card stand, the winning card determined by each spin of the pokette wheel. Cards used at pokette shall meet the requirements of N.J.A.C. 19:46-1.17.

(b) For purposes of settling a poker hand wager, the relative value of the cards depicted on the pokette wheel, in order of highest to lowest value, shall be: ace, king, queen, jack, 10, nine, eight, seven, six, five, four, three, and two. Neither of the jokers shall have any value for purposes of forming a poker hand. For purposes of completing a "straight" or a "straight flush" poker hand, an ace may be combined with a king and a queen or a 2 and a 3 but may not be combined with a king and a 2.

19:47-12.3 Opening of the table for gaming

(a) After receiving three decks of cards at the table in accordance with N.J.A.C. 19:46-1.18, the dealer or the floorperson assigned to the table shall inspect the three decks by sorting each deck into sequence and into suit to ensure that all cards are in each deck.

(b) Following the inspection of the cards by the dealer or floorperson assigned to the table, each deck shall be placed in the container used to house the cards pursuant to N.J.A.C. 19:46-1.13C.

19:47-12.4 Wagers; supervision

(a) All wagers at pokette shall be made by placing gaming chips or plaques on the appropriate areas of the pokette layout except that verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and that such cash is expeditiously converted into gaming chips or plaques in accordance with the regulations governing the acceptance and conversion of such instruments.

(b) No person at a pokette table shall be issued or permitted to game with non-value chips that are identical in color and design to value chips or to non-value chips being used by another person at the same table.

(c) Each player shall be responsible for the correct positioning of his or her wager on the pokette layout regardless of whether he or she is assisted by the dealer. Each player must ensure that any instructions given to the dealer regarding the placement of his or her wager is correctly carried out.

(d) The wagers identified in N.J.A.C. 19:47-12.5(a) (non-poker hand wagers) may be made by a player on each spin of the pokette wheel. The wagers identified in N.J.A.C. 19:47-12.5(b) (poker hand wagers) may only be made on a subsequent spin of the pokette wheel when, in accordance with N.J.A.C. 19:47-12.8, one or two winning cards are posted on the card stand.

(e) For purposes of complying with the organization and supervision requirements contained in N.J.A.C. 19:45-1.11 and 1.12, each pokette table shall be considered the same as one roulette table.

19:47-12.5 Permissible wagers

(a) The following shall constitute the permissible non-poker hand wagers at the game of pokette:

1. "Single card straight up" is a wager that the winning card shall be the same card as the single card selected by the player.
2. "Two cards or split" is a wager that the winning card shall be the same card as either of the two adjoining cards selected by the player.
3. "Four cards or corner" is a wager that the winning card shall be the same card as any of the four adjoining cards selected by the player.
4. "Single rank" is a wager that the winning card shall be one of the four cards contained in the single rank selected by the player.
5. "Double rank" is a wager that the winning card shall be one of the eight cards contained in the two adjacent ranks selected by the player.
6. "Ace-king-queen rank" is a wager that the winning card shall be one of the 12 cards contained in the ace, king and queen ranks or the two of spades.
7. "Jack-10-9 rank" is a wager that the winning card shall be one of the 12 cards contained in the jack, 10 and 9 ranks or the two of clubs.
8. "8-7-6 rank" is a wager that the winning card shall be one of the 12 cards contained in the 8, 7 and 6 ranks or the two of diamonds.
9. "5-4-3 rank" is a wager that the winning card shall be one of the 12 cards contained in the 5, 4 and 3 ranks or the two of hearts.
10. "Red" is a wager that the winning card shall be a diamond or a heart.
11. "Black" is a wager that the winning card shall be a spade or a club.
12. "Suit or column" is a wager that the winning card shall be one of the 13 cards contained in the suit selected by the player.
13. "Jacer" is a wager that the winning card shall be the ace of clubs, the ace of diamonds or either of the two jokers.

(b) The following shall constitute the permissible poker hand wagers at the game of pokette:

1. "Pair in two" is a wager that the winning cards on two consecutive spins of the pokette wheel shall be of identical value, regardless of suit.
2. "Pair in three" is a wager that at least two of the three winning cards on three consecutive spins of the pokette wheel shall be of identical value, regardless of suit.
3. "Three of a kind" is a wager that the winning cards on three consecutive spins of the pokette wheel shall be of identical value, regardless of suit.
4. "Straight" is a wager that the winning cards on three consecutive spins of the pokette wheel shall be of consecutive value, regardless of suit or the order in which the winning cards are determined.
5. "Straight flush" is a wager that the winning cards on three consecutive spins of the pokette wheel shall be of consecutive value and of the same suit, regardless of the order in which the winning cards are determined.
6. "Flush" is a wager that the winning cards on three consecutive spins of the pokette wheel shall be of the same suit.

19:47-12.6 Payout odds

(a) The payout odds for pokette printed on any layout or in any brochure or other publication distributed by a casino licensee shall be stated through the use of the word "to" or "win" and no odds shall be stated through the use of the word "for."

(b) Each casino licensee shall pay off winning wagers at the game of pokette at no less than the odds listed below:

Wager	Payout Odds
Single card straight up	51 to 1
Two cards or split bet	25 to 1
Four cards or corner bet	12 to 1
Single rank	12 to 1
Double rank	5 to 1

Ace-king-queen rank	3 to 1
Jack-10-9 rank	3 to 1
8-7-6 rank	3 to 1
5-4-3 rank	3 to 1
Red	1 to 1
Black	1 to 1
Suit or column	3 to 1
Jacer	12 to 1
Pair in two	11 to 1
Pair in three	5 to 1
Three of a kind	11 to 1
Flush	3 to 1
Straight:	
Open	5 to 1
Inside	11 to 1
Straight flush:	
Open	24 to 1
Inside	49 to 1

19:47-12.7 Procedures for dealing the game

(a) Prior to spinning the pokette wheel, the dealer shall announce "No more bets."

(b) The pokette wheel shall be spun by the dealer in either direction and shall complete at least three revolutions to constitute a valid spin.

(c) Each wager shall be settled strictly in accordance with its position on the layout.

(d) Upon completion of each spin, the dealer shall announce the winning card, including its suit, and shall place a marker on the corresponding card on the pokette layout. The dealer shall then select the winning card from the decks of cards maintained at the pokette table and place the winning card in a card stand located at the pokette table. After placing the marker on the layout and the card in the card stand, the dealer shall first collect all losing wagers and then pay off all winning wagers at the odds currently being offered pursuant to N.J.A.C. 19:47-12.6.

(e) When the pokette wheel clapper comes to rest on a joker:

1. All non-poker hand wagers, except wagers on that single joker straight up, a two card or split wager that includes that joker, or a jacer wager, shall be lost;

2. The dealer shall collect all losing and pay off all winning non-poker hand wagers at the odds currently being offered pursuant to N.J.A.C. 19:47-12.6; and

3. That spin of the pokette wheel shall have no bearing on the settling of any poker hand wagers which have not been completed in accordance with N.J.A.C. 19:47-12.8.

19:47-12.8 Procedures for placing and determining the outcome of poker hand wagers

(a) After the first winning card that is not a joker has been placed in the first space of the card stand and all non-poker hand wagers relevant to that winning card have been settled, the dealer shall announce that wagers may also be placed for a "pair in 2."

(b) Once all wagers have been placed by the players, the dealer shall spin the pokette wheel in accordance with N.J.A.C. 19:47-12.7(a) and (b). Upon completion of the spin, the dealer shall announce the winning card, including its suit, place a marker on the corresponding card on the pokette layout, select the winning card from the decks of cards maintained at the pokette table and place it in the second space of the card stand. The dealer shall first settle all non-poker hand wagers relevant to that winning card. If the second winning card does not form a pair with the first winning card, all wagers on a "pair in 2" shall lose and shall be immediately collected by the dealer. If the second winning card forms a pair with the first winning card, all wagers on a "pair in 2" shall win and shall be paid at the odds currently being offered pursuant to N.J.A.C. 19:47-12.6.

(c) If the second winning card does not form a pair, once all wagers relevant to the second winning card have been settled, the dealer shall announce, in accordance with (d) below, that wagers may also be placed for a "pair in 3" and on the other possible poker hand wagers.

(d) Additional poker hand wagers which may be made once all wagers relevant to the second winning card have been settled are as follows:

1. If the first and second winning cards in the card stand are of the same suit, the dealer shall announce that wagers may be placed for a "flush."

2. If the third winning card could complete a "straight" with the first and second winning cards pursuant to N.J.A.C. 19:47-12.2 and 12.5, the dealer shall:

i. If the values of the first and second winning cards in the card stand are consecutive, announce that wagers may be placed on an "open straight"; or

ii. If there is only one winning card that could complete a "straight" with the first and second winning cards in the card stand, announce that wagers may be placed on an "inside straight."

3. If the third winning card could complete a "straight flush" with the first and second winning cards in the card stand pursuant to N.J.A.C. 19:47-12.2 and 12.5, the dealer shall:

i. If the values of the first and second winning cards in the card stand are consecutive, announce that wagers may be placed on an "open straight flush"; or

ii. If there is only one winning card that could complete a "straight flush" with the first and second winning cards in the card stand, announce that wagers may be placed on an "inside straight flush."

4. If the first and second winning cards in the card stand are a pair, the dealer shall announce that wagers may be made on "three of a kind."

(e) After the third winning card is placed in the card stand, all poker hand wagers shall be settled as follows:

1. A wager on a "pair in three" shall only win if the third winning card forms a pair with either the first or second winning card;

2. A wager on a "flush" shall only win if the third winning card is of the same suit as the first and second winning cards;

3. A wager on an "open straight" or "inside straight" shall only win if the third winning card is consecutive in value with the first and second winning cards;

4. A wager on an "open straight flush" or "inside straight flush" shall only win if the third winning card is consecutive in value with and of the same suit as the first and second winning cards; and

5. A wager on a "three of a kind" shall only win if the third winning card is of identical value with the first and second winning cards.

(f) All losing poker hand wagers shall be collected immediately by the dealer. The dealer shall then pay off all winning poker hand wagers in accordance with the odds currently being offered pursuant to N.J.A.C. 19:47-12.6.

(g) After all poker hand wagers are settled, the dealer shall remove the three cards from the card stand. The next spin of the pokette wheel which results in a winning card other than a joker shall determine the first winning card for the formation of new poker hand wagers.

19:47-12.9 Irregularities

(a) If the clapper comes to rest between two depictions of cards upon completion of the spin of the pokette wheel, the casino licensee has the option to do one of the following:

1. Declare the winning card to be the depiction of the card previously passed; or

2. Declare the spin void and re-spin the wheel.

(b) Upon a casino licensee choosing one of the options as outlined in (a) above, it shall conspicuously post a sign at each table stating which option is in effect.

(c) If the pokette wheel does not complete at least three revolutions, the dealer shall announce "No spin" and re-spin the pokette wheel.

19:47-12.10 Minimum and maximum wagers

(a) Each casino licensee shall submit to the Commission for review and approval, in accordance with N.J.A.C. 19:47-8.2, the minimum wagers permitted at each pokette table.

(b) Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each pokette table.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Proposed Readoption with Amendments: N.J.A.C. 10:72

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

Authority: N.J.S.A. 30:4D-3; 30:4D-7, 7a, b and c.

Proposal Number: PRN 1992-238.

Submit comments by July 15, 1992 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:72 expires on August 27, 1992. This proposed readoption is designed to readopt all six subchapters.

An administrative review has been conducted, and a determination made that all subchapters should be continued because the rules are necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were promulgated.

This manual covers the eligibility requirements for pregnant women, specified children, and the aged, blind, or disabled applicants and/or recipients whose income and/or resources (if applicable) come within certain poverty guidelines that enable them to qualify for Medicaid but not cash assistance.

The New Jersey Care ... Special Medicaid Programs Manual, hereinafter referred to as the manual for purposes of this Summary, is designed to establish eligibility criteria for the optional categorically needy assistance programs established by Federal law. The manual is divided into six subchapters, which describe basic program requirements, the method of case processing, eligibility factors, both financial and non-financial, and the requirements of the presumptive eligibility program.

The basic intent of this manual is to provide Medicaid (Title XIX) coverage for persons who do not receive cash assistance but whose income and/or resources are not sufficient to pay for medically necessary care and treatment.

The three broad coverage groups are pregnant women, dependent children, and the aged, blind, or disabled.

In discussing the regulatory history of the rules, the Division has not included a detailed description of all the changes that occurred between its inception and this proposal because, in some instances, the eligibility standards have progressively increased, or remained constant. There have been no situations in which standards decreased. The Division's emphasis is on current eligibility standards that affect applicants/recipients who presently need Medicaid coverage. With respect to the aged, blind, or disabled categories, coverage commenced on February 2, 1988 (see 20 N.J.R. 548(a)). The resource standard has increased slightly since the program's inception. The current resource limits are $4,000 for individuals and $6,000 for couples. On readoption, the Division is amending the resource eligibility section (N.J.A.C. 10:72-4.5(b) below) to delete the reference to the 1988 standard which is no longer used in determining current eligibility. The standards mentioned previously remain in effect. Therefore, this is a technical recodification.

There is a change concerning the eligibility penalty period for transfer of resources as it relates to aged, blind, or disabled applicants/recipients seeking long term care (nursing facility care) as indicated in the text. The existing text, which indicates the penalty period is 24 months, is being updated to provide for a penalty period 30 months or less dependent on the value of the transferred resource. As indicated in the text, rules for imposing a resource transfer penalty are found at N.J.A.C. 10:71-4.7. These rules have already been revised to reflect the maximum 30-month penalty. This modification references the rules at N.J.A.C. 10:71-4.7.

With respect to pregnant women, their coverage commenced July 1, 1987 (see 19 N.J.R. 1731(a)). The income eligibility limits have been increased periodically to their current level at 185 percent of poverty (see 23 N.J.R. 2543(a) and 23 N.J.R. 3144(a)).

With respect to dependent children, the provisions also became effective July 1, 1987. There have been changes in both age and income limits since the rule's inception. The current eligibility standards and age categories will be described briefly.

Children up to age one can qualify with income up to 185 percent of poverty. The regulatory citations are the same as for those pregnant women cited two paragraphs previously.

Children from age one up to age six may qualify with income up to 133 percent of poverty (see 23 N.J.R. 1200 (a)).

Children age six and older may qualify at 100 percent of poverty. The age limits are being phased in so that eventually all children up to age 19 will be covered by the year 2001 if they meet eligibility standards. This proposal was published in the May 18, 1992 New Jersey Register at 24 N.J.R. 1860(a).

The manual also contains the requirements for the presumptive eligibility program which became effective May 2, 1988 (see 20 N.J.R. 983(a)). This program is described in N.J.A.C. 10:72-6. It is intended to enable a qualified provider to make a determination of a pregnant woman's eligibility and refer the applicant to the county welfare agency for a formal eligibility determination. The period of presumptive eligibility lasts until the end of the month following the month eligibility is determined, or until the county welfare agency makes a final determination of eligibility or ineligibility. The provider can render ambulatory prenatal care to a presumptively eligible pregnant woman and be reimbursed by Medicaid during the presumptive eligibility period. If the pregnant woman establishes "formal eligibility," then she can receive Medicaid coverage during her pregnancy and 60 days post-partum.

There are no resource requirements for pregnant women and children under the optional categorically needy program.

There is an amendment to the section on non-discrimination to include the reference to the Americans with Disabilities Act, P.L.101-336, codified as 42 U.S.C. 12101 et seq.

There are some amendments associated with this readoption which are primarily technical in nature. They have no effect on the eligibility criteria which has already been established by Federal and State law and/or regulation.

The section entitled applications (N.J.A.C. 10:72-2.1) is being amended to delete the reference to the PA-1J and indicate the correct form for pregnant women and children is the FD-335. The form PA-1G is used for the aged, blind, or disabled categories and is being codified at this time.

There are two issues relating to retroactive eligibility. First, there is a clarification regarding dismissed applications. The general policy is to dismiss the application if the applicant/recipient moves out-of-State (New Jersey). However, if an applicant/recipient resided in New Jersey during the retroactive entitlement period, and was otherwise eligible, his or her unpaid medical claims for services rendered will be processed for payment even if he or she subsequently moved out-of-State. (see N.J.A.C. 10:72-1(e)3iv below).

Second, the application used for retroactive entitlement is now designated as the "Application for Payment of Unpaid Medical Bills" (FD-74). The application is to be forwarded to the Retroactive Eligibility Unit within the Division of Medical Assistance and Health Services. This represents a long standing Division policy. (see N.J.A.C. 10:72-2.7(b)).

This proposed readoption also clarifies the language regarding eligibility for children up to age one. The current language indicates that the child remains eligible for the 60 day period following his or her birth. The amended language indicates that the child can be eligible up to one year so long as the mother remains eligible for Medicaid or would remain eligible if pregnant. The intent of this amendment is to recognize the fact that a child who remains in the mother's custody is eligible, regardless of the changes in income, so long as the mother qualified at the time of the child's birth. It is possible that the mother could lose her eligibility for Medicaid but the child could retain his or her eligibility for one year.

The Medicaid Status File has been re-designated as the Medicaid Eligibility File throughout the text.

Social Impact

The proposed readoption impacts upon Medicaid applicants and/or recipients who come within the categories of pregnant women, specific dependent children, and the aged, blind or disabled. Persons who qualify under the provisions of this manual will be eligible to receive medically necessary Medicaid services.

The proposed readoption has a favorable impact upon persons whose income and/or resources may exceed the categorical assistance standards yet still qualify for medical assistance, that is, Medicaid.

The rule also has a positive impact on pregnant women who may receive immediate ambulatory services from an approved provider.

The rule also impacts upon county welfare agencies who determine eligibility.

There is also an impact on the Office of Administrative Law, whose Administrative Law Judges preside over contested cases where an applicant/recipient contests an alleged adverse eligibility determination.

Economic Impact

There is no economic impact associated with this readoption, because there is no change in eligibility standards.

Medicaid recipients do not receive a cash benefit under these programs. However, Medicaid recipients may derive an economic benefit because medically necessary Medicaid covered services can be reimbursed by the New Jersey Medicaid program.

There is no economic impact upon Medicaid providers who render the services, because this manual does not regulate provider reimbursement. However, providers should be aware of the recipient's eligibility status at the time of treatment.

Regulatory Flexibility Statement

There is no need for a regulatory flexibility analysis because this manual does not pertain to small businesses under the terms of the Act, N.J.S.A. 52:14B-16.

The proposed readoption governs Medicaid recipients and standards for eligibility which are administered by the county welfare agencies, neither of whom are small businesses.

Full text of the proposed readoption may be found at N.J.A.C. 10:72.

Full text of the proposed amendments follows (additions indicated in boldface **thus;** deletions indicated in brackets [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 [PA-1J] **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, [and] **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 [women] **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 [Status] **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 [Status] **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](**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 [Status] **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[s deleted from] **terminated on** the Medicaid [Status] **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 [the appropriate forms] **an Application for Payment of Unpaid Medical Bills (FD-74)** and instruct the applicant to [send them] **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 [likewise] be eligible for Medicaid without regard to changes in the household unit's income for [the 60-day period following its birth] **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['s] 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.** [below:

	Individual	Couple
January 1, 1988 through December 31, 1988	3,800	5,700
January 1, 1989 and thereafter	4,000	6,000]

1.-2. (No change.)

3. For aged, blind, or disabled persons, the policy concerning transfer of resources within [24] **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, [Bureau of Research and Development] **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 [Status] 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 [Status] File for existing Medicaid eligibility.

i.-iii. (No change.)

2.-3. (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Family Development Program, Exclusions from the Eligible Unit, Stepparents, AFDC-N Payment Standard Equalization

Proposed 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

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

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.

Proposal Number: PRN 1992-258.

A **public hearing** on the proposed rulemaking will be held Wednesday, July 10, 1992 at the following locations and time:

East Orange City Council Chambers
44 City Hall Plaza
City Hall
East Orange, New Jersey
10:00 A.M.-4:00 P.M.

Camden City Council Chambers
Sixth and Market Streets
Camden, New Jersey
10:00 A.M.-4:00 P.M.

Trenton City Council Chambers
City Hall
319 East State Street
Trenton, New Jersey
10:00 A.M.-4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey by telephone at (609) 588-2291 no later than noon July 8, 1992, and provide his or her name, organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

Interested parties may submit written testimony at the hearing or by mail until July 15, 1992 on these proposed rules to:

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

The agency proposal follows:

Summary

Public Law 1991, c.523 establishes the Family Development Program (FDP) which will initially be implemented in the State's three largest public assistance recipient counties, Camden, Essex, and Hudson. Proposed new rules, N.J.A.C. 10:86, for the implementation and ongoing operation of the FDP are published elsewhere in this issue of the New Jersey Register. Until implementation of FDP is effected Statewide, both the FDP and REACH/JOBS programs will be concurrently operational within the State. Accordingly, proposed amendments have been included throughout N.J.A.C. 10:81 referencing both the FDP and REACH/JOBS to comport with the proposed new rules at N.J.A.C. 10:86.

The proposed amendment at N.J.A.C. 10:81-1.6(a)1 expands the cross-reference concerning safeguarding of information to ensure persons using this rule are referred to other pertinent rules.

The proposed amendments at N.J.A.C. 10:81-1.11(a)3 and 1.12(a)6 provide a brief introduction, description and purpose of the Family Development Program.

The proposed amendments at N.J.A.C. 10:81-2.4(f), 2.7(c)3, 4.2(f) and 5.8(c) align N.J.A.C. 10:81 with amendments previously proposed at N.J.A.C. 10:82 (see 24 N.J.R. 1194(a)) concerning equalization of assistance payment standards for New Jersey State-only funded segment, AFDC-N, with the assistance payment standards for AFDC-C and -F and specifying that Federal matching funds will now be available for such cases. The equalization of the AFDC-N segment payment standards to those of the Federally funded AFDC-C and -F segments of the program occurs as a result of the recently enacted welfare reform measure of the Legislature in P.L. 1991, c.527.

The proposed amendments at N.J.A.C. 10:81-5.2(b), 7.1(d)8 and 14.1(a) align N.J.A.C. 10:81 with amendments previously proposed at N.J.A.C. 10:82 (see 24 N.J.R. 1194(a)) which replace the retrospective budgeting methodology and monthly reporting process with a prospective system for calculating the assistance benefit.

The proposed amendments at N.J.A.C. 10:81-3.8(a) and (c), 14.18(a)1i4 and (e)1iii eliminate the automatic entitlement to incrementally increased public assistance benefits as a result of the birth of a child in accordance with the statutory provision of P.L. 1991, c.526. The potentially AFDC eligible newborn child living in the same household as his or her eligible dependent siblings shall not be included in the eligible unit and the State will not provide additional AFDC benefits for any such child born while the family is on assistance. The only exception to this provision pertains to a minor's first newborn child as specified at N.J.A.C. 10:81-3.8(c)3i. The above exclusion will not be applied for a period of 10 consecutive months from the operative date of the rule for families currently in receipt of AFDC benefits or 10 months from date of application for new AFDC applicants. In addition, beginning October 1, 1992, when a parent reapplies for AFDC benefits and none of the eligible unit members has been in receipt of AFDC-C, -F or -N benefits for a minimum of 12 consecutive months immediately prior to reapplication, the family is eligible for a new 10-month grace period before newborn children shall again be excluded from the eligible unit. After that 12-month period, any children previously excluded by this provision shall now be included in the eligible unit for cash assistance purposes. The only exception to the 12-month provision appears at N.J.A.C. 10:81-3.8(c)4i concerning a family whose case was closed due to earnings and reapplies for assistance as a result of loss of employment through no fault of their own. In such situations, any children previously excluded must now be included in the eligible unit for cash assistance purposes. While newborn siblings are excluded from the eligible unit for cash assistance, they will remain eligible for categorical and post-AFDC Medicaid as well as AFDC and post-AFDC child care benefits. In conjunction with the exclusion of children for cash assistance purposes, however, employed members of the eligible unit are given the opportunity to retain more of their earned income than is normally permitted through a new State earned income disregard (see concurrent proposed amendments at N.J.A.C. 10:82-2.8(a)5, 2.8(c) and 4.4(e) published elsewhere in this issue of the New Jersey Register).

The proposed amendments at N.J.A.C. 10:81-3.9, 5.7 and 8.22(a) pertain to the statutory provisions of P.L. 1991, c.525 and provide cross references to the proposed new rule at N.J.A.C. 10:82-2.10 concerning new stepparent rules published elsewhere in this issue of the New Jersey Register. The proposed amendment at N.J.A.C. 10:81-3.9 specifies who must be excluded from the eligible unit. The proposed amendment at N.J.A.C. 10:81-5.7 adds reference to the new calculation procedures concerning stepparents at N.J.A.C. 10:82-2.10. The proposed amendment at N.J.A.C. 10:81-8.22(a) stipulates that any child eligible for AFDC pursuant to application of the new rule at N.J.A.C. 10:82-2.10 shall also be eligible for Medicaid.

The proposed amendment at N.J.A.C. 10:81-3.18(b)7i(4) expands the definition of "quarter of work" for AFDC-F segment eligibility purposes to include participation in the WIN (Work Incentive Program).

The proposed amendment at N.J.A.C. 10:81-3.19(a) deletes redundant language. The proposed amendments at N.J.A.C. 10:81-3.19(h) delete language which is applicable only to the REACH/JOBS Program and is addressed at N.J.A.C. 10:81-14, the subchapter in which the REACH/JOBS Program is detailed.

The proposed amendment at N.J.A.C. 10:81-7.20(c) includes reference to the concept of "family plans" which must be developed under FDP regulations. "Family plans" are part of New Jersey's welfare reform measures, the purpose of which is to address the needs of the entire family, rather than just the individual participating adult.

The proposed amendments at N.J.A.C. 10:81-8.22(b) stipulate that families who participate in the FDP are eligible for post-AFDC Medicaid benefits for a period of 24 months beginning with the month in which the family becomes ineligible for AFDC for reasons related to earnings. The proposed amendment at N.J.A.C. 10:81-14.20 is a cross-reference to reflect the expansion of post-AFDC Medicaid benefits for FDP participants.

The proposed amendments at N.J.A.C. 10:81-9.1 provide a brief definition of the Family Development Program and a cross-reference to FDP.

The proposed amendment at N.J.A.C. 10:81-14.1(a)1 deletes language pertaining to the "TEEN PROGRESS" Program which is now obsolete.

The proposed amendment at N.J.A.C. 10:81-14.1(a)4 addresses the fact that FDP will be phased into operation in accordance with a schedule developed by the Division of Economic Assistance, Department of Human Services.

The proposed amendments at N.J.A.C. 10:81-14.21(b) provide that income earned by AFDC parents from providing child care to children of REACH participants or other AFDC recipients may, at the AFDC recipient's option, be budgeted in accordance with the provisions addressed in this subsection or in accordance with the provisions of N.J.A.C. 10:82-2.8. This option will enable the AFDC recipient to choose the procedure for calculating countable income which is most beneficial to them.

Social Impact

The Family Development Program (FDP) provides for support services in addition to the broad range of educational and training services already established through the REACH/JOBS program. At its inception, FDP will accept new applicants and incorporate the 5,400 active AFDC REACH/JOBS participants in Camden, Essex and Hudson counties at time of redetermination or at the end of a REACH/JOBS activity. Numbers of participants will increase as the scheduled phase-in of AFDC recipients to participant status progresses.

Equalization of the State funded two-parent AFDC-N segment assistance payments to the level of the AFDC-C and -F segments will serve to promote family stability among AFDC recipient families. This reform measure serves to eliminate existing State policy which has had a divisive effect on two-parent families leading to the father, in many instances, leaving the home so that the family would then be eligible for the extra money provided through the Federally funded AFDC-C segment. Thus the initiative emphasizes the importance of the nuclear family's staying intact and its overcoming any barriers to its economic success as a family unit.

In addition, the stepparent provisions proposed at N.J.A.C. 10:82-2.10 and cross-referenced herein at N.J.A.C. 10:81-3.9, 5.7 and 8.22, also support the integrity of the family. Thorough discussion of the social impact of these proposed amendments may be found in the social impact statement for the proposed amendments and new rules for N.J.A.C. 10:82, published elsewhere in this issue of the New Jersey Register.

The proposed amendments eliminating the automatic entitlement to incrementally increased public assistance benefits as a result of the birth of a child is based on the precept that entitlement to increased benefits due to a birth while on public assistance is contradictory to the circumstances that employed families face; there is no automatic increase in the salary of an employed self-sufficient family when a child is born. Thus, adult public assistance recipients must also be held responsible for decisions which affect their family circumstances. The adult is provided with alternative approaches through activities and services available through participation in the Family Development Program (see concurrent proposed new rules N.J.A.C. 10:86 published elsewhere in this issue of the New Jersey Register) and the availability of a new State earned income disregard for those AFDC parents for whom the exclusion of newborn children apply. These provisions encourage parental responsibility and promote the value of work. It is expected that, as a result of these provisions, the number of cases with earnings will increase by 40 percent, bringing the total percentage of AFDC cases with earnings to seven percent.

"Family plans" as part of New Jersey's welfare reform measures through the Family Development Program (FDP) initiative, serve to reinforce family planning and participation of all members of the family in resolving barriers to that family's self-sufficiency.

In order to enable newly employed persons to secure health benefits, employers often require satisfactory performance over an extended period of time before benefits are granted. To ensure that newly employed AFDC recipients have the best possible chance of continued employment, it is necessary to extend eligibility for post-AFDC Medicaid benefits to encompass a period of 24 months for FDP participants to assure that new employees are able to work through their provisional/probationary period of employment without the loss of medical coverage.

It is anticipated that these proposed amendments will not have a significant impact on the work load of county income maintenance personnel. Proposed amendments and new rules at N.J.A.C. 10:82 and 10:86 which appear elsewhere in this issue of the New Jersey Register and which are referenced within this proposal do, however, have a significant impact on such county personnel, which is discussed thereat.

Economic Impact

The projected Fiscal Year 1993 AFDC savings attributable to excluding newborns from the eligible unit, after expiration of the 10-month grace period, is estimated to be $480,690. This is based on calendar year 1991 actual births multiplied by the average $80.00 increase in AFDC grants when a new member is added to the eligible unit.

With respect to implementation of the new State earned income disregard, it is anticipated that Federal and State expenditures will decrease by approximately $214,700.

With respect to the proposed amendments and new rule concerning stepparents, it is estimated that during the first year following implementation, the total AFDC cost will be $4,256,000, with a program savings of $1,583,000, generating a total net AFDC cost of $2,673,000. This estimate is based upon the present number of AFDC cases that close each month due to marriage that will now continue to receive benefits, and the additional number of AFDC-C recipient parents that will now marry who, without these rules in effect, would not have otherwise done so. It is estimated that there will be a 20 percent increase (64 additional marriages) per month.

Regulatory Flexibility Statement

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

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

10:81-1.6 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).

[3.]**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 opportunities 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).

[6.]**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-[14.1]**14.**

10:81-2.4 Eligibility for [aid to families with dependent children] **Aid to Families with Dependent Children** (AFDC)

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

(f) [Allowance] **Payment** standards for persons eligible under the AFDC-C, [and] -F **and -N** appear in schedule [I] **II or III, as appropriate,** [part I, of the Assistance Standards Handbook] **at N.J.A.C. 10:82-1.2(b).** [Allowance standards for persons eligible under the AFDC-N segment appear in schedule II, part I of the Assistance Standards Handbook.]

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.)

[3. If the applicant has been receiving assistance under the AFDC-N segment and incapacity is subsequently established in accordance with the proper procedure and AFDC-C eligibility is approved, a retroactive payment shall be made to the date of application for the dollar difference between the AFDC-N grant received and the appropriate amount of payment under AFDC-C. Such a retroactive grant shall not be considered as current income or resource. If the applicant has been receiving assistance under the AFDC-F segment, no grant adjustment is necessary.]

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.**

(b) (No change.)

(c) 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 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 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.

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.**

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 [as set forth at N.J.A.C. 10:81-14.3A(i)] and refuses to register with the State Employment Service, the principal earner and the second parent (if that individual does not participate in **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] **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 [the Realizing Economic Achievement (REACH) Program,] **one of those respective programs to satisfy** the AFDC work and training [program] **requirements.** [Participation in REACH/JOBS is required as a condition of eligibility for AFDC-C, -F, and -N.] 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 [for the reasons set forth at N.J.A.C. 10:81-14.3A]. 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 [REACH program] **FDP**, that individual who voluntarily agrees to participate in [REACH] **FDP** and who is not a member of a required county phase-in group shall be treated as [REACH] **FDP** mandatory, unless the individual satisfies [REACH] **FDP** exemption criteria. If that individual is found to be exempt from [REACH] **FDP** and decides to participate, then the individual is a "volunteer in [REACH] **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 the participant fails to respond to the agency Conference Letter (Form R-8) sent by case management staff, cannot be contacted by telephone] and good cause does not appear to exist, then case management will notify the IM worker of the individual's failure to participate so that appropriate action can be taken to **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. [All conciliatory efforts shall be taken by case management to avoid sanctioning the individual, whenever possible, prior to referral to IM for santioning.]

10:81-4.2 Federal participation in AFDC-C, [and] -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 in monthly reporting or] cases covered by an approved error-prone profiling system.

[1. Monthly reporting: In cases subject to monthly reporting, a redetermination shall be done at least once every 12 months. (see N.J.A.C. 10:90). Cases subject to monthly reporting include:

i. Cases with earned income;

ii. Cases with recent work history (within the last six months); and

iii. Cases which have deemed income from individuals living with the eligible family who have earned income or recent work history (including stepparents and cases having alien sponsor's deemed income and resources);]

[2.]**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 [monthly reporting or] 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.)

[(c) If eligible for AFDC-C during the current month and the transfer was from the -N segment program, family members are entitled to a grant of assistance based on the additional dollar amount of the fixed family allowance for AFDC-C, less any applicable income deductions as set forth in the Assistance Standards Handbook.

1. If the transfer is from the -F segment to the -C segment and there is a change or reduction in the grant allowance, an adjustment shall be made in the grant subject to adverse action notice requirements.]

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.)

[8. For AFDC, the CWA takes action because of information the recipient furnished in a monthly report or because the recipient has failed to submit a complete or a timely monthly report without good cause (see N.J.A.C. 10:90);]

Recodify existing 9. through 11. as **8. through 10.** (No change in text.)

[12.]**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, [and], 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 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 N.J.A.C. 10:90], and shall at all times be used and interpreted in conjunction with these documents as appropriate. REACH incorporates the requirements of the Family Support Act of 1988, P.L. 100-485, which established the Job Opportunities and Basic Skills (JOBS) program under Title II of that Act, the Federal work/training program which replaced WIN. The Act also guarantees, through Title III provision, necessary supportive services for participation in work/training components. Therefore, satisfying REACH requirements will ensure compliance for participants with the Federal JOBS work/training mandates for receipt of AFDC benefits.

1. If any regulations herein contradict or conflict with existing regulations or policy established in N.J.A.C. 10:81-[,] **or** N.J.A.C. 10:82 [or N.J.A.C. 10:90], with the exception of N.J.A.C. [10:81-12] **10:86, The Family Development Program Manual**, such material is superseded by this subchapter. [Applicants/participants registered for TEEN PROGRESS prior to April 1, 1990 shall comply with TEEN PROGRESS regulations set forth at N.J.A.C. 10:81-12.]

2.-3. (No change.)

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; [and]

(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, [and N.J.A.C. 10:90,] 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[(d)], an amount equal to one-half (50 percent) of the total income earned from providing child care shall be disregarded. The remaining income is compared to the maximum income limits table at N.J.A.C. 10:82-1.2[(d)] based on the eligible family size.

2. Prospective needs test: 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 [allowance] **payment** standard at N.J.A.C. [10:82-1.2(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, [and] -F **and -N**: In determining the calculated earned income for the AFDC-C, [and] -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 [$90.00 work expense deduction at N.J.A.C. 10:82-2.8(a)1, or for the first $30.00 and one-third of the remainder of the earnings from providing child care for children of other REACH participants

(see N.J.A.C. 10:82-2.8(a)2)] **Federal and State disregards as set forth at N.J.A.C. 10:82-2.8 and 4.4.**

[4. AFDC-N segment: Income earned by AFDC-N segment recipients serving as child care providers shall be disregarded in accordance with N.J.A.C. 10:82-4.5.]

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 ECONOMIC ASSISTANCE

Assistance Standards Handbook

Stepparents, Exclusions from the Eligible Unit, State Earned Income Disregard

Proposed 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

Proposed New Rules: N.J.A.C. 10:82-1.11 and 2.10

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

Authority: N.J.S.A. 44:10-3, 30:4B-2, P.L. 1991, c.525 and c.526.

Proposal Number: PRN 1992-259.

A **public hearing** on the proposed rulemaking will be held Wednesday, July 10, 1992 at the following locations and time:

East Orange City Council Chambers
44 City Hall Plaza City Hall
East Orange, New Jersey
10:00 A.M.-4:00 P.M.

Camden City Council Chambers
Sixth and Market Streets
Camden, New Jersey
10:00 A.M.-4:00 P.M.

Trenton City Council Chambers
City Hall
319 East State Street
Trenton, New Jersey
10:00 A.M.-4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey by telephone at (609) 588-2291 no later than noon July 8, 1992, and provide his or her name, organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

Interested parties may submit written testimony at the hearing or by mail until July 15, 1992 on these proposed rules to:

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

The agency proposal follows:

Summary

New Jersey's welfare reform measures serve as a holistic approach to total welfare reform. At the heart of these initiatives is the basic principle that adults on Aid to Families With Dependent Children (AFDC) have a responsibility to strive towards self-sufficiency and to make decisions that support this end. The proposed amendments to AFDC program requirements enhance the role of the adult recipient in making decisions and in taking responsibility for his or her actions. These revisions also promote family stability and provide for strong nuclear families to guide and influence their children.

The proposed amendments at N.J.A.C. 10:82-1.3(a)1, 1.4(d) and 1.5(b) and the proposed new rule at N.J.A.C. 10:82-1.11 eliminate the automatic entitlement to incrementally increased public assistance benefits as a result of the birth of a child in accordance with the statutory provision of P.L. 1991, c.526. The potentially AFDC-eligible newborn child living in the same household as his or her eligible dependent siblings shall not be included in the eligible unit and the State will not provide additional AFDC cash benefits for any such child born while the family is on assistance in accordance with these proposed amendments. (The only exception to this provision pertains to a parent-minor's first newborn child as specified at N.J.A.C. 10:82-1.11(b)1.) While newborn siblings are excluded from the eligible unit for cash assistance, they will remain eligible for Medicaid as specified with new language at N.J.A.C. 10:82-1.4(d) and 2.11(g). The above provision will not be applied for a period of 10 consecutive months from the operative date of the rule for families currently in receipt of AFDC benefits or 10 months from date of application for new AFDC applicant families. In addition, beginning October 1, 1992, when an adult parent reapplies for AFDC benefits and none of the eligible unit members have been in receipt of AFDC-C, -F or -N benefits for a minimum of 12 consecutive months immediately prior to reapplication, the family is eligible for a new 10-month grace period before newborn children shall again be excluded from the eligible unit. After that 12-month period has concluded, any children previously excluded by this provision shall now be included in the eligible unit for cash assistance purposes. The only exception to the 12-month provision appears at N.J.A.C. 10:82-1.11(c)1 concerning a family whose case was closed due to earnings and who reapplies for assistance as a result of loss of employment through no fault of their own. In such situations, any children previously excluded must now be included in the eligible unit for cash assistance purposes.

The proposed amendments at N.J.A.C. 10:82-2.8(a)5, 2.8(c) and 4.4(e) provide that when AFDC recipient families have a newborn child while on assistance and are not given a benefit allowance increment for the new baby pursuant to the above provisions, the family shall have deducted from the monthly earned income of each employed person, if any, an additional State earned income disregard. The State disregard shall be deducted after the applicable Federal disregards have been subtracted. The State earned income disregard is not time-limited and shall be provided to the family for the length of time the family remains on AFDC. The State disregard is equal to the total Federal disregard amount for the individual subtracted from 50 percent of the State's AFDC payment standard adjusted for the family size, including the newborn child(ren). The State disregard must be recalculated when the Federal disregards change for each employed individual and when the eligible unit size changes, including the births of additional children.

The proposed amendments at N.J.A.C. 10:82-4.8 provide that income earned by AFDC parents from providing child care to children of REACH participants or other AFDC recipients may, at the AFDC recipient's option, be budgeted in accordance with the provisions addressed in this subsection or in accordance with the provisions of N.J.A.C. 10:86-5.8(a) and 10:81-14.21. This option will enable the AFDC recipient to choose the procedure for calculating countable income which is most beneficial to them.

The proposed amendments at N.J.A.C. 10:82-1.2(a) and (a)4, 1.3(a)2, 1.3(d), 1.4(a)1 and 2, 2.7 and 2.9 and the new rule at N.J.A.C. 10:82-2.10 implement the statutory provisions of P.L. 1991, c.525. When an AFDC-C recipient natural parent marries an individual on or after October 1, 1992 who is not the parent of the AFDC children, the county welfare agency must first determine if the stepparent is needy or non-needy. The stepparent shall be determined to be needy and included in the eligible unit if financial eligibility for AFDC benefits is established upon application of the provisions specified at N.J.A.C 10:82-2.9(a)1. If financial eligibility is not established, the stepparent shall be considered non-needy and the new rules at N.J.A.C. 10:82-2.10 shall be applied to determine if eligibility exists for the AFDC children. In such event, the AFDC recipient parent will be deleted from the eligible unit for cash assistance purposes only. Additionally, the stepparent and his or her natural or adoptive children shall not be included in the eligible unit. AFDC benefits will be available only for the dependent children who are otherwise eligible for receipt of assistance.

In conjunction with the proposed new rule concerning stepparents at N.J.A.C. 10:82-2.10, the State is proposing a new maximum income limits test in the eligibility determination process specifically for stepparents who marry AFDC-C recipient parents on or after October 1, 1992 (Schedule VII). The new income limits test compares total household income of the "new" family to the sliding income scale by family size, and serves to determine whether the natural children of the AFDC parent remain eligible for AFDC benefits. The sliding income limits scale used in such situations was derived from a comparison by family size with 150 percent of the Federal Poverty Income Guidelines, published at 57 FR 5455 and with 185 percent of the State's Standard of Need as set forth at N.J.A.C. 10:82-1.1A. If the household income is less than

the income limits in the Schedule VII, then the children are eligible for benefits and the stepparent's income is excluded for benefit calculation purposes. The stepparent is, however, financially responsible for himself or herself, any of his or her natural or adoptive children and for the new spouse only. The natural parent, therefore, must be removed from the eligible unit. The natural parent's income will be deemed to his or her eligible children and will be used in the grant calculation for the AFDC children. The $90.00 work expense disregard will be subtracted from the gross earnings of the natural parent. A further reduction equivalent to the maximum payment standard for one person shall also be deducted from the natural parent's income. Any remaining income of the natural parent will be deemed to the eligible unit consisting of his or her children only. The proposed amendment at N.J.A.C. 10:82-2.10(e)3 ensures that whenever income available to the AFDC-C children does not exceed the appropriate payment standard for the eligible unit size, the AFDC payment shall not be reduced below $10.00 until the gross income of the household equals or exceeds the applicable maximum income limit in Schedule VII.

The proposed amendment at N.J.A.C. 10:82-2.11(f) provides that where AFDC eligibility is denied or terminated because total income of the household, including that of the stepparent exceeds maximum income limits, eligibility for Medicaid shall be evaluated for the natural or adoptive parent and that parent's children.

The proposed amendment at N.J.A.C. 10:82-1.4(c) is merely a cross-reference correction.

Social Impact

The proposed amendments eliminating the automatic entitlement to incrementally increased public assistance benefits as a result of the birth of a child are based on the precept that entitlement to increased benefits due to a birth while on public assistance is contradictory to the circumstances that employed families face; there is no automatic increase in the salary of an employed self-sufficient family when a child is born. Thus, adult public assistance recipients must also be held responsible for decisions which affect their family circumstances. The adult is provided with alternative approaches through activities and services available through participation in the Family Development Program (see concurrent proposed new rule N.J.A.C. 10:86 published elsewhere in this issue of the New Jersey Register) and the availability of a new State earned income disregard for those AFDC parents for whom the exclusion of newborn children apply. These provisions encourage parental responsibility and promote the value of work. It is expected that, as a result of these provisions, the number of cases with earnings will increase by 40 percent, bringing the total percentage of AFDC cases with earnings to seven percent.

The proposed State earned income disregard serves as an incentive for parents to both seek and retain unsubsidized gainful employment. This added disregard will enable families to have more disposable income, to seek alternative lifestyles, and contribute to breaking the cycle of welfare dependency. This will be accomplished by permitting the family to have more available money as the AFDC benefit determination process will disregard more of the earned dollars in the AFDC benefit calculation. The State disregard shall have the greatest impact on families at the time when Federal disregards are diminishing (after loss of the one-third or $30.00 disregards); this is when the State disregard will be at its highest amount and when families will be most in need of this additional incentive.

To encourage and promote the development of nuclear families, the proposed stepparent provision allows a parent to marry while on AFDC and to exclude the new spouse from current AFDC deeming provisions if the new spouse is not the natural parent to any of the AFDC children. Thus, the stepparent is seen as being responsible for himself or herself, any of his or her natural or adoptive children, and for the new spouse only. If the total gross monthly income of the household (including the natural parent to the AFDC children and that parent's new spouse) does not exceed an established limit based on household size, then the AFDC children may remain eligible for continued AFDC benefits.

While precise data on current marriage behavior of AFDC recipients leaving AFDC are not available, best estimates suggest that, of the approximately 3,500 cases which close each month, 700 (20 percent) close for reasons involving a new marriage. Of those 700, approximately 462 (66 percent) will form households where the AFDC-C mother's new spouse is not the father of her children. Of those 462 cases, 323 (70 percent) will have household income below the new maximum income limits for stepparent cases. It is anticipated that provisions concerning stepparents will result in a 20 percent increase (64 additional marriages) each month in the number of two-parent families where one of the parents is a stepparent.

It is anticipated that the proposed amendments at N.J.A.C. 10:82-2.8 and 4.4 concerning calculation and application of the new State earned income disregard for families in which an excluded child is present, and the provisions at N.J.A.C. 10:82-2.9 and 2.10, will have a significant impact on the work load of county income maintenance personnel. The State earned income disregard requires manual recalculation whenever there is a change in the Federal disregards, a change in family size or a change in family income. The stepparent provisions require a determination of whether or not the entire family, including the stepparent, is financially eligible for AFDC benefits in accordance with the rules at N.J.A.C. 10:82-2.9. When it is determined that the stepparent is non-needy, only then are the rules at N.J.A.C. 10:82-2.10 applied in order to determine eligibility for the AFDC-C children. These amendments require income maintenance workers to apply a two-tiered financial eligibility determination for all such cases.

Economic Impact

The projected Fiscal Year 1993 AFDC savings attributable to excluding newborns from the eligible unit, after expiration of the 10-month grace period, is estimated to be $480,690. This is based on calendar year 1991 actual births multiplied by the average $80.00 increase in AFDC grants when a new member is added to the eligible unit.

With respect to implementation of the new State earned income disregard, it is anticipated that Federal and State expenditures will decrease by approximately $214,700.

With respect to the proposed amendments and new rule concerning stepparents, it is estimated that during the first year following implementation, the total AFDC cost will be $4,256,000, with a program savings of $1,583,000, generating a total net AFDC cost of $2,673,000. This estimate is based upon the present number of AFDC cases that close each month due to marriage that will now continue to receive benefits, and, the additional number of AFDC-C recipient parents that will now marry who, without these rules in effect, would not have otherwise done so. It is estimated that there will be a 20 percent increase (64 additional marriages) per month.

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 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 the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

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

10:82-1.2 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. 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 ac-

cordance 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, [or] 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**.

2. A stepparent of the children for whom assistance is sought may be included in the eligible unit [in accordance with] **if** the provisions of N.J.A.C. 10:82-[1.9]**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.**

(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, [or] is an illegal alien (see N.J.A.C. 10:81-3.9(c)) **or 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**;

2. The stepparent (the spouse of a natural or adoptive parent) [, when the natural or adoptive parent designates the stepparent as an individual whose presence in the home is essential to his/her well-being and elects that such person shall be included, according to N.J.A.C. 10:82-2.9] **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**;

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-[2.10]**2.11.**

(d) 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) 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.

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

10:82-1.11 [(Reserved)]**AFDC eligible family on assistance on or after October 1, 1992 with newborn child(ren)**

(a) 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.)

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, 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 [Stepparents:] 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 grant for the eligible unit shall be the appropriate allowance payment on Schedule II less any income to the eligible unit, including the countable income of the stepparent as determined in (d) below.] **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) 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-[2.10]**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.

[10:82-2.11 (Reserved)]

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 [(e)] **(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).

[(e)]**(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 [(e)1i] **(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 [REACH] participants **of those programs**. The self-employment income earned by those [REACH] clients [(AFDC-C and -F segment cases only)] participating in that initiative is budgeted according to procedures set forth at N.J.A.C. **10:86-5.8(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 ECONOMIC ASSISTANCE

Assistance Standards Handbook
Division of Youth and Family Services Monthly Foster Care Rates

Proposed Amendment: N.J.A.C. 10:82-4.9

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:7-6 and 44:10-3.
Proposal Number: PRN 1992-249.

Submit comments by July 15, 1992 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment updates the monthly foster child care rates at N.J.A.C. 10:82-4.9(c) as established by this Department's Division of Youth and Family Services (DYFS). The rates are stated in the Assistance Standards Handbook for general informational purposes, and the proposed amendment indicates that the base rates to be paid by DYFS for monthly foster child care have been increased.

Social Impact

The proposed amendment provides county welfare agencies with information about basic monthly foster care payments when children are placed in homes of recipients of public assistance. The proposed amendment indicating increased DYFS foster child care rates will continue to provide equitable determinations of eligibility when CWA staff are considering the income of public assistance recipients.

Economic Impact

The proposed amendment to N.J.A.C. 10:82-4.9(c) updates the rates published in the New Jersey Administrative Code to conform with increased base rates for monthly foster child care, as established by DYFS, effective January 1, 1992. The increased rates apply to public assistance recipients who have foster care children placed in their homes. Such increases in rates will have a very negligible, if any, impact on eligibility or grant level determinations made by county agencies. In any event, the incidence of utilization of public assistance households for foster care placement is insignificant.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes 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 Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

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

10:82-4.9 Division of Youth and Family Services

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

(c) The basic monthly rates for foster care as established by the Division of Youth and Family Services are as follows:

Age	New Base Rate/Child
0-5	[$244.00] **$256.00** per month
6-9	[$259.00] **$272.00** per month
10-12	[$287.00] **$301.00** per month
13 and over	[$305.00] **$320.00** per month

(b)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Manual
Work Requirement
Proposed Amendments: N.J.A.C. 10:85-3.2 and 10.1

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:8-111(d); and P.L. 1991, c.523 (Approved January 21, 1992).
Proposal Number: PRN 1992-260.

A **public hearing** on the proposed rulemaking will be held Wednesday, July 10, 1992 at the following locations and time:

East Orange City Council Chambers
44 City Hall Plaza
City Hall
East Orange, New Jersey
10:00 A.M.-4:00 P.M.

Camden City Council Chambers
Sixth and Market Streets
Camden, New Jersey
10:00 A.M.-4:00 P.M.

Trenton City Council Chambers
City Hall
319 East State Street
Trenton, New Jersey
10:00 A.M.-4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey by telephone at (609) 588-2291 no later than noon July 8, 1992, and provide his or her name, organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

Interested parties may submit written testimony at the hearing or by mail until July 15, 1992 on these proposed rules to:

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

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 10:85-3.2 and 10.1 align those sections with concurrent proposals (published elsewhere in this issue of the New Jersey Register) concerning the Family Development Program (FDP). The Department has proposed new rules at N.J.A.C. 10:86 setting forth the policies and procedures of the FDP for the efficient and equitable provision of intensive, coordinated services Statewide to economically disadvantaged families receiving Aid to Families with Dependent Children and to individuals on the State's General Assistance (GA) program.

The FDP shall replace the General Assistance Employability Program (GAEP) as the work/training program for GA when a county implements FDP. The FDP is New Jersey's initiative to help public assistance individuals 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. The FDP is a result of the Family Development Act approved January 21, 1992, P.L. 1991, c.523.

The proposed amendments bring N.J.A.C. 10:85-3.2 and 10.1 into alignment with FDP by making reference to the proposed new rules at N.J.A.C. 10:86 which serve as an integral part of the State's General Assistance program and shall be used and interpreted in conjunction with N.J.A.C. 10:85, as appropriate. Satisfying FDP requirements will ensure compliance for GA employable persons with work/training requirements for receipt of GA benefits.

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 GA employable applicants and recipients in accordance with that schedule. The FDP shall be established for GA in Camden, Essex and Hudson counties in the first year of the program beginning on or

about July 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.

Social Impact

Since the proposed amendments merely conform rules at N.J.A.C. 10:85-3.2 and 10.1 with statutory law (P.L. 1991, c.523), they do not in and of themselves impose any social impact on any person. It is the statutory law and the proposed new rules at N.J.A.C. 10:86 which create the social impact.

Economic Impact

Since the proposed amendments merely conform rules at N.J.A.C. 10:85-3.2 and 10.1 with statutory law (P.L. 1991, c.523), they do not in and of themselves impose any economic impact on any person. It is the statutory law and the proposed new rules at N.J.A.C. 10:86 which create the economic impact.

Regulatory Flexibility Statement

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

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

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 ECONOMIC ASSISTANCE

Family Development Program (FDP) Manual

Family Development Act Requirements for FDP Components

Including Education and Employment-Directed Activities

Proposed New Rules: N.J.A.C. 10:86

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

Authority: Family Support Act, Public Law 100-45 N.J.S.A. 44:10-3; Family Development Act approved January 21, 1992 P.L.1991, c.523.

Proposal Number: PRN 1992-261.

A **public hearing** on the proposed rulemaking will be held Friday, July 10, 1992 at the following locations and time:

East Orange City Council Chambers
44 City Hall Plaza
City Hall
East Orange, New Jersey
10:00 A.M.–4:00 P.M.

Camden City Council Chambers
Sixth and Market Streets
Camden, New Jersey
10:00 A.M.–4:00 P.M.

Trenton City Council Chambers
City Hall
319 East State Street
Trenton, New Jersey
10:00 A.M.–4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey by telephone at (609) 588-2291 no later than noon July 8, 1992, and provide his or her name, organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

Interested parties may submit written testimony at the hearing or by mail until July 15, 1992 on these proposed new rules to:

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

The agency proposal follows:

Summary

The proposed new rules at N.J.A.C. 10:86 execute 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 and P.L.1987, c.282 and 283. This Public Law creates the Family Development Program (FDP) for applicants and recipients of Aid to Families with Dependent Children (AFDC) and General Assistance (GA). Implementation of these rules, as proposed, is subject to Federal approval of waivers of AFDC policies impacted by these provisions. As such, these proposed rules may be subject to modification prior to implementation dependent upon Federal criteria for approval (for example, establishment of control group population for evaluation purposes). These proposed new rules comprise the Family Development Program Manual, codified as N.J.A.C. 10:86. N.J.A.C. 10:86 is an integral part of the State's AFDC and GA programs and shall be used and interpreted in conjunction with N.J.A.C. 10:81, 10:82 and 10:85. Any rules in this manual shall supersede those rules which contradict or conflict in existing rules policies established at N.J.A.C. 10:81, 10:82 and 10:85. The FDP is designed to assist public assistance families in becoming self-sufficient through the efficient and equitable provision of intensive, coordinated services.

The FDP shall replace REACH/JOBS and the General Assistance Employability Program (GAEP) as the education/training/work program for AFDC and GA respectively, when a county implements the program in accordance with a schedule developed by the Division of Economic Assistance (DEA), New Jersey Department of Human Services. 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 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 employable individuals.

The FDP incorporates the Title II provisions of the Family Support Act (FSA) of 1988, Public Law 100-485, which established the Job Opportunities and Basic Skills Training (JOBS) program for AFDC applicants and recipients. Sections 301 and 302 of the FSA are also incorporated herein. Guaranteed child care and other Federally matched supportive services are provided by Section 301 provisions for recipients participating in approved educational and training activities (defined as employment-directed activities for purposes of these proposed rules) or engaged in employment. Section 302 permits extended child care pay-

ments for 12 months (extended to 24 months under these rules) after the loss of AFDC benefits for certain individuals who lose AFDC eligibility due to increased earnings, increased hours of work, or loss of the earned income disregards. These proposed conforming new rules combine within the framework of the FDP, the elements of JOBS necessary to align the two programs. Therefore, FDP shall be the JOBS program for AFDC recipient families in those counties which have implemented the FDP.

The introductory subchapter, N.J.A.C. 10:86-1, establishes the general provisions applying to all subchapters in the manual. Subchapter 2 defines the terms to be used throughout the series of subchapters to follow. Subsequent subchapters delineate FDP participation (N.J.A.C. 10:86-3), the core components of the FDP (N.J.A.C. 10:86-4), the Education and Employment-directed Activity (EEDA) Component (N.J.A.C. 10:86-5), hearings (N.J.A.C. 10:86-6), FDP medical assistance (N.J.A.C. 10:86-7), sanctions (N.J.A.C. 10:86-8), and supportive services, including participant allowances (PALs) child care and the recovery of overpayments of supportive services (N.J.A.C. 10:86-9, 10 and 11, respectively).

The proposed new rules provide the conceptual framework for the Family Development Program supervised by the Division of Economic Assistance. This program and related welfare reform initiatives in other chapters of the Public Laws of New Jersey, P.L.1991, c.524, 525, 526 and 527 provide an innovative approach to enable families to take responsibility for themselves and their family members by accessing the resources needed by their families through a comprehensive, coordinated resource delivery system. That system creates a network of social services, special referrals (including health and rehabilitative services) and educational opportunities, vocational training, and employment-directed activities to help the caretaker relative or parent improve his or her ability to secure permanent, full-time unsubsidized employment. Concurrent proposed amendments to N.J.A.C. 10:81 and 10:82 (published elsewhere in this New Jersey Register) encourage families to overcome barriers by confronting life's circumstances through rational decision-making rather than through dependency on public assistance while at the same time making available services to ease the transition to self-sufficiency. The concurrent proposals, taken as an aggregate, empower AFDC and GA individuals to make such decisions by creating productive, competitive workers who can be employed in jobs with wages which are adequate to support their families.

Participation in activities soon after application for assistance is crucial to such individuals. Therefore, AFDC families, regardless of the age of the youngest child are, upon application, required to participate in the preparation of a Family Plan and in vocational assessment and counselling. This requirement of the FDP enforces the principle that individuals determine their futures through choices that they make and the actions they take. It is the aim of FDP to ensure that the choices are responsible decisions and that such decisions are reinforced through positive experiences to motivate the individual to self-sufficiency.

N.J.A.C. 10:86-1.1 establishes the purpose and scope of the FDP manual which sets forth the policies and procedures of the Family Development Program for the efficient and equitable provision of intensive, coordinated and comprehensive services Statewide to economically disadvantaged families receiving AFDC and to individuals on the State's GA program.

N.J.A.C. 10:86-1.2 requires income maintenance (IM) workers and municipal welfare departments (MWDs) to inform the FDP participants of their rights and obligations concerning the FDP participation. Additionally, language is included to address non-English speaking clients.

N.J.A.C. 10:86-1.3 and 1.4 provides that employees of the FDP provider entities, State, county and municipal agencies administer assistance and services to the FDP participants and their families in an atmosphere of mutual respect, free from discrimination.

N.J.A.C. 10:86-1.5 limits the disclosure of the FDP participant information to purposes directly connected with the administration of the FDP in order to ensure confidentiality of participant information.

N.J.A.C. 10:86-1.6(a) sets forth use of the county planning process which integrates the local human services system and the employment and training system.

N.J.A.C. 10:86-1.6(b) mandates that the Commissioner of the Department of Human Services (DHS) designate a Family Development Program Director in each county to serve on the FDP Planning Council as a voting member. Responsibilities of the FDP Director are delineated here and include implementing the FDP as established by the Planning Council, establishing administrative functions and appropriate roles and responsibilities of State, county and local agencies in the delivery of services and operation of the FDP and numerous coordination efforts and monitoring of the FDP activities.

N.J.A.C. 10:86-1.6(c) stipulates the requirement for each county to establish an FDP Planning Council, whose purpose is to determine the most effective way to plan and organize services for AFDC and GA FDP participants in that county. The membership of the FDP Planning Council shall number no less than 13 and no more than 15 voting members to include certain key representatives, such as, but not limited to, the directors of the State, county and municipal agencies; private industry council; lead child care agency; as well as a representative of private business or industry and two recipients of AFDC. An FDP Planning Council chairperson shall be appointed by the Commissioner of the DHS to ensure that the Planning Council carries out certain FDP mandates in accordance with DHS established timetables.

N.J.A.C. 10:86-1.7 specifies the requirement for the FDP Planning Council to prepare and submit a County FDP Implementation Plan to DEA in accordance with requirements of and procedures and timeframes which shall be established by the DHS. Such requirements shall be developed and proposed at a future date.

N.J.A.C. 10:86-1.8 describes the FDP client flow for individuals upon application or redetermination of AFDC or GA eligibility.

N.J.A.C. 10:86-1.9 emphasizes coordinated interaction among the FDP entities and within respective agencies/organizations involved in the FDP service delivery 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.

N.J.A.C. 10:86-1.10 sets forth policies and procedures concerning proper issuance, distribution, maintenance, updating and availability/access of the FDP manual and subsequent amendments to the manual.

N.J.A.C. 10:86-2 contains the definitions of words and terms used in this chapter.

N.J.A.C. 10:86-3 sets forth the FDP participation requirements for AFDC and GA FDP participants. N.J.A.C. 10:86-3.1(a) and (b) stipulate that all AFDC and required GA eligible individuals shall, unless exempt, participate in the FDP as a condition of eligibility for AFDC or GA. Furthermore, the FDP services/activities are extended to include the eligible recipient's family members. The services/activities needed are determined through assessment and the development of a Family Plan, the "core" of the FDP designed to direct family member participation in one or more of the available program core components, and to be periodically modified, as necessary, to address the changing needs/circumstances of the family.

N.J.A.C. 10:86-3.1(c) sets forth general participation requirements for individuals participating in the FDP components. Such requirements include that the individual attends an initial assessment of employability and counseling and diagnostic sessions; participates in good faith at all sessions necessary to develop the Family Plan; and complies in good faith with all provisions of the FDP Family Plan.

N.J.A.C. 10:86-3.1(c)3i stipulates that an AFDC recipient whose youngest child is less than two years of age shall participate, at a minimum (unless exempt under the provisions at N.J.A.C. 10:86-3.4(e)3), in counseling, vocational assessment and development of a Family Plan. He or she may volunteer to participate in the FDP Education and Employment-Directed Activities (EEDA) Component.

N.J.A.C. 10:86-3.1(e) requires the Municipal Welfare Department (MWD) to provide written notification to the appropriate CWA when a General Assistance/Food Stamp Program employable recipient fails or refuses to comply with the FDP requirements.

N.J.A.C. 10:86-3.2 clarifies that AFDC and employable GA recipients are required to participate in employment or in the FDP EEDA Component unless exempt by the IV-A agency IM worker or the MWD in accordance with specific AFDC and GA participation exemption categories listed in Chart I and II N.J.A.C. 10:86-3.2(b).

N.J.A.C. 10:86-3.2(c) stipulates that AFDC-N and GA recipients who are not otherwise exempt from participation and are illegal aliens are required to participate in FDP/EEDA CWEP worksites only.

N.J.A.C. 10:86-3.3 qualifies the circumstances that support incapacity exemption from the FDP/EEDA component for GA recipients. This exemption will be determined by the MWD and shall be based on documentation of physical or mental impairment which prevents the individual from engaging in employment.

N.J.A.C. 10:86-3.4(a) discusses AFDC specific exemption determination criteria as an income maintenance function. An AFDC individual may be exempt for incapacity when verified that a physical or mental

impairment alone or in conjunction with age, prevents the individual from engaging in employment and/or training and is expected to last at least three months.

N.J.A.C. 10:86-3.4(b) specifies exemption criteria for AFDC individuals, who on the basis of medical evidence are considered ill or injured on a temporary basis.

N.J.A.C. 10:86-3.4(c) relates the exemption for an individual who is considered to be "required in a home" to care for another member of the household who is physically or mentally impaired.

N.J.A.C. 10:86-3.4(d) considers the exemption due to pregnancy after the first trimester (months four through childbirth) when documented by medical verification of the date of delivery.

N.J.A.C. 10:86-3.4(e) concerns the exemption criteria for an AFDC parent or other caretaker relative who personally provides care for a child under two years of age.

N.J.A.C. 10:86-3.4(f) provides that an exemption for remoteness may be applicable when commuting from home to the FDP employment-directed activity by available public or private transportation is considered unreasonable. However, as stipulated at N.J.A.C. 10:86-3.5(g), when the principal earner in an AFDC-F or -N segment family is exempt from the FDP due to remoteness he or she shall register with the State Employment Service.

N.J.A.C. 10:86-3.4(h) exempts AFDC individuals who work not less than 30 hours per week in unsubsidized employment that is expected to last a minimum of 30 days from participation in other FDP/EEDA Component activities.

N.J.A.C. 10:86-3.5 concerns volunteer participation in the FDP/EEDA Component activities which only applies to AFDC individuals who meet the exemption criteria set forth at N.J.A.C. 10:86-3.2(b) and decide to participate regardless of the exemption. AFDC applicants and recipients who qualify as volunteers for participation have a right to stop participation at any time without loss of assistance payments.

N.J.A.C. 10:86-3.6(a) and (b) identify the specific AFDC target group populations required by the Federal Family Support Act (JOBS) for participation in the FDP program.

N.J.A.C. 10:86-3.6(c) sets forth the criteria to identify those AFDC individuals/families who are to be considered part of the State only AFDC target group for AFDC/FDP participation purposes.

N.J.A.C. 10:86-3.6(d) and (e) concern the CWA income maintenance responsibility to establish and to correct inappropriately assigned AFDC target group status.

N.J.A.C. 10:86-3.6(f) sets forth Federal participation requirements for particular categories of AFDC/FDP individuals with certain educational needs or certain family circumstances who must participate in prescribed education/employment-directed activities. One such category is described at N.J.A.C. 10:86-3.6(g) and includes dependent children between 16 to 18 who are not parents and who are not attending high school. Those individuals shall be mandatory participants in FDP/EEDA and should be encouraged to remain in school or participate in other education/training activities.

Another category of individuals subject to Federal participation requirements is the principal earner in an AFDC-F family, described at N.J.A.C. 10:86-3.6(h). If under 25 years of age with no high school diploma, preparatory educational activities may be required. Otherwise, participation for 16 hours per week in FDP work supplementation (WSP), in a community work experience program (CWEP) or in an on-the-job training (OJT) program is required.

N.J.A.C. 10:86-3.6(i) prescribes minimum FDP activity levels required for AFDC/FDP participants for purposes of determining a State's participation rate for Federal Financial Participation. An AFDC/FDP participant active only in assessment, employability development planning or in services is not considered a participant for these purposes. FSA/JOBs mandates another category of individuals subject to Federal participation requirements. To the extent educational services are available and State resources permit, the State must (with certain exceptions) require the custodial parent under 20 who has not finished high school (or its equivalent) to participant in an appropriate educational activity. Such custodial parents include several distinct groups discussed at N.J.A.C. 10:86-3.7.

N.J.A.C. 10:86-3.7(a)1 addresses the custodial parent under age 18. Such a parent with no high school diploma or equivalent, regardless of the age of the youngest child, is required to complete the high school education or equivalent. Attendance must be full-time unless good cause is demonstrated. In exceptional circumstances, criteria have been established to excuse the individual from high school attendance provided he or she participates in other preparatory educational activities.

N.J.A.C. 10:86-3.7(a)2 deals with the category of individuals between age 18 and 19, with no high school diploma or equivalent, regardless of the age of the youngest child. Such individuals are required to participate in preparatory educational activities. Once again, certain criteria are established so that in certain instances, such individuals may be required to participate in training or work activities instead of the educational activities.

N.J.A.C. 10:86-3.7(b) sets forth educational requirements for individuals over age 20 with no high school and who require preparatory educational activity consistent with the individual's employment goal. Participation in an educational activity may be precluded if the individual demonstrates a basic literacy level needed for his or her employment goal, or the employment goal identified in his or her FDP Family Plan does not require a high school diploma.

N.J.A.C. 10:86-3.7(c) clarifies that AFDC custodial parents regularly attending high school are not included as FDP/EEDA participants for Federal reporting purposes and, therefore, are not required to participate in the AFDC/EEDA component. Such individuals may be eligible for child care through the FDP to help them remain in school.

N.J.A.C. 10:86-3.8 delineates aspects of the Family Plan and the FDP Agreement. The Family Plan shall be mutually developed by the case manager in consultation with the AFDC parent/caretaker relative or employable GA participant based on the initial assessment of employability of the participant. The Family Plan outlines activities and services needed for the participant to achieve an employment goal, as well as the services/resources needed for each family member. Specific contents required in the Family Plan are listed at N.J.A.C. 10:86-3.8(e). Final approval of the FDP Family Plan rests with the AFDC or GA FDP case manager. The Family Plan may be periodically modified, as necessary, by the case manager to address the changing needs/circumstances of the FDP participant/family members.

The FDP Family Plan shall be used in conjunction with the FDP Agreement. The FDP Agreement outlines the specific FDP/EEDA Component activities and FDP supportive services needed to achieve the employment goal and sets forth provisions for which both the AFDC or GA FDP participant and the agency are expected to comply under the principle of mutual obligation. 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. Failure or refusal to sign the Family Plan or FDP Agreement without justification will result in sanctions as set forth at N.J.A.C. 10:86-8.

N.J.A.C. 10:86-3.8(j) allows for the participant to reconcile his or her dissatisfaction if, after evaluation and assessment, the participant is not satisfied with the terms of the Agreement.

The Family Plan and Agreement have no automatic or periodic expiration date and remain in force until an individual becomes ineligible for AFDC or GA for reasons 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. A review of the Family Plan and Agreement shall be completed at the time of redetermination of AFDC or GA eligibility.

N.J.A.C. 10:86-3.9 is concerned with placing a participant in employment. The FDP is designed to maximize an individual's ability and experience and strives to place the FDP individuals in jobs which offer the greatest range of responsibility, opportunity for advancement, and rate of pay accordingly, or to offer alternative employment-directed/training opportunities to accommodate the participant.

N.J.A.C. 10:86-3.10 provides for the availability of social services which include mental health services, vocational rehabilitation, drug and alcohol treatment programs, and health care. Acceptance of the social services is optional and not subject to sanctioning for refusal to participate or termination of participation. However, participation in another designated activity of need set forth in the Family Plan will be required.

N.J.A.C. 10:86-3.11 addresses the calculation of the net loss of cash income through employment and is applicable to AFDC-C, -F and -N segment FDP participants (Federally mandated by the Family Support Act (FSA) of 1988/JOBS for AFDC-C and -F). The calculation method is the approved FSA determination and is designed to prevent a family from accepting a job if the employment would penalize the family by having less disposable income after employment than would be available to the family while receiving assistance. The calculation (completed by

IM) is a manual process which is done on a case-by-case basis at the time of the offer of employment. If the agency makes payments for child care costs, good cause for net loss of cash income does not exist. 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.

N.J.A.C. 10:86-3.12 allows AFDC and GA FDP participants to be temporarily excused from participation in an FDP component activity (including social services as set forth in the FDP Agreement), if an activity or supportive service is not available. Such excused participation shall be reviewed once every week, up to once every month. The participant may also be temporarily excused from a particular day or session of employment or FDP/EEDA activity due to illness, death in the family or other special circumstances requiring the participant's immediate and personal attention.

N.J.A.C. 10:86-4 describes the core components which constitute the structure of the FDP. It is compulsory upon the county planning council to ensure that the 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.

N.J.A.C. 10:86-4.2 establishes the Case Management Component as 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. This component is 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, participation allowances for transportation and other employment-directed activity expenses; child care, including post-AFDC child care; and extended post-AFDC Medicaid. 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 Case Management Component, through a designated representative (usually a case manager), shall be responsible for preparing the key element of the FDP, the Family Plan (described in detail at N.J.A.C. 10:86-3.8).

N.J.A.C. 10:86-4.3 discusses the Vocational Assessment and Counseling Component which is available to all the FDP age appropriate AFDC and GA participants. This Component is intended to assist individuals in exploring their employment options and to help determine through assessment the services and activities needed by the AFDC adult caretaker relative or GA employable individual and their family members. If an adult AFDC or GA FDP participant fails or refuses to comply with the Vocational Assessment and Counseling Component, as agreed in the FDP Agreement and Family Plan, the individual shall be subject to the FDP mandated sanctions.

N.J.A.C. 10:86-4.4 describes the Social Services/Special Referrals Component which 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, such services as substance and alcohol abuse treatment and/or counseling, family/individual counseling, tutorial and vocational rehabilitation programs. Noncompliance with such an activity on the part of a participant and/or a family member shall not be subject to sanction penalties; however, reassignment to an alternate FDP activity pursuant to refusal of the rehabilitative service is compulsory and subject to appropriate program penalties for noncompliance.

N.J.A.C. 10:86-4.5 provides the objective of the EEDA Component which 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. The educational and work-related activities comport with Federal regulatory requirements of the JOBS program, the mandatory work/training program for AFDC participants. This 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 and State financial assistance can be accessed for FDP participants in post-secondary colleges (both community colleges and four-year institutions) and vocational training programs. Mandatory AFDC/FDP 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.

N.J.A.C. 10:86-4.6 describes the Job Development Component which 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. Each county, as mandated by P.L.1991, c.523, shall hire one or more person(s) in the position(s) entitled "Job Developer" for this expressed purpose.

N.J.A.C. 10:86-4.7 describes the FDP Supportive Services Component which 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 (including post-AFDC child care), as well as extended post-AFDC Medicaid benefits. While the services provided for under this Component may be available to both AFDC and GA FDP participants, certain supportive service allowances may be available only for AFDC FDP participants.

N.J.A.C. 10:86-5.1 sets forth the activities available under the FDP EEDA Component for those FDP participants, unless otherwise exempt, who are AFDC parents or caretaker relatives and employable GA recipients and, as need determined, their respective family members. The educational activities, job skills training, job readiness activities and the CWEP are mandatory activities for the FDP. Other component activities that may be selected by the County Planning Council are job search (individual or group) OJT and the WSP. The requirements for the activities described at N.J.A.C. 10:86-5.2 through 5.9 include the provisions of the JOBS program mandated under the Federal Family Support Act of 1988.

N.J.A.C. 10:86-5.2(a) allows for the access of educational programs that are not offered directly through the FDP but satisfy the FDP participation activities.

N.J.A.C. 10:86-5.2(b) describes the post-secondary and preparatory educational activities available in the respective county through the FDP for both the AFDC and GA populations. Post-secondary education includes educational opportunities at four-year and community colleges and vocational programs that lead to recognized careers for which there is or will be a demand in the job market. Additionally, this subsection also includes the sources of financial assistance that may be accessed to provide sufficiently for tuition and educational expenses for the FDP participants who have been accepted into such programs, and the treatment of scholarships and grants that may be obtained by the FDP participant.

N.J.A.C. 10:86-5.2(b)2 sets forth preparatory educational activities as those designed to remedy educational deficiencies and to provide and the FDP participant with the basic skills necessary to achieve his or her long term employment goal (entry into the job market). Such preparatory activities include programs for completion of a high school education or its equivalent; English proficiency education; and basic/remedial reading, writing, and mathematics skills.

N.J.A.C. 10:86-5.3(a) concerns job search activity participation requirements for those AFDC and GA participants whose immediate goal is to obtain full-time employment. Job search is directed to the FDP participant's needs and local job market conditions and can be conducted in an individual or group setting or a combination of both. Preparatory activities shall be provided for those participants who are deficient in certain job seeking skills and may be coupled with other educational and training activities.

N.J.A.C. 10:86-5.3(b) sets forth procedures to be followed for job contacts made by an FDP participant with a prospective employer, and delineates participant responsibilities and job contact reporting requirements within applicable time-frame periods. The FDP participant must report the result of all job contacts to the job search provider, who in turn must review the participant's job contacts and determine if the number of job contacts completed are in accordance with the FDP Agreement. It is the responsibility of the job search provider to review the individual's participation in job search and determine if participation should continue or if assignment to another FDP/EEDA is appropriate.

N.J.A.C. 10:86-5.3(c) allows for the provision of supportive services (including child care and transportation) for the FDP participants in job search activities, if needed.

N.J.A.C. 10:86-5.3(d) stipulates specific job search administrative requirements and limitations for AFDC/FDP participants only, for Federal financial participation (FFP) purposes. For FFP, job search participation requires an equivalent of 20 hours per week. The individual is allowed to participate in job search for a period of eight weeks in any period of 12 consecutive months for FFP purposes. Participation in job search beyond the eight week time period is permitted; however, it is an unmatchable activity for FFP unless the individual participates in another FDP component such as education or training in order to claim FFP.

N.J.A.C. 10:86-5.3(e) allows for use of the Food Stamp Employment and Training Program (FSETP) as a resource for job search activity in lieu of FDP participation for GA employable participants who have marketable job skills and experience.

N.J.A.C. 10:86-5.4 describes the FDP WSP applicable to AFDC/FDP participants only. N.J.A.C. 10:86-5.4(a) distinguishes that AFDC funds are used to develop and subsidize employment for AFDC/FDP participants as an alternative to aid provided by AFDC.

N.J.A.C. 10:86-5.4(b) establishes that WSP jobs are provided or subsidized by public or private employers, but acceptance of such positions shall be voluntary by an AFDC/FDP participant.

N.J.A.C. 10:86-5.4(c) allows the FDP provider entity to make arrangements as deemed appropriate with regard to time of work, length of the position, wages, subsidy to be provided and conditions of WSP participation.

N.J.A.C. 10:86-5.4(d) clarifies conditions of employment under WSP. During the first 13 weeks, employee status (that is benefits such as insurance coverage, vacation time granted to regular employees) is not provided to participants; wages paid under WSP are counted as earned income and subject to AFDC prospective budgeting requirements; and no WSP participant can be assigned to fill any established unfilled position at the employment site.

N.J.A.C. 10:86-5.4(e) provides an explanation of the wage pool which consists of money saved through WSP participation by AFDC individuals and diverted to the "pool" for WSP activity contracts as an administrative tool, used to provide wage subsidies to employers who hire AFDC/FDP participants.

N.J.A.C. 10:86-5.4(f) clarifies that mandatory and voluntary AFDC eligible WSP participants shall not exceed a lifetime cumulative total of nine months WSP participation.

N.J.A.C. 10:86-5.4(g) confirms that individuals who become ineligible for AFDC benefits shall continue in the AFDC/FDP WSP job until the WSP contract expires.

N.J.A.C. 10:86-5.4(h) and (i) stipulate that a FDP participant may not participate in WSP and OJT at the same time, and that if more than one individual in the AFDC family unit is participating in WSP, Federal reimbursement will not exceed the AFDC grant for that family.

N.J.A.C. 10:86-5.4(j), (k) and (l) discuss supportive services available for a WSP participant, which include the JOB and CAR allowances as set forth at N.J.A.C. 10:86-9; child care payments (including post-AFDC child care) as set forth at N.J.A.C. 10:86-10; and Medicaid coverage and extended Medicaid benefits as set forth at N.J.A.C. 10:86-7.

N.J.A.C. 10:86-5.4(m) clarifies that WSP earned income disregards are treated the same as any other AFDC case with earnings as delineated at N.J.A.C. 10:82-4.4. The child care disregards are not applied to WSP earned income; rather, payment is made directly to the child care provider. The State disregard is applied last as specified at N.J.A.C. 10:82-4.4.

N.J.A.C. 10:86-5.5(a) establishes the FDP mandated CWEP for AFDC and employable GA recipients to provide work experience and to serve as a training environment to improve the employability potential of the FDP participant. CWEP is designed to be a short term or part-time unsalaried work assignment with public or nonprofit employing agencies. FDP AFDC/GA participants in CWEP are provided or reimbursed for expenses for necessary transportation, child care and other services directly related to FDP participation in CWEP as set forth on the FDP Agreement and in accordance with FDP participants' supportive services allowances as specified at N.J.A.C. 10:86-9 and 10.

N.J.A.C. 10:86-5.5(b) stipulates that the FDP will designate CWEP sponsors to operate CWEP projects (worksites).

N.J.A.C. 10:86-5.5(c) states that CWEP worksites previously established by MWDs shall remain as an FDP CWEP assignment option, subject to the approval of the GA/FDP provider entity. Arrangements for use of the MWD worksites and any subsequently developed MWD worksites shall be agreed upon between the GA/FDP provider entity and the respective MWD.

N.J.A.C. 10:86-5.5(c)3 explains the importance of a Municipal Worksite Agreement (MWSA) signed by both the MWD and the MWD worksite agent, as it relates to worker's compensation coverage for MWD worksite participants at the worksites developed by the MWD. The MWD must provide the GA/FDP provider entity with a signed MWSA for each worksite before a GA recipient can report to the developed worksite. The GA/FDP provider entity shall evaluate the established worksite within a 14 day timeframe in accordance with CWEP project requirements described at N.J.A.C. 10:86-5.5(d).

N.J.A.C. 10:86-5.5(d) sets forth CWEP project requirements for establishing AFDC/GA FDP CWEP worksites. CWEP worksites must serve a useful public purpose, for example, in fields such as health and social services or environmental protection; may not displace persons currently employed or fill established position vacancies; cannot in any way be politically related; must not be in violation of applicable health and safety standards; and shall not be developed in response to bona fide labor disputes.

N.J.A.C. 10:86-5.5(e) sets forth CWEP participation requirements for AFDC and GA FDP participants. Notable among the CWEP participation requirements is the explanation of the computation for determining the required number of hours for CWEP participation, and the emphasis that job placement will have top priority when coordinating CWEP with other FDP activities. In keeping with the employability goal of the FDP participant, participation shall be reevaluated at least once every three months and at the conclusion of each CWEP assignment; an AFDC individual is not required to continue in the CWEP assignment after nine months 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.

N.J.A.C. 10:86-5.5(f) provides that workers' compensation accident insurance protection shall be provided for both AFDC and GA FDP CWEP participants under a Statewide umbrella policy of the DHS.

N.J.A.C. 10:86-5.5(g) lists certain categories of AFDC or GA employable recipients who may not be required to participate in FDP CWEP.

N.J.A.C. 10:86-5.6(b) sets forth provisions of FDP on-the-job training for AFDC and GA FDP participants. An AFDC or GA FDP participant is hired by a private or public employer and receives training essential to the performance of the job. The employment is subsidized under contract between the employer and the AFDC or GA FDP provider agency. If the individual has made satisfactory progress during the OJT contract period, he or she will be retained by the employer as a regular employee upon expiration of the OJT contract. Wages are paid to OJT participants and are considered earned income for purposes of AFDC or GA benefits. If a participant in OJT becomes ineligible for AFDC or GA pursuant to AFDC/GA earned income calculations, he or she shall remain a FDP participant for the duration of the contract and may be eligible for certain supportive services during that time period as specified at N.J.A.C. 10:86-9, and extended Medicaid benefits in accordance with N.J.A.C. 10:86-7. Child care benefits for AFDC participants may also continue to the end of the OJT contract period when AFDC ineligibility occurs; however, child care continues as post-AFDC child care for one year in accordance with N.J.A.C. 10:86-10.

N.J.A.C. 10:86-5.6(c) clarifies that vocational training programs in the FDP shall be provided through coordination and contract with the local Job Training Partnership Act (JTPA) by the AFDC or GA FDP provider entity.

N.J.A.C. 10:86-5.7 concerns the treatment of mandatory AFDC or GA FDP participants who are scheduled to begin the FDP participation and are self-enrolled in a client-selected education or training program activity. The AFDC or GA FDP case manager shall determine the appropriateness of the self-enrolled activity as FDP participation activity if that activity relates to the individual's employment goal, as indicated by the initial assessment of employability and the development of an employability plan. An approved client-selected activity is subject to periodic review at the end of each term and at any other times the AFDC or GA FDP case manager deems necessary.

Although the client-selected activity may be approved as AFDC or GA FDP participation, if FDP funds through State student assistance program are not available for tuition for participation in such activity, the individual shall assume responsibility for all tuition cost. Participants

in approved client-selected activities may be eligible for child care and other supportive services as set forth in this chapter.

N.J.A.C. 10:86-5.8 describes additional employment-directed activity initiatives for AFDC and GA FDP participants. One initiative is the "child care provider 600 slots" that designates a number of slots among certain counties for AFDC recipients only, to satisfy the FDP participation as child care providers. Income earned from this activity is considered income from self-employment but special disregards are applied in determining gross income. Another initiative is the New Jersey Youth Corps (NJYC) administered primarily through the Department of Community Affairs. This activity is designed to recruit, train and employ young persons (between ages 16 and 25) who are high school dropouts in urban renewal projects, such as housing rehabilitation. FDP/NJYC participants receive stipends in exchange for services provided, as well as vocational training and educational services necessary to perform program assignments and enhance future employability. The stipends extended are treated as exempt resources in accordance with applicable AFDC and GA exempt resource provisions.

A third initiative is Job Readiness Skills for Adolescents (JRSA). This activity is directed to adolescent custodial parents under age 19 who are in need of certain preparatory job readiness skills, such as techniques of job hunting or motivation and self-esteem. JRSA programs are provided concurrently for the FDP participant while participating in an educational or employment directed activity of FDP/EEDA.

N.J.A.C. 10:86-6 contains the provisions governing hearings and notices applicable to all AFDC or GA FDP participants as specified at N.J.A.C. 10:81-6 for AFDC, and N.J.A.C. 10:85-7 for GA program applicants and/or recipients. All adverse actions shall be provided in a Spanish language version for those AFDC or GA FDP participants whose primary language is Spanish. Violations of New Jersey wage and hour statutes and employee complaints concerning work assignments, conditions, and rates are handled by those divisions of the Department of Labor through existing procedures. The hearing process as maintained by the Office of Administrative Law is applicable to all AFDC or GA FDP participants. As such, those procedures in AFDC and GA, guaranteeing participants the right to request a fair hearing who are adversely affected by the agency, are extended in these proposed new rules.

N.J.A.C. 10:86-7 contains provisions concerning extended post-AFDC Medicaid benefits for AFDC/FDP families losing assistance and entering the post-AFDC period in those counties which have implemented the FDP. Families who become ineligible for AFDC shall continue to receive Medicaid for a period of 24 months should they lose AFDC eligibility due to: receipt of earnings or increased earnings from employment, including earnings from new employment; loss of the $30.00 or one-third disregard because of time-limited application; increased hours of employment; or receipt of New Jersey State Unemployment or Temporary Disability Insurance benefits.

Additionally, a child born to the family during the 24-month extension period 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 extension period, or if the child's 12-month guaranteed period from date of birth continues beyond the termination date of the post-AFDC extended Medicaid period.

N.J.A.C. 10:86-8 is patterned on and contains certain work and training penalties provisions of AFDC currently contained at N.J.A.C. 10:81-14.8 under REACH/JOBS. These FDP provisions incorporate the requirements of the Family Support Act (FSA) with certain exceptions. Notably, the REACH/JOBS conciliation procedure which precedes the imposition of sanctions for noncompliance of the recipient with the REACH agreement has been eliminated to comport with sanctioning procedures established in the Family Development Act. Further, the duration of sanction periods and the penalty have been modified per that legislation. The FDP provisions which allow the client to reverse a finding of noncompliance remain unchanged from those of REACH/JOBS. Rules concerning those eligible unit members to be penalized for non-compliance under various circumstances also remain unchanged under the FDP. The inclusion of employable GA recipients in the FDP is a significant ancillary expansion of the GA "Workfair" concept as it appears at N.J.A.C. 10:85-10. In general, the FDP rules concerning sanctions differ from comparable REACH/JOBS sanctions in that they may be imposed quickly. A sanction of 20 percent of the eligible unit's appropriate payment standard may be imposed if a mandatory AFDC participant who is the parent or caretaker relative fails or refuses, without good cause, to participate in the development of a Family Plan and the signing of the FDP Agreement. This sanction is of at least one month's duration, or until the failure to comply ceases. The initial REACH/JOBS sanction for similar noncompliance is also of a month's duration and consists of the deletion of the needs of the mandatory AFDC parent/caretaker participant from the grant entitlement, but it cannot be imposed before an extensive series of consultations by the case manager with the unwilling participant has occurred.

The penalty for a second non-compliance in the REACH/JOBS and the FDP programs are identical inasmuch as the offending participant's needs are deleted from the grant entitlement for at least three months, or until the failure to comply ceases, whichever is longer. The FDP has no provision for a six-month sanction for a third non-compliance as in the REACH/JOBS regulations.

In addition to the 20 percent reduction penalty, the FDP provides at N.J.A.C. 10:86-8.6 and 8.7 that a second offense penalty in AFDC and that any penalty applied to a GA/FDP participant for noncompliance shall be a penalty of ineligibility for the individual for a period of three months' duration, or until the failure to comply ceases. This penalty is applicable also to subsequent instances of noncompliance with FDP requirements in both the AFDC and GA programs.

N.J.A.C. 10:86-9 describes the categories of and eligibility criteria for those participant allowances (PALs) available to AFDC and GA recipients who participate in the FDP activities. To a great extent, these PALs are similar to the PALs provided in the REACH Program under N.J.A.C. 10:81-14.19.

N.J.A.C. 10:86-9.1 delineates the specific PALs available through FDP, and details the responsibility of the case manager to ascertain whether PALs are necessary for FDP participation and to ensure that similar reimbursements are not available through other funding sources. As is the case with REACH/JOBS-type PALS, FDP-type PALs are excluded from income for the purposes of determining eligibility and the level of benefit for the Food Stamp Program.

N.J.A.C. 10:86-9.2 describes the provision of PALs to reimburse FDP participants for transportation-related expenses (TREs). This category of PAL is similar to that afforded to REACH/JOBS participants under N.J.A.C. 10:87-14.19(b).

N.J.A.C. 10:86-9.2(a) states that transportation-related expenses incurred by regularly employed AFDC and GA recipients, AFDC recipients in Work Supplementation, or AFDC and GA recipients in On-The-Job Training are generally not covered by the TRE-type PAL, as those expenses are handled through the $90.00 and $60.00 work expense disregards provided in the AFDC and GA Programs under N.J.A.C. 10:82 and N.J.A.C. 10:85, respectively.

N.J.A.C. 10:86-9.3(b) requires that the case manager consider the most accessible and economical means of transportation available to the FDP participant. A TRE-type PAL is not authorized when free transportation is available to the participant.

N.J.A.C. 10:86-9.2(c) explains how TRE-type PALs will be provided to the FDP participants, and is similar to the payment methodology used in REACH/JOBS under N.J.A.C. 10:81-14.19(b)5.

N.J.A.C. 10:86-9.2(d) describes the FDP activities which qualify the participant for a TRE-type PAL. They include FDP assessments, evaluations and conferences, educational and non-educational activities directed at employment, and participation to begin new employment (not to exceed one month). The FDP qualifying activities are similar to those at N.J.A.C. 10:81-14.19(b)1.

N.J.A.C. 10:86-9.2(e) permits reimbursement for the actual cost of transportation up to $6.00 per day ($30.00 per week) for both AFDC and GA FDP participants. Higher amounts may be provided for AFDC/FDP participants up to a maximum of $15.00 per day/$60.00 per week if circumstances are documented which detail the need for the higher TRE-type PAL. In extraordinary situations, a TRE-type PAL in excess of the $15.00 per day/$60.00 per week maximum may be permitted, with prior DEA approval. This provision is similar to that under REACH/JOBS in N.J.A.C. 10:81-14.19(b)3, 4 and 5.

N.J.A.C. 10:86-9.2(f) permits a TRE-type PAL for costs of transporting AFDC children to and from child care facilities or day camps, with a maximum of $10.00 per week per child. This subsection is similar to that for REACH/JOBS participants under N.J.A.C. 10:81-14.19(c) but is not through the FDP.

N.J.A.C. 10:86-9.3 provides for a $100.00 PAL for AFDC and GA recipients participating in employment-directed activities (EDAs). This category of PAL enables the recipient to participate in EDAs such as

training and educational programs, job search, and CWEP (GA only) to cover expenses such as books, supplies, equipment, uniforms, tools, special clothing, and fees.

N.J.A.C. 10:86-9.3(b) identifies approved EDAs for GA/AFDC FDP participants. For GA participants those non-educational EDAs are job search and CWEP. For AFDC participants, those EDAs cover job search. Participation in OJT, WSP, and (for AFDC participants) CWEP does not qualify for the $100.00 EDA-type PAL, as other funding methodologies meet those needs.

N.J.A.C. 10:86-9.3(c) states that the eligibility period for the $100.00 EDA-type PAL begins with the first FDP/EEDA component activity and ends with the last day of participation in the final EDA. Under N.J.A.C. 10:86-9.3(d), an EDA-type PAL exceeding the $100.00 maximum may be made, if documented and approved by DEA, but not to exceed a total of $150.00. These provisions are similar to those in REACH/JOBS at N.J.A.C. 10:81-14.19(d)4 and 6.

N.J.A.C. 10:86-9.4 identifies a PAL category which is provided to permit an FDP participant to accept or maintain employment. The JOB-type PAL is capped at $100.00 per eligibility participation period, which begin when the participant receives an employment offer, and ends 90 days after the loss of AFDC or GA eligibility. Individuals who become ineligible for AFDC due to excess earned income, but who were not participating under FDP, may be eligible for the JOB-type PAL if the individual complies with FDP requirements. Expenses covered by the JOB-type PAL include clothing, tools, union dues, and other items necessary for the individual's employment. These provisions are similar to those in the REACH/JOBS program at N.J.A.C. 10:81-14.19(e).

N.J.A.C. 10:86-9.5 addresses the CAR-type PAL which is provided to AFDC FDP participants who are parents or caretaker relatives for motor vehicle maintenance. The CAR-type PAL is capped at $500.00 per eligibility period, and is provided for actual expenses incurred by the AFDC FDP participant. The period of eligibility for the CAR-type PAL starts when the recipients begins his or her participation in the first FDP activity, and ends 90 days after loss of AFDC eligibility. CAR-type PALs may be provided to reimburse the participant for motor vehicle servicing and repairs, tune-ups, tires, and payment of insurance for the motor vehicle (including surcharges). CAR-type PALs do not cover radio or air-conditioning repair, nor vehicle purchases, licenses or registration. In extraordinary circumstances, the CWA may authorize, with DEA approval, a CAR-type PAL exceeding the cumulative $500.00 cap. Total CAR-type PALs cannot exceed $1,000 per participant. This category of PAL is similar to that in the REACH/JOBS program at N.J.A.C. 10:81-4.19(f).

N.J.A.C. 10:86-9.6 addresses the $10.00 CWEP-type PAL which is provided to AFDC FDP participants. This type of PAL reimburses the CWEP participant for clothing and personal care items, as well as materials and supplies purchased to apply for or accept employment through CWEP. The CWEP-type PAL cannot exceed $10.00, and is provided in lieu of the EDA-type PAL. This category of PAL is similar to that in the REACH/JOBS Program at N.J.A.C. 10:81-14.19(j).

N.J.A.C. 10:86-9.7 defines the various eligibility participation periods for the EDA, JOB, and CAR categories of PALs. An FDP participant who has been off of GA or AFDC for 12 consecutive months is entitled to a new eligibility participation period for these PALs upon reapplication for assistance. An FDP participant who leaves the GA or AFDC program and remains off that program for less than one year will be eligible only for the remaining balance of each appropriate PAL. These criteria are similar to those in the REACH/JOBS program at N.J.A.C. 10:81-14.19(g).

N.J.A.C. 10:86-9.8 provides that the participant is eligible to receive up to the maximum amount of each type of PAL during the participation period either as a one-time lump sum payment or in a number of smaller payments, issued either retrospectively or in anticipation of an expense to be incurred. PALs are to be issued to a vendor directly, when possible.

N.J.A.C. 10:86-9.9 provides the procedures to ensure prudent administration of the TRE, EDA, JOB, CAR, TCC and CWEP funds. These procedures are similar to those in the REACH/JOBS Program at N.J.A.C. 10:81-14.19(i). The procedures require that the FDP activities be made accessible to participants at minimal inconvenience.

N.J.A.C. 10:86-10 addresses FDP supportive services: child care for AFDC/FDP families, including post-AFDC child care benefits. This subchapter stipulates the same requirements for receipt of child care benefits as through REACH/JOBS at N.J.A.C. 10:81-14.18, 14.18A and 14.18B. The text in subchapter 10 has been rearranged for clarity of understanding and to reduce duplication which is evidenced in N.J.A.C. 10:81-14.18 through 14.18B under REACH/JOBS.

N.J.A.C. 10:86-10.1 lists the availability of child care benefits. It also explains the case manager assessment responsibility for child care and referral to the Lead Child Care Agency (LCCA), and participant rights and responsibilities. FDP child care activities shall be coordinated with existing child care resource and referral agencies. Payment for the cost of child care is available through the FDP program at rates established by the Department.

N.J.A.C. 10:86-10.2 defines the type of care, duration of child care payments, special needs, and maximum child care rates for a licensed child care center; School-Age Programs; Day Camps; Registered Family Day Care Homes; and Approved-Home Day Care. The rates utilized have been incorporated from N.J.A.C. 10:82-5.3, which was adopted at 24 N.J.R. 1500(a) on April 20, 1992.

N.J.A.C. 10:86-10.3 details how FDP funds are expended for child care; when an employed participant receiving AFDC pays for child care not approved by the FDP; and exceptions to direct payment of child care. N.J.A.C. 10:86-10.4 specifies provider requirements for child care centers, registered homes, family day care providers, providers of in-home care; and day camp providers. N.J.A.C. 10:86-10.5 provides detailed guidance and eligibility for FDP post-AFDC extended child care benefits.

N.J.A.C. 10:86-10.6 lists co-payment scales; criteria for determination and re-determination of the co-payment; the process for co-payment assessment; requirements for a provider's receipt of co-payment; and refunds of co-payments. (The co-payment scales for family sizes up to six individuals were adopted on December 16, 1991 at 23 N.J.R. 3791(a)). Those scales are being expanded in this proposed rulemaking to cover family sizes up to 12, without revising the previously adopted scales for family sizes of six and below.)

N.J.A.C. 10:86-10.7 sets forth procedures for co-payment determination, collection and monitoring by case management.

N.J.A.C. 10:86-11 addresses overpayment recovery procedures that apply to all supportive service benefits. Overpayments may be recovered either by direct payment from the client, or from the provider to the agency, through reduction in future benefits until the amount is repaid. Families shall be permitted to retain, for any month, a reasonable amount of funds to defray living expenses. Reductions in benefits as a method of recovery can only be made from the type of benefit in which the overpayment occurred.

The exception to overpayment recovery is the instance of a provider whereby the agency is obligated under a contract to make full payment. FFP cannot be claimed in such cases. Detailed information must be maintained regarding the collection of overpayments. These provisions duplicate the provisions for REACH/JOBS at N.J.A.C. 10:81-14.24.

Social Impact

The Family Development Program serves as a holistic approach to solving economic and social problems of, as well enhancing the role of, the family as a unit in making decisions and in taking responsibility for the actions of its members. At the heart of this initiative is the basic principle that adults on AFDC have a responsibility to strive towards self-sufficiency and to make decisions that support this end. Likewise, these adult recipients serve as role models to their children and reinforce positive approaches to self-sufficiency by example. The ultimate goal of the FDP is to restore and strengthen the nuclear family by empowering individuals to make their own decisions. As such, the program makes available every resource possible to meet a family's needs and places the responsibility on the adults to utilize those resources to help resolve the family's problems and to move toward employment. The program moves welfare from an environment of dependency to one of action with emphasis placed on the decisions and actions of the parents. Thus, this reform can be viewed as a "two-generation" prevention program; today's parents make decisions affecting their families and through their examples, demonstrate to the next generation the correct approach to self-sufficiency. Rather than focusing on the participant alone, therefore, "family plans" will now be developed which serve to reinforce planning and participation of all members of the family in resolving barriers to that family's self-sufficiency. The FDP offers intensified and coordinated services emphasizing educational opportunities for all family members including remedial education and tutoring programs and access to higher educational opportunities. It brings together the existing social, health and educational/vocational resources in the State and offers a one-stop approach to meeting the needs of the entire AFDC family.

The FDP reinforces family planning and participation of all members of a family in resolving barriers to that family's self-sufficiency. The objective is to enable public assistance recipients to secure permanent

full-time unsubsidized employment with wages and benefits that are adequate to support their families. This will be accomplished by ensuring that family members obtain the necessary educational skills and vocational training to secure such employment, in addition to other health-related, social, educational and vocational services that may be necessary to assist the family. At its inception, FDP will incorporate the 5,400 active REACH/JOBS participants in Camden, Essex and Hudson counties, whose numbers will increase as the scheduled phase-in of AFDC recipients to participant status progresses. An additional number of persons (approximately 2,000) in the initial FDP counties who are currently exempted from participation because their youngest child is under three years of age will be potentially deemed mandatory FDP participants if their youngest child is two or older.

The FDP program is being expanded to serve the GA population as well, since many of the fathers of AFDC recipient children participate in this State-funded welfare program. The FDP thus provides for a fundamental advance in the philosophy underlying the GA program for employable adults. This involves extending the range of supportive, educational, and training services afforded to AFDC participants to the employable segment of the GA population. This expansion will begin in the counties of Camden, Essex and Hudson and in the city of Trenton in Mercer County. Thus, approximately 9,000 employable GA recipients will be potential beneficiaries of services afforded by FDP. Where the GA recipient is also the parent of one or more AFDC children, any advances in the earnings potential of this population can only heighten the sense of parental responsibility, increase the likelihood of family formation, and enrich the home lives of AFDC children. Since GA recipients are now eligible for the full range of supportive/educational/training services available under FDP, they may now receive those allowances which are, in many cases, crucial to accepting gainful employment. Such allowances include moneys to purchase tools needed to be competitive with other job applicants or cover transportation related expenses.

The FDP expands the responsibility level of adult recipients of AFDC to participate in an assessment of the family's needs and in outlining a plan of action which delineates the services and activities, including counseling and assessment, that family members will access to help themselves overcome the barriers to employment. Unlike JOBS, mandatory participation of adult recipients is required in this component regardless of the age of the youngest child. Adults contract with the "broker of services," the case manager, to avail family members with needed health, educational, and social services via a written agreement. Whereas JOBS requires the participation of the adults only, the FDP extends participation to all family members who need assistance, regardless of the nature of that need. Tutoring, remedial educational programs, immunization programs, substance abuse referrals and/or treatment, special individualized services, individual counseling or family counseling, parental skill training, and so forth, are just a few of the available resources being aggregated for such families.

The FDP places emphasis on intensive remedial educational services, tutoring, and financial and other assistance for higher educational opportunities for family members. The program is designed to ensure that each adult participant and family member, as age appropriate, attains a high school degree or its equivalent before assignment of the individual to vocational-related activities under the program. Additionally, within the limits of available State funding, financial assistance through the New Jersey Educational Opportunity Fund and other State student assistance programs to cover tuition and educational expenses shall be made available to each FDP adult participant or other family member who has been accepted into an institution of higher education, including four-year colleges, community colleges and post-secondary vocational training programs. This effort serves to increase skill levels to overcome barriers to employment opportunities and enables participants to become members of a productive work force.

The FDP places the responsibility for cooperation with program requirements on the AFDC parent person or employable GA recipient. As such, the intent of the sanctioning process for non-cooperation is to avert negative behavior reinforcement. The parent/employable GA individual is to be advised in advance of the penalties for failure to cooperate with program mandates and, once advised, is expected to act responsibly. The penalaties for non-compliance will be delineated in the contract the recipient signs with the case manager for program participation as well. If the AFDC recipient does not cooperate in the first phase of the program, in the counseling and assessment stage before the signing of the Family Plan, a penalty of 20 percent of the maximum penalty standard for the family size will be deducted from the family's assistance benefit amount. The 20 percent reduction shall remain in effect for a period of not less than 30 days, or until the failure to comply ceases. After the signing of the family contract, the AFDC/FDP penalty for non-cooperation without good cause shall be loss of benefits for the individual for a period of not less than 90 days (three months) or until the failure to comply ceases. The 90-day penalty shall also be applicable to second and subsequent failures to actively participate in the AFDC program. The 90 day (three month) penalty is applicable in all instances of non-compliance for GA participants, including subsequent penalties. The conciliation process shall also be removed. Since the recipient is informed in advance and in the contract, the agency worker can move to impose the sanction as long as timely and adequate notice provisions have been met. The recipient may request a fair hearing on the agency action if he or she desires.

In order to enable newly employed persons to secure health benefits, employers often require satisfactory performance over an extended period of time before benefits are granted. To ensure that newly employed AFDC recipients have the best possible chance of continued employment, it is necessary to extend eligibility for post-AFDC Medicaid benefits to encompass a period of 24 months for the FDP participants. This extention will serve to ensure that new employees are able to work through their provisional/probationary period of employment without the loss of medical coverage.

With the establishment of a planning council in each county, education, employment and social services will be comprehensively coordinated and effected to the greatest extent possible for both the AFDC and GA populations. This will be accomplished by ensuring that members of such councils from both the private and public sectors are fully aware of all resources available in their geographic location. That information will be used by the planning councils to preclude redundant services and establish services that are currently lacking.

An exemption which the FDP emphasizes is excusing a mandatory participant from a work or training component if he or she participates in a drug or alcohol rehabilitation program. This serves to focus on the underlying problems facing the family and attempts to address those social services-related problems which must be resolved before the employability issue can be dealt with. Another vulnerable target group upon which the FDP will focus are those families and individuals who are in a state of imminent or actual homelessness. The FDP will ensure that all available and pertinent services and resources needed to resolve the family's present and future barriers to family stability are provided in a coordinated and organized manner.

Economic Impact

In accordance with P.L. 1991, c.523, $10 million may be allocated, contingent on receipt of State appropriations to supplement the current funding levels for the REACH/JOBS program to provide the funds necessary to implement the provisions of the FDP for AFDC and GA families and individuals in Camden, Essex and Hudson counties, as well as in the city of Trenton, Mercer County. These moneys will be utilized in conjunction with funds which may be allocated for fiscal year 1993 for the REACH/JOBS program and the General Assistance Employability Program. Approximately $730,000 shall be assigned to Camden County for the expansion of the GA/FDP as well as $2,122,000 to serve the GA population for all the municipalities of Essex County and up to $649,000 for programs to serve the Hudson County GA recipients. Through the services provided through the FDP, the FDP participant shall be able to increase his or her employability in a labor market which is seeking a more highly skilled, technical workforce. He or she would have the opportunity to secure better employment in jobs which provide adequate salaries to support his or her family without public assistance subsidies.

Regulatory Flexibility

The proposed new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The 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 the General Assistance and Aid to Families with Dependent Children programs to a low-income population by a governmental agency rather than a private business establishment.

Full text of the proposed new rules follows:

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. 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.

(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 Economic Assistance (DEA), 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 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. DEA 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 DEA. Questions of interpretation shall be resolved by the DEA.

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 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 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.

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 handicap by the Department, the Division or the other FDP designated agencies and organizations involved in provision of the FDP services.

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 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 and functions;
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 (DEA) 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, 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 a FDP Planning Council, appointed in accordance with established county procedures. 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); a representative of the Commissioner of DHS; and a representative each of the 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;

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 DEA 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 unit members or the GA individual 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' DEA shall issue the manual and amendments to the manual, as necessary. DEA 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) DEA 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 DEA 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, DEA and in each CWA and MWD of the State.

i. Specify 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 DEA.

6. Employment, education and training organizations (that is, vocational/technical schools, community colleges, JTPA offices) shall be furnished with a copy of this manual.

7. A current up-to-date copy of the manual, or any portion of the manual, is available from DEA through a written request by the interested person, at the cost of printing and mailing.

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 DEA.

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/EEPA 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 management 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.

"County IV-A agency" means the county board of social services or the county welfare agency in the respective county.

"DEA" means Division of Economic Assistance 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" 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 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.

"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 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; or, in General Assistance, the employable GA individual and his or her spouse or other family members.

"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;

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 Economic Assistance (DEA) (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 DEA/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 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 DEA 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 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 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 Economic Assistance, 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 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 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. DEA 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 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, DEA. 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 ben-

efits 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 hearings.

(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 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 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 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 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 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, who is a mandatory participant by virtue of the fact that such individuals 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 AFDC family member shall be sanctioned for 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 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 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 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 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. 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 DEA.

(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 DEA 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 DEA 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 DEA 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 gar-

ments, 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 DEA. Again, extreme prudence should be used by the AFDC/FDP case management entity in making the decision to seek DEA 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 DEA approval, additional payment(s) of up to $500.00 more, when warranted, or $1,000 maximum for the CAR allowance). Under no circumstances shall DEA 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 DEA, 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

	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	$ 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

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	$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 DEA (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; and

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 DEA 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 ar-

rangement. 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 DEA 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 DEA 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 DEA 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 DEA.

(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.

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Project Cost Certification

Proposed New Rules: N.J.A.C. 5:80-32

Authorized By: New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Authority: N.J.S.A. 55:14K-3q, 5(g) and 7a(7).
Proposal Number: PRN 1992-262.

Submit comments by July 15, 1992 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, NJ 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low and moderate-income families.

In connection with receiving Agency financing, housing sponsors enter into mortgage and other contractual documents with the Agency which outline the terms and conditions of obtaining Agency financing. Part of these terms, as required by the Agency's statute, require the Agency to determine that its financing goes toward project costs which are reasonable or necessary. The proposed new rules set forth the procedures which enable the Agency to determine that its mortgage proceeds are spent on project costs which are reasonable or necessary. The rules require housing sponsors and their contractors to submit certified audits of the costs incurred in constructing the project. The rules also outline the Agency's review process for approving project costs.

Social Impact

The Agency monitors and approves expenditures in order to assure that costs are reasonable or necessary to the project construction. Such monitoring helps enable the Agency to minimize its mortgage amount which thereby helps to maintain the project at rents affordable to low and moderate-income residents.

Economic Impact

The proposed rules have been developed in order for the Agency to determine whether costs incurred by housing sponsors and their contractors are reasonable or necessary. Such review enables the Agency to keep down the cost of construction and eliminate unnecessary or excessive costs. This in turn keeps the mortgage amount as low as possible which enables the Agency to spread its financing capabilities as far as possible. It also helps to maintain rents for tenants at affordable levels. While the housing sponsors and/or their contractors may incur auditing and appraisal costs as a result of the imposition of these rules, such audits and appraisals are an allowable mortgage expense which is reimbursed to the sponsors and contractors.

Regulatory Flexibility Analysis

The proposed new rules require the cost certification of mortgage financing given to housing sponsors, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The reporting and recordkeeping requirements imposed by the proposed rules require housing sponsors and their contractors (some of which are also small businesses) to maintain adequate books and records of their construction costs and submit certified accounts of such costs.

As to compliance requirements, the rules codify existing requirements for cost certification, which requirements have been outlined in the contractual documents between the Agency, housing sponsors and contractors. While the Agency acknowledges the need for professional services, such as accountant services, in meeting the requirements of the proposed rules, the cost associated with such services is a recognized project cost which may be paid out of mortgage proceeds. Because housing sponsors are predominantly small businesses and due to the fact that housing sponsors and their contractors will suffer no increase in capital costs and because sponsors and contractors would typically employ professionals for such audits in absence of these rules, no differentiation in the compliance requirement based upon business size is proposed.

Full text of the proposed new rules follows:

SUBCHAPTER 32. PROJECT COST CERTIFICATION

5:80-32.1 Purpose

(a) The rules within this subchapter establish the determination of project cost consistent with the requirements of N.J.S.A. 55:14K-3q and 7(a)(7). These rules shall apply to housing projects receiving loans from the Agency for:

1. Construction financing or construction financing with permanent take-out;
2. Permanent take-out financing with prior agency review;
3. Permanent take-out financing without prior agency review; and
4. Completed projects.

5:80-32.2 Definitions

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

"Certificate of Final Acceptance" means the document executed by the sponsor, architect and, if required by the construction contract, by the Agency signifying that all outstanding items of work under the construction contract including punchlist items have been completed. Issuance of a Certificate of Final Acceptance shall not constitute a waiver of claims for latent defects or other matters reserved in the construction contract.

"Closing Form 10" means the form established by the Agency and prepared by the sponsor which estimates the project cost, the maximum amount of mortgage and required equity funding and projected income and expenses of the housing project.

"Combined Statement of Development and Construction Costs" means the audited Sponsor's Certification of Project Costs and in the form as revised from time to time by the Internal Audit Division. The audit is to be performed in accordance with generally accepted auditing standards by an independent auditor.

"Completed project" means an existing premises which will qualify as a housing project under the Agency Act and which already has non-Agency financing or is owned free of mortgage or construction loan indebtedness.

"Construction Contract Records and Agency Access Rider" means the agreement between the sponsor and the contractor which requires the contractor to maintain certain books, records, accounts and files and to allow Agency access to the same in the form as revised from time to time by the Internal Operations and Regulatory Affairs Division (see Appendix A, incorporated herein by reference.)

"Construction Cost Audit—Engagement Letter" means the CPA engagement letter for the provision of an independent audit of the statement of construction costs prepared by the contractor's auditor in the form as revised from time to time by the Internal Audit Division. (see Appendix B, incorporated herein by reference.)

"Construction Cost Audit Report" means the audited contractor's Certification of Project Construction Cost in the form as revised from time to time by the Internal Audit Division. The audit is to be performed in accordance with generally accepted auditing standards by an independent auditor. (See Appendix C, incorporated herein by reference.)

"Construction financing" means a loan made by the Agency, the proceeds of which shall be used to finance the costs incurred during the construction, improvement, rehabilitation, or development of a housing project and including related land acquisition costs.

"Construction financing with permanent take-out" means a loan made by the Agency, the proceeds of which shall be used to finance costs incurred during the construction, improvement, rehabilitation, or development of a housing project and including related acquisition costs and which is converted to permanent financing after

substantial completion of construction or such other date as is called for in the mortgage or mortgage note. (See Appendix D, incorporated herein by reference.)

"Contract documents" means, collectively, the project manual, drawings, specifications, general conditions, trade payment breakdown and other such documents as may be called for by the construction contract.

"Contractor" means the general contractor or contractors hired by the Sponsor to construct, improve or rehabilitate the project.

"Development Cost Audit—Engagement Letter" means the CPA engagement letter for the provision of an independent audit of the statement of development costs prepared by the sponsor in the form as revised from time to time by the Internal Audit Division. (See Appendix E, incorporated herein by reference.)

"Development Cost Audit Report" means the sponsor's audited Certification of Project Development Costs and Construction Costs in the form as revised from time to time by the Internal Audit Division. The audit is to be performed in accordance with generally accepted auditing standards by an independent auditor. (See Appendix F, incorporated herein by reference.)

"Final Mortgage Closing Statement" means the agreed upon written recitation of total project costs which is signed by the sponsor and the Agency at the time the final advance is made under the Agency loan.

"Independent auditor" means an auditor that is "independent" as defined by the American Institute of Certified Professional Accountants and does not provide any recordkeeping services to the sponsor or contractor related to the Project.

"Mortgage closing" means the date on which the Agency mortgage loan documents are executed or effective, whichever is later.

"Permanent take-out financing with prior Agency staff review" means a loan made by the Agency, the proceeds of which shall be used to finance the project costs of a housing project, the development and construction of which have been subject to ongoing Agency oversight and cost review, and which loan is made after all temporary or final certificates of occupancy have been issued and are current and which Agency recognized project costs shall include repayment of loans procured and costs incurred by the sponsor and any developer's fee in the construction, improvement, rehabilitation, site acquisition or development of the housing project.

"Permanent take-out financing without prior Agency staff review" means a loan made by the Agency, the proceeds of which shall be used to finance the project costs of a housing project, the development and construction of which have not been subject to ongoing Agency oversight and cost review, and which loan is made after all final certificates of occupancy have been issued and are current and which Agency recognized project costs shall include repayment of loans procured and costs incurred by the Sponsor and any developer's fee in the construction, improvement, rehabilitation, site acquisition or development of the housing project.

"Project cost" means the sum total of all costs incurred in the acquisition, development, construction, improvements or rehabilitation of a housing project, which are approved by the Agency staff as reasonable or necessary, which costs shall include, but are not necessarily limited to:

(1) Cost of land acquisition and any buildings thereon;

(2) Cost of site preparation, demolition and development;

(3) Architect, engineer, legal, Agency and other fees paid or payable in connection with planning, execution and financing of the project;

(4) Cost of necessary studies, surveys, plans and permits;

(5) Insurance, interest, financing, tax and assessment costs and other operating and carrying cost during construction;

(6) Cost of construction, reconstruction, fixtures, and equipment related to the real property;

(7) Cost of land improvements;

(8) Necessary expenses in connection with initial occupancy of the project;

(9) A reasonable profit or fee to the builder and developer;

(10) An allowance established by the Agency for working capital and contingency reserves, and reserves for any deficits;

(11) Costs of guarantees, insurance or other additional financial security for the project; and

(12) The cost of such other items, including tenant relocation, as the Agency staff shall determine to be reasonable and necessary for the development of the project. The total of items 1 through 12 above shall be reduced by any and all net rents and other net revenues received from the operation of the real and personal property on the project site during construction, improvement or rehabilitation.

"Punch list" means a list of the remaining work to be done in any specific project.

"Sponsor" means "housing sponsor" as defined in N.J.S.A. 55:14K-3h.

5:80-32.3 Construction financing or construction financing with Agency permanent take-out

(a) When construction financing or construction financing with permanent take-out is provided, project costs shall be determined in accordance with the procedure delineated in this section.

(b) Prior to mortgage closing, the Technical Services Division shall review the contract documents and prepare an estimate of total anticipated constuction costs. Upon the issuance of temporary or final Certificates of Occupancy, the Technical Services Division shall determine that the housing project is complete and not in need of any alterations, changes or repairs necessary to protect the security of Agency and meets all standards of occupancy regarding the health, safety and welfare of residents, subject to any Agency permitted outstanding conditions.

(c) Prior to mortgage closing, the Research and Development Division shall, in consultation with the Finance and Management Division and with other Divisions, as appropriate, review and approve the Closing Form 10 prepared by the Sponsor.

(d) Prior to mortgage closing, the contractor shall be supplied with the Agency's standard form "Construction Cost Audit—Engagement Letter" and the standard form "Construction Cost Audit Report" which shall be used respectively by the contractor to retain an independent auditor and by the independent auditor in preparing the audit of the contractor's Certification of Project Construction Costs. Additionally, the Contractor shall have signed a construction contract which incorporates the Agency's requirements for the maintenance of the contractor's books and records during construction, which shall be as contained in Appendix A.

(e) Prior to mortgage closing, the sponsor shall be supplied with the Agency's standard form "Development Cost Audit—Engagement Letter" and the Agency's standard form "Development Cost Audit Report" which shall be used respectively by the sponsor to retain an independent auditor and by the independent auditor in preparing the audit of the sponsor's total project costs.

(f) Prior to mortgage closing, the sponsor and contractor shall be advised as to the Agency's current requirements for maintenance of books and records. The Agency staff shall have full and free access to all books of accounts and records of the contractor at anytime during construction.

(g) If the contractor and sponsor are related parties, the Agency shall supply the sponsor/contractor with additional cost report schedules and may require or allow a single or phased independent audit covering construction and development.

(h) Within 20 days after the issuance of the Certificate of Final Acceptance of construction, the contractor shall submit original copies of the Construction Cost Audit Report to Internal Audit and to the Technical Services Division, accounting for all costs, charges and expenses paid and incurred by the contractor in the construction of the housing project.

(i) Upon receipt of the Construction Cost Audit Report, Internal Audit shall review the audit. If the determination of Internal Audit is that the Construction Cost Audit Report is unacceptable, Agency staff may engage an independent auditor to prepare an audit of the costs, charges, and expenses paid and incurred by the contractor and the cost of the audit shall be borne by the contractor. The Agency staff and its auditors shall have full and free access to all books of accounts and records of the contractor. With the assistance of the Technical Services Division, Internal Audit shall review the

Construction Cost Audit Report and prepare a schedule summarizing costs claimed by category as shown in the Standard Construction Cost Audit Report of the contractor's Certification of Project Construction Costs and the Internal Audit Division's adjustments to those costs.

(j) Upon receipt of the Construction Cost Audit Report and Internal Audit's construction cost schedule, the Technical Services Division shall prepare a preliminary summary of the approved necessary and reasonable contractor's costs and of other construction related project costs arising under items 2, 6 and 7 of the definition of project cost and, as applicable, to construction related costs under 4, 5, 9 and 11, of the definition of project cost.

(k) Upon completion of the procedures performed in (j) above, the Technical Services Division, in consultation with Internal Audit, will prepare an interim determination of the contractor's costs.

(l) If the interim determination of contractor's costs is acceptable to the contractor, it shall be deemed to be the Technical Services Division's final cost determination.

(m) If the contractor objects to the interim determination of contractor's costs, the Technical Services Division shall review the objections and, if appropriate, reconcile the interim determination. In the event that the contractor still has objections after the Technical Services Division's review, the Director of Technical Services shall convene a conference with the contractor, the sponsor, the architect and others as appropriate at which time the contractor's objections will be heard and considered. After due consideration and additional adjustments, if deemed appropriate by the Technical Services Division, the final cost determination of contractor's costs shall be issued by the Technical Services Division.

(n) After final determination of contractor's costs, the sponsor shall submit to the Agency its Development Cost Audit Report prepared by an independent auditor accounting for the cost of land and all project costs including construction costs. Upon receipt of the Development Cost Audit Report, the Internal Audit Division shall review the audit. If the determination of Internal Audit is that any audit is unacceptable, Agency staff may engage an independent auditor to prepare a report of the cost charges and expenses incurred by the sponsor. The cost of the audit shall be paid for by the sponsor. The Agency shall have full and free access to all books of accounts and records of the sponsor. Internal Audit shall summarize all differences between costs claimed per the Development Cost Audit Report and costs previously disbursed by the Finance Division so that a determination of allowable project costs can be made depending upon the type of cost at issue by either the Technical Services Division, or by the Research and Development Division (for project costs not subject to the Technical Services Division's review in accordance with (j) above) in consultation as appropriate with other Divisions.

(o) Upon completion of (b) through (n) above, the Internal Operations and Regulatory Affairs Division shall prepare a Mortgagor's Release and Final Mortgage Closing Statement incorporating all approved project costs for acceptance by the Directors of Internal Audit and Finance and by the Sponsor.

5:80-32.4 Permanent take-out financing with prior Agency staff review

(a) When permanent take-out financing with prior Agency review is provided, project costs shall be determined in accordance with this section.

(b) Prior to construction, the Technical Services Division shall review contract documents and any other documents required by the Agency and prepare an estimate of total construction costs. Upon the issuance of temporary Certificates of Occupancy, the Technical Services Division shall determine that the housing project is complete and not in need of any alterations, changes or repairs necessary to protect the security of the Agency and meets all standards of occupancy regarding the health, safety and welfare of residents, subject to any Agency-permitted outstanding conditions. During construction, the Technical Services Division shall monitor construction of the housing project. The cost of monitoring shall be borne by the sponsor and shall be included in the Agency's mortgage fee if financing is provided by the Agency. The Agency may require payment in advance or adequate security to ensure payment in the event that there is no Agency permanent take-out.

(c) The Research and Development Division, prior to mortgage closing, in consultation with the Finance and Management Divisions and with other Divisions as appropriate, shall review and approve the Closing Form 10 prepared by the sponsor.

(d) If the Agency's form of construction contract is not used prior to construction, the contractor and the sponsor shall execute the Construction Contract Records and Agency Access Rider as a rider to the construction contract or as a separate binding agreement.

(e) Prior to construction, the contractor shall be supplied with the Agency's standard form "Construction Cost Audit—Engagement Letter" and the standard form "Construction Cost Audit Report" which shall be used respectively by the contractor to retain an independent auditor and by the independent auditor in preparing the audit of the Contractor's Certification of Project Construction Costs. Also, prior to construction, the sponsor shall be supplied with the Agency's standard form "Development Cost Audit—Engagement Letter" and the Agency's standard form "Development Cost Audit Report" which shall be used respectively by the sponsor to retain an independent auditor and by the independent auditor in preparing the audit of the sponsor's project costs.

(f) If the contractor and sponsor are related parties, the Agency shall supply the sponsor/contractor with additional cost report schedules and may require or allow a single or phased independent audit covering construction and development.

(g) Prior to construction, the sponsor and contractor shall be advised as to the Agency's current requirements for maintenance of books and records. The Agency staff shall have full and free access to all books of accounts and records of the contractor at any time during construction.

(h) Within 20 days after the issuance of all temporary or final Certificates of Occupancy, the sponsor shall submit original copies of the contractor's Construction Cost Audit Report to Internal Audit and to Technical Services accounting for all costs, charges and expenses paid and incurred by the contractor in the construction of the housing project.

1. Drafts of an interim Construction Cost Audit Report which are substantially complete or which are complete as to a portion or phase of the construction may be submitted prior to submission of the Construction Cost Audit Report for preliminary Agency review. Such preliminary review may expedite the Agency's Construction Cost Audit Report review which typically takes at least 60 days from receipt of the Independent Construction Audit.

(i) Upon receipt of the Construction Cost Audit Report, the Internal Audit shall review the audit. If the determination by Internal Audit is that the audit is unacceptable, Agency staff may engage an independent auditor to prepare an audit of the costs, charges, and expenses paid and incurred by the contractor and the costs of the audit shall be borne by the contractor. The Agency staff and its independent auditors shall have full and free access to all books of accounts and records of the contractor. If Internal Audit accepts the audit, Internal Audit, with the assistance of the Technical Services Division, shall prepare a construction cost schedule summarizing costs claimed by category as shown in the standard Construction Cost Audit Report of the contractor's Certification of Project Construction Costs and the Internal Audit Division's adjustments to those costs.

(j) Upon receipt of the Construction Cost Audit Report and Internal Audit's construction cost schedule, the Technical Services Division shall prepare an interim determination of the approved necessary and reasonable construction related project costs arising under items 2, 6 and 7 and, as applicable, to construction related costs under items 4, 5, 9 and 11, of the definition of project cost. Simultaneously, the Research and Development Division shall prepare an interim determination of the approved necessary and reasonable development costs incurred by the sponsor under the categories or parts of categories of project cost which are not subject to the Technical Services Division's determination of construction related project costs.

(k) If the interim determination of the contractor's costs is acceptable to the contractor, it shall be deemed to be the Technical Services Division's final interim cost determination, subject to submittal of a final contractor's Construction Cost Audit Report of any punch list items.

1. If the contractor objects to the interim determination of contractor's costs, the Technical Services Division shall review the objections and if appropriate, reconcile the interim determination. In the event that the contractor still has objections after the Technical Services Division's review, the Director of Technical Services shall convene a conference with the contractor, the sponsor, the project architect and others, as appropriate, at which time the contractor's objections will be heard and considered. After due consideration and additional adjustments, if deemed appropriate, the final interim cost determination of contractor's costs shall be issued by the Technical Services Division.

(l) If the interim determination of the sponsor's costs is acceptable to the sponsor, it shall be deemed to be the Research and Development Division's final interim cost determination subject to submittal of a final sponsor's Development Cost Audit Report of any remaining development costs.

1. If the sponsor objects to the interim determination of sponsor's costs, the Research and Development Division shall review the objections and if appropriate, reconcile the interim determination. In the event that the sponsor still has objections after the Research and Development Division's review, the Director of Research and Development shall convene a conference with the sponsor and others, as appropriate, at which time the sponsor's objections will be heard and considered. After due consideration and additional adjustments, if deemed appropriate, the final interim cost determination of sponsor's costs shall be issued by the Research and Development Division.

(m) After the issuance of the interim determination of reasonable and necessary construction project costs by the Technical Services Division and the interim estimate of reasonable and necessary project costs by the Research and Development Division, but before submission of a Development Cost Audit Report of all project costs by the sponsor in accordance with (n) below, and if there are no substantial discrepancies between the claimed project costs and the project costs estimated by the Agency, the loan may proceed to mortgage closing if the mortgage loan does not exceed 90 or 100 percent, for profit and nonprofit sponsors respectively, of total estimated reasonable and necessary project costs in accordance with N.J.S.A. 55:14-7(a)7. In such event the Agency shall withhold adequate mortgage proceeds and such other security deemed necessary by Agency staff to complete project development and cover the contractor's potential claims.

(n) Within 20 days after the issuance of a Certificate of Final Acceptance, the contractor shall submit a final contractor's Construction Cost Audit Report to the Technical Services and Internal Audit Divisions. The final audit shall be processed in the same manner as set forth in (j) and (k) above.

1. Drafts of the Construction Cost Audit Report which are substantially complete or which are complete as to a portion or phase of the construction, may be submitted prior to submission of the Construction Cost Audit Report for preliminary Agency review. Such preliminary review may expedite the Agency's audit review which typically takes at least 60 days from receipt of the Construction Cost Audit Report.

(o) After final determination of the contractor's costs, the sponsor shall submit its Development Cost Audit Report prepared by an independent auditor to the Agency accounting for the cost of land and all project costs including construction costs. Upon receipt of the Development Cost Audit Report, the Internal Audit Division shall review the audit. If the determination of Internal Audit is that any audit is unacceptable, Agency staff may engage an independent auditor to prepare a report of the cost charges and expenses incurred by the sponsor. The cost of the audit shall be paid for by the sponsor. The Agency shall have full and free access to all books of accounts and records of the sponsor. Internal Audit shall summarize all differences between costs claimed per the independent audit and shall summarize Internal Audit's adjustments to the independent audit so that final determination of allowable project costs can be made, depending upon the type of cost at issue, by either the Technical Services Division (see (j) above) or by the Research and Development Division (for project costs not subject to Technical Services Division review in accordance with (j) above) in consultation as appropriate with other Divisions.

(p) Upon completion of the foregoing, the Division of Internal Operations and Regulatory Affairs shall prepare a Mortgagor's Release and a Final Mortgage Closing Statement incorporating all approved project costs for acceptance by the Directors of Internal Audit and Finance and by the sponsor.

5:80-32.5 Permanent take-out financing without prior agency staff review

(a) When permanent financing without prior Agency staff review is provided, project costs shall be determined in accordance with the procedures delineated in this section.

(b) After a Certificate of Actual Completion (that is, the sponsor and architect of record have accepted all work excluding remaining landscaping) of construction has been issued, the sponsor shall submit a Development Cost Audit—Engagement Letter and a Combined Statement of Development and Construction Costs, accounting for all costs, charges and expenses paid and incurred in the cost of land acquisition, construction, and development of the housing project. The construction costs portion of the independent audit shall be sufficiently detailed to enable the Technical Services Division to make the determinations called for in (d) below. Furthermore, the sponsor shall provide for inspection by the Agency staff all contract documents and change orders, invoices, purchase receipts and such other items as the Technical Services Division requires to determine that the cost of material, equipment and labor was reasonable and necessary.

(c) Upon receipt of the Combined Statement of Development and Construction Costs, Internal Audit shall review the audit. If the determination by Internal Audit is that any audit is unacceptable, Agency staff may engage in independent auditor to prepare an audit of the costs, charges, and expenses incurred by sponsor. The cost of the audit shall be borne by the sponsor. The Agency and its auditors shall have full and free access to all books of accounts and records of the sponsor and contractor with respect to all project costs.

(d) The Technical Services Division shall inspect and evaluate the completed project, solely for purposes of determining whether Agency financing will be made available, including as they deem necessary each individual unit, to determine whether the construction, as observable, is complete and in conformity with the contract documents and is in all respects of quality acceptable to the Agency. The Technical Services Division shall also review, in conjunction with the Internal Audit Division, the Combined Statement of Development and Construction Costs submitted by the sponsor as it applies to costs arising under item 2, 6 and 7 and as applicable to 4, 5, 9 and 11 of the definition of project cost to determine that project costs as shown were reasonable and necessary based on the Technical Services Division's inspection and general knowledge of the costs of construction and materials, and the review sponsor's and available contractor's records.

(e) The Research and Development Division, in conjunction with other Divisions as appropriate, shall review the Combined Statement of Development and Construction Costs as it applies to project cost, excluding costs subject to Technical Services Division review, and shall determine whether such project costs were reasonable and necessary.

(f) After completion of the foregoing, a mortgage closing shall be scheduled. Simultaneously, or as soon thereafter as the costs of landscaping are reviewed and approved by the Technical Services Division and a Certificate of Final Acceptance or the equivalent approval by the sponsor and architect of record has been issued, the Division of Internal Operations and Regulatory Affairs shall prepare a Mortgagor's Release and a Final Mortgage Closing Statement incorporating all approved project costs for acceptance by the Directors of Internal Audit and Finance and by the sponsor.

5:80-32.6 Completed projects

(a) Except for premises owned by the original owner, as defined in (e) below, project costs for a completed project shall be the costs incurred in the acquisition. These costs may include legal and other professional fees incurred by the sponsor in the acquisition as are deemed reasonable and necessary by Agency staff, and shall include the purchase price, the reasonability and necessity of which shall be determined by an appraisal, acceptable to Agency staff, of the current fair market value of the premises. The appraisal shall be made or updated within 90 days preceding the date of the mortgage closing. The appraisal shall take into consideration the effect of any existing encumbrances or restrictions including those on use.

(b) The sponsor shall pay to the Agency, in advance, a sum required by the Agency staff which shall be reasonably expected to cover the cost of the appraisal. The Agency shall independently select and retain the appraiser. The sponsor shall reimburse the Agency for any additional costs of the appraisal.

(c) If Agency staff determines that the appraisal is unacceptable, or determines that additional verification of value is needed, a second appraisal may be required. The cost of the second appraisal shal be borne by the sponsor subject to the same conditions set forth herein for the first appraisal.

(d) Prior to Agency commitment to provide mortgage financing, the Technical Services Division shall inspect any premises to be acquire and determine that the premises will constitute a complete project and is not in need of any alterations, changes or repairs necessary to protect the security of the Agency and which meets all governmental standards of occupancy regarding the health, safety and welfare of the project's residents.

(e) "Original owner" means the owner who constructed or had constructed the premises and who has not conveyed the premises to an unrelated purchaser pursuant to a binding agreement under which the owner has conveyed all legal, equitable, future, potential or controlling interests in the premises. Project cost for original owner completed projects shall be determined in accordance with the procedures for permanent take-out financing without prior agency staff review and shall be established as of the date of the Certificate of Final Acceptance without adjustment for present dollar value.

(f) Upon completion of the foregoing, a mortgage closing shall be scheduled. Simultaneously, the Internal Operations and Regulatory Affairs Division shall prepare a Final Mortgage Closing Statement incorporating all approved project costs for acceptance by the Directors of Internal Audit and Finance and by the sponsor.

5:80-32.7 Projects with construction contracts which do not include a contractor's fee

In the event that any sponsor enters into a contruction contractor which does not state a contractor's fee, the sponsor's development fee approved by the Agency shall be reduced by that portion which the Agency determines should reasonably be assigned for payment of the contruction fee. This determination shall be made by the Research and Development Division in consultation with other Divisions as appropriate. Projects employing contruction contracts with stated construction fees shall be governed by the Agency's standard allowed development/construction fee schedules.

5:80-32.8 Rules of general application

(a) The Agency's determination of project cost shall be final.

(b) Housing sponsors shall certify to the Agency that the Agency loan does not exceed 90 percent of the project cost for housing sponsors organized for profit, or 100 percent of the project cost for nonprofit sponsors.

(c) With respect to for profit sponsors, no advance of mortgage proceeds shall exceed 90 percent of the amount of any requisition approved by the Agency. Housing sponsors shall pay to the Agency, for reduction of the principal of the loan, the amount by which the loan proceeds advanced exceed 90 percent or 100 percent (as applicable) of the project cost.

(d) This subchapter shall govern only project cost determination and shall not in any way limit the Agency's review of the quality of construction or any underwriting criteria which the Agency may apply in determining whether to provide financing.

(e) Notwithstanding any of the foregoing, the Agency Board may, as permitted by the Agency Act, accept other assurances in any form or manner whatsoever, as will enable the Agency to determine project cost with reasonable accuracy.

(f) The Agency's determination of project cost, and any inspections, reviews, audits or appraisals done in connection therewith, shall be performed in accordance with its responsibility as a lender and as a lender and as an instrumentality of the State of New Jersey pursuant to N.J.S.A. 55:14K-1 et seq. and shall not:

1. Make the Agency a party to any contract between the sponsor and contractor;

2. Relieve the sponsor of its obligation to certify project costs or to notify the Agency of any corrections, omissions or changes in information submitted to, or reviewed by the Agency;

3. Relieve the sponsor of its obligations pursuant to any agreements executed by the sponsor in connection with the Agency's financing of the housing project;

4. Be deemed to be dispositive, or to otherwise affect, any claims by persons that they have been discriminated against because of race, religious principles, color, national origin or ancestry in connection with the construction of the housing project.

APPENDIX A

CONSTRUCTION CONTRACT RECORDS AND AGENCY ACCESS RIDER

This Rider shall become part of the Construction Contract (the "Contract") dated _____ between _____ (the "Owner") and _____ (the "Contractor") in connection with the construction and/or rehabilitation of a certain multi-family rental housing project located at _____ and known as _____ (the "Project").

The Contractor and Owner acknowledge that the New Jersey Housing and Mortgage Finance Agency (the "Agency") will be providing financing to the Owner, subject to certain conditions outlined in a Mortgage Commitment issued by the Agency to the Owner.

As part of the requirements and conditions for such financing, the Contractor agrees as follows:

A. The Contractor agrees that representatives of the Agency shall have full and free access to all books of account and records of the Contractor relating to the Work under the Contract, including the right to make photostatic copies of or excerpts or transcripts from such books of accounts and records and related and supporting documents and statements, including but not limited to bank statements, checks paid by banks and checkbook stubs.

B. Separate bank accounts and books in account and records shall be maintained by the Contractor in connection with the Contract. Entries shall not be made therein with respect to any other job of the Contractor. The separate books of account shall include, but need not be limited to: General Ledger, Cash Receipts Book, Cash Disbursements, Voucher Register, Payroll Register, Insurance Register and Contractors Ledger. All purchases should be supported by an invoice, purchase order and a signed receiving report. Also, these documents should specifically reference the Project. All labor charges should be supported by a time card. These time cards should be signed by the individual performing the Work and the individual's supervisor. These time cards should specifically reference the Project. Also, the specific construction phase being performed should also be indicated on the time card.

   All disbursements under this Contract shall be made by check from the separate bank account or accounts established by the Contractor. No deposits therein or withdrawals therefrom shall be made by the Contractor with respect to any other construction job. The Contractor shall use a Uniform System of Accounts prescribed by the Agency in the accounting required for this Contract.

C. The Contractor hereby agrees to provide to the Owner and Agency any information which they may request regarding the operations, organization or financing of the Contractor. The Contractor also agrees that it will provide upon request affidavits that it has complied with all Agency policies and procedures governing construction con-

tracts, including prohibitions against making any kickback, rebate or other payments in return for, or as an inducement to, the award of the Contract.

D. The Contractor hereby acknowledges that it is not a third party beneficiary of any agreement between the Owner and Agency.

APPENDIX B

CONSTRUCTION COST AUDIT—ENGAGEMENT LETTER
(LETTERHEAD OF C.P.A.)

(DATE)

(Name & Address of Contractor)

_____

_____

_____

_____

Gentlemen:

This confirms our engagement to audit the statement of Construction Cost of (DEVELOPMENT) housing project funded by New Jersey Housing And Mortgage Finance Agency from inception through _____ (substantial completion).

We will audit the Development's Statement of Construction Cost as required by New Jersey Housing And Mortgage Finance Agency.

The Statement of Construction Cost is the responsibility of the Company's management. Our responsibility is to express an opinion on whether costs billed by the Contractor are valid costs as determined by New Jersey Housing And Mortgage Finance Agency regulation, contract terms and generally accepted accounting principles.

Our audit will be conducted in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance about whether the Statement of Construction Costs is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of construction cost. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall contractor cost presentation. We believe that our audits provide a reasonable basis for our opinion.

We are independent Certified Public Accountants with respect to (NAME OF CONTRACTOR) as defined in Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accountants.

We also state that we do not perform any accounting, bookkeeping, and/or consulting services for the referenced development other than the audit referred to herein.

We will be available, upon request, to discuss with you and the New Jersey Housing And Mortgage Finance Agency, any matters relating to our audit.

Whenever possible, we will utilize your personnel to reduce our own time requirements. They will provide us with a detailed trial balance and the supporting schedules we deem necessary. A list of such schedules will be furnished to you shortly after we begin the engagement.

The fee for the services indicated will not exceed $_____. It should be understood, however, that circumstances may arise that will require our services to be extended. If it appears that the maximum fee will be exceeded, we will discuss the alternatives with you in order to arrive at an acceptable solution.

If this letter correctly expresses your understanding, please sign the enclosed copy, obtain the approval of the New Jersey Housing And Mortgage Finance Agency, and return one (1) completely executed copy to us.

Thank you for the confidence you have placed in us by engaging us as your independent Certified Public Accountants. We hope this proves to be the beginning of a long and mutually beneficial association.

Very truly yours,

_____ _____

(Signature of C.P.A.) DATE

Accepted:

(NAME OF CONTRACTOR)

BY: _____ _____

(Authorized Signature) DATE

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

BY: _____ _____

Manager of Internal Audit DATE

APPENDIX C

CONSTRUCTION COST AUDIT REPORT

(DATE)

(NAME & ADDRESS OF CONTRACTOR)

We have audited the records maintained by your Company under the cost certification project titled _____, New Jersey Housing And Mortgage Finance Agency—Project #_____, and submit the following schedules and notes as a result of that audit. All schedules are as of _____.

Schedule 1	Cost Summary
Schedule 2	Direct Construction Costs
Schedule 2A	Subcontracted Costs
Schedule 2B	Material Purchases And Sundry Charges
Schedule 2C	Labor Used In Trades
Schedule 2D	Adjusted Construction Budget
Schedule 3	General Conditions
Schedule 4	Contractor's Fee Per Change Orders

These financial statements are the responsibility of the contractor. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the attached Contractor's Certification of Project Construction Cost presents fairly, in all material respects, the actual cost of (PROJECT NAME).

We certify that we have no financial interest in the project other than in the practice of our profession.

(CONTRACTOR'S NAME)
(DEVELOPMENT'S NAME)
CONSTRUCTION COST SUMMARY (SCHEDULE 1)
(PERIOD)

Direct Construction Cost (Schedule 2)	$XXX
General Conditions (Schedule 3)	XXX
Contractor's Fee per contract	XXX
Contractor's Fee—	
Per change orders (Schedule 4)	XXX
Bond	XXX
Total Construction Cost	$XXX

(CONTRACTOR'S NAME)
(DEVELOPMENT'S NAME)
DIRECT CONSTRUCTION COSTS (SCHEDULE 2)
(PERIOD)

Item No.	Item Description	Subcontracted Costs (Schedule 2A)	Materials And Sundry Pages (Schedule 2B)	Labor (Schedule 2C)	Total	Adjusted Construction Budget (Schedule 2D)

NOTE: Detail of individual line items should be provided here.
Categories should be consistent with the construction budget (trade payment breakdown).

Total direct construction costs:

(CONTRACTOR'S NAME)
(DEVELOPMENT'S NAME)
SUBCONTRACTED COSTS (SCHEDULE 2A)
(PERIOD)

Item No.	Subcontractor	Base Contract	Extras	Change Orders	Total	Paid	To Be Paid

Provide detail of individual line items here. Individual line items and total amount should agree to the Subcontracted cost category of the Schedule of Direct Construction Costs (Schedule 2).

(CONTRACTOR'S NAME)
(DEVELOPMENT'S NAME)
MATERIAL PURCHASES AND SUNDRY CHARGES (SCHEDULE 2B)
(PERIOD)

Item No.	Vendor Name	Cost	___ % Overhead & Profit Allowance (If Applicable)	Total	Paid	To Be Paid

Provide detail of individual line items here. Individual line items and total amount should agree to materials category of the Schedule of Direct Construction Costs (Schedule 2).

(CONTRACTOR'S NAME)
(DEVELOPMENT'S NAME)
LABOR USED IN TRADES (SCHEDULE 2C)
(PERIOD)

Item No.	Gross Payroll	Payroll Taxes, Insurance, and Benefits	Sub-Total	___ % Overhead and Profit Allowance (If Applicable)	Total

Provide detail of individual line items here. Individual line items and total amount should agree to the labor category of the Schedule of Direct Construction Costs (Schedule 2).

(CONTRACTOR'S NAME)
(DEVELOPMENT'S NAME)
ADJUSTED CONTRACT AS PER CHANGE ORDERS (SCHEDULE 2D)
(PERIOD)

Item No.	Description	Original Budget	Change Order Amount	Change Order Number	Extras Amount	Extras Number	Adjusted Budget
X	XXXX	$XX.XX	$XX.XX		$XX.XX		$XX.XX

Provide detail of individual line items here. Individual line items and total amount should agree to the adjusted budget category of the Schedule of Direct Construction Costs (Schedule 2).

(CONTRACTOR'S NAME)
(DEVELOPMENT'S NAME)
GENERAL CONDITIONS (SCHEDULE 3)
(PERIOD)

GENERAL CONDITIONS:

Detail of line items that is consistent with the construction budget should be provided here:	$XXX
Total General Conditions.	$XXX

(CONTRACTOR'S NAME)
(DEVELOPMENT'S NAME)
CALCULATION OF CONTRACTOR'S FEE PER CHANGE ORDERS (SCHEDULE 4)
(PERIOD)

Change Order Number	Base Amount of Change Order	% Contractor Fee Per Change Order	Contractor's Fee Per Change Order
1	$XX.XX	$XX.XX	$XX.XX
2	XX.XX	XX.XX	XX.XX
3	XX.XX	XX.XX	XX.XX
Total Contractor's Fee per Change Orders			$

FOOTNOTES

All disclosures required by generally accepted accounting and auditing standards should be made. Full disclosure regarding the existence or non-existence of related party transactions or relationships is required. In the case of related party transactions, all activity (including profit) should be quantified and set forth in the footnote. Transactions with related parties that are reimbursements of costs with no profit should also be disclosed.

APPENDIX D

REPORT FORMAT—PERMANENT TAKE-OUTS
COMBINED STATEMENT OF DEVELOPMENT AND CONSTRUCTION COSTS

CERTIFIED PUBLIC ACCOUNTANT'S LETTERHEAD

We have audited the attached Mortgagor's Certification of Sources of Financing and Project Development Costs and Construction Costs at _____ (Date) _____, pertaining to the New Jersey Housing And Mortgage Finance Agency project #____, _____ (Project Name) _____. These financial statements are the responsibility of the Developer. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards (and government auditing standards if applicable). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the attached Mortgagor's Certification of Project Development Cost and Construction Costs presents fairly, in all material respects, the actual cost of _____ (Project Name) _____.

We certify that we have no financial interest in the project other than in the practice of our profession.

We certify that equity contributions in the amount of $_____ have been made by the _____ (Sponsor's Name) _____ based upon audit of deposits made into the project construction loan account.

SIGNATURE BLOCK

SPONSOR'S NAME
PROJECT DEVELOPMENT COST
DATE

ITEM	Advanced To Date	Balance Payable	Total
Land and Land Carrying Costs			
1. Land			
2. Site Inspection and Appraisal			
3. Relocation			
4. Other			
Construction Costs		Schedule 1	
1. Contract			
2. Change Order Additions			
3. Change Order Deductions			
4. Contractor's Fee			
5. Less: Retention			
Development Fee (if applicable)			
Professional Services			
1. Architect's Fee			
2. Architect's Field Supervision			
3. Engineer's Inspection Fee			
4. Laboratory Fee			
5. Soil Investigation			
6. Land Surveys			
7. Legal Fee			
8. Loan Consultant			
9. HFA Field Representative			
10. Consultant Studies			
11. Other			
Selling and Renting Expenses			
1. Selling or Renting Fee			
2. Advertising and Promotion			
3. Other			
Carrying and Financing Expenses			
1. Interest			
2. Fees and Charges			
3. Real Estate Taxes			
4. Other			
5. Insurance			
6. HFA Processing Fee			
7. HFA Financing Fee			
8. Title and Recording Expenses			
9. Organization Expenses			

10. Building Permit—Local
11. Building Permit—State
12. Accounting

Minimum Escrow Requirement

Working Capital

Total Development Costs

NOTE: Categories provided here are for guidance. Actual categories should be in accordance with the project's Form 10b. Also, please note that all accruals must be reflected on this Schedule.

(SPONSOR'S NAME)
CONSTRUCTION COST SUMMARY (SCHEDULE 1)
(PERIOD)

Direct Construction Cost (Schedule 2)	$XXX
General Conditions (Schedule 3)	XXX
*Contractor's Fee	XXX
*Contractor's Fee—Per Change Orders (Schedule 4)	XXX
Bond	XXX
Total Construction Cost	$XXX
Construction Retention	$XXX

*Auditor's decision to include Schedule 4, or to add an additional schedule calculating the Contractor's Fee, should be based upon the nature of the Construction Contract and consultation with the Agency's Internal Audit Division.

(SPONSOR'S NAME)
DIRECT CONSTRUCTION COSTS (SCHEDULE 2)
(PERIOD)

Item No.	Item Description	Subcontracted Costs (Schedule 2A)	Materials And Sundry Pages (Schedule 2B)	Labor (Schedule 2C)	Total	Adjusted Construction Budget (Schedule 2D)

NOTE: Detail of individual line items should be provided here.
Categories should be consistent with the construction budget (trade payment breakdown).

Total direct construction costs:

(SPONSOR'S NAME)
SUBCONTRACTED COSTS (SCHEDULE 2A)
(PERIOD)

Item No.	Subcontractor	Base Contract	Extras	Change Orders	Total	Paid	To Be Paid

Provide detail of individual line items here. Individual line items and total amount should agree to the Subcontracted cost category of the Schedule of Direct Construction Costs (Schedule 2).

(SPONSOR'S NAME)
MATERIAL PURCHASES AND SUNDRY CHARGES (SCHEDULE 2B)
(PERIOD)

Item No.	Vendor Name	Cost	___% Overhead & Profit Allowance (If Applicable)	Total	Paid	To Be Paid

Provide detail of individual line items here. Individual line items and total amount should agree to materials category of the Schedule of Direct Construction Costs (Schedule 2).

(SPONSOR'S NAME)
LABOR USED IN TRADES (SCHEDULE 2C)
(PERIOD)

Item No.	Gross Payroll	Payroll Taxes, Insurance, and Benefits	Subtotal	___% Overhead & Profit Allowance (If Applicable)	Total

Provide detail of individual line items here. Individual line items and total amount should agree to the labor category of the Schedule of Direct Construction Costs (Schedule 2).

(SPONSOR'S NAME)
ADJUSTED CONTRACT AS PER CHANGE ORDERS (SCHEDULE 2D)*
(PERIOD)

Item No.	Description	Original Budget	Change Order Amount	Change Order Number	Extras Amount	Extras Number	Adjusted Budget
X	XXXX	$XX.XX	$XX.XX		$XX.XX		$XX.XX

Provide detail of individual line items here. Individual line items and total amount should agree to the adjusted budget category of the Schedule of Direct Construction Costs (Schedule 2).

*Auditor's decision to include this schedule should be based upon the nature of the construction contract and consultation with the Agency's Internal Audit Division.

(SPONSOR'S NAME)
GENERAL CONDITIONS (SCHEDULE 3)
(PERIOD)

GENERAL CONDITIONS:

Detail of line items that is consistent with the construction budget (trade payment breakdown) should be provided here:	$XXX
Total General Conditions:	$XXX

(SPONSOR'S NAME)
CALCULATION OF CONTRACTOR'S FEE PER CHANGE ORDERS (SCHEDULE 4)
(PERIOD)

Change Order Number	Base Amount of Change Order	% Contractor Fee Per Change Order	Contractor's Fee Per Change Order
1	$XX.XX	$XX.XX	$XX.XX
2	XX.XX	XX.XX	XX.XX
3	XX.XX	XX.XX	XX.XX
Total Contractor's Fee per Change Orders			$

(DEVELOPMENT NAME)
SCHEDULE OF EQUITY CONTRIBUTIONS
(PERIOD)

Item	Advanced To Date	Balance Payable	Total
Total Project Development Cost			
Less: Equity Contribution*			
Total HMFA Mortgage Loan			

*Detail should be provided of the nature of the various contributions.

SPONSOR'S NAME

ACCRUED EXPENSES
DATE

SUPPLIER	AMOUNT

FOOTNOTES

All disclosures required by generally accepted accounting and auditing standards should be made. Full disclosure regarding the existence or non-existence of related party transactions or relationships is required. In the case of related party transactions, all activity (including profit) should be quantified and set forth in the footnote. Transactions with related parties that are reimbursement of costs with no profit should also be disclosed.

APPENDIX E

ENGAGEMENT LETTER—DEVELOPMENT COSTS

(Letterhead of CPA)

(Date)

(Name & Address of Sponsor)

_____

_____

_____

_____

Gentlemen:

This confirms our engagement to audit the statement of Sources of Financing and Development Cost of the (Development) housing project funded by New Jersey Housing & Mortgage Finance Agency for (Sponsor) from inception through _____.

We will audit the Statement of Development cost as required by New Jersey Housing & Mortgage Finance Agency.

The Statement of Development Cost is the responsibility of the Company's management. Our responsibility is to express an opinion on whether costs billed by the Sponsor to New Jersey Housing & Mortgage Finance Agency are valid costs as determined by New Jersey Housing & Mortgage Finance Agency regulations, contract terms and generally accepted accounting principles.

Our audit will be conducted in accordance with generally accepted auditing standards (and government auditing standards if applicable). Those standards require that we plan and perform an audit to obtain reasonable assurance about whether the statement of development costs is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of development cost. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall development cost presentation. We believe that our audits provide a reasonable basis for our opinion.

We are independent Certified Public Accountants with respect to (Name of Developer) as defined in Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accountants.

We also state that we do not perform any accounting, bookkeeping, and/or consulting services for the referenced development other than the audit referred to herein.

We will be available, upon request, to discuss with you and the New Jersey Housing & Mortgage Finance Agency, any matters relating to our audit.

Whenever possible, we will utilize your personnel to reduce our own time requirements. They will provide us with a detailed trial balance and the supporting schedules we deem necessary. A list of such schedules will be furnished to you shortly after we begin the engagement.

The fee for the services indicated will not exceed $_____. It should be understood, however, that circumstances may arise that will require our services to be extended. If it appears that the maximum fee will be exceeded, we will discuss the alternatives with you in order to arrive at an acceptable solution.

If this letter correctly expresses your understanding, please sign the enclosed copy, obtain the approval of the New Jersey Housing & Mortgage Finance Agency, and return one (1) completely executed copy to us.

Thank you for the confidence you have placed in us by engaging us as your independent Certified Public Accountants. We hope this proves to be the beginning of a long and mutually beneficial association.

Very truly yours,

_____ _____

(Signature of C.P.A.) Date

Accepted:

(Name of Sponsoring Group)

BY:_____ _____

(Authorized Signature) Date

NEW JERSEY HOUSING & MORTGAGE FINANCE AGENCY

BY:_____ _____

Manager of Internal Audit Date

APPENDIX F

REPORT FORMAT—STANDARD DEVELOPMENT COSTS

CERTIFIED PUBLIC ACCOUNTANT'S
LETTERHEAD

We have audited the attached Mortgagor's Certification of Sources of Financing and Project Development Costs and Construction Costs at _____ (Date) _____, pertaining to the New Jersey Housing And Mortgage Finance Agency project #____, _____ (Project Name) _____. These financial statements are the responsibility of the Developer. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards (and government auditing standards if applicable). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence

supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the attached Mortgagor's Certification of Project Development Cost and Construction Costs presents fairly in all material respects the actual cost of _____ (Project Name) _____.

We certify that we have no financial interest in the project other than in the practice of our profession.

We certify that Equity contributions in the amount of $_____ have been made by the _____ (Sponsor Name) _____ based upon audit of deposits made into the project construction loan account.

We certify that payment has been made on all withdrawals on the project construction loan account, except those identified as outstanding, with the prior authorization of the Agency.

SIGNATURE BLOCK

SPONSOR'S NAME
PROJECT DEVELOPMENT COST
DATE

ITEM	Advanced To Date	Balance Payable	Total
Land and Land Carrying Costs			
1. Land			
2. Site Inspection and Appraisal			
3. Relocation			
4. Other			
Construction Costs		Schedule 1	
1. Contract			
2. Change Order Additions			
3. Change Order Deductions			
4. Contractor's Fee			
5. Less: Retention			
Development Fee (if applicable)			
Professional Services			
1. Architect's Fee			
2. Architect's Field Supervision			
3. Engineer's Inspection Fee			
4. Laboratory Fee			
5. Soil Investigation			
6. Land Surveys			
7. Legal Fee			
8. Loan Consultant			
9. HFA Field Representative			
10. Consultant Studies			
11. Other			
Selling and Renting Expenses			
1. Selling or Renting Fee			
2. Advertising and Promotion			
3. Other			
Carrying and Financing Expenses			
1. Interest			
2. Fees and Charges			
3. Real Estate Taxes			
4. Other			
5. Insurance			
6. HFA Processing Fee			
7. HFA Financing Fee			
8. Title and Recording Expenses			
9. Organization Expenses			
10. Building Permit—Local			
11. Building Permit—State			
12. Accounting			
a. Development Cost Certification			
b. HFA Construction Audit			
c. Requisition and Bookkeeping			

Minimum Escrow Requirement			
Working Capital	_____	_____	_____
Total Project Development Cost			
Less: Equity Contribution	_____	_____	_____
Total HMFA Mortgage Loan	_____	_____	_____

Notes:
1. The amounts will correspond to the final determination of Construction Costs rendered by the Technical Service Division of the New Jersey Housing & Mortgage Finance Agency, if available. If a determination is not available, these amounts will correspond to the Construction Cost Certification of the General Contractor.

SPONSOR'S NAME
EQUITY INVESTMENT
DATE

		Amount
Contributions of Cash		
Source of Funds	(See	$XXX
Cash Deposits	Schedule	XXX
Letter of Credit	Attached)	XXX
Development Fee Advanced		XXX
Other Fees Advanced		XXX
		$(1)
Contributions Not Requiring Cash		
___% of Development Fee		$XXX
___% of Other Fees Pledged		XXX
		$(2)
Total Equity Investment Contributed		$(1) + (2)
Total Equity Investment Required (___% of Total Development Cost Certified)		$(3)
Excess Equity Investment Due to Sponsor at Closing/ (Addtional Equity Investment Due from Sponsor at Closing)		$(1) + (2) −(3)

SPONSOR'S NAME
ACCRUED EXPENSES
DATE

SUPPLIER	AMOUNT

SPONSOR'S NAME
CONSTRUCTION LOAN ACCOUNT RECONCILIATION
DATE

Balance per Bank Statement				$XXX
Less: Outstanding Checks				
Number	Date	Payee	Amount	
			XXX	
			XXX	
			XXX	
Account Balance			XXX	

Note:

(1) An explanation for all checks outstanding longer than sixty (60) days is required.
(2) An explanation is required if there is an Account Balance.

FOOTNOTES

All disclosures required by generally accepted accounting and auditing standards should be made. Full disclosure regarding the existence or non-existence of related party transactions or relationships is required. In the case of related party transactions, all activity, (including profit) should be quantified and set forth in the footnote. Transactions with related parties that are reimbursements of costs with no profits should also be disclosed.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need
Application and Review Process
Proposed Repeals: N.J.A.C. 8:33-1 through 4
Proposed Recodification: N.J.A.C. 8:33-5.1 to 6.1
Proposed New Rules: N.J.A.C. 8:33-1 through 5

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq.
Proposal Number: PRN 1992-256.

Submit written comments by July 15, 1992 to:
John C. Scioli, Director
Health Policy, Planning and Certificate of Need
Room 604
New Jersey State Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

In 1971, The Department of Health was granted the authority, pursuant to N.J.S.A. 26:2H-1 et seq., to have 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, health care facility cost containment programs and all public and private institutions whether State, county, municipal, incorporated or not incorporated serving principally as nursing or maternity homes, residential health care facilities, or as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition(s).

Pursuant to this statute, the Department promulgated rules specifically for the certificate of need application and review process in order to clarify and execute the intent of this law. In brief, N.J.A.C. 8:33 defines the nature and scope of review procedures, scope of the rules, establishes guidelines and criteria for the submission of applications for certificate of need, and assigns fees for the processing of certificate of need applications.

Prior to this notice for repeal and new rules, the agency conducted an internal review of the entire chapter and determined that the existing rules required significant revision as a result of recommendations by the Governor's Commission on Health Care Costs to reform the State's health care system, and subsequent enactment of the Health Care Cost Reduction Act, P.L.1991, c.187, which became effective on July 31, 1991. The Act specifies changes in certificate of need process requirements and requires that the review process be consistent with the State Health Plan. Because the necessary revisions were so extensive, it was decided to delete the entire current chapter and replace it with a new N.J.A.C. 8:33.

The proposed new rules were reviewed in their entirety by the Health Care Administration Board. They are necessary to:

A. Further clarify the intent of N.J.S.A. 26:2H-1 et seq., N.J.S.A. 26:2H-8, and P.L.1991, c.187;

B. Clearly define and refine public policy and the various certificate of need process requirements;

C. Ensure the equitable treatment of all applications;

D. Enable the review process to become a more effective tool for implementing the State Health Plan, State policies, and State health planning regulations; and

E. With the above, improve the effectiveness and efficiency of the certificate of need process.

The proposed new rules:

A. Expand certificate of need review requirements to include the initiation by any person of a health care service which is the subject of a health planning rule (see N.J.A.C. 8:33-1.3);

B. Outline the procedure for determination of a health facility (see N.J.A.C. 8:33-2.2);

C. Identify the process for requesting a waiver from certificate of need requirements by a physician who initiates a health care services which is the subject of a health planning regulation or who purchases major moveable equipment whose total cost exceeds the monetary threshold (see N.J.A.C. 8:33-2.3);

D. Identify the process for requesting a waiver from the certificate of need requirements by a health maintenance organization which initiates a health care service, or modernizes, renovates or constructs a health care facility (see N.J.A.C. 8:33-2.4);

E. Provide for deregulation of some types of transfer of ownership transactions under certain circumstances (see N.J.A.C. 8:33-3.3);

F. Permit the transfer of ownership of an unimplemented certificate of need under certain circumstances (see N.J.A.C. 8:33-3.3);

G. Change the requirements for decrease in number of licensed beds with a capital expenditure less than the monetary threshold from full review to expedited review process (see N.J.A.C. 8:33-3.4);

H. Increase the monetary thresholds applied to applications for certificate of need for the modernization/renovation/construction of a health care facility and acquisition of major moveable equipment to $1 million (see N.J.A.C. 8:33-3.6 and 3.7);

I. Expand review requirements to include modernization, renovation, construction of a facility by any person whose total cost is over the monetary threshold if the facility type is the subject of a health planning regulation adopted by the Department (see N.J.A.C. 8:33-3.6);

J. Provide for deregulation from certificate of need of a newly established minor moveable equipment category, such as telephone and computer systems and computerized axial tomography equipment (see N.J.A.C. 8:33-3.8);

K. Change the requirements for changes in cost to approved certificate of need applications (see N.J.A.C. 8:33-3.9);

L. Change the requirements for changes in scope to approved certificate of need applications (see N.J.A.C. 8:33-3.9);

M. Specify the duration of a certificate of need and eliminate the extension of time process (see N.J.A.C. 8:33-3.10);

N. Establish the State Health Plan as the basis upon which certificate of need applications shall be approved through a full review process (see N.J.A.C. 8:33-4.1);

O. Increase the certificate of need application filing fee in accordance with P.L.1991 c.187, ranging from $5,000 to $100,000 (see N.J.A.C. 8:33-4.3);

P. Outline and clarify the statutory provision that requires the Commissioner to limit approval of certificates of need for capital construction/major moveable projects for hospitals that would be financed by the New Jersey Health Care Facilities Financing Authority to a Statewide total of $225 million per year for all projects for a three-year period beginning January 1, 1992 (see N.J.A.C. 8:33-4.9);

Q. Provide for the requirement of 15 percent equity for all types of health care facilities (see N.J.A.C. 8:33-4.10);

R. Outline the criteria for evaluation of an applicant's track record in making certificate of need determinations (see N.J.A.C. 8:33-4.10);

S. Outline the statutory review process of certificate of need applications by the local advisory board and the State Health Planning Board (see N.J.A.C. 8:33-4.13 and 4.14); and

T. Establish an expedited review process for the review of projects which are not specifically addressed in the State Health Plan but statutorily require certificate of need review, such as community-based primary care centers, outpatient drug and alcohol counseling, outpatient mental health services, residential health care, basic life support ambulance and invalid coach services, mandatory renovations, and decreases in licensed beds with capital expenditures less than the monetary threshold (see N.J.A.C. 8:33-5.1);

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 ..."

New Jersey's Certificate of Need Program has been in operation since 1971, when the Health Care Facilities Planning Act was enacted into law. The objective now is to refine and improve this system to increase efficiency and to do so without weakening any one of the three legs of the tripod of health care: quality, cost, and access.

The intent of the new rules is to address the spirit and intent of the 1971 Health Care Facilities Planning Act, as amended, by maintaining a Certificate of Need Program that promotes quality, cost-effective, and accessible services. These rules also implement the recommendations of the Governor's Commission on Health Care Costs and the statutory requirements of P.L.1991, c.187 and ensure that all applications are treated equitably; that rules are more clearly written to ensure that better recommendations received by the Department from all participants in the review process; that the review process becomes a more effective tool for implementing State Plans, policies, and planning rules; and to improve efficiency by streamlining various aspects of the review process. In this way, the certificate of need process can continue to help ensure that all citizens of the State have access to quality, cost-effective health services and facilities.

Economic Impact

These rules are proposed to implement the provisions of State and Federal laws to 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.

The proposal incorporates the provisions of P.L.1991, c.187 which establishes a certificate of need application filing fee with a minimum of $5,000 and a maximum of $100,000 to be borne by the certificate of need applicant. Furthermore, for projects greater than $15 million, additional costs will be incurred by institutions which will be required to submit independently verified historical and projected financial and utilization information as part of the certificate of need application.

However, the proposal significantly and realistically increases the various monetary thresholds which determine whether or not a certificate of need application is necessary. This will serve to relieve health care facilities of the requirement and economic burden of filing applications for relatively minor, low-cost projects.

In addition, the provisions which delete specific types of minor movable equipment acquisition from the certificate of need review process also will serve to relieve health care facilities of the requirement and economic burden of filing certificate of need applications for projects which do not have a significant impact on cost, access or quality of health care.

Regulatory Flexibility Analysis

These proposed new rules impose reporting, recordkeeping and other compliance requirements on the Department of Health and entities, including small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq, which propose to provide a health care service or establish a health care facility in accordance with the provisions of State laws and rules. The requirements imposed vary with each situation or application, but may include fees paid to professionals such as architects, planners, engineers, attorneys, accountants and other advisers. The basic requirements for an application for a certificate of need are contained in this chapter, with specific requirements for particular health care services found in the chapters immediately following N.J.A.C. 8:33 in the New Jersey Administrative Code. However, no exemptions or lesser requirements can be provided to small businesses due to statutory provisions which mandate the promotion of health and high quality health care at a reasonable cost to all citizens of the State.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:33.

Full text of the proposed new rule follows:

CHAPTER 33
CERTIFICATE OF NEED APPLICATION AND REVIEW PROCESS

SUBCHAPTER 1. GENERAL PROVISIONS

8:33-1.1 Purpose; scope

(a) The purpose of these rules is to implement the provisions of the Health Care Facilities Planning Act, P.L. 1971, c.136, as amended by P.L. 1978, c.83 and the Health Care Cost Reduction Act, P.L. 1991, c.187. These rules may be amended as necessary to best implement the statutory provisions and to reflect changing economic and systemic conditions within the health care system.

(b) The Health Care Facilities Planning Act provides that no health care facility shall be constructed or expanded, and no new health care service shall be instituted, except upon application for and receipt of a certificate of need. It further provides that no agency of the State or of any county or municipal government shall approve any grant of funds for, or issue any license to, a health care facility which is constructed or expanded, or which institutes a new health care service, in violation of the provisions of this act, N.J.S.A. 26:2H-7. Finally, the Act states:

"No government agency and no hospital service corporation organized under the laws of the State and no other purchasers of health care services shall purchase, pay for or make reimbursement or grant-in-aid for any health care services provided by a health care facility unless at the time the service was provided, the health care facility possessed a valid license or was otherwise authorized to provide such service." N.J.S.A. 26:2H-18.

(c) All inquiries regarding certificate of need matters should be directed to:

Certificate of Need Program
New Jersey State Department of Health
CN 360, Room 604
Health-Agriculture Building
John Fitch Plaza
Trenton, New Jersey 08625-0360
(609) 292-6552

(d) In addition, before filing a certificate of need application, prospective applicants are encouraged to contact the local advisory board (LAB) in the service area(s) in which their proposed health care service(s) or facility is planned to examine the relationship of the proposed project with the LAB's plans and the State Health Plan. If the proposed service area overlaps more than one planning region, the applicant should consult with each of the affected LABs.

8:33-1.2 General statements of public policy and rules of general application

(a) It is the public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided, properly utilized, and at a reasonable cost are of vital concern to the public health. As provided by N.J.S.A. 26:2H-1, in order to provide for the protection and promotion of the health of the 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 related health care services planning, and health care facility cost containment programs, as well as planning with all public and private institutions whether State, county or municipal, incorporated or not incorporated, serving principally as nursing or maternity homes, residential health care facilities, or as facilities for the prevention, diagnosis, or treatment of human disease, pain, injury, deformity or physical condition(s). All such institutions shall be subject to the provisions established herein.

(b) The Commissioner, to implement the provisions and purposes stated above, shall have the power to inquire into the accessibility to and availability of health care services and the operation of health care facilities and to conduct periodic inspections of such facilities with respect to the fitness and adequacy of the premises, equipment, personnel, rules and bylaws and the adequacy of financial resources and resources of future revenues.

(c) No certificates of need shall be issued unless the action proposed in the application for such certificate is consistent with the health care needs identified in the State Health Plan and the action is necessary to provide required health care in the area(s) to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health care services in the region or Statewide, and will contribute to the orderly development of adequate and effective health care

services. In making such determinations there shall be taken into consideration the availability of facilities or services which 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 health personnel supply in the several professional disciplines, the accessibility to and availability of health care services to low income persons, and such other factors as may be established by regulation. In the case of an application by a health care facility established or operated by any recognized religious body or denomination, the needs of the members of such religious body or denomination for care and treatment in accordance with their religious or ethical convictions may be considered to be public need.

(d) Certificate of need applications shall be reviewed for conformance with the rules in effect on the date the application is deemed complete for processing.

(e) Recommendations concerning certificates of need shall be governed and based upon the principles and considerations set forth in these rules, as well as applicable State laws, rules and policies.

(f) Certificates of need shall be issued by the Commissioner based upon criteria and standards promulgated by the Commissioner and the State Health Planning Board and approved by the Health Care Administration Board. The Commissioner may approve or deny an application for a certificate of need if the approval or denial is consistent with the State Health Plan. If any application is denied, the applicant may appeal the decision to the Health Care Administration Board.

(g) No decision shall be made by the Commissioner contrary to the recommendations of the State Health Planning Board or the local advisory board concerning a certificate of need application or any other matter, unless the State Health Planning Board and the applicant shall have been granted the opportunity for a fair hearing in accordance with 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.

8:33-1.3 Definitions

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

"Accepted for processing" means an application has been determined to be complete by the Department and has been entered into the applicable review cycle.

"Applicant" means an individual, a partnership, a corporation (including associations and joint-stock companies), a State, or a political subdivision or instrumentality (including a municipal corporation) of a State that will be the licensed operator of the proposed service, facility or equipment, which will have overall responsibility for the health care service to be provided.

"Bed capacity" means the total number of beds, listed by health care service within the facility, which are recognized on the facility's current license.

"Capital-related operating costs" means costs pertaining to buildings, fixtures, and moveable equipment, including depreciation, interest, rent/lease and property taxes.

"Change in cost" means any cost in excess of the total approved capital cost in the most recent certificate of need approval for the project.

"Change in financing" means an increase in financing related charges for the project or an increase in the annual interest rate for the financing.

"Change in the method of financing" means a change in the source of financing for a project (for example a change from tax-exempt bonds to taxable bonds), or a change in the amount of project costs which are to be paid from cash, fund raising, grants or other sources other than mortgages, loans or leases.

"Change in project scope" is defined as a deviation from the approved certificate of need which results in a change in any one of, but not limited to, the following:

1. Number of beds by service;
2. Change in complement of major movable equipment;
3. Array of services;
4. Service area;
5. Access or availability to the approved project;
6. Population served including the percentage of Medicaid and medically indigent required to be served as a condition of certificate of need approval; or
7. Square footage.

"Commissioner" means the State Commissioner of Health.

"Construction" means the erection, building, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including fixed equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

"Construction cost factor" means the inflation factor calculated by the Department and added to the certificate of need approved project cost. This construction cost factor is calculated as a factor of the time between certificate of need submission and initiation of construction, and is based on a standardized industry measurement of construction cost inflation.

"Deferral" means a suspension of the review of a submitted application for a limited period of time.

"Demonstration/research project" means a health care service, technology, equipment or modality not currently available in the State.

"Department" means the New Jersey State Department of Health.

"Discontinuance" means any health care facility which has closed or substantially ceased operation of any of its beds, facilities, services, or equipment for a period of two succeeding years.

"Equipment system" means a group of equipment units, which operate together to perform a function. For example, the central processing unit of a computer and its peripheral equipment comprise an equipment system. The bedside cardiac monitor units and the nursing console form an equipment system.

"Equipment unit" is an apparatus that can perform its designated function by itself without the addition of any other component.

"Expedited review process" means the review by the Department of Health of a certificate of need application meeting certain specified criteria. Such a review process does not include a review by the local advisory board or the Statewide Health Planning Board.

"Financing charges" means charges, fees and costs incurred by a health care facility in connection with obtaining financing for a project, including, but not limited to: points, discount, financing fees and other charges by the financing agency, authority, bank or trustee; interest on borrowings during construction, net of any interest earnings derived from the investment of borrowed funds; fees of bond counsel, counsel to the lender and counsel to the trustee, if any; fees of accountants and feasibility or other financial consultants; a reserve for debt service equal to one year's principal and interest; charges for title insurance, mortgage insurance, bond insurance or other insurance required in connection with the financing; and rating service fees, printing costs and other costs incurred in connection with the financing; provided that where financing is being provided with tax exempt bonds, an application for a certificate of need will be deemed to include a reserve for debt service of one year's principal and interest and a reasonable underwriter's discount or financing fee, as approved by the bond issuing authority.

"Fixed equipment" means equipment which is attached to the physical plant of a facility.

"Full review process" means the review of an application by the local advisory board(s) and the Statewide Health Planning Board, as well as the Department of Health.

"Health care facility" means the facility or institution, whether public or private, engaged principally in providing services for health maintenance organizations, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease

hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, residential health care facility and bioanalytical laboratories (except as specifically excluded hereunder) or central services facility serving one or more such institutions but excluding institutions that provide healing solely by prayer and excluding such bioanalytical laboratories as are independently owned and operated, and are not owned, operated, managed or controlled in whole or in part, directly or indirectly by any one or more health care facilities and the predominant source of business of which is not by contract with health care facilities within the State of New Jersey and which solicit or accept specimens and operate predominantly in interstate commerce.

"Health care service" means the preadmission, outpatient, inpatient, and postdischarge care provided in or by a health care facility, and such other items or service as are necessary for such care, which are provided by or under the supervision of a physician for the purpose of health maintenance or diagnosis or treatment of human disease, pain, injury, disability, deformity, or physical condition, including, but not limited to nursing service, home care nursing and other paramedical service, ambulance service, service provided by an intern, resident in training or physician whose compensation is provided through agreement with a health care facility, laboratory service, medical social service, drugs, biologicals, supplies, appliances, equipment, bed and board, but excluding services provided by a physician in his or her private practice, unless the service is the subject of a health planning regulation adopted by the Department of Health or involves the acquisition of major moveable equipment as specified herein, and services provided by volunteer first aid, rescue and ambulance squads as defined in the New Jersey Highway Safety Act of 1971, P.L. 1971, c.351.

"Health maintenance organization" or "HMO" means an entity which has received a certificate of authority to provide prepaid health care services pursuant to the Health Maintenance Organizations Act, P.L. 1973, c.337 (N.J.S.A. 26:2J-1 et seq.) inclusive of any amendments which may be made thereto.

"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 Health to serve as the regional health planning agency for a designated region in the State.

"Major moveable equipment" means equipment, 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 shall include all equipment which receives premarketing 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 in the chapter Appendix, Exhibit 3, incorporated herein by reference.

"Mandatory replacement of equipment and/or mandatory renovations to facilities" means replacement of equipment or renovation for one or more of the following reasons:

1. Replacement or renovation is required as a result of a mandate from any Federal, State, county or municipal governmental agency; or

2. Replacement or renovation is required to operate the licensed health care facility without harm or major disruption to the care of patients or to the health and safety of patients, providers, or employees of the health care facility. Examples of this type of replacement would include a breakdown of a heating and/or cooling plant within a facility or a malfunction rendering inoperable the power plant of a facility.

"Medically underserved" groups refer to 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.

"Medical arts building" or "medical office building" means a building whose primary function is to provide office space for a person or persons engaged in the private practice of medicine.

"Minor moveable equipment" means equipment which does not fall within the definition of major moveable equipment stated herein.

"Modernization/renovation" means the alteration, expansion, major repair, remodeling, replacement, and renovation of existing buildings, and the replacement of obsolete equipment of existing buildings.

"Null and void," "nullification," and "nullify" means the revocation of a certificate of need by the Commissioner prior to the expiration of the certificate.

"Operator" of a health care facility means the person or entity which is the holder of the facility license and which has the ultimate responsibility for the provision of health care services in the facility in accordance with applicable legal and professional standards.

"Optional replacement of equipment" means replacement equipment which will perform more analyses, operate more efficiently, economically or reliably or in some manner improve operations in a unit, but which maintains existing capability and does not include upgrading to a newer technology that expands the range of service.

"Person" shall include a corporation, company, association, society, firm, partnership and joint stock company, as well as an individual.

"Principal" means any individual, partnership, or corporation with an ownership interest in a health care facility or service, or a general or managing partner in a limited partnership.

"Project cost" means costs submitted in those dollars which would be needed to complete the project over the anticipated period of construction, if construction were to begin at the time of certificate of need submission.

"Provider of health care" means an individual:

1. Who is a direct provider of health care service in that the individual's primary activity is the provision of health care services to individuals or the administration of health care facilities in which such care is provided and, when required by State law, the individual has received professional training in the provision of such services or in such administration; or

2. Who is an indirect provider of health care in that the individual:

i. Holds a fiduciary position with, or has a fiduciary interest in, any entity described in subparagraph 2ii(2) or subparagraph 2ii(4) below; provided, however, that a member of the governing body of a county or any elected official shall not be deemed to be a provider of health care unless he is a member of the board of trustees of a health care facility or a member of a board, committee or body with authority similar to that of a board of trustees, or unless he participates in the direct administration of a health care facility; or

ii. Received, either directly or through his or her spouse, more than one-tenth of his or her gross annual income for any one or more of the following:

(1) Fees or other compensation for research into or instruction in the provision of health care services;

(2) Entities engaged in the provision of health care services or in research or instruction in the provision of health care services;

(3) Producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care services; or

(4) Entities engaged in producing drugs or such other articles.

"Service area" means a geographic area, generally a county, within which the facility or service is located. However, definitions of service areas specified in approved planning rules shall take precedence over this general definition.

"Similar equipment units" means pieces of equipment which are similar in function and appearance. For example, a manually operated bed and an electrically operated bed are similar units. A 1,000 power microscope and 500 power microscope are similar units. A coulter counter and a microscope are not similar units.

"State Health Planning Board" means the board established pursuant to section 10 of P.L. 1991, c.187, to prepare and review the State Health Plan and to conduct certificate of need review activities.

"Termination" means a certificate of need is not extended by the Commissioner beyond its expiration date.

"Total capital cost" means all costs associated with the proposed project including studies and/or surveys; architect, engineer, legal

fees; plans and specifications; supervision and inspection of site and buildings; demolition, renovation, construction; fixed and major moveable equipment, purchase of land and buildings; lease and/or rentals; developmental and/or start up costs, but excluding carrying and financing cost and/or fees, interest and debt service reserve fund. Total capital cost excludes any contingency amounts.

"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, debt service reserve fund. Total project cost excludes any contingency amounts.

"Withdrawal" means a voluntary written request by a certificate of need applicant to the Department to cease any further review of a submitted application submitted before the Commissioner acts on the application. Such a request shall be considered final by the Department and no further consideration or review shall be given to the "withdrawn" application.

SUBCHAPTER 2. APPLICABILITY OF CERTIFICATE OF NEED REQUIREMENTS

8:33-2.1 Types of review

There will be two types of review of certificate of need applications: full review, as described in N.J.A.C. 8:33-4.1(a), and expedited review, as described in N.J.A.C. 8:33-4.1(b). The full review process applies to all certificate of need applications not specifically identified herein as meeting the criteria for expedited review.

8:33-2.2 Determination of a health care facility or service

(a) It is incumbent upon all health care facilities and services to comply with the certificate of need requirements set forth in statute and rules promulgated pursuant thereto. If such automatic compliance is not forthcoming, the Commissioner, consistent with the "public policy of the State 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) and in accordance with the definitions of a health care facility and a health care service, as specified in N.J.S.A. 26:2H-2 and 26:2H-7, shall determine whether a proposed or existing system or modality of health care delivery constitutes a health care service or health care facility subject to certificate of need requirements. If so designated, such facility shall be subject to all of the provisions of the Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) and rules promulgated pursuant thereto.

(b) In making this determination, the Commissioner may choose to request the advice and comment of the State Health Planning Board and/or the local advisory board within whose boundaries the proposed or existing health care modality in question originates.

(c) Those factors which shall be considered relevant to the determination of a health care facility or service shall include, but not be limited to:

1. The types of health care service and facilities, and changes thereto, which are required to obtain certificate of need approval by the provisions of this subchapter;
2. The type of health care service delivered or to be delivered, its impact on existing health care facilities and providers and its potential effect on the health care delivery system;
3. The apparent costs of equipping, staffing and operating the health care service and the resultant cost to all payors and consumers of health care;
4. The degree of complexity in terms of medical technology, equipment, and the medical, para-medical and administrative staffing required to provide the health care service;
5. The evaluation of how historically established referral patterns will be impacted upon by the proposed service; and
6. The financial arrangements for the payment or reimbursement of health care services available to both the service entity in question and to those persons receiving such care.

(d) When a determination is made that a health care service/health care facility is deemed to require certificate of need review, the person(s) involved shall be so notified by the Commissioner. The Commissioner's decision shall be a final agency decision.

8:33-2.3 Waivers to certificate of need requirements for physicians

(a) A physician who initiates a health care service which is the subject of a health planning requirement, or purchases major moveable equipment whose total cost is over $1,000,000, may apply to the Commissioner for a waiver of the certificate of need requirement.

(b) The application by a physician for a waiver of the certificate of need requirement may be made if the following criteria are met:

1. The equipment or health care service is such an essential, fundamental and integral component of the physician's practical specialty, that the physician would be unable to practice his or her specialty according to the acceptable medical standards of that specialty without the health care service or equipment;
2. The physician bills at least 75 percent of his or her total amount of charges in the practice specialty which uses the health care or equipment; and
3. The health care service or equipment is not otherwise available and accessible to patients pursuant to standards identified in the State Health Plan or in specific health planning regulations guiding the review of the proposed service or equipment. However, where these standards are not identified in either the State Health Plan or the relevant health planning rules, a physician may satisfy this criteria by documenting to the satisfaction of the Commissioner, that the proposed service or equipment is not otherwise available or accessible for geographic, financial or other reasons to patients at a health care facility which has received certificate of need approval for the health care service or equipment within 30 minutes travel time of the physician's proposed site for the planned service or equipment.

(c) The physician's documentation in support of his or her petition for a waiver shall include, but may not be limited to, a detailed description of the service or equipment, a statement of the costs related to the implementation, a detailed explanation of patients to be served, detailed assessment of the costs, risks and benefits to patients and an assessment of the impact that the subject of the petition will have on the health care delivery system in general, and on the specific providers of that service in the area in which the service will be located. The Commissioner may make inquiries of existing providers in the area proposed to be served to determine the impact of those providers. In addition, the physician shall identify how his or her service will provide access to persons who are unable to pay the full cost of care and how the service will advance the principles of P.L. 1991, c.187 concerning access, quality and cost containment.

(d) The satisfaction of (b)1, 2, and 3 above will be judged according to the following standards:

1. In assessing a physician's petition for a waiver of the certificate of need requirements, the Commissioner shall be guided by the principles set forth in P.L. 1991, c.187.
2. The certificate of need requirement will not be waived for any health care service proposed to be provided by a physician to inpatients.
3. The certificate of need requirement will not be waived for any diagnostic or therapeutic health care service proposed to be offered by a physician in an outpatient setting when the Commissioner finds that the service as proposed represents an unnecessary risk to patients (for example, services that can only be offered by Department regulation in acute care settings with appropriate backup).
4. A petition for a waiver may not be made concurrently with the submission by the physician seeking the waiver of a certificate of need application for the service. If such an application has been submitted, it will be deferred automatically into the first available batch following a determination on the waiver.

(e) The Commissioner shall make a determination about whether to grant or deny the waiver based upon the criteria set forth at (b)1 through 3 above within 120 days from the date the request for the waiver is received by the Commissioner and shall so notify the physician who requested the waiver. If the request is denied, the Commissioner shall include in that notification the reason for denial of the waiver. If the request is denied, the proposed health care service or the proposed acquisition of major moveable equipment

shall be subject to certificate of need requirements pursuant to this chapter. The Commissioner's determination whether to grant or deny the waiver shall be a final agency decision.

8:33-2.4 Waivers to certificate of need requirements for health maintenance organizations

(a) A health maintenance organization which furnishes at least basic comprehensive care health services on a prepaid basis to enrollees either through providers employed by the health maintenance organization or through a medical group or groups which contract directly with the health maintenance organization may apply to the Commissioner for a waiver of certificate of need requirements for:

1. The initiation of any health care service as provided in section 2 of P.L. 1971, c.136 (N.J.S.A. 26:2H-2);

2. The initiation by any person of a health care service which is the subject of a health planning regulation adopted by the Department;

3. The expenditure by a licensed health care facility of over $1,000,000 for modernization or renovation of its physical plant, or for construction of a new health care facility; or

4. The modernization, renovation or construction of a facility by any person, whose total project cost exceeds $1,000,000, if the facility-type is the subject of a health planning regulation adopted by the Department.

(b) The application by a health maintenance organization for a waiver of the certificate of need requirements may be made if the following criteria are met:

1. The initiation of the health care service or the modernization, renovation or construction is in the best interests of State health planning; and

2. The health maintenance organization is in compliance with the provisions of P.L. 1973, c.337 (N.J.S.A. 26:2J-1 et seq.) and complies with the provisions of subsection d of section 3 of P.L. 1973, c.337 (N.J.S.A. 26:2J-3) regarding notification to the Commissioner.

(c) In its petition for a waiver, the health maintenance organization must provide sufficient information, which shall include, but need not be limited to, a detailed description of the service or equipment, statement of the costs related to the implementation, detailed explanation of patients to be served, detailed assessment of the costs, risks and benefits to patients and an assessment of the impact that the subject of the petition will have on the health care delivery system in general, and on the specific providers in the area in particular. The Commissioner may make inquiries of existing providers in the area proposed to be served to determine the impact on those providers.

(d) The satisfaction of (b)1 and 2 above will be judged according to the following standards:

1. In assessing a health maintenance organization's petition for a waiver of the certificate of need requirements, the Commissioner shall be guided by the principles set forth in P.L. 1991, c.187.

2. The certificate of need requirement will not be waived for any health care service proposed to be provided by a health maintenance organization to inpatients.

3. The certificate of need requirement will not be waived for any diagnostic or therapeutic health care service proposed to be offered by a health maintenance organization in an outpatient setting where the Commissioner finds that the service as proposed represents an unnecessary risk to patients (for example, services that can only be offered by Department regulation in acute care settings with appropriate backup).

4. A petition for a waiver may not be made concurrently with the submission by the health maintenance organization seeking the waiver of a certificate of need application for the service. If such an application has been submitted, it will be deferred automatically into the first available batch following a determination on the waiver.

(e) The Commissioner shall make a determination about whether to grant or deny the waiver within 45 days from the date the request for the waiver is received by the Commissioner and shall so notify the health maintenance organization requesting the waiver. If the request is denied, the Commissioner shall include in that notification the reason for denial of the waiver. If the request is denied, the proposed health care service or the proposed acquisition of major moveable equipment shall be subject to certificate of need requirements pursuant to this chapter. The Commissioner's determination whether to grant or deny the waiver shall be a final agency decision.

SUBCHAPTER 3. TYPES OF CERTIFICATE OF NEED APPLICATIONS

8:33-3.1 Initiation of health care service

Initiation of any of the specified standard categories of health care services identified in the chapter Appendix, Exhibit 2, incorporated herein by reference, or the modification, replacement or expansion of any health care service or facility, regardless of the amount of capital or operating expenditures requires a certificate of need.

8:33-3.2 Termination of service and reduction of bed capacity

(a) Any health care facility which has closed or substantially ceased operation of any of its beds, facilities, services, or equipment for any consecutive two-year period shall require a certificate of need before reopening such beds, facilities, services, or equipment.

(b) The Commissioner may amend a facility's license to reduce that facility's licensed bed capacity to reflect actual utilization at the facility if the Commissioner determines that 10 or more licensed beds in the health care facility have not been used for any consecutive two-year period. For the purposes of this subsection, the Commissioner may retroactively review utilization at a facility for any two-year period beginning on or after January 1, 1990.

(c) Voluntary closure of a facility or discontinuance of all of its services does not require a certificate of need, except that the closure of a general acute hospital requires a certificate of need and shall follow the full review process. Where a certificate of need is not required pursuant to this section, written notification shall be filed, with the Department's Division of Health Facilities Evaluation and Licensing and with the Certificate of Need Program, 120 days prior to the proposed closure of a facility or discontinuance of all of its services and full compliance with all applicable regulations for closure/discontinuance is required.

(d) Discontinuance of a component service of a hospital requires a certificate and shall follow the full review process. Discontinuance of a component service of any other health care facility requires a certificate of need and shall follow the expedited review process.

8:33-3.3 Transfer of a health care service/facility

(a) A certificate of need is required for a transfer of ownership of operating health care facilities, beds, services, or equipment, that are the subject of health planning regulation according to the rules in this chapter. Applications for transfer of ownership shall follow the expedited review process, except for those involving general acute hospital facilities or services, which shall follow the full review process.

(b) If a transfer of ownership occurs without a required certificate of need subsequent to licensure, then a daily penalty as established in licensing rules promulgated by the Department may be assessed on the "new" owner and/or operator from the date of the unapproved transfer to the date the Department grants formal ownership approval to the "new" owner and/or operator.

(c) In the review of a transfer of ownership application, the prospective owner(s)/operator(s) will be evaluated by the Department on the basis of character and competence and track record with regard to past and current compliance with state licensure, applicable Federal and certificate of need requirements, as specified in N.J.A.C. 8:33-4.9 and 4.10.

(d) A prospective owner approved for any transfer of ownership shall be subject to the same Department of Health certificate of need, licensure, and reimbursement requirements as the current owner, including continuing compliance with any applicable certificate of need conditions, except that the Commissioner may amend the requirements to relate to changes in the health care system.

(e) These rules apply to ownership by any individual, partnership, corporation, or other entity in any entity which is the licensed operator of a facility or which owns the facility's real property. Except as otherwise provided in (g) below, a transfer of ownership which

requires a certificate of need is defined as an acquisition or transfer which will increase or establish an ownership interest in a health care facility, as defined in N.J.A.C. 8:33-1.3, through purchase, lease, purchase or lease option, gift, donation, exchange, or by any other means. Types of ownership interests to which these rules apply include, but are not limited to, the following:

1. Shares of stock or any other type of security in a private business corporation;

2. Partnership interests in a general or limited partnership;

3. Ownership of a proprietorship or any other entity which operates a health care facility; and

4. Holding title to real property which is used to operate health care facility, or having a leasehold interest in such real property.

(f) Applications for transfer of ownership shall specify each and every principal in the entity which is the prospective owner and shall account for 100 percent of the ownership of the facility, except that if the ownership and operation is a publicly held corporation, each and every principal who has a 10 percent or greater interest in the corporation must be identified by name, home address and percentage of interest.

(g) The following types of changes by operating health care facilities do not require certificate of need approval by the Department as transfers of ownership, but do require prior written notice to the Division of Health Facilities Evaluation and Licensing of any such sale and identification of ownership changes.

1. The purchase or sale of less than 10 percent of the outstanding stock (preferred or common) in a business corporation, except that any purchase of stock which results in an individual holding 10 percent or more of the corporation's outstanding stock when the individual previously held less than 10 percent of the stock shall require certificate of need approval;

2. The purchase or sale of limited partnership interests in a limited partnership, where a written limited partnership agreement prohibiting participation in management of the partnership by limited partners has been submitted to the Department. This exception shall not apply to general or managing partners or to any partner who participates in management;

3. A change in the membership of a nonprofit corporation, where the members are individuals or nonprofit corporations, and there is no purchase or sale of assets.

4. A change in ownership which does not involve acquisition of an ownership interest by a new principal; that is, the change involves only the percentage owned by the principals in the entity which is the licensed operator of the facility or involves withdrawal of one or more principals from ownership in the facility;

5. The death of a principal in a health care facility, which shall be reported to the Department's Licensure Program, together with the identity of the heir(s) to the ownership interest of the deceased principal. If the heir(s) intends to retain the ownership interest, the heir(s) shall be subject to investigation of licensure track record. Otherwise, the Department may accept an application to transfer the heir's ownership interest. Any other transfer ownership which occurs by operation of law shall be reported in the same manner; and

6. A transfer, which involves a change in the controlling legal entity, but not in individuals with ownership interests, including, but not limited to:

i. A change in the type of organizational entity owning the facility only, with no change in the principals with ownership interests (for example, a change from a corporation to a partnership or vice versa);

ii. The merger or consolidation of a corporation with or into its wholly-owned subsidiary;

iii. The merger or consolidation of a corporation with or into a corporation with identical common ownership;

iv. A transfer of assets to an entity with identical common ownership;

v. A transfer of assets to a wholly-owned subsidiary corporation;

vi. A transfer of assets from a wholly-owned subsidiary corporation to its parent;

vii. A transfer of stock to a wholly-owned subsidiary; or

viii. A transfer of stock to an entity with identical common ownership.

(h) Any person or entity which loans money for the construction of, capital improvements to, or operation of a health care facility may hold as security therefore such liens, mortgages, pledges, and other encumbrances on the assets, real property, or stock or other ownership interests in the health care facility as provided in any loan or security agreement with the borrower and to the fullest extent permitted by law. If a lender acquires an interest in all of the assets or ownership of a health care facility upon foreclosure of any such security interest upon default, such lender shall promptly make application for a certificate of need in accordance with this subchapter and will be permitted to operate the facility pending review of said application provided that such lender shall demonstrate to the satisfaction of the Department that the health, safety and welfare of the patients will be maintained in the interim.

(i) Except as otherwise provided in (j) below, the transfer of approved certificates of need prior to licensure is prohibited. Proceeding with any such transfer shall nullify the certificate of need and preclude licensure as a health care facility.

(j) At the discretion of the Department, an exception to the prohibition, at (i) above, on the sale of certificates of need prior to licensure may be permitted and the certificate of need process for transfer of ownership may be allowed to proceed on an unimplemented certificate of need if the types of changes set forth at 1 through 6 above apply. Applicants for transfers of unimplemented certificates of need demonstrate in the application that the transfer will not adversely affect the financial feasibility of the project.

(k) If a lender or creditor acquires an ownership interest in the physical assets of an unlicensed certificate of need project through foreclosure on a mortgage, lien, or other security interest, the certificate of need ordinarily will be automatically nullified. However, the Commissioner may consider the transfer of the certificate of need to the new owner of the site where the certificate of need approved project has been substantially completed as determined by the Commissioner, and where the Commissioner finds that the completion of the project would be in the best interest of the population to be served. The Commissioner must seek the recommendation of the State Health Planning Board and the State Health Planning Board may seek the recommendation of the local advisory board. The State Health Planning Board may appeal a decision of the Commissioner which is contrary to its recommendation.

(l) If the facility being transferred has any partially implemented or unimplemented certificate of need approvals, an application for transfer of ownership will not be accepted for processing until the unimplemented components of the certificate of need have been completed. The Commissioner can waive this requirement where he or she determines it is consistent with the needs of the health care system reflected in the State Health Plan.

(m) Applications for transfer of ownership of home health agencies will be processed according to the rules in this chapter and must meet the criteria identified at N.J.A.C. 8:33L-2.6.

8:33-3.4 Bed capacity, medical day care slot capacity

(a) The following criteria apply to changes in bed capacity:

1. Any increase in the number of licensed beds by licensure and/or health planning category requires a certificate of need and shall follow the full review process, except as follows:

i. Long-term care facilities proposing to increase their total number of licensed long-term care beds by no more than 10 beds or 10 percent of their licensed long-term care capacity, whichever is less, within a period of five years shall not require a certificate of need, but shall apply to the Department's Division of Health Facilities Evaluation and Licensing for authorization pursuant to N.J.S.A. 26:2H-7.2.

ii. Any increase in the total number of residential health care beds requires a certificate of need and shall follow the expedited review process.

2. Any decrease in the number of licensed beds by licensure and/or health planning category requires a certificate of need and shall follow the full review process, except that an application for decrease

in the number of licensed beds by licensure and/or health planning category which will result in a capital expenditure less than the monetary threshold outlined in N.J.A.C. 8:33-3.6 shall follow the expedited review process.

3. The relocation of licensed beds from one physical facility or site to another requires a certificate of need and shall follow the expedited review process, except that if the relocation is from one county to another, the application shall follow the full review process.

(b) The following criteria apply to medical day care slots:

1. The establishment or expansion of an adult day health care facility requires a certificate of need and shall follow the full review process.

2. The reduction of adult day health care slots from an existing facility requires a certificate of need and shall follow the expedited review process.

3. The establishment of or change in the number of pediatric day care slots requires a certificate of need and shall follow the expedited review process.

8:33-3.5 Buildings

(a) Regardless of cost, a certificate of need is required for:

1. Establishment of a new health care facility;

2. Replacement of an existing bed-related health care facility;

3. Establishment of a satellite location for an existing health care facility;

4. Relocation and replacement of an existing non-bed related health care facility to a new site outside of the municipality in which it is located; and

5. Relocation and replacement of a component service of an existing health care facility.

8:33-3.6 New construction/modernization/renovation

(a) Acquisition of a building and/or new construction, modernization or renovation of a health care facility which, under generally accepted accounting principles, results in cumulative total project costs for all projects within a fiscal year in excess of $1,000,000, requires a certificate of need and shall follow the full review process. If the new construction, modernization or renovation is for a facility which is the subject of a health planning regulation adopted by the Department, then any person, including a physician or group of physicians must also obtain a certificate of need.

(b) Acquisition of fixed equipment and/or renovations to facilities dealing exclusively with energy conservation and management in excess of the cost thresholds for optional replacements or renovations requires a certificate of need and shall follow the expedited review process.

(c) Mandatory replacement of fixed equipment and/or mandatory renovations to facilities in excess of the monetary thresholds for equipment replacement or renovations requires a certificate of need and shall follow the expedited review process.

(d) Regardless of capital cost, a certificate of need is not required for new construction, modernization or renovation of a medical arts building or parking garage.

1. 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 in reimbursement regulations.

2. The costs of the purchase, construction, renovation, expansion and operation of a proposed medical arts building 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 health care services in the building.

8:33-3.7 Major moveable equipment

(a) Acquisition, replacement, expansion, or transfer by any person, including a physician, of major moveable equipment whose total cost exceeds $1,000,000, as well as any major moveable equipment for the provision of a service which is the subject of a health planning regulation or which is proposed by the Commissioner to be the subject of a health planning regulation, requires a certificate of need except where the Commissioner has granted a waiver to a physician or to a Health Maintenance Organization pursuant to section 30 of P.L.1991, c.187.

(b) Acquisition of an equipment unit that is part of an equipment system, through purchase, lease, or donation, if the system's cost or value, including installation and renovation under generally accepted accounting principles, results in a cumulative total project cost or value of $1,000,000 or more or is expected to be $1,000,000 or more, within a fiscal year, requires a certificate of need and shall follow the full review process in the appropriate batch.

(c) Any major moveable equipment acquisition which is subject to certificate of need batching requirements shall be processed in the appropriate batch and cannot be included as part of another application, such as a facility modernization/renovation/construction project.

(d) Optional replacement of existing major moveable equipment with the same equipment which exceeds the dollar threshold requires a certificate of need and shall follow the full review process in the appropriate batch.

(e) Mandatory replacement of major moveable equipment, as defined at N.J.A.C. 8:33-1.3, which exceeds $1,000,000 requires a certificate of need and shall follow the expedited review process.

8:33-3.8 Minor moveable equipment

Regardless of capital cost, a certificate of need shall not be required for the acquisition, replacement, expansion or transfer by any person, including a physician, of minor moveable equipment. The Department will not support any appeal to the Hospital Rate Setting Commission for additional reimbursement in the schedule of rates as a result of the acquisition of minor moveable equipment by general acute care hospitals.

8:33-3.9 Changes in cost/scope/financing

(a) Any proposed change in the cost of an approved project shall require a change of cost review and shall follow the expedited review process outlined in N.J.A.C. 8:33-5, except as follows:

1. A certificate of need for change in cost for an original certificate of need approval issued after the effective date of these rules may not exceed 10 percent of the approved capital cost including any construction cost factor calculated by the Department for the life of the certificate of need. Any certificate of need application for change in cost which exceeds 10 percent will not be accepted for processing. Any cost in excess of the approved certificate of need will not be eligible for reimbursement.

2. A certificate of need for change in cost for an original certificate of need approval issued prior to the effective date of these rules may be filed regardless of the amount of the increase in cost.

3. A change of cost application must be filed with the Department prior to expenditure of funds and/or commitment to expend funds which would result in total project costs which exceed the approved certificate of need costs. The Department shall not process any applications for changes in scope and/or cost when the changes in scope have occurred and/or costs have already been incurred and construction has been initiated or the project implemented by the time the application is submitted for processing unless the Commissioner determines that the changes arose from extraordinary unforseeable circumstances outside the applicant's control.

(b) The following criteria apply to a proposed change in the location of an approved, but unimplemented, certificate of need project:

1. Relocation of the proposed project within the same municipality does not require a certificate of need review. The applicant shall submit written notification to the Certificate of Need Program with appropriate documentation of site control.

2. Relocation of the proposed project within the same county requires a certificate of need and shall follow the expedited review process.

3. Relocation of the proposed project outside the approved county will not be accepted for processing. Failure of the applicant to implement the project within the same county will result in nullification of the approved certificate of need.

(c) The following criteria shall apply to changes in square footage:

1. Any increase in the total approved square footage to be renovated and/or constructed does not require a certificate of need, unless it also results in an increase in total project costs and would be subject to the criteria identified at (a) above.

2. Any decrease of less than 10 percent of the total approved square footage to be renovated and/or constructed does not require a certificate of need.

3. Any decrease of 10 percent or greater of the total approved square footage to be renovated and/or constructed with a commensurate reduction in cost requires a certificate of need and shall folllow the expedited review process. An application for a decrease in square footage of 10 percent or greater without a commensurate reduction in cost will not be accepted for processing.

(d) The following criteria shall apply to changes in beds, complement of major moveable equipment and array of services:

1. A certificate of need for change in scope for an original certificate of need approval issued prior to the effective date of these rules may be filed providing that the scope change results in a reduction of beds, elimination of approved major moveable equipment or elimination of services and shall follow the expedited review process. All applications for change in scope must be filed with the Department no later than December 31, 1993. Applications filed after that date will not be accepted for processing.

2. The Department will not accept for processing the following changes in scope for an original certificate of need approval issued prior to the effective date of these rules. Failure to implement the scope of the project as approved will result in nullification of the approved certificate of need and require the filing of a new certificate of need application in the next appropriate cycle.

i. Any increase in the number or category of approved beds;

ii. Addition of approved major moveable equipment; or

iii. Addition/expansion of services approved within the application or any standard categories of health care services.

(e) The following criteria apply to changes in service area, access or availability to the approved project, population served:

1. The Department will not accept for processing the following changes in the scope of any approved certificate of need. Failure to implement the scope of the project as approved will result in nullification of the approved certificate of need and require the filing of a new certificate of need application in the next appropriate cycle.

i. Relocation of the proposed project outside the county for which it was originally approved; or

ii. Change in the population served including percentage of Medicaid and medically indigent required to be served as a condition of certificate of need approval.

(f) The Department will not accept for processing any change in scope for an original certificate of need approval issued after the effective date of these rules unless the change is for the exclusive purpose of reducing the scope of the project with a commensurate reduction in cost. Failure to implement the scope of the project as approved will result in nullification of the approved certificate of need and require the filing of a new certificate of need application in the next appropriate cycle.

(g) Any change in financing or change in the method of financing, which will result in an increase in capital-related operating costs of 10 percent or more shall be considered a change in the financing of the project and shall follow the expedited review process.

(h) Any modifications to the project as approved shall be reported to the Department's Certificate of Need Program in writing for review and approval prior to implementation.

8:33-3.10 Duration of certificate of need

(a) The following criteria apply to the duration of a certificate of need:

1. For a certificate of need approved after the effective date of this rule, the certificate of need shall be valid for a period of five years from the date of approval, unless the State Health Plan specifies a different period of time for which a certificate of need for that service shall be valid or the Commissioner grants additional time in the initial certificate of need approval for complex projects submitted by hospitals which can only be completed in phases. For complex hospital projects, the applicant will be required to petition for the extended period of time in its application, providing a detailed schedule for project implementation and identifying a specific time frame for project completion.

i. If the project has not been approved and/or licensed by the Department's Division of Health Facilities Evaluation and Licensing within the timeframe identified within this subchapter, the certificate of need shall automatically be deemed to be terminated, unless the Commissioner determines that the failure of the applicant to complete the project within this timeframe was the result of extraordinary unforseeable circumstances beyond the control of the applicant (for example, zoning litigation through the first court decision, sewer moratorium). In making this determination, the Commissioner may request the advice and comment of the State Health Planning Board and/or the local advisory board within whose boundaries the project is located.

2. For a certificate of need approved prior to the effective date of this rule, the certificate of need approval shall remain valid until the expiration date noted in the most recent extension of time. The applicant will be required to file for a extension of time 60 days prior to the current expiration and to propose a detailed time frame identifying the remaining time needed to complete the approved subject. Where the Commissioner determines that the approval should be extended for an additional period of time beyond its current expiration date, he or she will assign a final expiration date.

8:33-3.11 Demonstration projects

(a) Applications subject to certificate of need requirements seeking approval as a demonstration/research project shall follow the following process:

1. The applicant shall submit a request to the local advisory board to recommend the incorporation of the proposed demonstration/research project into the State Health Plan.

2. The State Health Planning Board (SHPB) shall consider the recommendations of the local advisory board. Where the SHPB determines that the State Health Plan should allow for a specific type of demonstration or research project, the SHPB shall revise the plan subject to the approval of the Health Care Administration Board.

3. If the revised plan is adopted identifying the need for a demonstration/research project, the Commissioner may invite certificate of need applications in response to the need specified in the State Health Plan in accordance with the review process identified at N.J.A.C. 8:33-4.1.

SUBCHAPTER 4. THE REVIEW PROCESS

8:33-4.1 Request for certificate of need applications

(a) The full review process for certificate of need applications will be activated upon notice by the Commissioner inviting certificate of need applications in response to specific needs identified in the State Health Plan. The notice shall become effective upon the date of publication in major newspapers of general circulation in the State. The notice will also be distributed to health care associations on file with the Department, filed with the Office of Administrative Law and published in the New Jersey Register. The notice will identify the needed service(s), proposed geographic area(s) to be served, the date the application is due, the date the application is deemed complete for processing, the date the local advisory board must submit its recommendation to the Commissioner and the date that the State Health Planning Board must submit its recommendation to the Commissioner. The local advisory Board(s) shall forward recommendations to the State Health Planning Board and Commissioner within 45 days after the application is deemed complete for processing and the State Health Planning Board shall forward recommendations to the Commissioner within 90 days after the application is deemed complete for processing unless a fair hearing is requested by an applicant in accordance with the procedures identified at N.J.A.C. 8:33-4.14. A decision should generally be rendered by the Commissioner approximately three months after the application is deemed complete for processing.

(b) The expedited review process will include 12 review cycles. The beginning of each cycle shall be the fifteenth day of each month

and a decision should generally be rendered by the Commissioner approximately two months after the application is deemed complete for processing. Deadlines for initial submission of applications for expedited review shall be no later than the first day of the month preceding the beginning of a review cycle.

8:33-4.2 Development of applications

(a) Application for a certificate of need shall be made to the Department, in accordance with the requirements of this chapter, and shall be in such form and contain such information as the Department may prescribe.

(b) Before filing an application, applicants are encouraged to contact the local advisory/board(s) in the proposed service area(s) and the Department to examine the relationship of the proposed project to the applicable plans, guidelines, and criteria. Applicants should refer to Exhibit 1 of the chapter Appendix, incorporated herein by reference, for information and assistance in determining how the proposed service area relates to the appropriate local advisory board. If the proposed service area overlaps more than one local advisory board planning region, the applicant shall contact all affected local advisory boards and the Commissioner will invite comment from the appropriate boards.

(c) An applicant or any principal thereof, whose certificate of need application is in any appeal or hearing status, may not file a certificate of need application for the same health care service in the same service area which is similar to, dependent upon, or related to the application being appealed as determined by the Commissioner, while such appeal or hearing is pending.

8:33-4.3 Submission of applications

(a) Three copies of the application shall be submitted to the appropriate local advisory board(s) simultaneously with 15 copies to:

Certificate of Need Program
New Jersey State Department of Health
CN 360, Room 604
John Fitch Plaza
Trenton, New Jersey 08625-0360
(609) 292-6552

(b) Below is the schedule of fees, based on total project costs, required when submitting any application for a certificate of need for the expedited review or full review process. Fees shall be paid in full at the time applications are filed with the Certificate of Need Program. Failure to pay the appropriate application filing fee in full shall form a sufficient basis to deem the application to be incomplete. Certified checks, cashiers' checks or money orders must be made payable to Treasurer, State of New Jersey. No cash or personal checks will be accepted. The certificate of need application fee shall be non-returnable, except that, if an application is submitted in the incorrect batch, is unresponsive to the notice issued by the Commissioner or inappropriately requests expedited review, it may be declared not accepted for processing by the Department, in which case the filing fee will be returned.

Total Project Cost (TPC)	Fee Required
$1,000.00 or less	$ 5,000
Greater than $1,000,000 but less than $10,000,000	$ 5,000 + 0.05% of TPC
10,000,000 or greater	$100,000
Transfer of ownership	$ 5,000
Change in Cost/Scope	$ 5,000

:33-4.4 Certificate of need filing requirements

(a) An applicant shall document in the application that he or she wns the site where the facility, service, or equipment will be located, r has an ownership or lease option for such site, which option is alid at least through the certificate of need processing period. A uly executed copy of the deed, option or lease agreement for the te must be submitted with the certificate of need application and nclude identification of site, terms of agreement, date of execution nd signature of all parties to the transaction. If the site is optioned r leased by the applicant, a copy of the deed held by the current wner is required at the time of filing.

(b) One hundred percent of the ownership and operation of the proposed facility, service or equipment shall be accounted for in the certificate of need application. Each and every principal involved in the proposal shall be identified by name, home address and percentage of interest, except that if the ownership and operation is a publicly held corporation, each and every principal who has a 10 percent or greater interest in the corporation shall be identified by name, home address and percentage of interest. Where a listed principal has an ownership or operating interest in another health care facility, in this or any other state, identification of the principal(s), the health care facilities in which they have an ownership or operating interest, and the nature and amount of each interest shall be specified.

(c) If the applicant is a registered corporation, the name and address of the registered agent shall be identified in the application.

(d) If a management company will be hired, the name and address of all principals in the management company shall be identified and, if the certificate of need is approved, prior to licensure, a copy of the management agreement shall be submitted to the Certificate of Need Program and the Division of Health Facilities Evaluation and Licensing. Any change in management subsequent to certificate of need approval shall be reported to the Division of Health Facilities Evaluation and Licensing.

(e) The operator of the proposed facility, service, or equipment shall file and sign the application. In the case of transfer of ownership the proposed owner/operator is considered to be the applicant. However, both the current owner/operator and proposed owner/operator shall file and sign the application.

(f) If the applicant does not comply with all of the above provisions, the Department will determine the application to be incomplete.

8:33-4.5 Review for completeness

(a) The Department alone shall make the determination of the completeness status of applications. If a local advisory board chooses to comment on the completeness status of applications, it must provide the Department with written comments 20 days after the application filing deadline. The Department will make a decision on the completeness by the beginning of each review cycle and will notify both the applicant and the affected local advisory board(s) of its determination. Only complete applications will be processed. If an application has been determined to be incomplete, the Department shall notify the applicant and the appropriate local advisory board(s) in writing citing the specific deficiencies in the application. The applicant may file a new application with the appropriate information, which will be processed in the next appropriate cycle.

(b) An application which is submitted in the incorrect batch, is unresponsive to the notice issued by the Commissioner, or inappropriately requests expedited review may be declared not accepted for processing by the Department. The Department will notify the applicant of this decision and the filing fee will be returned.

(c) Once an application has been submitted to the Department of Health, no subsequent submission of information will be accepted, unless specifically requested in writing by the Department, the State Health Planning Board or the local advisory board(s). Any questions and subsequent responses must be forwarded by the State Health Planning Board or the local advisory board(s) to the Department on a timely basis.

(d) An applicant or principal(s) must submit a single application for beds or services subject to batching requirements and shall not submit more than one application for a given site in a given batch. Violations of this rule will result in a determination that all applications submitted by the applicant and/or principal in the given batch will be deemed not accepted for processing.

8:33-4.6 Modification of applications

(a) Under no circumstances shall an application be modified or altered to change the number or category of inpatient beds, proposed services, equipment subject to a planning regulation, or change in site after the application submission deadline date. An applicant

desiring to make such a modification or alteration shall be required to withdraw the application from the current cycle and submit a new application for the next cycle.

(b) Modifications not specified in (a) above, such as changes in square footage and change in cost, will be permitted if such changes are in response to completeness questions from the Department and made prior to submission of the application to the review process.

8:33-4.7 Deferral of applications

(a) An applicant may request in writing a deferral for up to a total of six months or, for batched applications, deferral into the next applicable batch for that service. If the applicant fails to notify the Department in writing to reactivate the application within this time frame, a new application will be required.

(b) The local advisory board, the State Health Planning Board, or the Department may defer a certificate of need application for up to a total of six months or may defer an entire batch of applications into the next applicable batch for that service. In the instance of projects which are the subject of a capital cap, the State Health Planning Board may recommend deferral of the entire batch subject to approval by the Commissioner. All such applications must be deferred and the deferral may not exceed six months.

(c) An applicant may revise the deferred project costs to account for inflation and may be requested by the Department to submit additional updated information prior to reactivation of the application.

1. Reactivated applications with no changes or with only a change in cost may continue in the review process from the point of deferral unless the applicant is required to submit new information in response to a change in the applicable requirements.

2. Reactivated applications with any change in project scope will be treated as a new application and shall follow the review process beginning with submission of the application to the Department, except that if the application is modified in a non-substantive way, that is, if the modification were proposed separately, it would either not require certificate of need review or would require only an expedited review, the application may continue from the point of deferral.

(d) When a deferral is requested by the local advisory board, it shall confirm that request in writing to the Department and such requests will be reflected in the official record of the application(s).

(e) The Department will not accept any requests for a deferral from the applicant once the State Health Planning Board or any standing committee of the State Health Planning Board authorized to make recommendations to the Board on the disposition of certificate of need applications has made its recommendation.

8:33-4.8 Withdrawal of applications

(a) An applicant may submit a written request for withdrawal of its application prior to final action by the Commissioner. The certificate of need filing fee shall not be returned in the event of a withdrawn application. Once an action has been taken by the Commissioner, the application shall not be withdrawn.

8:33-4.9 General criteria for review

(a) The State Health Planning Board shall prepare and revise annually, a State Health Plan. The State Health Plan shall identify the unmet health care needs in an area by service and location and it shall serve as the basis upon which all full review certificate of need applications shall be approved. The plan shall be effective beginning January 1, 1992. The State Health Planning Board shall consider the recommendations of the local advisory boards in preparing and revising the plan to incorporate specific regional and geographic considerations of access to, and delivery of, health care services at a reasonable cost. The State Health Planning Board shall incorporate the recommendations of the local advisory boards into the plan unless the recommendations are in conflict with the best interests of Statewide health planning.

(b) No certificate of need shall be issued unless the action proposed in the application for such certificate is consistent with the health care needs identified in the State Health Plan and the action is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health care services in the region or Statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations there shall be taken into consideration:

1. The availability of facilities or services which may serve as alternatives or substitutes;

2. The need for special equipment and services in the area;

3. The possible economies and improvement in services to be anticipated from the operation of joint central services;

4. The adequacy of financial resources and sources of present and future revenues;

5. The availability of sufficient manpower in the several professional disciplines; and

6. Other applicable requirements which are specified in any health planning rule adopted by the Department of Health.

(c) It shall be the responsibility of the applicant to adequately and appropriately demonstrate that the proposed project meets the health care needs identified in the State Health Plan, other State plans and policies, and State Health planning rules, the need that the population served or to be served has for the services proposed and the relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided. It is not incumbent upon the review process to demonstrate lack of need.

(d) No certificate of need shall be granted to any facility that currently fails to provide or fails to contractually commit to provide services to medically underserved populations residing or working in its service area as adjusted for indications of need. In addition, no certificate of need shall be granted to any facility that fails to comply with State and Federal laws regarding its obligation not to discriminate against low income persons, minorities, and disabled individuals.

(e) For the three-year period beginning January 1, 1992 through December 31, 1994, the Commissioner shall limit approval of certificates of need for hospitals for capital construction projects that would be financed by the New Jersey Health Care Facilities Financing Authority to a Statewide total of $225,000,000 per year for all projects, exclusive of the refinancing of approved projects.

1. "Capital construction project" shall include the purchase of major moveable equipment, as well as any modernization, construction or renovation project.

2. The annual cap shall include the total project cost of each approved certificate of need for acute care hospitals including the following:

i. All amounts approved for all applicable projects submitted prior to the current certificate of need moratorium but not acted on before January 1, 1992;

ii. All capital construction projects, including all those that are or would be financed by the Health Care Facilities Financing Authority. These may include projects that are financed partially through hospital equity or a source other than the Health Care Facilities Financing Authority, if the project is deemed eligible for such financing by the Authority;

iii. The cap shall not apply to a certificate of need application for a change in cost to a project originally approved prior to January 1, 1992; and

iv. The cap shall not apply to a certificate of need application which is funded totally by cash equity and will not result in any future increase in capital reimbursement under Chapter 83.

3. Approvals of certificate of need applications within the annual $225,000,000 shall permit approval of projects in the following two categories:

i. Construction/renovation/modernization: Approvals in this category may total up to $205,000,000;

ii. Major Moveable Equipment: Approvals in this category may total up to $20,000,000;

iii. In any year where the full allocation within the above amounts is not awarded through certificate of need actions by the Commissioner, projects of the remaining category may be approved.

4. The annual cap shall apply to the year in which the certificate of need applications are received.

8:33-4.10 Specific critera for review

(a) Each applicant for a certificate of need must show how the proposed project will promote access to low income persons, racial and ethnic minorities, women, disabled persons, the elderly, and persons with HIV infections and other persons who are unable to obtain care. In determining the extent to which the proposed service promotes access and availability to the aforementioned populations, the applicant, where appropriate, shall address in writing the following:

1. The contribution of the proposed service in meeting the health related needs of members of medically underserved groups as may be identified in the applicable local health plan and State Health planning rules as deserving of priority;

2. The extent to which medically underserved populations currently use the applicant's service or similar services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

3. The performance of the applicant in meeting its obligation, if any, under any applicable State and Federal regulations requiring provision of uncompensated care, community services, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

4. How and to what extent the applicant will provide services to the medically indigent, Medicare recipients, Medicaid recipients and members of medically underserved groups;

5. The extent to which the applicant offers a range of means by which a person will have access and availability to its service (for example, outpatient services, admission by house staff, admission by personal physician);

6. The amount of charity care, both free and below cost service, that will be provided by the applicant. In determining eligibility for this care, the applicant shall use the eligibility categories A and B of the Hill-Burton Act regulations 42 CFR 124,501 et seq.;

7. Access to public or private transportation to the proposed project;

8. As applicable, effective communication between the staff of the proposed project and non-English speaking people and those with speech, hearing, or visual handicaps must be documented; and

9. Where applicable, the extent to which the project will eliminate architectural barriers to care for handicapped individuals.

(b) Each applicant for certificate of need must demonstrate that the proposed project can be economically accomplished and maintained; that it will address otherwise unmet needs in a particular municipality, county, and/or regional health planning area; that it will not have an adverse economic or financial impact on the delivery of health care services; and that projected volume is reasonable. Evaluation of the applications will include a review of:

1. Demographics of the area, particularly as related to the populations affected by the proposed project;

2. Economic status of the service area, particularly as related to special health service needs of the population; and future facility cash flow;

3. Physician and professional staffing issues;

4. Availability of similar services at other institutions in or near the service area;

5. Provider's historical and projected market shares;

6. The immediate and long term financial impact on the institution this review will assess:

i. Whether the method of financing identified is accurately calculated and economically feasible, and is the least cost method available;

ii. Impact of the proposed project on capital cost, operating cost, projected revenues, and charges for the year prior to the application and the two years following project completion;

iii. Impact of the proposed project on the provider's financial condition, as measured by financial statements, including balance sheets, income statements and cash-flow statements;

iv. Whether the applicant has demonstrated the ability to obtain the necessary capital funds;

v. Whether the applicant has demonstrated that the project will result in an excess of revenue within two years after completion of the project;

vi. Whether the minimum equity requirement of at least 15 percent has been met;

(1) Equity (non-debt) is defined as a non-operating liquid asset contribution that would result in a reduction of debt. Equity may include cash, donations, net projected cash from fundraising.

(2) Land may be considered as equity if the land is included in the project cost, and the owner of the land has clear title to the land, not subject to liens or encumbrances.

(3) The appraised value of land may be considered as equity if an independent appraisal is included as part of the certificate of need application and the above criteria are met.

(4) The Commissioner may reduce the equity requirement for applicants who can demonstrate that the proposed project will primarily serve a medically underserved population;

vii. The feasibility of refinancing both new and existing debt. When it is economically feasible, the applicant must agree to refinance;

viii. For acute care hospitals, compliance with the reimbursement rules in N.J.A.C. 8:31B, and substantiation that capital reimbursement will be sufficient to meet capital costs under the Department's policy guidelines for capital; and

ix. The ability of acute care hospitals to meet the operating costs associated with the project, based on payment as defined in N.J.A.C. 8:31B; and

7. Each applicant for certificate of need must demonstrate how the proposed project will comply with applicable rules and regulations governing the construction, modernization or renovation of the project. The applicant shall address the following:

i. A cost estimate of the project stated in those dollars which would be needed to complete the project over the anticipated period of construction, assuming that construction was to begin at the time of the certificate of need submission;

ii. A detailed description of the project including square footage, construction type, current and proposed use of areas proposed for renovations, anticipated construction related circumstances, impact of asbestos abatement, accounting of all displaced department services areas, relocations and vacated areas; and

iii. The probable impact of the construction project on the costs and charges of providing health care services.

(c) For projects exceeding $15,000,000 in cost, institutions shall submit to the Department independently verified historical and projected financial and utilization information as identified in (b) 1 through 6 above.

(d) The Commissioner may request any additional information deemed necessary to establish that the proposed project will be economically maintained and will not adversely affect the State's health care system.

(e) Each applicant for certificate of need shall demonstrate character and competence, quality of care, and an acceptable track record of past and current compliance with State licensure requirements, applicable Federal requirements, and State certificate of need requirements, including, but not limited to, the following:

1. The performance of the applicant in meeting its obligation under any previously approved certificate of need including full compliance with the cost and scope as approved, as well as all conditions of approval;

2. Any person with a history of noncompliance with statutory or regulatory requirements which, as determined by the Department, threaten the life, safety or quality of care of patients shall be ineligible to file a certificate of need application until a period of at least one year has elapsed, during which time the person must have demonstrated a record of continuous compliance with licensing or regulatory standards. The one-year period shall be measured from

the time of the last licensure or certification action indicating full compliance with regulatory standards; and

3. No certificate of need application will be approved for any applicant with existing non-waiverable violations of licensure standards at the time of filing, or before final disposition of the application or for an applicant with a history of noncompliance with licensing, statutory or regulatory standards which, as determined by the Department, threaten the life, safety or quality of care of patients. Furthermore, no certificate of need application will be accepted for processing if it is possible for the Department to determine the unacceptability of the applicant's track record. An exception will be in the case of applications submitted for the purpose of correcting recognized major licensure deficiencies. An exception to this provision may also be granted for applications submitted for the closure or substantial reduction of underutilized beds, services, or equipment.

8:33-4.11 Notification of review cycles

The Department shall submit written notification to the local advisory board for the health planning region in which the proposed project is to be offered or developed and local advisory boards serving contiguous health planning regions, of the certificate of need applications received in a review cycle, applications deemed complete for processing and the proposed schedule for the review. The local advisory board shall be exclusively responsible for providing notification of certificate of need applications to members of the public through newspapers of general circulation and other means deemed acceptable by the local advisory board.

8:33-4.12 Functions of local advisory boards

(a) Each local advisory board shall conduct local health planning for its designated region and make recommendations at least annually to the State Health Planning Board for incorporation into the State Health Plan.

(b) The local advisory board shall review certificate of need applications for proposed projects in its region and make recommendations to the Commissioner consistent with the State Health Plan and all appropriate health planning rules.

(c) The local advisory board shall furnish written decisions to the Commissioner which provide the explicit basis for any recommendations made by the local advisory board on certificate of need applications. Such written decisions shall be forwarded to the Commissioner within 45 days after the application is deemed complete for processing unless the application has been deferred pursuant to N.J.A.C. 8:33-4.7 or because of the conduct of an administrative hearing regarding one of the batched applications. These written decisions may take the form of minutes of the local advisory board.

(d) The local advisory board shall be responsible for the following activities:

1. To the extent possible, assistance to the applicant in the completion of appropriate certificate of need application forms;

2. Written notification to its service area public of the beginning of a review, which shall include notification of the proposed schedule for the review, the public comment period for persons directly affected by the review, and the manner in which notification will be provided of the time and place for public comment;

3. Provision for public comment in the course of agency review if requested by one or more persons directly affected by the proposed project; and

4. Evaluation of the public need for each proposal in accordance with the State Health Plan, the criteria for review identified in N.J.A.C. 8:33-4.9 and 4.10 and the requirements of applicable State health planning rules.

(e) The following activities shall not be the responsibility of the local advisory boards:

1. Involvement in architectural plans review of approved projects;

2. Monitoring of the construction of approved projects;

3. Determining compliance with Departmental licensure requirements; or

4. Evaluating the character and competence of the applicant, based upon State licensure, survey records, or other information of State regulatory agencies.

8:33-4.13 Role of the State Health Planning Board

(a) The State Health Planning Board shall review applications for certificates of need and make recommendations to the Commissioner in accordance with the State Health Plan and all applicable health planning rules.

(b) The State Health Planning Board shall furnish written decisions to the Commissioner which provide the explicit basis for any recommendations made by the Board on certificate of need applications. Such written decisions shall be forwarded to the Commissioner within 90 days after the application is deemed complete for processing unless the application has been deferred pursuant to N.J.A.C. 8:33-4.7 or because of the conduct of an administrative hearing regarding one of the batched applications. These written decisions may take the form of minutes of the State Health Planning Board.

(c) A member of the State Health Planning Board shall not vote on any matter before the Board concerning an individual or entity with which the member has, or within the last 12 months has had, any substantial ownership, employment, medical staff, fiduciary, contractual, creditor or consultative relationship. A member who has had such a relationship with an individual or entity involved in any matter before the Board shall make a written disclosure of the relationship before any action is taken by the Board with respect to the matter and shall make the relationship public in any meeting in which action on the matter is to be taken.

8:33-4.14 Procedures for review by local advisory boards and the State Health Planning Board

(a) If at least 25 percent of the quorum of voting members at a meeting of a local advisory board votes affirmatively to approve a certificate of need application, regardless of whether the local advisory board's recommendation is to approve or deny the application, the application shall be forwarded to the State Health Planning Board for its review of the application. If the application does not receive the required minimum number of affirmative votes, the application shall not be submitted to the State Health Planning Board or the Commissioner for their reviews, respectively.

(b) If at least 25 percent of the quorum of voting members at a meeting of the State Health Planning Board votes affirmatively to approve a certificate of need application, regardless of whether the State Health Planning Board's recommendation is to approve or deny the application, the application shall be forwarded to the Commissioner for his or her review of the application. If the application does not receive the required minimum number of affirmative votes, the application shall not be submitted to the Commissioner of Health for his or review.

(c) If an application which is consistent with the State Health Plan does not receive the required minimum number of affirmative votes by either a local advisory board or the State Health Planning Board, respectively, the applicant may request a fair hearing to permit the application to move to the next level for review. The request for a fair hearing shall be made to the Commissioner of Health within 30 days of the vote by the local advisory board or State Health Planning Board, as applicable. The fair hearing shall be held within 60 days of the request. If the hearing examiner determines that the application should be reviewed by the next level for review, the applicant shall be so notified and the State Health Planning Board or the Commissioner, as applicable, shall review the application.

1. If a request for fair hearing is received within 30 days, it will be forwarded to the Office of Administrative Law where it will be processed expeditiously.

2. The Administrative Law Judge will review the reasonableness of the local advisory board's or State Health Planning Board's reasons for denial, as stated in its written decision, based on the documenting evidence that was considered by the LAB or SHPB. No other documentation may be introduced during the course of the hearing.

3. The decision of the Administrative Law Judge on whether the certificate of need application should proceed to the next step in the review process will be the final decision.

4. All certificate of need applications competing for the same service in the same area will be deferred by the Department until a final decision is rendered.

5. The process will be reactivated at the next appropriate step (to the State Health Planning Board or to the Commissioner) upon notice of the final decision of the Administrative Law Judge.

8:33-4.15 Procedures for Commissioner of Health review

(a) The Commissioner may approve or deny an application for a certfificate of need if the approval or denial is consistent with the State Health Plan and all applicable health planning rules. The Commissioner shall issue a written decision on his or her determination of a certificate of need application which shall specify the reasons for approval or disapproval. The decision will be sent to the applicant, to the appropriate local advisory board and to the State Health Planning Board, and shall be available to others upon request.

(b) Pursuant to N.J.S.A. 26:2H-9, if the Commissioner recommends denial of a certificate of need application, the applicant shall be granted an opportunity for fair hearing to contest the Commissioner's action. Further, no decision shall be made by the Commissioner contrary to the recommendations of the State Health Planning Board or the Local Advisory Board on the disposition of a certificate of need application unless the State Health Planning Board and the applicant shall be granted an opportunity for a hearing.

(c) A request for a fair hearing shall be made to the Department within 30 days of receipt of notification of the Commissioner's decision. The fair hearing shall be conducted according to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Health Care Administration Board, within 30 days of receiving all appropriate hearing records, or, in the absence of a request for a hearing within 30 days of receiving the denial recommendations of the Commissioner, shall make its determination.

(d) After the commencement of a fair hearing pursuant to (c) above, and before a decision is made, there shall be no ex parte contacts between any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance of a certificate of need, and any person in the Department who exercises any responsibility for reviewing the application. Ex parte communication is defined as an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given. It shall not include requests for status reports on any matter or proceeding. Any communications made after commencement of the fair hearing that are placed in the record of the proceedings are made available to all parties are not ex parte and are not prohibited.

(e) The determination of the Health Care Administration Board is the final decision of the Department where the Commissioner has recommended denial of a project application or where his or her decision to approve is contrary to the recommendation of the State Health Planning Board or the Local Advisory Board and a fair hearing is requested and held.

(f) If the Commissioner intends to approve or deny an application for a certificate of need contrary to the State Health Plan, the Commissioner shall submit to the Health Care Administration Board the entire record of the application, including the recommendations of the local advisory board and the State Health Planning Board and the Commissioner's specific reasons for his or her intention to act contrary to the State Health Plan. If the Health Care Administration Board agrees with the Commissioner, it shall request the Commissioner to hold the affected application and direct the State Health Planning Board to amend the State Health Plan to reflect its determination. Upon the effective date of the amendment to the State Health Plan, the Commissioner shall reconsider the application. However, where the State Health Plan is silent on an issue(s) related to a service or facility proposed in a certificate of need application, the Commissioner shall rely on appropriate Departmental policies and planning rules, as well as any appropriate recommendations of the State Health Planning Board and local advisory board, in making a determination on the application.

(g) The Department shall notify, upon their request, providers of health services and other persons subject to certificate of need requirements of the status of the review of certificate of need applications, findings made in the course of such review, and other information respecting such review after the certificate of need is deemed complete for processing.

(h) If the Department determines that the holder of an approved certificate is not making a good faith effort to implement the project, the Commissioner may null and void the certificate. Prior to such a determination, the Department must notify the holder of the certificate of its intent to initiate the nullification process. The holder of the Certificate shall have 30 days from the date of such notice to submit written documentation of the substantial progress which has been made, and which will continue, in implementing the Certificate. If, after the review of the documentation submitted, a notice of nullification is nevertheless issued, the holder may request a hearing pursuant to (c) above.

8:33-4.16 Conditions on approval/monitoring

(a) Conditions may be placed on certificate of need approval by the Commissioner if they relate to material presented in the application itself, are prescribed in State rules, relate to the criteria specified in N.J.A.C. 8:33-4.9 and 4.10 or promote the intent of the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as amended. The State Health Planning Board and local advisory board shall not recommend the inclusion of conditions in a certificate of need approval which are not consistent with the provisions of this subchapter.

(b) Any conditions placed on a certificate of need approval shall become part of the licensure requirements of the approved facility. Failure to comply with approved certificate of need conditions may result in licensure or rate action by the Department and may constitute an adequate basis for denying certificate of need applications by an applicant who is out of compliance with conditions on previous approvals. The applicant must contest any condition, if at all, within 30 days of receipt of notice. The applicant will vacate his right to oppose said condition(s) if he fails to submit written notice that he contests any condition to the Department within this time. If the applicant contests a condition, the Commissioner will suspend his or her approval of the certificate of need in order to consider the objection. Furthermore, the Commissioner has the right to nullify the approval of the certificate of need. The Commissioner may, at his or her discretion, consult with the State Health Planning Board to obtain its recommendation on the contested condition(s). The Commissioner reserves the right to modify a condition subject to the agreement of the applicant at any time after the 30 days and prior to licensing in order to respond to changes in the health care system while the project is being implemented.

(c) When conditions are included in the Commissioner's approval letter, the applicant shall file a progress report on meeting such conditions with the Certificate of Need Program at least 12 months from the date of approval and annually for the first two years after project implementation and at any other time requested by the Department in writing. Failure to file such reports may result in the nullification of the approved certificate of need, fines and penalties imposed through licensure or rate action and/or taken into consideration in the review of subsequent certificate of need applications.

(d) Where an applicant has failed to meet conditions of approval of previously approved certificates of need, it may form an adequate basis for the Department to bar the applicant from filing any subsequent certificate of need until the conditions in question are satisfied.

SUBCHAPTER 5. EXPEDITED REVIEW PROCESS

8:33-5.1 Statement of purpose

(a) The expedited review process shall be used for the following specific applications:

1. Community-based primary care centers;
2. Outpatient drug/alcohol counseling;
3. Basic life support ambulance and invalid coach;
4. Mental health services which are exclusively out-patient and, therefore, non-bed related;

5. Establishment of or changes to residential health care bed capacity;
6. Decrease in licensed beds with a total project cost less than the threshold;
7. Mandatory renovations;
8. Mandatory replacement of fixed or major moveable equipment in excess of the threshold;
9. Transfer of ownership of all health care facilities and components thereof except general acute hospitals;
10. Change in site of an approved but unimplemented certificate of need project within the same county. A change in site within the same municipality will not require a certificate of need. However, notification of the change must be submitted to the Certificate of Need Program;
11. Relocation of a health care facility within the same municipality or within the same county;
12. Establishment of a continuing care retirement community (CCRC) with a health care facility component or change in bed capacity of a health care facility component of a CCRC facility;
13. Establishment of a restricted admissions facility or change in bed capacity of a restricted admissions facility as articulated in the Long-Term Care chapter of the State Health Plan and specific health planning rules related to long-term care;
14. Change in cost to an original certificate of need issued after the effective date of these rules which is 10 percent or less of the approved capital cost including an inflation factor;
15. Change in cost to an original certificate of need issued prior to the effective date of these rules;
16. Establishment of or changes in the capacity of a pediatric day health care facility; or
17. Decrease in the capacity of an adult day health care facility.

(b) The expedited review process may also be used in lieu of the full review process, as noted in these rules, or in the following limited situations:
1. Emergency situations which demand rapid action; or
2. When the project has minimal impact on the health care system as a whole.

8:33-5.2 Process

(a) The expedited review process will include 12 review cycles. The beginning of each cycle shall be the 15th day of each month and a decision should be rendered by the Commissioner approximately two months after the application is deemed complete for processing. Deadlines for initial submission of applications for expedited review shall be no later than the first day of the month preceding the beginning of a review cycle.

(b) Applications will be reviewed to determine the completeness of the required information. The Department shall make a determination by the beginning of the cycle as to whether the application is complete for processing.

(c) The determination of whether or not a project is eligible for processing under the expedited review process shall be made by the Department.

(d) Interested parties, including the State Health Planning Board, the Health Care Administration Board, local advisory boards, shall be notified by the Department of the expedited review applications deemed complete for processing.

(e) Certificate of need application forms for expedited review (except transfer of ownership) may be obtained from, and 10 copies shall be filed with:

Certificate of Need Program
New Jersey State Department of Health
John Fitch Plaza
CN 360, Room 604
Trenton, New Jersey 08625
(609) 292-6552

(f) Certificate of need application forms for expedited review for transfers of ownership may be obtained from, and 10 copies shall be filed with:

Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
(609) 588-7791

(g) Applications shall be reviewed by appropriate Department staff for the purpose of providing information to assist the Commissioner in making the final decision.

8:33-5.3 General requirements

(a) Minimum information required for all expedited review projects shall consist of:
1. Project description, including capital cost, operating costs and revenues, square footage, services affected, equipment involved, source of funds, utilization statistics, both inpatient and outpatient, how the project will foster economies within patient charge structure and justification for the proposed project;
2. The extent to which all residents of the area will have access to services, particularly the medically underserved; and
3. Assurances by the applicant, that all appropriate access criteria identified at N.J.A.C. 8:33-4.9 and 4.10 will be met.

8:33-5.4 Specific requirememts

(a) In addition to the requirements of N.J.A.C. 8:33, the following information shall be provided, as appropriate, for all expedited review projects:
1. For mandatory replacement or renovation, or explanation of the mandatory nature, including written opinion regarding hazards and safety effects upon patient care by experienced professionals, or from Federal, State, county or municipal governmental agencies;
2. For a change in cost, scope or financing, a description of new project costs by category, new square footage and new financing alignment;
3. For a change in beds, the number of beds to be added or deleted, a description of service area, required changes in staffing patterns, assurances that the impact on existing and approved facilities will foster optimum utilization and factors affecting travel time in area and availability of health personnel supply for staffing, and explanation of beds by service, the services affected, and the total number of beds available at the completion of the project; or
4. For a transfer of ownership, identification of all major licensure deficiencies and date of violation for any health care facility for any applicant (including any principals thereof) who owns (in whole or in part), manages or operates or has owned (in whole or in part) managed, or operated any health care facility, especially:
i. Curtailment of admissions; and
ii. A record of non-compliance with State licensure standards (N.J.A.C. 8:39) or comparable Federal, Medicare and Medicaid certification requirements.

8:33-5.5 Required commitments for the medically underserved

(a) The applicant shall make at least a minimum commitment to provide care to the medically underserved population as follows:
1. Community-based primary care centers: The applicant must provide a minimum of 10 percent of total visits to the medically underserved.
2. Outpatient drug/alcohol counseling: The applicant must provide a minimum of 10 percent of total visits to the medically underserved.
3. Ambulance/invalid coach: The applicant must agree to become a Medicaid provider.

APPENDIX

EXHIBIT 1

LOCAL ADVISORY BOARDS IN NEW JERSEY

Region	Name of Agency	Counties Served
I	Region One/Health Planning Consortium	Morris Passaic Sussex Warren
II	Fairleigh Dickinson University	Bergen Hudson
III	Region III Local Advisory Board	Essex Union
IV	Midstate Health Advisory Corp.	Hunterdon Mercer Middlesex Somerset
V	HealthVisions, Inc.	Burlington Camden Cumberland Gloucester Salem
VI	Jersey Coast Health Planning Council, Inc.	Atlantic Cape May Monmouth Ocean

EXHIBIT 2

STANDARD CATEGORIES OF HEALTH CARE SERVICES

Note: The installation or implementation of any of the specified health care services as shown below, which have not been previously provided by the health care facility, will require a certificate of need.

A. Bed-related
1. Medical/Surgical
2. Obstetrics, gynecology
3. Pediatric
4. Adult and pediatric intensive care (ICU)
5. Cardiac care (CCU)
6. Rehabilitation
7. Long-term care
8. Residential health care
9. Adult acute psychiatric
10. Adult intermediate and special psychiatric
11. Child and adolescent acute psychiatric
12. Child and adolescent intermediate psychiatric
13. Alcohol detoxification
14. Alcohol residential treatment
15. Drug free residential (therapeutic community)

B. Non-bed-related
1. Outpatient and clinic services
2. Home health agency
3. Drug rehabilitation-outpatient drug free
4. Alcohol rehabilitation
5. Outpatient mental health care
6. Partial hospitalization
7. Mental health emergency/screening
8. Drug rehabilitation-detoxification/maintenance
9. Comprehensive outpatient rehabilitation facility
10. Adult day health care
11. Pediatric day health care

C. Special Services
1. Renal dialysis
2. Invasive cardiac diagnostic services
3. Burn center, unit or program
4. Cardiac surgical services
5. Organ transplant/organ procurement
6. Megavoltage radiation oncology
7. Organ bank
8. Perinatal services including neonatal intensive or intermediate services
9. Hospice program
10. Mobile intensive care or advanced life support services
11. Medical day care
12. Positron emission tomography services
13. Magnetic resonance imaging services
14. Any service for which regionalization criteria or health planning regulations have been developed.
15. Other new health/medical care technologies including any medical equipment which has received FDA pre-marketing approvals

EXHIBIT 3

EXAMPLES OF MAJOR MOVEABLE EQUIPMENT

Cardiac catheterization laboratory equipment

Extracorporeal shock wave lithotripter (kidney and/or biliary)

Linear accelerator (including Cobalt 60 unit)

Nuclear magnetic resonance (NMR) and magnetic resonance imaging (MRI) equipment

Positron emission tomography (PET)

TRANSPORTATION

(a)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT BUREAU OF MAINTENANCE SUPPORT

Permits

Proposed Readoption: N.J.A.C. 16:41

Authorized By: George Warrington, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-7, 27:7A-11 and 27:7A-17.

Proposal Number: PRN 1992-253.

Submit comments by July 15, 1992 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66(1978), N.J.A.C. 16:41, Permits, will expire on July 28, 1992. Additionally, in compliance with Executive Order No. 66(1978), the rules were reviewed by the staff of the Department's Bureau of Maintenance Support to determine their necessity, adequacy, reasonableness, efficiency, understandability, and responsiveness for the purpose for which they were promulgated. The review revealed that the rules should be revised for the sake of clarity. In order to update the rules and to conform to the policy changes made in the recent adoption of the Access Code, N.J.A.C. 16:47, a number of changes will be made in the text, format and organization of material, which will be proposed at a later date.

The rules primarily outline the procedure for obtaining applications and permits by any person(s) or contractor(s) initiating work over, under or within any portion of property under the jurisdiction of the Department, or initiating any activity which will interfere with the safe and free movement of traffic on the State highway system.

The Department, therefore, proposes to readopt N.J.A.C. 16:41 without change at this time, in order to continue the permitting rules without interruption of their effectiveness.

Subchapter 1 contains general requirements, such as the application for, and issuance of, permits; the processing of bonds and agreements; and the responsibilities of the permittee in regard to traffic control and

restoration of the area. Also included are references to Department addresses and telephone numbers.

Subchapter 2 contains the driveway access permit requirements for those who have made application to the Department prior to the effective date of N.J.A.C. 16:47, the new Access Code.

Subchapter 3 contains provisions governing permits and fees for utility openings.

Subchapter 4 contains requirements for permits and fees for the erection of poles in the right-of-way.

Subchapter 5 contains requirements and fees for the drainage of property over which the Department has jurisdiction.

Subchapter 6 contains the requirements for the attachment of wires, pipes or other materials to bridges.

Subchapter 7 contains the permit, application and fee requirements for the intersection of streets.

Subchapter 8 had been repealed and reserved recently by a rulemaking which introduced a new chapter dealing with outdoor advertising.

Subchapter 9 contains the permit, fee and operating rules regarding the movement of buildings and other overdimensional or overweight objects.

Subchapter 10 contains rules regarding temporary use of the State highway right-of-way, including permitting and fee requirements and allowable conditions.

Subchapter 11 contains the requirements applicable to railroad grade crossings.

Subchapter 12 contains the rules applicable to the use of decorations or banners on the State Highway right-of-way.

Subchapter 13 contains the requirements for tree-trimming, generally done by the utility companies.

Subchapter 14 regulates detours of traffic on State highways.

Subchapter 15 contains standards for other types of permits, such as telephone booth installations, left turn slots in the center median of a highway, crosswalks and other miscellaneous requests which may be made of the Department.

Subchapter 16 currently reserved, previously contained rules regarding State-owned railroad property. These rules have been recodified to N.J.A.C. 16:71.

The appendix contains information regarding the types of permits granted and the review determinations necessary for each type.

Social Impact

The social impact of the proposed readoption is expected to be beneficial. This chapter allows for such items or events of general social benefit as parades, the display of banners, decorations of particular civic, religious or ethnic interest, and telephone installations along the highway, as well as those of benefit to individual people or businesses. The rules also provide a social benefit to the motoring public, in that drivers may be assured of standards of safety as they travel the highways over which the Department has jurisdiction.

Economic Impact

The economic impact of the readoption includes a requirement that the applicant or permittee be responsible for the costs of the project, reimbursing the Department where indicated. The effect of this requirement upon the regulated public cannot be quantified at this time, since the specific factors involved vary from project to project. The Department, however, has provided for estimates to the applicant or permittee whenever possible. The taxpaying public, as a result of this requirement, will incur less cost, since the persons requesting the permit will be paying for the expenses of the Department when restoration must be done. Fees for the various permits range from $1.00 to $2,000.

Regulatory Flexibility Analysis

The proposed readoption will affect any entity, whether person, business or government, which seeks a permit from the Department for any of a number of specified activities or installations. This includes any entities defined as small businesses in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The fees required are based upon the costs to the Department, and, in general, are lower in situations most likely to affect small businesses, governments or individuals. For example, the fee for construction of a sidewalk or a curb is $1.00; for parades, $1.00; and for bus shelters, $5.00, while the fee for tree trimming, usually applicable to utility companies, is $300.00 annually per region, and the combined fees for the control of vegetation for the purpose of outdoor advertising, generally large businesses, total $500.00.

Other costs arising from the application of the standards in this chapter would be derived from charges to the applicant or permittee for professional fees, such as engineering, legal or other applicable specialties. The costs would vary, depending upon the size and complexity of the project.

The Department has determined that no differential treatment should be provided in these rules for small businesses, as the term is defined in the Regulatory Flexibility Act, since public safety on the highways of New Jersey is of paramount importance.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:41.

TREASURY-GENERAL

(a)

DIVISION OF THE STATE LOTTERY

Training and Background Checks of Key Personnel Proposed Amendments: N.J.A.C. 17:20-2.1, 4.3 and 4.4

Authorized By: New Jersey State Lottery Commission, Frank M. Pelly, Executive Director.

Authority: N.J.S.A. 5:9-7.

Proposal Number: PRN 1992-264.

Submit comments by July 15, 1992 to:

Frank M. Pelly, Executive Director
Department of the Treasury
Division of the State Lottery
CN 041
Trenton, N.J. 08625-0041

The agency proposal follows:

Summary

Under existing rules, background checks of credit reporting agencies and criminal history are performed on owners of lottery ticket sales agencies. The proposed amendments extend such checks to managers and other personnel of such licensees. It also codifies existing practice so as to require that lottery agents and their employees be trained to perform their assigned tasks properly.

Social Impact

The proposed amendments further the public interest in maintaining the Lottery at the highest levels of integrity and security. By performing background checks on all key ticket sales agency personnel, the Lottery will be in a better position to assure that individuals of questionable background will not be in a position to deal unfairly with the ticket-buying public or to impair the receipt and processing of lottery revenues and documentation.

Economic Impact

The proposed amendments are revenue-neutral and are anticipated to have no direct economic impact on lottery ticket sales. It may require payment of additional fees to the State Bureau of Investigation from applicants for licensure to cover the costs of background checks on criminal record history information (credit checks are paid for directly by the Lottery as an operating expense). The required training will be provided by the Lottery, through their computer company, at no cost to the applicant or the applicant's employees.

Regulatory Flexibility Analysis

The proposed amendments may require small businesses to engage in additional recordkeeping, to the extent that they are not presently requiring all key personnel to submit consents to background checks. To satisfy the requirements of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it has been determined that any minimal increase in recordkeeping required by the proposed amendments is outweighed by the anticipated benefits to the public to be derived therefrom. It has also been determined that the amendments are the least restrictive and least cumbersome means of accomplishing the above ends, consistent with the interests of the ticket sales agents and their employees, as well as those of the public at large. The ticket sales agents and their employees

will receive training by the Lottery's computer company, paid for by the Lottery, pursuant to N.J.A.C. 7:20-4.3(a).

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

17:20-2.1 Definitions

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

...

"Key personnel" means and includes any person operating a lottery ticket sales terminal, engaging in sales or redemptions of lottery tickets, preparing settlements, making bank deposits or in any other way handling lottery transactions. It also includes any person managing, or otherwise in charge of, a licensed business in the absence of the owner.

...

17:20-4.3 Review

(a) Upon receipt of an application which appears to be complete and in order, the Director shall subject it to a thorough review, including:

1.-3. (No change.)

4. Such other procedures as may be needed to substantiate the [applicant's] moral character **of the applicant and key personnel** and the ability **of the applicant** to satisfy the other licensing criteria as set forth in the Act and in this chapter.

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

17:20-4.4 Issuance of license; conditions

(a) The Director may license an applicant to be a manual agent or a machine agent as the facts and circumstances may warrant. **Before issuing a license, the Director shall provide training to all applicants and key personnel to the extent the Director deems appropriate, and shall require that training be administered to such persons as will best preserve the integrity and most effective operation of the Lottery. Training shall cover machine operations, handling of instant tickets, redemption and settlement procedures and all other aspects of transacting business as an agent of the Lottery.**

(b)-(g) (No change.)

(a)

DIVISION OF THE STATE LOTTERY

Sale of Lottery Tickets at Specific Locations Licensed

Proposed Amendment: N.J.A.C. 17:20-4.8

Authorized By: New Jersey State Lottery Commission, Frank M. Pelly, Executive Director.

Authority: N.J.S.A. 5:9-7.

Proposal Number: PRN 1992-244.

Submit comments by July 15, 1992 to:

Frank M. Pelly, Executive Director
Division of the State Lottery
Department of the Treasury
CN 041
Trenton, N.J. 08625-0041

The agency proposal follows:

Summary

The proposed amendment clarifies the underlying rule requiring that ticket sales be conducted only at the licensed location by stating that all transactions regarding sale of lottery tickets occur at that location, and not elsewhere.

Social Impact

By requiring that all aspects of a lottery ticket sales transaction occur at the licensed location, and not elsewhere, the proposed amendment discourages bulk purchases which can be seen as impairing the public interest. The amendment also assures service to members of the public who purchase tickets individually, since ticket issuing machines will have to be dedicated to serving the clientele at the licensed location, rather than serving bulk purchasers located elsewhere.

Economic Impact

The proposed amendment is revenue-neutral and is anticipated to have no direct economic impact. Insofar as it maintains public confidence in the integrity of the Lottery, the amendment has the effect of safeguarding the State's fourth largest revenue source.

Regulatory Flexibility Statement

The proposed amendment imposes no additional reporting, recordkeeping or other compliance requirements on small businesses; therefore, no analysis is required by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment serves to clarify the existing requirement that Lottery ticket sales occur only at the licensed location.

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

17:20-4.8 Sale of lottery tickets at specific locations licensed

An agent shall not sell tickets at any location other than that which is specified in the license. **All transactions involved in the sale of said tickets shall occur at the licensed location, and not elsewhere, but the holder of a winning ticket need not redeem such ticket at the place of purchase.**

(b)

DIVISION OF THE STATE LOTTERY

Sale and Redemption of Lottery Tickets

Proposed Amendment: N.J.A.C. 17:20-6.2

Authorized By: New Jersey State Lottery Commission, Frank M. Pelly, Executive Director.

Authority: N.J.S.A. 5:9-7.

Proposal Number: PRN 1992-263.

Submit comments by July 15, 1992 to:

Frank M. Pelly, Executive Director
Department of the Treasury
Division of the State Lottery
CN 041
Trenton, N.J. 08625-0041

The agency proposal follows:

Summary

The proposed amendment supplements existing rules by requiring all lottery ticket sales agents to redeem winning lottery tickets during normal business hours within the constraints of existing law, which limits such power to payment of prizes of $599.00 or less. It also effects minor language changes in the underlying rule.

Social Impact

The proposed amendment is made for the convenience of the ticket-buying public, who are sometimes unable to obtain payment of prizes on winning tickets without recourse to several claim centers under existing Lottery Commission Rules.

Economic Impact

The proposed amendment is revenue-neutral and is anticipated to have no direct economic impact. Insofar as it may foster and encourage lottery ticket sales, the amendent has the effect of augmenting the State's fourth largest revenue source.

Regulatory Flexibility Analysis

The proposed amendment may require small businesses to engage in additional recordkeeping to the extent that they are not presently redeeming winning lottery tickets, or to the extent that they are not offering to make payment by check, on prizes of $599.00 or less. To satisfy the requirements of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it has been determined that any minimal increase in recordkeeping required by the amendment is outweighed by the anticipated benefits to the public and the indirect enhancement of State revenues to be derived therefrom. It has also been determined that the amendment is the least restrictive and least cumbersome means of accomplishing the above ends, consistent with the interests of the ticket sales agents as well as the public at large.

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

17:20-6.2 Sale **and redemption** of lottery tickets

(a) [The agent shall make available, a] **At** all times during normal business hours, **agents shall make** current lottery tickets **available** for sale to the public, **and shall, within the limits set forth by law and these rules, redeem all winning tickets by payment of cash or check to the holder.**

(b)-(f) (No change.)

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program

Readoption with Amendments: N.J.A.C. 2:32

Proposed: April 6, 1992 at 24 N.J.R. 1142(a).
Adopted: May 11, 1992 by the Sire Stakes Board of Trustees, Bruce A. Stearns, Executive Director, and Arthur R. Brown, Jr., Secretary of Agriculture.
Filed: May 13, 1992 as R.1992 d.239, **without change.**

Authority: N.J.S.A. 5:5-91
Effective Date: May 13, 1992, Readoption
June 15, 1992, Amendments.
Expiration Date: May 13, 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.AC. 2:32.

Full text of the adopted amendments follows:

2:32-2.3 Registration of stallions
(a)-(b) (No change.)
(c) The registration must be returned by December 1. The Certificate of Good Health must be completed by a licensed New Jersey veterinarian on the farm where the stallion is standing, sometime between January 1 and January 21 of the year the stallion is registered and standing. The Certificate of Good Health, when signed by the veterinarian, is to be sent along with a copy of the EIA-AGID test chart to the Standardbred Owners and Breeders Association, Inc., P.O. Box 839, Freehold, New Jersey 07728 by February 15 of the registered year.
(d) The fee for annual registration of a stallion shall be due on or before December 1 of the approaching breeding season and December 1 for new registration. The fee must accompany this registration.
1. The following fees shall be applicable:
i. $750.00 if the stud fee is between $0 and $1,000 or free.
ii. $1,000 if the stud fee is between $1,001 and $5,000.
iii. $1,500 if the stud fee is between $5,001 and $15,000 or private.
iv. $2,000 if the stud fee is over $15,000.
(e) (No change.)
(f) The stallion must be on the farm by January 1 of the year they are expected to stand. Special permission may be granted by the New Jersey Sire Stakes Board of Trustees only for first year stallions to compete in any stakes or invitational events which are determined by the New Jersey Sire Stakes Board of Trustees to be important to the betterment of the Sire Stakes Program. A fee of $7,500 shall be payable to the New Jersey Sire Stakes Program if this permission is granted. In any event the stallion must be on the farm by March 1 and must have been registered in accordance with (a) through (f) above.
(g) The registration makes the foals of the stallion eligible to be nominated to the following:
1.-8. (No change.)
9. New Jersey Sire Stakes (Fair and Pari-Mutuel);
10. New Jersey Yearling Show; and
11. New Jersey Sired Overnight Events.
(h) (No change.)

2:32-2.9 Yearling nominations
(a) All foals must be registered with the United States Trotting Association with a certificate of registration dated on or before the time of nomination.
1. (No change.)
2. The yearling nomination fee shall be $40.00 if a copy of the United States Trotting Association certificate of registration accompanies the yearling nomination form and an additional $10.00 processing fee shall be due if the copy of the United States Trotting Association certificate is not submitted. The nomination payment covered the nomination fee for both the Fair and Pari-Mutuel division. Thereafter, each division will have separate sustaining payments.
3. (No change.)
4. Supplemental nominations may be made to the New Jersey Sire Stakes commencing with foals of 1991. Parties delinquent in paying the May 15 yearling nomination fee date are given until September 15 of the yearling year to fulfill the aforementioned conditions of nominations for a fee of $250.00. After September 15 up until February 15 of the two-year-old year the cost will be $500.00. An additional $400.00 is required to supplement to the Lou Babic Pace $300.00 or for the Lou Babic Filly division by February 15 of the two-year-old year.

2:32-2.10 Sustaining fees
The sustaining fee schedule will be as follows:

PARI-MUTUEL DIVISION

(No change.)

FAIR DIVISION

Age	First Sustaining Fee	Second Sustaining Fee
2	$100.00 (Feb. 15)	$150.00 (Apr. 15)
3	$100.00 (Feb. 15)	$150.00 (Apr. 15)

LOU BABIC MEMORIAL PACE

Age	Sustaining Fee
2YO Open	$600.00 (Mar. 15)
2YO Filly	$300.00 (Mar. 15)

2:32-2.19 Entry fee deadlines
(a) (No change.)
(b) All New Jersey Sire Stakes horses entered and drawn to post positions are required to pay entry fees at the track. This entry fee is required even though a horse is scratched.
(c) The entry fee must be paid or the horse will not be permitted to race in any Sire Stakes event until the fee is paid and collected.
(d) The entry fee will not be refunded unless the horse dies between the time of declaration and the start of the race.
(e) (No change.)

2:32-2.20 Entry fees
Entry fees will be added to the basic purse only in Fair and Pari-Mutuel series races. Entry fees will be:

Pari Mutuel Division	Fair Divisions
2 year olds $500.00	2 year olds $75.00
3 year olds $600.00	3 year olds $75.00

2:32-2.27 Final races
(a) (No change.)
(b) Each Pari-mutuel Final will have a $500.00 entry fee for two-year-olds and a $600.00 entry fee for three-year-olds and is open to the highest New Jersey Sire Stakes point winners declared in the Meadowlands, Garden State and Freehold, and the highest New Jersey Sire Stakes point winners at the Fairs in each division that are declared in and can be drawn to post in the first tier. Trailers will not be permitted to start in any New Jersey Sire Stakes Finals. There will be no entry fee for the Fair Finals.
(c)-(j) (No change.)

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Examination Charges
Travel Expenses
Adopted Amendment: N.J.A.C. 3:1-6.6

Proposed: April 20, 1992 at 24 N.J.R. 1420(a).
Adopted: May 21, 1992 by Jeff Connor, Commissioner, Department of Banking
Filed: May 21, 1992 as R.1992 d.250, **without change.**

Authority: N.J.S.A. 17:1-8 and 8.1; 17:9A-335 and 375; 17:10-11 and 23; 17:11A-45(g); 17:11B-11 and 13; 17:12B-172; 17:15-4; 17:15A-26; 17:15B-14 and 17; 17:16C-15; 17:16D-7 and 8; 45:22-10 and 11.

Effective Date: June 15, 1992.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:
The Department **received no comments.**

Full text of the adoption follows:

3:1-6.6 Examination charge

(a) The individual per diem per person examination charge for an examination of a bank, savings and loan association or holding company shall be $300.00, plus $15.00 for travel expenses.

(b) The individual per diem per person examination charge for an examination of a licensee, credit union, trust company or trust department of a bank, savings bank or savings and loan association, or any person not specified in this section shall be $325.00, plus $15.00 for travel expenses.

(b)

DIVISION OF REGULATORY AFFAIRS

Qualified Corporations
Adopted Amendments: N.J.A.C. 3:12-2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1 through 5.5 and 5.7
Adopted Repeal: N.J.A.C. 3:12-1.1, 1.2 and 1.3
Adopted New Rules: N.J.A.C. 3:12-1.1 and 1.2

Proposed: March 2, 1992 at 24 N.J.R. 675(b).
Adopted: May 20, 1992 by Jeff Connor, Commissioner, Department of Banking.
Filed: May 20, 1992 as R.1992 d.242, **without change.**

Authority: N.J.S.A. 17:9A-213.

Effective Date: June 15, 1992.
Expiration Date: June 15, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

SUBCHAPTER 1. GENERAL PROVISIONS

3:12-1.1 Definitions

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

"Capital" or "capitalization" means the aggregate of capital stock, surplus, undivided profits and unsecured subordinated capital notes or debentures.

"Fiscal agent" means a domestic corporation, or a foreign corporation authorized to transact business in this State, which transacts business in this State as a fiscal agent for other corporations, as defined in N.J.S.A. 17:9A-25(13).

"Qualified corporation" means a domestic corporation, or a foreign corporation authorized to transact business in this State, which registers with the Department to act as a registrar, transfer agent and/or fiscal agent.

"Registrar" means a domestic corporation, or a foreign corporation authorized to transact business in this State, which transacts business in this State as a registrar for other corporations, as defined in N.J.S.A. 17:9A-28(3).

"Transfer agent" means a domestic corporation, or a foreign corporation authorized to transact business in this State, which transacts business in this State as a transfer agent for other corporations, as defined in N.J.S.A. 17:9A-28(3).

3:12-1.2 Effect of rules upon depository institutions

Nothing in this chapter shall be construed as expanding or restricting the powers otherwise conferred by law upon a depository institution, such as a bank or savings bank, to engage in activities as a registrar, transfer agent or fiscal agent, and no such depository institution, in exercising any power otherwise conferred upon it, shall be subject to any provision of this chapter.

3:12-2.1 Filing a certified statement with the Commissioner of Banking

(a) Prior to transacting business as a registrar, transfer agent or fiscal agent, a corporation shall obtain approval from the Department to act as a qualified corporation. The application to act as a qualified corporation shall contain the following:

1. The address of the principal corporate office;
2. Address of all offfices located in this State;
3. Names of corporate directors and executive officers;
4. Financial statement;
5. Insurance coverage;
6. The filing fee of $100.00; and
7. Other information which may be required by the Commissioner from time to time to determine compliance with these rules.

(b) The president or vice president of the corporation shall certify that the information contained on the application is true to the best of his or her knowledge and belief.

(c) The application and certified statement shall be filed as of December 31 of each year, or as of such other time as the Commissioner may require.

(d) The application, certified statement and $100.00 filing fee shall be filed in the Department of Banking on or before April 1 of each year, or within 90 days of the specified date set by the Commissioner in (c) above.

3:12-2.2 Public disclosure of financial information

A qualified corporation, upon request by a corporate client, shall disclose its assets, liabilities, capital and fidelity insurance coverage. Information disclosed, as of the same date as a filed certified statement pursuant to this chapter, shall not vary in any material respect with the balance sheet of said certified statement. No information shall be disclosed as of any other date which does not itemize assets, liabilities, capital and insurance coverage in the same manner as required by this chapter.

3:12-2.3 Examination by a public accountant

(a) The directors of a qualified corporation shall cause the examination of the qualified corporation's records by a public accountant at least once in each calendar year. The scope of said examination shall include an inventory verification of unissued stock certificates and a confirmation of the last certificate number issued with the corporate issuer. The verifications and confirmations shall not be less than five percent of the accounts serviced or 10 corporate issuers, whichever is greater.

(b) The public accountant shall render an opinion on the financial statement, the sufficiency of internal controls and the adequacy of the separation of functions.

3:12-2.5 Examination by the Commissioner of Banking

The Commissioner of Banking may at any time, either personally or by a person or persons duly designated by him or her, examine the records of a qualified corporation. The costs of such examination shall be borne by the qualified corporation so examined.

3:12-3.1 Minimum capital

A qualified corporation shall maintain capital equal to $5,000 for each corporate issuer serviced or $100,000, whichever is greater. Unless otherwise directed by the Commissioner of Banking, no qualified corporation shall be required to maintain capital in excess of $1,000,000.

3:12-3.2 Restriction on new accounts for deficient capitalization

A qualified corporation which does not meet the minimum capitalization as required by this chapter shall not enter into a service agreement or contract with a corporate issuer to act as a registrar, transfer agent or fiscal agent. Renewals of existing contracts or agreements are not subject to this regulation.

3:12-3.3 Maximum time period for deficient capitalization

A qualified corporation shall not remain in a deficient capital position as calculated by standards prescribed by this chapter for a period of time in excess of 12 months or such other period of time as the Commissioner may prescribe.

3:12-4.1 Minimum fidelity insurance coverage

(a) A qualified corporation shall obtain a bankers or stockbrokers blanket bond which covers:

1.-2. (No change.)

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

3:12-4.2 Mail insurance

A qualified corporation shall provide insurance to cover securities in transit by mail.

3:12-4.3 Director's review of insurance

Insurance coverages maintained by a qualified corporation shall be reviewed annually by the board of directors to determine the sufficiency of coverages maintained based on the volume and nature of operations.

3:12-5.1 Establishment of a place of business

A qualified corporation shall maintain a place of business in the State of New Jersey and establish hours at which time business will be transacted.

3:12-5.2 Vault protection

A qualified corporation shall provide a vault for the storage and adequate protection, as determined by the Commissioner, of all stock certificates except those certificates which have been cancelled as a result of a complete transfer transaction.

3:12-5.3 Reconstruction of records

A qualified corporation which maintains the corporate issuer's stockholder records or ledger shall develop, implement and maintain a system providing for the reconstruction of the stockholders ledger.

3:12-5.4 Safekeeping; stock certificates

(a) A qualified corporation acting as a transfer agent shall provide safekeeping facilities for undeliverable stock certificates.

(b) (No change.)

3:12-5.5 Safekeeping unclaimed cash dividends

(a) A qualified corporation acting as a transfer agent shall provide for the adequate protection of unclaimed cash dividends.

(b) (No change.)

3:12-5.7 Transfer transaction journal

A qualified corporation acting as a transfer agent shall, based on the volume of transactions, periodically, but at least once in a 12-month period, provide the corporate issuer with a copy of the corporate issuer's transfer transaction journal.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Administration and Enforcement Process; Special Inspections

Adopted Amendments: N.J.A.C. 5:23-1.4, 2.15, 2.18, 2.20 and 3.14

Proposed: April 6, 1992 at 24 N.J.R. 1147(a).

Adopted: May 18, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: May 20, 1992 as R.1992 d.244, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 52:27D-124.

Effective Date: June 15, 1992.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

A comment was submitted by Daniel M. McGee, P.E., Regional Director, Construction Codes and Standards, of the American Iron and Steel Institute.

COMMENT: The amendments make reference to Class I, Class II and Class III structures, but do not define or explain these terms. Definitions should be included in N.J.A.C. 5:23-2.15.

RESPONSE: The designations of classes of structures are based upon the designations of the types of enforcing agencies that are authorized to do plan review for them. The Department agrees that this should be made more explicit. It is therefore adding definitions of "Class I structure," "Class II structure" and "Class III structure." However, these new definitions are being placed in the general definition section, N.J.A.C. 5:23-1.4, because the terms are used in several places in the chapter.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***):

5:23-1.4 Definitions

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

. . .

***"Class I structure" means a structure not listed in N.J.A.C. 5:23-3.10(c)1i through v or 2ii through xx.**

"Class II structure" means a structure listed in N.J.A.C. 5:23-3.10(c)2ii through xx.

"Class III structure" means a structure listed in N.J.A.C. 5:23-3.10(c)1i through v.*

. . .

5:23-2.15 Construction permits—application

(a) The application for a permit shall be submitted in such form as the enforcing agency may prescribe and shall be accompanied by the required fee as provided for in this subchapter and N.J.A.C. 5:23-4. The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure, and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the construction official, which shall include, but not be limited to, the following.

1.-4. (No change.)

5. A statement that all required State, county and local prior approvals have been given, including such certification as the construction official may require; and

6. For Class I structures, a list of all materials and work requiring special inspections, and a list of agencies, qualified licensed professionals or firms intended to be retained for conducting those inspections in accordance with the requirements of the building subcode.

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

5:23-2.18 Inspections

(a) (No change.)

(b) Inspections during the progress of work:

1. The construction official and appropriate subcode officials shall carry out such periodic inspections during the progress of work as are necessary to insure that work installed conforms to the approved plans and the requirements of the regulations.

i.-iii. (No change.)

iv. Special inspection schedule: Where buildings proposed for construction exceed two stories in height or by their nature pose complex or unusual inspection problems, the construction official or appropriate subcode official may specify additional or special inspections to the applicant in writing prior to the issuance of a permit and during construction in the case of unforseeable circumstances. Where Class I structures incorporate construction techniques covered under the special inspection provisions of the building subcode, such special inspections shall be provided for. The applicant shall provide a list of special inspections required by the building subcode when applying for the permit.

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

5:23-2.20 Tests and special inspections

(a) All tests and special inspections required by the provisions of the regulations shall be made and conducted under the supervision of the enforcing agency and in accordance with such inspection and test procedures as may be prescribed by the provisions of the regulations, with the expense of all test and inspections to be borne by the owner or lessee, or the contractor performing the work.

(b) The construction official may accept tests and test reports of the Department and other government agencies, as well as signed statements and supporting inspection and test reports filed by qualified licensed professionals or approved agencies or firms.

5:23-3.14 Building Subcode

(a) (No change.)

(b) The following articles or sections of the building subcode are modified as follows:

1.-9. (No change.)

10. The following amendments are made to Article 13 of the building subcode entitled "Materials and Tests":

i.-iv. (No change.)

v. Section 1308.1 is amended to add the phrase "for Class I structures or when requested by the building subcode official" after the word "special inspections" on the first line;

vi. Section 1308.1.1 is deleted in its entirety and substitute in lieu thereof "Permit applications shall be made in accordance with N.J.A.C. 5:23-2.15.";

vii. Section 1308.2 is deleted and substitute in lieu thereof "Premanufactured construction and components shall be approved in accordance with N.J.A.C. 5:23-4.26.";

viii. Section 1308.3.1 is deleted in its entirety.

11.-21. (No change.)

(c) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Municipal Enforcing Agencies—Establishment
Adopted Amendment: N.J.A.C. 5:23-4.3

Proposed: April 6, 1992 at 24 N.J.R. 1148(a).

Adopted: May 18, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: May 20, 1992 as R.1992 d.245, **without change.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: June 15, 1992.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-4.3 Municipal enforcing agencies—establishment

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

(c) Term; transfer:

1.-2. (No change.)

3. Except as otherwise provided in (a)3 above with regard to enforcement of the elevator safety subcode, the Department shall not assume partial responsibility for the enforcement of the regulations pursuant to this section. Whenever the Department is constituted as the local enforcing agency by the municipality, it shall act as the exclusive enforcing agency with respect to all subcodes and all areas of the regulations within the limits of such municipality.

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

(b)

DIVISION OF HOUSING AND DEVELOPMENT

New Home Warranties and Builders' Registration
Denial, Suspension or Revocation of Registration; Warranty Obligations
Adopted Amendments: N.J.A.C. 5:25-2.5, 5.2, 5.4 and 5.5

Proposed: April 6, 1992 at 24 N.J.R. 1149(a).

Adopted: May 18, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: May 20, 1992 as R.1992 d.246, **without change.**

Authority: N.J.S.A. 46:3B-10.

Effective Date: June 15, 1992.

Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:25-2.5 Denial, suspension or revocation of registration

(a) A certificate of registration may be denied or revoked if the registrant or applicant, or an officer, partner, director or stockholder of the registrant or applicant, has at any time:

1.-3. (No change.)

4. Willfully violated the New Jersey State Uniform Construction Code to any substantial degree; or

5. Habitually or egregiously engaged in any act or omission set forth in (b)1 through 7 below.

(b) A certificate of registration may be suspended, pending compliance with the Act, with this chapter and with the orders of the Commissioner, if the registrant, or an officer, partner, director or stockholder of the registrant, has at any time:

1. Failed to continue his participation in either the State Plan or a private plan;

2. Failed or enroll or warrant any new home with either the State Plan or an approved private plan;

3. Failed to correct or settle any claim arising out of any defect after his responsibility has been established through the dispute settlement procedure of the State Plan or of a private plan, as the case may be, unless such determination is appealed and a stay of the order to correct the defect is issued by the Commissioner or by a court having jurisdiction;

4. Failed to file an amended application for or to a certificate of registration within 30 days of any material change in the information provided in the most recent application or amendment thereto;

5. Had as an officer, partner, director or stockholder any person who was serving as an officer, partner, director or stockholder of a builder that is not registered or the certificate of registration of which has been revoked or is currently suspended; provided that this paragraph shall not apply to any person who was not affiliated

with such builder at the time that the incident or practice that led to revocation or suspension occurred;

6. Incurred, or been responsible for incurring, an award against the New Home Warranty Security Fund for which the fund has not been fully compensated; or

7. Failed to participate in the dispute settlement process, in which case any suspension shall continue in effect pending resolution of the dispute and full compensation for any payments made, or expenses incurred, by the Fund.

(c) A certificate of registration may be denied or revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director or stockholder of the applicant or registrant, has at any time, violated any provision of the Act or of this chapter, or any order of the Commissioner, with regard to any matter not referred to in either (a) or (b) above.

Recodify existing (b)-(c) as (d)-(e) (No change in text.)

5:25-5.2 Claim eligibility

(a) (No change.)

(b) An owner who elects a remedy other than the filing of a warranty claim with an approved private plan or the State plan shall not be eligible thereafter to file a claim against the State fund. The State fund shall not be liable for any claim not filed in accordance with this chapter.

(c) No person who is not an eligible owner, as determined in accordance with (a) above, shall be entitled to file a claim against the State fund. No builder or other seller of a new home shall be eligible to file a claim against the State fund or to obtain indemnification or other relief from the State fund, whether in a third-party action or otherwise.

5:25-5.4 Warranty contributions, amount, date due

(a) Each builder not participating in an approved private plan shall contribute to the State plan in an amount equal to 0.4 of one percent of the purchase price of the home, or the fair market value of the home on its completion date if there is no good faith sale, each time he sells a home. When the cost of land is not included in the sale, the purchase price shall be deemed to be 125 percent of the contract amount and shall be the basic for calculating the premium and the dollar value placed on the Certificate of Participation.

1. Whenever the seller of a new home is not the builder who constructed it, or a builder taking from the builder who constructed it, such as a mortgage in possession, receiver in bankruptcy, or executor of an estate, such person shall not be excused from payment of premiums or from taking corrective action on complaints, dispute settlement, or the like in the same manner as would any builder. Such person may contract with a builder for follow-up services that may be required pursuant to the warranty, or may at his option pay an additional 0.4 of one percent of the purchase price of the new home and be relieved of the obligation to provide such follow-up services. The State plan shall then stand in his place with regard to any claims made pursuant to this subchapter, but shall not stand in his place if the homeowner elects not to file a claim in accordance with this subchapter and elects, rather, to pursue any other remedy against the seller. The claims procedure established by this subchapter shall be the exclusive remedy whereby the State plan shall stand in the place of the seller. The Department shall inspect the new home for any defects. The list of defects shall be attached to the Certificate of Participation. Uncompleted portions shall be excluded from the warranty coverage until completed, in accordance with N.J.A.C. 5:25-3.4(a)1. The additional amount paid shall not be passed through to the owner.

2. Where a builder is under contract with a property owner to fully construct a new home and provide the required warranty coverage and fails to complete the contract and obtain a certificate of occupancy, the owner may apply to the Department for a new home warranty and pay a premium of 0.8 of one percent of the purchase price of the home. Such procedure, and the coverage thereby secured, shall be as defined in N.J.A.C. 5:25-5.4(a)1. A warranty shall not be issued when the home is less than 80 percent complete or it is determined by the Department that the cause of the builder's not completing the home was the owners' failing to meet their responsibility under the contract.

3.-4. (No change.)

5:25-5.5 Claims procedure

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

(e) Final payment in event of builder default rules are as follows:

1. If any builder, after receiving the decision of the arbitrator, the Bureau of Homeowner Protection or the Director, as the case may be, refuses to correct any defect within the time period specified in the decision, then the owner may file a request for payment with the Department. Notwithstanding any conciliation agreement or arbitration award, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2 below, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

2.-4. (No change.)

(f) Nothing herein shall limit the right of an owner to seek a remedy directly in court pursuant to Section 9 of the Act, without regard to the dispute settlement procedures made available in accordance with this subchapter; provided, however, that the New Home Warranty Security Fund shall have no liability if a remedy other than dispute settlement in accordance with this subchapter is elected by the owner of a new home.

(g) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

WATER SUPPLY ELEMENT

Water Supply Loan Programs

Readoption with Amendments: N.J.A.C. 7:1A

Proposed: March 2, 1992 at 24 N.J.R. 707(a).

Adopted: May 20, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: May 22, 1992 as R.1992 d.252, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: Water Supply Bond Act of 1981, P.L.1981, c.261, as amended by P.L.1983, c.355; N.J.S.A. 13:1B-3; 13:1D-9; 40A:11-1 et seq.; 58:1A-1 et seq.; N.J.S.A. 58:12A-1 et seq.; N.J.S.A. 58:12A-22 through 58:12A-25; and N.J.A.C. 5:34.

DEPE Docket Number: 04-92-01.

Effective Date: May 22, 1992, Readoption; June 15, 1992, Amendments.

Expiration Date: May 22, 1997.

Summary of Public Comments and Agency Responses:

Pursuant to the requirements of Executive Order No. 66 (1978), the Water Supply Bond Loan Rules, N.J.A.C. 7:1A, are set to expire on June 5, 1992. On March 2, 1992 at 24 N.J.R. 707(a), the Department of Environmental Protection and Energy proposed to readopt this chapter and proposed a number of amendments intended to clarify and update the rules. A public hearing to accept testimony on the proposed readoption with amendments was held on March 18, 1992. The public comment period on the proposal closed on April 1, 1992.

The Department received one written comment during the public comment period ending April 1, 1992, and one individual testified on behalf of two organizations at the public hearing on March 18, 1992. The following is a list of the persons who made either written or oral comments directly related to the proposal:

Robert A. Briant, Jr; Utility and Transportation Contractors Association of New Jersey;

Robert E. Thiele; Hackensack Water Company and National Association of Water Companies (New Jersey Chapter)

1. COMMENT: Both the Hackensack Water Company and the New Jersey Chapter of the National Association of Water Companies expressed support for the amendments proposed throughout this chapter for the purpose of implementing P.L.1989, c.311, which amended the Water Supply Replacement Trust Act, N.J.S.A. 58:10A-22 through 58:12A-25, to authorize the use of the Water Supply Replacement Trust Fund for loans to privately-owned public water systems. The commenters stated that making low cost loans available to investor-owned utilities would directly benefit the customers of those companies and solve many of the problems faced by small water companies.

RESPONSE: The Department appreciates the commenters' support for the proposed amendments and intends to extend financing to investor-owned utilities as soon as funding is available. As noted in the proposal, the uncommitted balance of the original $60 million appropriated to the Trust Fund has been reappropriated by the Legislature for other uses. Due to current fiscal conditions in the State, the status of future funding for Type B and Type C water supply replacement loans is uncertain.

2. COMMENT: The Utility and Transportation Contractors Association of New Jersey (Association) expressed support for the proposed readoption with amendments. In particular, the Association commented that amending these rules to correct or add citations to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34, would help maintain the integrity of the public bidding process and further protect the State's taxpayers from abuses that may occur during the bidding process. The Association also supported the proposed amendment of N.J.A.C. 7:1A-2.13(b)4 to eliminate approval of funding for salaries, equipment and force account work.

RESPONSE: The Department appreciate the commenter's support for the proposed amendments. The Department agrees that these amendments will help strengthen the public bidding process.

Summary of Hearing Officers' Recommendations and Agency Response:

Richard Kropp, Chief of the Department's Bureau of Water Allocation, served as hearing officer at the March 18, 1992 hearing. After reviewing the testimony presented at the public hearing, Mr. Kropp recommended that the Department readopt N.J.A.C. 7:1A with the proposed amendments.

Mr. Kropp's recommendations are set forth in more detail in the hearing officers' report. A copy of the record of the public hearing which includes the hearing officers' report is available upon payment of the Department's normal charges for copying. Persons requesting copies of the public hearing record should contact:

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

In accordance with the recommendation of the hearing officer, the Department has adopted the proposal with technical and substantive changes not requiring additional public notice and comment (see Summary of Agency-Initiated Changes, below). The Department intends the adopted amendments to apply to all new loan applications received subsequent to this adoption and all pending loan applications for which a loan agreement has not yet been executed between the applicant and the Department.

As noted in the proposal, the Department has updated by 10 years age subcategories accompanying the priority point values for rehabilitation loan projects at N.J.A.C. 7:1A-3.2(f), to reflect the passage of 10 years since the enactment of the Water Supply Bond Act of 1981. This change may alter the priority point totals and ranking of proposed rehabilitation projects as calculated under N.J.A.C. 7:1A-3.2(c) and (h). However, the Department has determined that since sufficient funds have been appropriated to fund all pending eligible rehabilitation loan applications received before fiscal year 1992, it will not be necessary to recalculate priority point values or rankings for these applications. For loan applications received during or after fiscal year 1992, the Department will assign priority points and determine priority point rankings in accordance with the rules in effect at the time the complete information necessary for these calculations is received by the Department.

Also as noted in the proposal, the Department has amended N.J.A.C. 7:1A-4.2(h)5 to allow for reasonably higher priority points for large systems seeking water supply interconnection loans. This change corrects a deficiency in the calculation of priority points which previously prevented large systems from qualifying for the maximum interconnection loan amount, but does not affect the calculation of priority points for other systems. Since the Department anticipates that sufficient funds are available to fund all pending eligible interconnection loan applications, even taking into account the increase in the maximum loan amount for each category of interconnection loan (amended N.J.A.C. 7:1A-4.2(e)), it intends to recalculate the priority points for large systems for which interconnection loan applications are pending.

Summary of Agency-Initiated Changes:

1. Due to a printing error, the Summary section of the Department's March 2, 1992 proposal overstated by $4 billion the amount of funding recommended by the New Jersey Statewide Water Supply Plan to be appropriated for rehabilitation loan funding. The Plan recommends a total appropriation of $100 million for rehabilitation loan funding, not $4100 million as stated in the proposal.

2. To correct an omission in the proposal, references to "State projects" have been deleted from N.J.A.C. 7:1A-1.1 and 1.2. Pursuant to P.L.1983, c.355, State water supply projects are no longer eligible for funding under the Water Supply Bond Act.

3. The Department has revised N.J.A.C. 7:1A-2.9(a) to be consistent with its current practice of transmitting three, not four, copies of the loan award document to the applicant.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:1A.

Full text of the adopted amendments follows (additions to proposal in boldface with asterisks ***thus***; deletion from proposal in brackets with asterisks *[thus]*):

CHAPTER 1A
WATER SUPPLY LOAN PROGRAMS

7:1A-1.1 Scope and construction of rules

(a) The following shall constitute the rules governing loans for *[State or]* local projects for the rehabilitation or repair of antiquated, obsolete damaged or inadequately operating publicly owned water supply facilities, for the interconnection of unconnected or inadequately connected water systems, and for the construction of water supply facilities or public water systems to address contamination problems as identified by the Department, pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended by P.L. 1983, c.355, N.J.S.A. 58:12A-22 through 58:12A-25, and as recommended by the New Jersey Statewide Water Supply Plan. These rules prescribe procedures, minimum standards for conduct of borrowers, and standards for obtaining loans for the rehabilitation of water supply facilities, for interconnections between water supply systems, and for the construction of water supply facilities or public water systems to address contamination problems as identified by the Department.

(b) (No change.)

7:1A-1.2 Purpose of rules

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended by P.L. 1983, c.355, N.J.S.A. 58:12A-22 through 58:12A-25, and the New Jersey Statewide Water Supply Plan; and amendments.

2. To establish policies and procedures for administration of funds appropriated pursuant to the above acts for the purpose of making State loans for *[State or]* local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating water supply transmission facilities, for the interconnection of unconnected or inadequately connected water supply systems, and for the construction of water supply facilities or public water systems to address contamination problems identified by the Department;

3.-6. (No change.)

7:1A-2.1 Scope

This subchapter shall prescribe procedures and requirements for the award of State loans for projects which will effectuate the

purposes of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., N.J.S.A. 58:12A-22 through 58:12A-25, and the Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended by P.L. 1983, c.355, and as recommended by the New Jersey Statewide Water Supply Plan.

7:1A-2.2 Definitions

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

"Act" means the Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended by P.L. 1983, c.355, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., N.J.S.A. 58:12A-22 through 58:12A-25, and such other acts and appropriations provided to the Department for the purposes provided in this chapter.

"Administrator" means the Assistant Director of the Water Supply Element of the Department or the person designated by the Commissioner to carry out the functions of the Administrator for the purposes of this chapter.

"Applicant" means any local unit, municipality, municipally-owned public water system or privately-owned public water system that applies for a loan pursuant to the provisions of these rules and regulations.

...

"Commissioner" means the Commissioner of the Department or his or her designated representative.

"Construct" and "Construction" mean, in addition to the usual meaning thereof, acts of construction, re-construction, replacement, improvement, betterment and the solicitation of bids in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34.

...

"Contamination problems" means an existing potable groundwater supply whose physical, chemical, microbiological or radiological condition, is or may reasonably be expected to become, such that its continued use is detrimental to public health in accordance with the New Jersey Safe Drinking Water Act Regulations, N.J.A.C. 7:10, or in accordance with the Safe Drinking Water Act N.J.S.A. 58:12A-1 et seq., particularly 58:12A-6, as applicable.

"Department" means the New Jersey Department of Environmental Protection and Energy.

...

"Eligible project scope" means: (1) the repair, replacement or reconstruction of antiquated, obsolete, damaged or inadequately operating water supply transmission facilities consisting of pipes and appurtenances including, but not limited to, pump stations, valves, surge chambers, existing interconnections and storage tanks which convey water; or (2) the construction, repair, replacement or reconstruction of parts of an inadequate or nonexistent water supply system interconnection; or (3) the planning, design and construction of water supply facilities or public water systems to address contamination problems as identified by the Department. The applicant's project scope must conform to one of these criteria to be funded pursuant to this chapter.

...

"Local unit" means any political subdivision of the State or agency thereof.

...

"Municipality" means any city, town, township, borough or village or any agency or instrumentality of one or more thereof.

...

"Project" means any work relating to the rehabilitation of water supply transmission facilities, the construction or rehabilitation of interconnections between water supply systems, or construction of water supply facilities or public water systems to address contamination problems.

"Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes:

1. Any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

2. Any collection or pre-treatment storage facilities not under such control which are used primarily in connection with such system.

"Residences with contaminated wells" means residences in a residential area of more than 1,500 residential units that has been found by the local department of health, or board of health, and the county board of health, or department of health, to have at least 25 percent of the wells supplying potable water to the area with contaminants in excess of the maximum contaminant levels adopted by the Department pursuant to P.L. 1983, c.443 (N.J.S.A. 58:12A-2 et seq.), as applicable.

...

"Type B Funding" means loans awarded to municipalities, municipally owned public water systems, or privately owned public water systems as defined at N.J.S.A. 58:12A-3, out of appropriations other than appropriations made pursuant to the Water Supply Bond Act, P.L. 1981, c.261, as amended, or other bond acts, to plan, design and construct projects to address contamination problems as identified by the Department other than those addressed under Type C Funding (see this subchapter and N.J.A.C. 7:1A-7).

...

7:1A-2.3 Preapplication procedures

(a) Every applicant shall request an informal conference prior to making a formal application for a loan. During the conference the Department shall identify and explain all loan application documents. It shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a loan. This conference is not part of the application procedure and verbal statements made during the conference shall not bind the Department. Such conferences may be waived at the discretion of the Department.

(b) Questions concerning the program and requests for a preapplication conference should be directed to:

Department of Environmental Protection and Energy
Water Supply Element
CN-029
Trenton, New Jersey 08625

7:1A-2.4 Application procedures

(a) To apply for a water supply loan, an applicant shall comply with all the pertinent requirements of this section. The application shall be submitted to the Department on the forms provided for that purpose.

(b) An applicant for a water supply loan shall submit:

1.-6. (No change.)

7. Proposed financial arrangements for both construction of the project and sale of water between the purveyors concerned, if any, and written confirmation that the proposed arrangements are acceptable to both purveyors and the New Jersey Board of Regulatory Commissioners, if applicable;

8.-12. (No change.)

(c) (No change.)

(d) Applications should be submitted well in advance of the application closing date for the application period in which the applicant wishes to be awarded a loan. There shall be at least one application period in each fiscal year. For the rehabilitation loan program, the application closing date for the application period shall be June 30.

1. For the interconnection loan program, the application closing date for the application period shall be June 30. In the case of loans for addressing water supply contamination problems, two annual application periods will be established with closing dates of December 31 and June 30 respectively. However, applications will be received and reviewed on a continuous basis. Those projects meeting exigency standards, as defined at N.J.A.C. 7:1A-5.2(b), shall be processed for immediate funding if available.

2. Additional application periods may be established as deemed necessary by the Department upon publication of a notice of the

details of the additional application period in the New Jersey Register.

3. The application closing date for any application period may be extended, if deemed necessary by the Department, upon publication of a notice of extension in the New Jersey Register.

4. If the Department determines that funds are not available to award any loans in a given fiscal year, it may suspend the application period by providing notice of such suspension in the New Jersey Register by April 30.

(e) (No change.)

(f) Applications shall be sent to:

Department of Environmental Protection and Energy
Water Supply Element
CN-029
Trenton, New Jersey 08625

7:1A-2.5 Use and disclosure of information

All loan applications, preapplications, and other submittals, when received by the Department, constitute public records. The Department shall make them available to persons who request their release, to the extent allowed by New Jersey and Federal law.

7:1A-2.6 Evaluation of application

(a) The Department shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subjected to:

1. (No change.)

2. Program, technical, scientific and environmental evaluation to determine the merit and relevance of the project to the Department's program objectives, especially those recommendations described in the New Jersey Statewide Water Supply Plan;

3.-5. (No change.)

7:1A-2.7 Department approval/disapproval

(a) After a full review and evaluation of an application, the Department shall take one of the following actions:

1.-3. (No change.)

(b) (No change.)

7:1A-2.8 Amount and terms of loan

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

(d) A rate schedule setting forth the amounts charged for sale of water by the borrower shall be established for each rehabilitation, interconnection or water supply replacement loan. For all borrowers, a portion of receipts, as stipulated by the loan award document, shall be dedicated to a specific fund for the purpose of assuring repayment of the loan by the borrower. The Department may require additional collateral to secure the loan when deemed necessary.

1. When applicable, a New Jersey Board of Regulatory Commissioners approved rate schedule setting forth the amounts charged for the sale of water by the borrower shall be established.

(e) (No change.)

7:1A-2.9 Loan award document

(a) The Department shall prepare and transmit *[four]* ***three*** copies of the loan award document to the applicant.

1.-4. (No change.)

7:1A-2.10 Effect of loan award

(a) (No change.)

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project. The Department's policy is that cost overruns for any project or portion thereof are solely the responsibility of the borrower.

7:1A-2.11 Notice of intent

(a) (No change.)

(b) The applicants receiving a Notice of Intent to Award a loan shall obtain all necessary Federal, State and local permits and approvals within six months of receipt of the Notice of Intent to Award a loan. Failure to obtain the required permits within the required time period shall make the project ineligible for a loan for that application period unless prior approval for an extension has been granted by the Department pursuant to N.J.A.C. 7:1A-2.12(h).

(c)-(e) (No change.)

7:1A-2.12 Project development phase of water supply loan program

(a) Each applicant receiving a Notice of Intent to Award a loan shall arrange to have a pre-design conference within 30 days after receipt of the notice, and shall submit all materials required by this section to the Department within six months after receipt of the notice or within the time limits of any extension granted pursuant to (h) below.

(b) During the pre-design conference the Department shall identify and explain the requirements of this section, including design criteria and review of the requirements of the Environmental Assessment specified in (d) below. Based on information furnished by the applicant, the Department shall also determine if an approval is required for the project or any portion thereof pursuant to the Standards for Construction of Public Community Water Systems, N.J.A.C. 7:10-11.

1. (No change.)

2. If an approval is required pursuant to the construction standards referred to in (b) above, the Department shall provide reasonable assistance to the applicant to insure compliance with the requirements of said construction standards as applicable. The Department reserves the right to require approval in accordance with said construction standards at a later date should revised or additional information so indicate.

(c) All applicants for water supply loans shall submit all materials required by this subsection, prepared in accordance with accepted engineering practices, within the specified time period.

1. (No change.)

2. The plans for the water supply bond loan project shall be prepared by an engineer licensed by the State of New Jersey. Each drawing shall be signed and sealed and shall have a title block giving the name and location of the project, the scale or scales used, date, the name of the engineer and his or her license number. Plans shall show clearly the datum to which evaluations shown are referred. The National Geodetic Vertical Datum of 1929, (U.S.G.S.), should be used wherever possible or an equation converting to that datum given. The plans shall clearly reflect and label all existing and proposed features and shall include but not be limited to:

i. (No change.)

ii. A profile and plan, if required in the judgment of the Department, of the entire transmission-grid system that is to be constructed. The plan shall include, but not be limited to, an index map, water mains, service connections, fire hydrants, gate valves, blowoff valves, air relief valves, pressure reducing valves, pumping stations, surge chambers and storage tanks. The Plan shall also include, but not be limited to, the location of all utilities and sewer lines, that is, pipelines, telegraph and telephone lines, electrical conduits, and sanitary and storm sewers that will have an effect on the project implementation.

iii. If required by the Department, a topographic and pressure contour map of the transmission grid system showing ground elevations and water pressure at various points in the system.

iv.-vi. (No change.)

3.-7. (No change.)

(d) The Department reserves the right to waive any of the submission requirements of (c) above, subject to the provisions of the Standards for Construction of Public Community Water Systems, N.J.A.C. 7:10-11, when it has determined that submission of such information is not required or necessary in order for the Department to enter into a Loan Agreement with the applicant.

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

7:1A-2.13 Eligible project costs

(a) Project costs shall be allowed to the extent permitted by this chapter and the loan award document. Eligible project costs shall be those costs set forth below:

1. Repair, replacement, or reconstruction of all or part of any obsolete, damaged, antiquated, or inadequately operating water supply transmission system, or any obsolete or antiquated water supply interconnection or construction of a new interconnection, or the planning, design and construction of water supply facilities or

public water systems to address contamination problems as identified by the Department, within the scope of the approved feasibility study, including planning costs when so approved by the Department;

2.-7. (No change.)

(b) Ineligible project costs shall be those costs set forth below:

1.-3. (No change.)

4. Salaries of regular water purveyor employees, expenses for governmentally owned or purveyor owned equipment, and other such force account expenses; and

5. (No change.)

(c) Development and construction project contracts must be awarded in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34.

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

(f) Prior to any final award of bids for construction contracts the borrower shall submit for the Department's review and approval the final construction contracts with work specifications detailing any changes made since the Department's previous design approval.

1.-2. (No change.)

3. The borrower shall certify to the Department the following:

i. The borrower's compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.S.A. 5:34;

ii.-iii. (No change.)

(g) (No change.)

7:1A-2.17 Loan conditions

(a) The following requirements, in addition to such other statutes, rules, terms and conditions as may be applicable to particular loans, are conditions of each loan and conditions precedent to each payment under a loan award document:

1.-2. (No change.)

3. The borrower shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with accounting principles required by New Jersey law.

4. (No change.)

5. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project.

i. This performance bond or guarantee shall remain in effect until the Department's final inspection of the project and determination in writing that the project is satisfactorily completed.

ii. (No change.)

6.-8. (No change.)

7:1A-2.22 Publicity and signs

(a) (No change.)

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Department, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

7:1A-2.34 Administrative hearings

(a) The Administrator shall make the initial decision regarding all disputes arising under a loan. The borrower shall be required to specify in writing and in detail the basis for its appeal. When a borrower so requests, the Administrator shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the borrower.

(b) A borrower may request a hearing within 15 days of a decision by the Administrator. The hearing request shall be addressed to: Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402. The request for a hearing shall specify in detail the basis for the appeal.

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

7:1A-3.1 Eligibility and criteria

(a) Any local unit operating an antiquated, obsolete, damaged or inadequately operating water supply transmission facility in need of rehabilitation or repair is eligible for a loan in any application period where it satisfactorily completes the loan application process in a timely manner, meets the eligibility criteria set forth in this subchapter, receives the minimum priority score, and ranks high enough on the priority list to be funded. To receive a loan the project shall meet the following criteria to the satisfaction of the Department.

1.-4. (No change.)

5. The application must be accompanied by adequate explanation of how the local unit plans to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan and the steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete and implement the project. The local unit must comply with all standard loan provisions of the State of New Jersey.

6. (No change.)

7:1A-3.2 Priority determination

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

(e) A maximum loan amount for each project shall be set for each of the three categories of projects as follows:

1.-3. (No change.)

4. Any loan funds appropriated for a project in excess of the actual costs spent for the completed project shall be returned to the Water Supply Fund created pursuant to the Act within 30 days of final inspection of the project by the Department.

(f) Priority points shall be given for the following factors and in the amount shown below:

1. A local unit shall receive priority points listed in priority categories set forth in (f)2, 3, 4, 5, 6 and 9 below only if the project scope includes the actual repair, rehabilitation, or correction of a problem item clearly related to said priority categories.

2. Priority points shall be awarded for the age of transmission lines and appurtenances including interconnections and surge tanks to be rehabilitated.

i. Two points shall be awarded for transmission lines and appurtenances constructed between the years 1976 through 1980;

ii. Four points shall be awarded for transmission lines and appurtenances constructed between the years 1961 through 1975;

iii. Eight points shall be awarded for transmission lines and appurtenances constructed between the years 1936 through 1960;

iv. Twelve points shall be awarded for transmission lines and appurtenances constructed between the years 1911 through 1935;

v. Sixteen points shall be awarded for transmission lines and appurtenances constructed in or before the year 1910.

3. The local unit shall be required to submit justification to the satisfaction of the Department before priority points are awarded under priority categories (f)4 and 5 below. The justification may consist of, but not be limited to, a technical analysis, a professional certification, unresolved Departmental administrative orders, unresolved Departmental directive letters, verifiable system failures and malfunctions, or other justifications as deemed acceptable by the Department.

4. Priority points shall be awarded, subject to (f)3 above, for the age of the pump station(s) to be rehabilitated.

i. Two points shall be awarded for each pump station constructed between the year 1970 through 1975;

ii. Four points shall be awarded for each pump station constructed between the year 1965 through 1969;

iii. Eight points shall be awarded for each pump station constructed between the year 1960 through 1964;

iv. Twelve points shall be awarded for each pump station constructed before the year 1960.

5. Priority points shall be awarded, subject to (f)3 above, for the age of storage tank(s) to be rehabilitated.

i. Two points shall be awarded for each storage tank constructed between the year 1970 through 1975;

ii. Four points shall be awarded for each storage tank constructed between the year 1965 through 1969;

iii. Eight points shall be awarded for each storage tank constructed between the year 1960 through 1964;

iv. Twelve points shall be awarded for each storage tank constructed before the year 1960.

6. In the instance where the project scope includes rehabilitation of different items, items of different ages, or both, the total points awarded under priority categories in (f)1, 2, 3, 4 and 5 above shall be the weighted average in accordance with the capital value associated with each item. Capital value is defined as the estimated installed cost of an existing item in its new state at the present time.

As an example see Table 1 below:

TABLE 1

Item	Age Subcategory	Points	New Cap. Cost (Million $)	Fraction Total Cost	Points (weighted)
lines	1961-75	4	0.5	0.213	0.852
lines	1936-60	8	1.0	0.426	3.408
tank	1960-64	8	0.5	0.213	1.704
pump sta.	1965-69	4	0.1	0.043	0.172
pump sta.	1960-64	8	0.25	0.106	0.848
		total	2.35	1.001	Weighted Average 6.984

i. (No change.)

7. Priority points shall be awarded for the percentage of the present daily demand of the local unit's water supply system that can be augmented from usable interconnections with other water systems. The present daily demand for the local unit's service area shall be calculated by totaling the daily water supply demand over a one year period ending in the month of the submission of the local unit's rehabilitation loan application and dividing this sum by 365.

i.-iv. (No change.)

8.-10. (No change.)

(g) Total priority points shall be determined by totaling all the points awarded a local unit by (f) above.

(h) The Department shall establish and maintain a separate priority list for each application period for each of the size groups as set forth in this section in accordance with the number of priority points awarded each project pursuant to this section.

7:1A-4.1 Eligibility and criteria

(a) Any local unit whose system includes an antiquated, damaged, or inadequate water supply interconnection in need of rehabilitation, or repair or consolidation, or whose system lacks interconnections which qualify either as Class A or as Class B interconnections, as further defined in N.J.A.C. 7:1A-4.2, is eligible for a loan in any application period where it satisfactorily completes the loan application process in a timely manner, meets the eligibility criteria set forth in this subchapter, receives the minimum priority score, and ranks high enough on the priority list to be funded. A local unit may apply for interconnections with privately owned as well as publicly owned systems. To receive a loan the project shall meet the following criteria to the satisfaction of the Department:

1.-4. (No change.)

5. The application shall be accompanied by adequate explanation of how the local unit plans to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and the steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete and implement the project. The local unit shall comply with all standard loan provisions of the State of New Jersey.

6.-7. (No change.)

7:1A-4.2 Priority determination

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

(c) Three separate priority lists shall be established in each application period according to the size of water supply systems as set forth in (a) above. Appropriations for each of the priority lists shall be determined as a percentage of the total periodic appropriations by the Legislature to the Department for the purpose of implementing this chapter. An interconnection project shall be placed into its appropriate category according to the residential population served by the local unit's water supply system.

1.-3. (No change.)

(d) (No change.)

(e) A maximum loan amount for each project shall be set for each of the three categories of projects as follows:

1. A water supply system serving 10,000 or fewer residents may receive a loan of up to $300,000 maximum;

2. A water supply system serving between 10,001 and 50,000 residents may receive a loan of up to $500,000 maximum;

3. A water supply system serving greater than 50,000 residents may receive a loan of up to $800,000 maximum;

4. Any loan funds appropriated for a project in excess of the actual costs spent for the completed project shall be returned to the Water Supply Fund pursuant to the Act within 30 days of final inspection of the project by the Department.

(f) The specific goal of interconnections is to bring all purveyor systems as far as practicable into either Condition A or Condition B, as specified below.

1. In Condition A, a system shall have interconnection capacity from adjacent systems sufficient to maintain its water supply at a minimum of 75 percent of its average water supply demand while burdening no one adjacent system for more than 25 percent of its (the adjacent system's) average water supply demand.

2. In Condition B, when Condition A is impracticable to achieve, the system shall have sufficient interconnection capacity from adjacent systems to maintain its water supply at a minimum of 50 percent of its average water supply demand while burdening no one adjacent system for more than 35 percent of its (the adjacent system's) average water supply demand.

3. The average water supply demand for the local unit's and interconnected purveyors service areas shall be calculated by totaling the daily water supply demand over a one year period ending in the month of the submission of the local unit's interconnection loan application and dividing this sum by 365.

4. In instances where Condition A is impractical to achieve, the local unit shall provide justification to the satisfaction of the Department why Condition A cannot be achieved.

5. If an interconnection project results in a burden upon any adjacent supplying system in excess of 25 percent under Condition A or 35 percent under Condition B, said project shall not be eligible for an interconnection loan. An interconnection project that will increase the total interconnection capacity of a system significantly in excess of Condition A criteria shall not be fully eligible for interconnection loan funding. An interconnection project that will increase the total interconnection capacity of a system significantly in excess of Condition B criteria shall not be fully eligible for interconnection loan funding except when the project serves to decrease the reliance of the benefiting system on adjacent systems to significantly less than 35 percent.

(g) (No change.)

(h) Priority points shall be governed by the following:

1.-2. (No change.)

3. Priority points shall be awarded in the amount of 10 priority points for any administrative order issued by the Department to the local unit requiring an interconnection, provided that the local unit's project scope provides for the implementation of the actions ordered by the Department in such relevant administrative order. Priority points shall also be awarded in the amount of five priority points for any directive or recommendation to provide and improve an interconnection provided that the local unit's project scope provides for the implementation of the actions directed by the Department in such relevant directive or recommendation letter.

i. No administrative order, directive or recommendation issued subsequent to September 20, 1982 may be counted towards the local unit's priority point total except for those orders issued in accordance with the procedures established by N.J.S.A. 58:1A-15e.

4. (No change.)

5. A second ratio will be estimated of the residents served divided by 10,000 for small systems, 50,000 for intermediate systems, and 100,000 for the largest systems.

6. (No change.)

7:1A-5.1 Eligibility and criteria (Type A and Type B loans)

(a) Any local unit which has received notification from the Water Supply Element of the Department that groundwater supply contamination problems exist within its jurisdiction which adversely affect the potable water service of at least three dwelling units is eligible for a Type A loan, provided it satisfactorily completes the loan application, meets the eligibility criteria set forth in this subchapter, receives the minimum priority score and ranks high enough on the priority list (as applicable) to be funded. The above requirements shall also apply to any municipality, municipally owned public water system or privately owned public water system seeking a Type B loan. To receive a Type A or Type B loan the project shall meet the following criteria to the satisfaction of the Department:

1.-3. (No change.)

4. The maximum loan amount for any one project shall be $3,000,000. In awarding a water supply loan, the Department may consider project expense and the degree of environmental impact which the project may have. Any applicant may be eligible to apply for one loan in any application period.

5.-9. (No change.)

(b) A public meeting shall be held and pertinent project information disseminated to the public. The applicant shall be responsible for holding this meeting.

(c) The applicant shall be required to pass or to obtain from the local unit or municipality in which the applicant is located a mandatory connection ordinance prior to issuance of the loan award agreement by the Department. The applicant shall be required to pass or to obtain from the local unit or municipality in which the applicant is located a mandatory well sealing ordinance when in the judgment of the Department such well sealings are necessary to prevent additional migration of contaminants or the potential exists for additional contamination from wells which remain unused and not sealed.

(d) In the event a borrower has received approval for a grant, claim, payment, award or other loans from the State for the same project funded pursuant to this chapter, said payment shall be directly credited towards pre-payment of any outstanding principal and interest of the loan to the extent of payment received. As applicable, the outstanding principal and interest on the water supply loan shall be reduced to the amount received from the borrower and a revised repayment schedule shall be issued by the Department for the remaining maturity period of the loan.

(e) In the event a borrower receives a grant, claim, payment, award, loan or any form of payment from any government agency or receives payment for damages relating to the same project funded pursuant to this chapter, the borrower shall pre-pay, within 30 days of receipt of such grant, claim, award, loan, payment or damage payment, any outstanding principal and interest of the loan to the extent of payment received. As applicable, the outstanding principal and interest on the water supply loan shall be reduced to the amount received from the borrower and a revised payment schedule shall be issued by the Department for the remaining maturity period of the loan.

7:1A-5.2 Priority determination (Type A and Type B loans)

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

(f) Priority points for water supply replacement projects to address nonpublic wells with contamination problems shall be awarded based on the three factors of severity, public hardship, and population served, as indicated below:

1. (No change.)

2. In considering financial hardship, project costs and the relative income levels of those affected will be considered.

i. (No change.)

ii. The State Median Family Income Level and Median Family Income Level as reported in the latest census for the applicant shall be determined.

iii.-iv. (No change.)

3. (No change.)

(g) Priority points to address contamination problems related to publicly owned wells shall be awarded based on the three factors of severity, public hardship and population served, as indicated below:

1. Subject to a wellfield sampling program approved by the Department, the following shall address severity:

i. The rated well pump capacity tested and found to be greater than the maximum contaminant level divided by the total rated system capacity (including wells, surface water, and bulk purchase interconnections) multiplied by 100.

ii. The rated well pump capacity tested and found to be greater than two times the maximum contaminant level divided by the total rated system capacity (including wells, surface water, and bulk purchase interconnections) multiplied by 100.

iii. The rated well pump capacity that may be affected in the future divided by the total rated system capacity (including wells, surface water, and bulk purchase interconnections) multiplied by 100.

iv.-vi. (No change.)

2. In considering financial hardship, project costs and the relative income levels of those affected will be considered.

i. (No change.)

ii. The State Median Family Income Level and Median Family Income Level as reported in the latest census for the applicant shall be determined.

iii. A point system reflecting the degree of hardship will be used according to the following schedule:

Incremental annual project cost per affected service:

0—$ 25/yr:	0 pts.
$ 26—$ 75/yr:	15 pts.
$ 76—$125/yr:	30 pts.
$126—$175/yr:	45 pts.
over $175/yr:	60 pts.

Affected services = Total Services × (present rated well pump capacity of wells presently contaminated plus wells anticipated to be contaminated, as estimated by the Department, divided by present rated system capacity (including wells, surface water, and bulk purchase interconnections).

iv. (No change.)

3. (No change.)

(h) (No change.)

7:1A-6.3 Application procedures

(a) To apply for an emergency interim rehabilitation loan, an emergency loan applicant shall comply with all the pertinent requirements of this section. The application shall be submitted to the Department on forms provided for that purpose.

(b) An emergency loan applicant for an emergency interim rehabilitation loan shall submit to the Department within 60 days of the critical water supply service disruption documented information fulfilling all the following criteria to the satisfaction of the Department.

1. Establish that a critical water supply service disruption occurred within the previous 60 days to the emergency loan applicant's water supply system;

2.-10. (No change.)

7:1A-7.1 Water Supply Replacement Trust Fund

(a) Funds appropriated to the Department from acts other than the Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended, or other bond acts, for the purpose of providing loans for alternative water supplies when contamination problems exist shall be deposited in the Water Supply Replacement Trust Fund. The funds in the Water Supply Replacement Trust Fund are specifically dedicated for the purpose of making Type B and Type C Loans to municipalities, municipally owned public water systems, or privately owned public water systems to plan, design and construct projects to address contamination problems as identified by the Department pursuant to this chapter.

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

(f) Where the area of actual or anticipated contamination extends beyond the limits of a single municipality, the applicant shall develop a single plan covering the entire area, on the basis of which the optimum plan shall be prepared, covering the entire area. Municipalities shall enter into an agreement for the joint administration of planning and/or design and construction to the extent feasible. Such agreement shall be subject to approval by the Department, and shall at a minimum, prescribe arrangements for the procurement, contracting and payment of joint debt and construction services as well as designate the applicant to administer the planning, design and construction of the entire project.

7:1A-7.2 Amount and terms of loan

(a) Funds made available for Type B and Type C Loans under this subchapter shall be subject to the following conditions:

1. Such loans shall bear interest at a rate fixed by the Department of the Treasury, and shall not exceed the rate of two percent per annum. Under hardship circumstances, subject to approval by the Department of Treasury, loans may be given at interest rates below two percent, based on the percentage of the municipality's median family income level required to plan, design, construct and operate the project.

2.-4. (No change.)

7:1A-7.3 Eligibility and criteria (Type B loans)

For Type B Funding, any municipality, municipally-owned public water system or privately owned public water system, including subdivisions or agencies thereof, may be eligible to apply for one loan in any application period. The maximum loan amount awarded to any municipality, municipally owned public water system or privately owned public water system under any application for Type B Funding shall be $3,000,000. Eligibility and criteria for Type B Funding shall be as set forth at N.J.A.C. 7:1A-5.1(a) through (e).

7:1A-7.4 Priority determination (Type B and C Loans)

(a) (No change.)

(b) For Type C Funding, a municipality having residences with contaminated wells as defined in this chapter may make application for and receive one award for a maximum of $8,000,000 subject to meeting the following criteria to the satisfaction of the Department.

1. The municipality shall have received notification from the Water Supply Element of the Department that groundwater contamination problems exist within its jurisdiction which adversely affect the potable water service.

2.-4. (No change.)

5. The application shall be accompanied by adequate explanation of how the municipality plans to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan and the steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete and implement the project. The municipality must comply with all standard loan provisions of the State of New Jersey.

6. (No change.)

7. The municipality shall have a contiguous residential area containing more than 1,500 residential units that has been found by the local department of health, or board of health, and the county board of health, or department of health, to have at least 25 percent of the wells supplying potable water to the area with contaminants in excess of the maximum contaminant levels to be adopted by the Department pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., as applicable.

8.-12. (No change.)

(a)

ENVIRONMENTAL REGULATION-LAND USE REGULATION PROGRAM

Freshwater Wetlands Protection Act Rules

Notice of Action on Adoption of the Statewide General Permits

N.J.A.C. 7:7A-9.2(a)

Take notice that the adoption of new and amended general permits under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 through 30 (the "Act"), as provided in the recently adopted amendments to the Freshwater Wetlands Protection Act Rules (see 24 N.J.R. 975(b)), will become operative as scheduled on June 14, 1992.

On March 16, 1992, the Department of Environmental Protection and Energy ("Department") promulgated amendments to its rules under the Act, N.J.A.C. 7:7A. Those amendments included the following new and amended general permits, under N.J.S.A. 13:9B-23(c):

1. Construction of Underground Utility Lines, N.J.A.C. 7:7A-9.2(a)2;
2. Additions to Existing Residences, N.J.A.C. 7:7A-9.2(a)8;
3. State or Federally Funded Roads, N.J.A.C. 7:7A-9.2(a)9;
4. Minor Road Crossing Fills, N.J.A.C. 7:7A-9.2(a)10;
5. Stormwater Outfall and Conveyance Structures, N.J.A.C. 7:7A-9.2(a)11;
6. Minor Dredging Activities for Lake Maintenance or Restoration, N.J.A.C. 7:7A-9.2(a)13;
7. Monitoring and Testing Devices, N.J.A.C. 7:7A-9.2(a)14;
8. Maintenance, Repair and Reconstruction of Dam Structures, N.J.A.C. 7:7A-9.2(a)18;
9. Construction of Recreational and Fishing Docks, or Piers on Pilings, Cantilevered or Floating Piers, and Public Boat Ramps, N.J.A.C. 7:7A-9.2(a)19;
10. Bank Stabilization Activities in State Open Waters, N.J.A.C. 7:7A-9.2(a)20;
11. Construction or Installation of Above-Ground Structures Associated with Utility Line Construction, N.J.A.C. 7:7A-9.2(a)21;
12. Placement of Bulkheads Adjacent to Human-Made Lagoons, N.J.A.C. 7:7A-9.2(a)24; and
13. Repair or Alteration of Malfunctioning Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:7A-9.2(a)25.

In connection with these new and amended general permits, the Department had prepared environmental analyses, as required by the Act. Some persons commenting on the new and amended general permits stated that they believed that the environmental analyses done by the Department at the time it proposed the general permits were not, in certain instances, made readily available during the comment period. Because the Department wishes to fully involve the public in all aspects of program development and implementation, the Department delayed the operative date of the new and amended general permits until June 14, 1992. The delay provided time to obtain additional public comment regarding the general permits based upon the environmental analyses. On March 16, 1992, the Department published a notice stating how interested persons could obtain copies of the environmental analyses, and announcing a public hearing and an opportunity to submit written comments (see 24 N.J.R. 975(a)).

The Department received no comments suggesting that the results of the environmental analysis did not justify the new or amended general permits as adopted. Therefore, after fully considering the comments received on the environmental analyses, the Department has determined that each of the Statewide general permits should become operative as adopted.

However, some commenters suggested changes to the general permits, which would broaden the scope of the affected general permits. The

Department is considering proposing some or all of the suggested changes to the Statewide general permits in a future rule proposal. However, as required by N.J.S.A. 13:9b-23, before proposing these changes the Department must conduct new environmental analyses and determine whether the suggested changes would result in only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and will cause only minor impacts on freshwater wetlands. The Department expects to complete this additional environmental analysis within the next year.

In response to the March 16, 1992 notice, the following persons submitted written comments or gave testimony at the public hearing:

Name, Affiliation

Gatti, Thomas J., Richard A. Alaimo Associates
Boynton, Perry S., Jersey Central Power and Light
Caruso, Joseph G., Burlington County Board of Chosen Freeholders
Fair, Abigail, Association of New Jersey Environmental Commissions (ANJEC)
Fisher, David B., Ernst, Ernst & Lissenden
Gross, Michael J., Giordano, Halleran & Ciesla
Karen, Robert H. and McGuinness, Michael, New Jersey Builders Association

General Comments

(1) COMMENT: If the Department decides that increasing the number of available Statewide general permits is necessary, we strongly urge the Department to insure that logging and record-keeping practices allow for future assessment of cumulative wetlands losses (ANJEC).

RESPONSE: Since the freshwater wetlands program began in 1988, the Department has maintained a database to track all permit actions. The database also includes information on the types of Statewide general permit authorizations issued, and the number of acres of wetlands affected by each authorization. For example, between July 1, 1988 and March 1992, the Department authorized 2,535 Statewide general permits affecting a total of 312 acres. In addition, the recent addition of State Plane Coordinates into the database will facilitate tracking of authorizations on a regional basis to allow the Department to better assess cumulative losses.

(2) COMMENT: I support the proposed adoption of the 13 Statewide General permits listed in the public notice and strongly encourage the Department to maintain the operative date of June 14, 1992 for use of these general permits (Ernst, Ernst & Lissenden, New Jersey Builders Association).

RESPONSE: The Department acknowledges this comment in support of the new and amended general permits.

N.J.A.C. 7:7A-9.2(a)10, Minor Road Crossing Fills

(3) COMMENT: We agree that condition 10ii (the 50 or 100 foot crossing length limit does not apply to widening of existing roadways) should not be applicable to an existing roadway since its location is already established (Burlington County Board of Chosen Freeholders).

RESPONSE: The Department acknowledges this comment in support of the new and amended general permits.

(4) COMMENT: Condition 10iii (the total area of freshwater wetlands and/or State open waters disturbed or modified does not exceed 0.25 acres) should be relaxed for widening of existing public roadways because: (a) Generally, the vegetation adjacent to existing roadways is already degraded due to polluted stormwater runoff from the road surface. Due to vehicle noise and movement, wetlands adjacent to the roadway do not provide wildlife with good sources of food or nesting and cover habitat. While it is true that widening will result in the loss of wetlands, the quality of the wetland lost is low; (b) Expansion of existing roadways will only minimally increase the hindrance of wildlife movement compared to the creation of new roadway; (c) Widening an existing roadway will not affect the flow of water from one side of the roadway to the other as would be the case of a new crossing. The hydrologic regime will not be affected. The ecosystem would not be any more fragmented or segmented than what exists prior to widening; (d) The decrease in flood storage caused by widening of existing roadway is minimal for linear projects especially in the southern sections of the State having relatively flat terrain. For these reasons, it is suggested that the total area of freshwater wetlands and/or State open waters which may be disturbed or modified should be expanded from ¼ to ⅓ acre for widening of existing roadways to match the Army Corps NWP No. 14. If the Department is unwilling to change the limit to ⅓ acre for the entire State, perhaps it can be changed for South Jersey (area south of U.S. Route No. 1) due to its flat terrain and extensive wetlands (Burlington County Board of Chosen Freeholders).

RESPONSE: As the commenter acknowledged, the GP as adopted March 16, 1992 does not have a limitation on the length for road widening projects. In the majority of cases, however, while wetlands immediately adjacent to existing roadways do not provide pristine habitat, they do perform an important function by filtering pollutants from the roadway before they reach adjacent waterbodies. In addition, raptors often find roadway berms and highway medians desirable hunting areas, provided an adequate amount of cover remains for their prey. Further, one of the objectives the Legislature established for setting limits on the quantity and extent of fill or disturbance to be allowed under a general permit is to minimize impacts to wetlands and waters for which the Department will not require mitigation. Therefore, in the case of a road widening, which implies additional traffic and consequently increased runoff with highway pollutants, it is appropriate to require mitigation through an Individual permit if the general permit limits are exceeded.

Regarding fragmentation of the ecosystem, it cannot be assumed that a roadway widening will have minimal or no effect. A two lane roadway may provide much less hindrance to a given species than a much wider highway, and may in effect result in the loss of habitat for a given species that would not traverse the widened roadway. Road widening will cause an increase in roadway deaths for species which will attempt to cross the roadway, because it takes longer to cross a wider roadway and because wider roadways often invite higher speed auto travel.

Therefore, the Department does not find that the information currently available supports the change in the general permit that the commenter suggests. Such issues will be considered on a case-by-case basis through the Individual permit process. The Department's decision regarding any future expansion of limits will be based on information regarding individual and cumulative impacts resulting from authorizations at the current limits.

(5) COMMENT: At 10v(4), the use of the term "watercourse" could cause confusion. Not all crossings need to be designed for fish passage. Strict interpretation of this condition would require box culverts or arches for all crossings. Many crossings carry small flows and hydraulically only warrant circular pipes. To require box culverts or arches would be overly expensive. It is suggested that the need to provide for fish passage by the use of box culverts or arches be decided on a case by case basis on advice by N.J. Fish and Game (Burlington County Board of Chosen Freeholders).

RESPONSE: The rule at N.J.A.C. 7:7A-9.2(a)10v(4) is one of a list of best management practices to be carried out for minor road crossings. The requirement to maintain fish passage "when a watercourse is present" is meant to distinguish crossings involving State open waters from those which only traverse wetlands. However, it is the Department's position that fish passage should be provided in all waterways since the State is constantly striving to upgrade water quality and the future may see a particular waterbody attain water quality levels to again support fish. Further, by maintaining a passageway for fish, vertebrate and invertebrate species will also be allowed to pass. This provision lists the most desirable ways to maintain fish passage as provided by the Department, through its Division of Fish, Game and Wildlife. The Department does, however, on a case by case basis, determine whether or not passage can be provided adequately through circular pipes.

(6) COMMENT: We urge that the Department not alter the conditions that must be satisfied prior to the issuance of Statewide general permit No. 10 to require that runoff from the roadway crossings be collected and discharged to an area outside of the wetlands and waterway, and to require that temporary fill be removed and deposited in an appropriate upland area and any temporarily disturbed wetland areas restored to original conditions, to the maximum extent practicable (New Jersey Builders Association).

RESPONSE: The Department has not altered the conditions. The Environmental Analysis simply states that these conditions may be appropriate for certain authorizations and thus may be considered on a case by case basis pursuant to N.J.S.A. 13:9B-23(d).

N.J.A.C. 7:7A-9.2(a)11, Stormwater Outfall and Conveyance Structures

(7) COMMENT: The environmental analysis does not provide the rationale for the 10 cubic yard limitation on rip-rap at the end of an authorized outfall structure. However, the Department in response to several comments received on the 1991 amendments, noted that this

limitation was set to encourage the use of multiple outfalls discharging smaller volumes, thereby minimizing environmental impacts. We do not agree with this conclusion and ask that the Department amend Statewide general permit number 11 to delete this limitation. By limiting the total amount of rip-rap to 10 cubic yards per outfall structure, the Department may actually be encouraging additional impacts to freshwater wetlands. Several smaller outfall structures would likely result in a need for more total rip-rap and, therefore, a larger total area of disturbance than a single outfall structure. A single outfall structure designed in accordance with Standards for Soil Erosion and Sediment Control in New Jersey, would have minimal environmental impacts, regardless of the quantity of rip-rap as long as it was constructed within the 0.25 acre disturbance limitation and complies with the requirement for the pretreatment of stormwater runoff. The removal of the 10 cubic yard limitation on rip-rap would also eliminate situations where outfall protection is undersized to allow the project to meet the requirements of GP No. 11 (Richard A. Alaimo Associates).

RESPONSE: The Department does not agree and will not remove the 10 cubic yard limitation on the quantity of rip-rap to be placed at the end of an outfall structure. Prior to development of a site, the runoff goes over-land, entering the wetlands at several locations. After development, all runoff is collected and then discharged at point locations. The hydrology of a wetland may be altered if large volumes of runoff are directed away from certain parts of the wetland and redirected to one location. Therefore the use of several smaller outfalls with up to 10 cubic yards of rip-rap at many locations in the wetlands will have lesser impacts than a single large structure because, regardless of the number of outfalls to be placed, the cumulative impacts cannot exceed 0.25 acres under this permit (See N.J.A.C. 7:7A-9.4(b)).

If an applicant is complying with the Standards for Soil Erosion and Sediment Control in New Jersey, an outfall should never be improperly sized. Rather, the applicant should reengineer the drainage onsite so that it will comply or an Individual permit should be obtained. However, the Department is continuing to discuss this issue with the Soil Conservation Districts and may, as a result of these discussions, propose amendments to this general permit at some time in the future.

N.J.A.C. 7:7A-9.2(a)20, Bank Stabilization Activities in State Open Waters

(8) COMMENT: We recommend that the Department amend Statewide general permit No. 20 to reflect the following: (1) N.J.A.C. 7:7A-9.2(a)20iii should be amended to state that the activities are limited to an average of less than one cubic yard of rip-rap per running foot placed along the bank below the plane of the ordinary high water mark or high tide line of State open waters; (2) Since there is often a need to correct existing bank stability problems, in conjunction with the repair or maintenance of existing structures, it is recommended that the Department amend GP No. 20 to permit its use in conjunction with GP No. 1. Since the disturbance of additional freshwater wetlands or State open waters is not permitted under GP No. 1, the cumulative impact of the two general permits would not be greater than the impact of GP No. 20 if completed alone. We recommend that the remaining Statewide general permits become operative as published in the March 16, 1992 New Jersey Register (Richard A. Alaimo Associates).

RESPONSE: The Department agrees that it would be beneficial to allow GP No. 20 to be combined with maintenance activities through a GP No. 1 and that it is unlikely that this will result in any increased environmental impact. Therefore, the Department will propose the necessary amendment, upon making the finding through the environmental analysis that the suggested change would result in only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and will cause only minor impacts on freshwater wetlands. The Department expects to complete this additional environmental analysis within the next year. However, the Department is allowing GP No. 20 to become operative as originally adopted, so that the availability of this general permit is not delayed pending that amendment.

The Department has determined that it is unnecessary to amend GP No. 20 as suggested by the commenter, to include the language below the plane of the ordinary high water mark or high tide line of State open waters." This authorization is necessary only if rip-rap is being placed within a regulated open water area, which is by definition below this line.

N.J.A.C. 7:7A-9.2(a)21, Construction or Installation of Above-Ground Structures Associated with Utility Line Construction

(9) COMMENT: The requirement to limit a permanently cleared right-of-way (ROW) to a maximum of 20 feet requires clarification. Electric utilities must maintain needed clearances from conductors to avoid fast-growing vegetation from interfering with and short-circuiting the conductors. Thus, this width would be unacceptable if it applies to vegetative clearing. However, the 20 foot permanently cleared ROW is acceptable for vehicular access to patrol the lines or conduct emergency or scheduled maintenance (JCPL).

RESPONSE: The 20-foot width limitation for a permanent right-of-way refers only to the area to be maintained for vehicular access. While the remainder of the right-of-way should be allowed to revegetate, vegetative maintenance can be conducted to avoid interference with the conductors using a Statewide general permit No. 1 for maintenance activities.

(10) COMMENT: We would suggest increasing the 20 foot permanent right-of-way to 30 feet in order for maintenance equipment to have enough maneuvering area (Giordano, Halleran & Ciesla).

RESPONSE: As stated above, the 20 foot permanent right-of-way refers only to the area to be maintained for vehicular access. Since the standards produced by the Federal Highway Administration provide that a two-lane county highway is 24 feet in width (not including shoulders), the Department believes that 20 feet should be sufficient for access to a line for maintenance.

(11) COMMENT: The 60 foot construction clearing limit is unacceptable for certain types of electric utility construction. Seventy foot construction clearance is required for lower voltage lines (34.5 kV, 69 kV). For larger voltage lines (115 kV), construction requires the clearing of a width equivalent to the largest lateral spacing of the wires plus a short circuit distance to allow for vegetative growth, or wire blow-out. These distances vary and are site specific. Therefore, for higher voltage lines, clearing should be limited to that which "is necessary to operate the line safely and to avoid electric interruption" (JCPL).

RESPONSE: Based on the commenter's concern, the Department will consider amending the limits for clearing for construction of low voltage, above-ground utility lines in a future rule proposal if the environmental analysis supports a finding that an increase in width to 70 feet will result in minimal individual and cumulative impacts to freshwater wetlands and State open waters.

The Department will not make the change suggested for construction and maintenance of higher-voltage lines. In order to assure that each Statewide general permit results in minor impacts to wetlands and waters, the Department must set pre-defined limits for each type of general permit activity. Therefore, the Department cannot adopt a condition to allow an unspecified amount of clearing, although it may be necessary for the construction and maintenance of higher voltage lines, because such an open-ended condition makes it impossible to ensure that the activity will have only minor impacts. Greater amounts of clearing must therefore be reviewed on a case by case basis through the Individual permit process.

(12) COMMENT: In the "potential environmental impacts" section for GP No. 21 (above ground utility lines), we feel that there is no need to elaborate on the ability of vegetation to provide primary production for the food web, nesting and cover habitat, etc. We see no reason for such a discussion at this detail unless specific ecosystem analysis is also included (Giordano, Halleran & Ciesla).

RESPONSE: When proposing a new Statewide general permit, or proposing amendments to existing permits, the Department is required by the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) to determine that "the activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, will cause only minor impacts on freshwater wetlands . . ." Therefore, each environmental analysis discusses the impacts to the environment which could result from the loss of wetland vegetation (that is, the loss of productivity, loss of wildlife habitat), placement of fill in freshwater wetlands and State open waters, (that is, potential for erosion and sedimentation, fragmentation of the ecosystem, effects to hydrology, potential for flooding), and potential impacts to water quality. Therefore, these issues must be addressed on a general basis for the entire State in order for the Department to adopt a Statewide general permit.

(13) COMMENT: We strongly object to allowing above ground new utility structures in exceptional resource value and EPA priority wetlands.

This permit should be for activities only in intermediate or ordinary resource value wetlands (ANJEC).

RESPONSE: The Department disagrees with the commenter's recommendation. For the reasons discussed below, this general permit is expected to result in no more than minimal cumulative adverse impacts to exceptional resource value wetlands and EPA priority wetlands. This Statewide general permit includes a requirement that, "if located in exceptional resource value wetlands, the activity will not have a negative impact on a documented threatened or endangered species or its habitat." This condition allows the Department to review the impacts of a specific activity on a specific threatened or endangered species and its habitat prior to authorization. In this way, an applicant for a Statewide general permit shall be required to either minimize impacts to meet the specified levels and modify the activities in order to avoid jeopardizing a threatened or endangered species, or pursue an Individual permit.

Further, the Department has made the finding that so long as the total area of disturbance to wetlands or waters is one acre or less, the area to be maintained for access is a maximum of 20 feet in width and all other areas temporarily used as access for construction are re-vegetated, and the activity is designed so as not to interfere with the natural hydraulic characteristics of the wetland and watershed, these activities will result in only minimal cumulative adverse impacts on the environment and are in conformance with the Act. Further, the rules at N.J.A.C. 7:7A-9.5(b) require that an applicant for a general permit provide notice to adjacent landowners and municipal officials and afford the opportunity for public comment on the application.

The Department has not responded to the following comments, which were addressed in the Department's adoption document in the March 16, 1992 New Jersey Register, or were otherwise beyond the scope of the March 16, 1992 notice (numbers in parentheses refer to the numbered comments in the March 16 adoption document, where the responses can be found):

(14) COMMENT: With respect to Statewide general permit No. 10 for minor road crossings, I would strongly encourage the Department to re-examine the 100 foot limitation on the length of road crossings. This restriction is extremely conservative and has created a hardship on many applicants with respect to the ability of landowners to use the uplands portion of their sites (Ernst, Ernst & Lissenden). (927 and 928).

(15) COMMENT: I would encourage the Department to re-evaluate the proposed (but not adopted) Statewide General permits Nos. 22 and 23 for regional stormwater facilities and affordable housing projects (Ernst, Ernst & Lissenden, New Jersey Builders Association). (1036-1063 and 1064-1128).

(16) COMMENT: We object to elimination of EPA Priority wetlands as a limiting condition on GP No. 2 (subsurface utility lines) (ANJEC). (839-841).

(17) COMMENT: We strongly object to excluding any conditions for the proposed amendment that allows widening of existing roadways (ANJEC). (925).

(18) COMMENT: We object to the omission in the standard conditions that filling wetlands shall be avoided. The federal regulations for required conditions for carrying out nationwide activities should be incorporated as a condition for Statewide general permits (ANJEC). (1148).

(19) COMMENT: Since the Department's purpose in this solicitation of comments is not to resurrect the past comments on the permits themselves, we will simply ask the Department to reconsider our concerns on those items that were not addressed in this latest adoption (New Jersey Builders Association).

(20) COMMENT: It is recommended that a Statewide general permit be provided for filling up to one acre of wetlands or open waters in a headwater for the widening of existing public roadways and crossings. Such a GP is authorized by N.J.S.A. 13:9B-23d(5) of the Act and is provided under NWP No. 26 (Burlington County Board of Chosen Freeholders).

HEALTH

(a)

HEALTH FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE) Cost Accounting and Rate Evaluation Guidelines

Adopted Amendments: N.J.A.C. 8:31A-7.4 and 7.5

Proposed: March 2, 1992 at 24 N.J.R. 734(b).

Adopted: May 19, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: May 21, 1992 as R.1992 d.249, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: June 15, 1992.

Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:

COMMENTERS: Betty Bacharach Hospital, Blue Cross and Blue Shield of New Jersey, Children's Specialized Hospital, New Jersey Hospital Association, JFK Medical Center, Kessler Institute, Welkind Rehabilitation Hospital.

COMMENT: The commenters support the New Jersey Hospital Association Petition for Rulemaking which requests a rebasing of the SHARE Hospital reimbursement system. The rebasing will acknowledge the hospital changes since 1979. Also, the commenters believe that rebasing would be more equitable to all payers.

RESPONSE: The Department agrees that a rebasing of the SHARE Hospital reimbursement system is warranted because of changes since 1979. The Department supports a rebasing on an average of every three to five years.

COMMENTER: Blue Cross and Blue Shield of New Jersey

COMMENT: This payor is not opposed to rebasing if it is done infrequently and only when it has been determined that the rate system has not kept up with the economic conditions of the Hospital industry.

RESPONSE: The Department considers the proposal of every three to five years as a reasonable time period for rebasing because of technological changes in the Hospital industry.

COMMENTERS: Betty Bacharach Hospital, Children's Specialized Hospital, New Jersey Hospital Association, JFK Medical Center, Kessler Institute.

COMMENT: The commenters support the elimination of the Minimum Base Period Challenge.

RESPONSE: The Department is not proposing the elimination of the Minimum Base Period Challenge at this time. The issue is under review for future consideration.

COMMENTER: Blue Cross and Blue Shield of New Jersey

COMMENT: The commenter is opposed to the elimination of the Minimum Base Period Challenge.

RESPONSE: The Department is not proposing the elimination of the Minimum Base Period Challenge at this time. The issue is under review for future consideration.

COMMENTER: Children's Specialized Hospital

COMMENT: The commenter supports the development of an intensity factor to provide a more accurate comparison of the resource consumption and, therefore the cost, of treating certain types of patients.

RESPONSE: The development of an intensity factor was not proposed in this rulemaking. The Department will review this issue.

COMMENTER: Children's Specialized Hospital

COMMENT: The commenter supports the reimbursement of uncompensated care expenses.

RESPONSE: Reimbursement for uncompensated care was not proposed in this rulemaking. The Department will review this issue.

Summary of Changes Upon Adoption:

There were two changes between initial publication and final adoption in the Department of Health's proposal for SHARE Hospital rebasing. There was unanimous agreement by the interested parties on these changes. The parties, which included the payers, the providers and the

Public Advocate, consented to these revisions at a meeting on March 18, 1992. These changes were made for reasons of fairness and equity.

The first revision changed the base year from 1991 to 1990 and the Rate Year from 1993 to 1992. The SHARE Hospital system has not been rebased since 1979 and the changes in the hospital industry should be recognized in 1992 and not delayed until 1993.

The second revision changed the periodic rebasing from a period between four and seven years to a period between three and five years. The reimbursement system should be sufficiently flexible to recognize the advances in medical technology in a time period which is less than seven years.

Full text of adoption follows: (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

8:31A-7.4 Methodology for calculating Global Rates

(a) (No change.)

(b) Hospitals will not receive a Global Rate for the Rate Year which reflects a rebasing and the elimination of the Minimum Base Period Challenge.

8:31A-7.5 Methodology for Alternate Rates

(a) (No change.)

(b) A proposed Alternate Rate will be developed from the following:

1.-5. (No change.)

6. The Adjusted Approved Base will be determined by adjusting the most recent approved rate (Final Administrative Rate, Administrative Payment Rate, or Proposed Administrative Rate) for actual volume variances, relevant certificate of need and other legal changes, and excluding depreciation and lease costs in the Plant cost center, interest, malpractice and utility costs. This Adjusted Approved amount will be compared to the actual costs less peer comparison challenges and exclusive of depreciation and lease costs in the Plant cost center, malpractice and utility costs. If the actual costs are in excess of the Adjusted *[Approval]* ***Approved*** Base the amount of excess is the overspending challenge. The overspending challenge will be increased by the economic factor and deducted from the Actual costs except for base year *[1991]* ***1992*** (rate year *[1993]* ***1992***) and periodically not less than every *[four]* ***three*** years nor more than *[seven]* ***five*** years. This adjustment will be made separately for the physician and non-physician portions. No tradeoffs will be allowed.

7.-15. (No change.)

(c) (No change.)

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Controlled Dangerous Substances: Schedule II Carfentanil, Etorphine Hydrochloride, Diprenorphine

Adopted Amendments: N.J.A.C. 8:65-2.4, 2.5, 6.6, 6.13 and 6.16

Proposed: June 17, 1991 at 23 N.J.R. 1911(a).

Adopted: May 1, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Filed: May 15, 1992 as R.1992 d.241, **without change.**

Authority: N.J.S.A. 24:21-9.

Effective Date: June 15, 1992.

Expiration Date: June 17, 1996.

Summary of Public Comments and Agency Response:

No comments received.

Full text of the adoption follows.

8:65-2.4 Other security controls for non-practitioners

(a)-(f) (No change.)

(g) Before the initial distribution of carfentanil, etorphine hydrochloride, and/or diprenorphine to any person, the registrant must verify that the person is authorized to handle the substance(s) by contacting the Drug Enforcement Administration.

8:65-2.5 Physical security controls for practitioners

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

(e) Carfentanil, etorphine hydrochloride and diprenorphine shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

(f)-(g) (No change.)

8:65-6.6 Procedure for executing order forms

(a) (No change.)

(b) Only one item shall be entered on each numbered line. There are 10 lines on each order form. If one order form is not sufficient to include all items in an order, additional forms shall be used. Order forms for carfentanil, etorphine hydrochloride and diprenorphine shall list only these substances. The total number of items ordered shall be noted on that form in the space provided.

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

8:65-6.13 Preservation of order forms

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

(d) The supplier of carfentanil, etorphine hydrochloride and diprenorphine shall maintain order forms for these substances separately from all other forms and records required to be maintained by the registrant.

8:65-6.16 Special procedure for filling certain order forms

(a) The purchaser of carfentanil, etorphine hydrochloride or diprenorphine shall submit copy 1 and 3 of the order form to the supplier and retain copy 3 in his or her own files.

(b) The supplier, upon determining that the purchaser is a veterinarian engaged in zoo and exotic animal practice, wildlife management programs and/or research and authorized by the D.E.A. to handle these substances, shall fill the order in accordance with the procedures set forth in 21 C.F.R. 1305.09 except that:

1. Order forms for carfentanil, etorphine hydrochloride and diprenorphine shall only contain these subtances in reasonable quantities; and

2. (No change.)

(b)

HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Correction

Controlled Dangerous Substances: Schedule III Anabolic Steroids

N.J.A.C. 8:65-10.3(b)4

Authority: N.J.S.A. 24:21-3.

Authorized By: Francis J. Dunston, M.D., M.P.H., State Commissioner of Health.

Take notice that the Department of Health added a list of Anabolic Steroids to Schedule III of the Controlled Dangerous Substances regulations at 23 N.J.R. 1943(b) and now needs to correct the spelling of two of the steroids added at that time, and also to add a phrase to the end of N.J.A.C. 8:65-10.3(b)4xxviii to indicate that the list of salts, esters, or isomers of a drug or substance is restricted to only those steroids promoting muscle growth. The phrase addition was in the final rule of the Drug Enforcement Administration dated as February 13, 1991 at 56 F.R. 5753) but not incorporated in the State's Notice at 23 N.J.R. 1943(b).

N.J.A.C. 8:65-10.3(b)4ii should read: Chlorotestosterone (4-chlorotestosterone).

N.J.A.C. 8:65-10.3(b)4xiv should read: Methandrostenolone.

N.J.A.C. 8:65-10.3(b)4xxviii should read: Any salt, ester, or isomer of a drug or substance described or listed above, if that salt, ester, or isomer promotes muscle growth.

Full text of N.J.A.C. 8:65-10.3(b)4 corrected by this notice follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

8:65-10.3 Controlled dangerous substances: Schedule III

(a) (No change.)

(b) The following is Schedule III listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code numbers:

1.-3. (No change.)

4. Anabolic steroids (CDS Code 4000), as follows:

i. (No change.)

ii. [Chlorotestotsterone] **Chlorotestosterone** (4-chlorotestosterone);

iii.-xiii. (No change.)

xiv. [Methandrosterone] **Methandrostenolone**;

xv.-xxvii. (No change.)

xxviii. Any salt, ester, or isomer of a drug or substance described or listed above, **if that salt, ester, or isomer promotes muscle growth.**

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Notice of New Client Eligibility Income Schedules IV-A "At-Risk" Child Care (ARCC) Program

Take notice that, in accordance with N.J.A.C. 10:15B-1.2(b)1, the Department of Human Services announces new client eligibility income schedules for the IV-A "At-Risk" Child Care Program based on the 1992 Federal Poverty Income Guidelines published annually in the Federal Register (reference the Federal Register, Vol. 57, No. 31, dated February 14, 1992, pg. 5456). The new client eligibility income schedules are effective May 1, 1992.

TITLE IV-A "AT-RISK" and
CHILD CARE DEVELOPMENT BLOCK GRANT VOUCHER PROGRAM
CLIENT ELIGIBILITY INCOME SCHEDULES

TITLE IV-A "AT RISK" CHILD CARE (ARCC)
CERTIFICATE VOUCHER PAYMENT PROGRAM
CLIENT ELIGIBILITY INCOME SCHEDULE

Maximum Allowable Gross Income for Entry Level
(At or Below)
Represents 150% of the 1992 Federal Poverty Level

Family Size	Per Year
1	$10,215
2	$13,785
3	$17,355
4	$20,925
5	$24,495
6	$28,065
7	$31,635
8	$35,205

For each family member over 8 add $3,570 to the maximum allowable gross income.

Maximum Allowable Gross Income for Eligibility Determination and Exit Level
Represents 185% of the 1992 Federal Poverty Level

Family Size	Per Year
1	$12,599
2	$17,002
3	$21,405
4	$25,808
5	$30,211
6	$34,614
7	$39,017
8	$43,420

For each family member over 8 add $4,403 to the maximum allowable gross income.

(b)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Administrative Correction
Public Assistance Manual
Need and Amount of Assistance in REACH
N.J.A.C. 10:81-14.21

Take notice that the Office of Administrative Law has discovered errors in the current text of N.J.A.C. 10:81-14.21(b)1, 2 and 3. These paragraphs do not reflect the amendments adopted effective January 7, 1991 (see 22 N.J.R. 2405(b) and 23 N.J.R. 63(b)). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

10:81-14.21 Need and amount of assistance in REACH

(a) (No change.)

(b) Income earned by AFDC parents serving as child care providers (600 Child Care Provider Slots): Income earned by AFDC parents from providing child care for children of REACH participants and other AFDC recipients shall be considered income from self-employment, and shall be treated in accordance with 1 through 4 below.

1. Maximum income eligibility: In determining gross earned income for purposes of the maximum income level at N.J.A.C. 10:82-1.2(d), an amount equal to one-half (50 percent) of the total income earned from providing child care shall be disregarded. **The remaining income is compared to the maximum income limits table at N.J.A.C. 10:82-1.2(d) based on the eligible family size.**

2. Prospective needs test [and calculation of AFDC grant]: In determining prospective need [and computing the amount of the AFDC grant,] an amount equal to one-half (50 percent) of the total income earned from providing child care shall be disregarded. **The remaining income is then compared to the allowance standard at N.J.A.C. 10:82-1.2(c) for the eligible family size to determine if the family is prospectively eligible.**

3. Determination of calculated earned income—AFDC-C and -F: In determining the calculated earned income for the AFDC-C and -F segments, from the total gross earnings from providing child care, deduct an amount equal to one-half (50 percent). The remaining income shall be counted in [determining eligibility under the prospective needs test and] computing the AFDC grant. No additional deductions shall be made for expenses of producing self-employment income set forth at N.J.A.C. 10:82-4.3, for the [$75.00] **$90.00** work expense deduction at N.J.A.C. 10:82-2.8(a)1, or for the first $30.00 and one-third of the remainder of the earnings from providing child care for children of other REACH participants (see N.J.A.C. 10:82-2.8[(a)3](**a**)2).

4. (No change.)

(c)-(e) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook
AFDC Income Limits; Assistance Payment Standards; AFDC-N Segment Payment Standard Equalization; AFDC Prospective Budgeting
Adopted Amendments: N.J.A.C. 10:82-1.6, 1.7, 2.1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.9, 2.13, 2.14, 2.19, 2.20, 3.13, 3.14, 4.4, 4.15 and 5.10
Adopted Repeals: N.J.A.C. 10:82-1.11, 2.11, 2.12, 4.5 and 5.11
Adopted Repeals and New Rules: N.J.A.C. 10:82-1.2 and 1.10

Proposed: April 6, 1992 at 24 N.J.R. 1194(a).
Adopted: May 20, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: May 27, 1992 as R.1992 d.261, **with a substantive and a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:10-3; P.L. 1991 c.527 (New Jersey Assembly Bill No. 4704); Public Law 74-271 (Social Security Act) as amended by the Federal Omnibus Budget Reconciliation Act (OBRA) of 1990.

Effective Date: June 15, 1992.
Operative Date: July 1, 1992.
Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

A **public hearing** on the adopted rulemaking was held Tuesday, April 21, 1992 at the following location and time:

10 Quakerbridge Plaza
Conference Rooms A and B
Quakerbridge Road
Trenton, New Jersey 08625
10:00 A.M.-4:00 P.M.

Individuals testifying: No one testified at the hearing. Mr. William Richardson, Chief, Division of Economic Assistance, acted as hearing officer. There were no recommendations made by the hearing officer. Comments were received from the Bergen County Board of Social Services and Legal Services of New Jersey.

COMMENT: Commenter requests that the proposed amendments at N.J.A.C. 10:82-1.2 be revised to specifically address the treatment of child support income when determining eligiblity or grant amount.

RESPONSE: The Department states that although the proposed amendments cover the treatment of all income sources, both earned and unearned, when determining eligibility or grant amount, the Department takes note of the comment and advises that this is an issue requiring further review and analysis which may necessitate separate rulemaking in order to specifically address the comment. Any revision which may impact on client eligibility and/or benefit amount would be a substantial change from the proposed amendments and, as such, would need to be reproposed through the New Jersey Register.

COMMENT: The grant level selected, set at 45 percent of the standard of need, is inadequate as an amount for families to live on. There is no indication of the basis on which 45 percent was reached, as opposed to some other level. The Department has failed to take appropriate and legally required actions to insure that families dependent on its assistance have enough to live on, commencing with its failure to present any analysis to the Legislature concerning how these families are to live and what minimum level would be necessary to insure that they can live with minimum decency.

RESPONSE: The setting of a standard of need is not synonymous with changing the welfare grant payment levels. By promulgating the standard of need, as required by the Court (*In the Matter of Petitions of Rulemaking, N.J.A.C. 10:82-1.2 and 10:85-4.1,* 117 *N.J.* 311 (1989)), the Department is stating what is needed to ensure that families live safely and decently in New Jersey (see 24 N.J.R. 101(a)). The responsibility to set welfare grant levels for AFDC is a separate and distinct decision which is part of the State appropriations process, and is subject to many considerations, including the availability of resources and the competing demands on those resources. In the absence of additional appropriations, the 45 percent ratable reduction payment standard was the most viable option given available appropriations.

COMMENT: The reduction in the amount of the grant for famly sizes of seven or more is arbitrary.

RESPONSE: The amounts for households of seven or more are based on the 45 percent of the standard of need in accordance with Federal requirements which provide that all payment standards must be proportionately adjusted. In accordance with Federal regulations, therefore, the State made ratable reductions to its established standard of need to create assistance standards which are all proportionately adjusted in relation to the standard of need. Since maximum payment levels (Schedule III) may not exceed the State's ratably reduced payment standard (Schedule II), payment maximums for households of seven or more had to be adjusted accordingly.

COMMENT: The standard of need upon which these grant percentages are predicated is itself inadequate and out-of-date. The standard must be updated to take account of 1992 cost-of-living and revised to incorporate previously excluded cost categories.

RESPONSE: The Department has already acknowledged that the standard promulgated is an interim standard which will be reviewed and updated when the 1990 Census housing data becomes available (approximately July 1992). Additionally, it is the Department's intent to review the standard of need every three years as required by Federal law.

COMMENT: The Department needs to incorporate some mechanism by which working AFDC recipients are able to retain some greater portion of their earnings, so that the welfare system serves as an incentive and support for people to become economically self-sufficient.

RESPONSE: The revised payment standards (Schedule II) based on the standard of need provide for a higher base, in most instances, from which to deduct countable income for working families. Those payment standards will, therefore, result in a higher grant for almost all families with income.

Summary of Agency-Initiated Changes:

A printing error at N.J.A.C. 10:82-1.10(d) is corrected to read "... the earned or unearned income amount or eligible unit size ...".

Upon review and for purposes of clarification, DEA has deleted the reference to Schedule III at N.J.A.C. 10:82-5.10(a)2 because Schedule III is not to be used to determine eligibility, but rather serves as a cap on public assistance benefit amounts. Schedule II is, in fact, the payment and eligiblity standard based on the State standard of need and provides a higher base for comparison of family income for eligibility purposes in relation to the standard of need.

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 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 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. The AFDC grant shall not be considered as income for this purpose.

2. Funds exempted under N.J.A.C. 10:82-1.7 and 3.2(b)6 through 10 and monies disregarded under N.J.A.C. 10:82-4.6 shall not be considered income for this purpose.

3. Schedule I represents 185 percent of the State's Standard of Need set forth in N.J.A.C. 10:82-1.1A.

Schedule I
Maximum Income Levels

AFDC-C, -F and -N	Number in Eligible Unit
$ 758	1
1,515	2
1,822	3
2,085	4
2,331	5
2,564	6
2,784	7
2,991	8
Add $207 each additional person	More than 8

(b) AFDC assistance payment standards are set forth in Schedules II and III below. The payment standards are established for the eligible family unit according to the number of persons in the eligible unit.

Payment Standards

Schedule II AFDC-C -F, and -N	Number in Eligible Unit	Schedule III Maximum Payment AFDC-C, -F and -N
$185	1	162
369	2	322
443	3	424
507	4	488
567	5	552
624	6	616
677	7	677
728	8	728
Add $50.00 each additional person	More than 8	Add $50.00 each additional person

(c) Countable income sources (both earned or unearned) of an eligible family shall be subtracted from the payment standard for the eligible family size set forth in Schedule II. However, unemployment insurance benefits as a source of income shall be handled as delineated in (g) below.

1. Schedule II payment standards represent a ratable reduction of 45 percent of the State's Standard of Need set forth at N.J.A.C. 10:82-1.1A for the eligible family unit size.

(d) The payment standards in Schedule III are maximum payment standards based on family size. Schedule III maximum payment standards are a function of available funding.

(e) When an eligible family has no other countable income source for AFDC purposes, Schedule III payment standards are used to determine the assistance benefit for the eligible family members.

(f) After the subtraction of countable income from the Schedule II payment standard, the income maintenance worker shall compare the remainder after subtraction to the maximum payment standard for the eligible unit size in Schedule III. The eligible family shall receive an assistance payment which is the lesser of the remainder after subtraction from Schedule II or the Schedule III maximum payment amount for the eligible family size.

(g) Unemployment insurance compensation benefits (UIB) are subtracted last in all assistance payment determinations.

1. If the eligible family has other countable income, the UIB benefits of any member of the eligible family, including the principal earner, shall be deducted from the lesser of either the remainder after subtraction from Schedule II or the Schedule III maximum payment amount for the eligible family size, as the last step in the determination of the monthly assistance payment.

2. If the eligible family has no other countable income except for UIB, and the principal earner is the UIB beneficiary, then the UIB is deducted from the Schedule III payment standard for the eligible family size. The remaining amount after subtraction of the UIB is the family's monthly assistance payment.

3. If the eligible family has no other countable income except for UIB and the UIB beneficiary is any other member of the eligible family except for the principal wage earner, then the UIB is deducted, as any other unearned income, from Schedule II. The assistance payment is the lesser of the remainder after subtraction from Schedule II or the Schedule III maximum payment amount for the eligible family size.

10:82-1.6 Eligible person temporarily in an institution

(a) A member of the eligible unit who is temporarily in an institution in accordance with N.J.A.C. 10:81-3.33 shall continue to be regarded as an eligible member of that unit.

1. When the absence of an -N segment parent will continue for 30 days or longer, the remaining members of the family may be eligible for AFDC-C.

(b) In situation where such institutional care continues for a period of 30 days or more (disregarding any interruptions for "visits home" by the day or weekend), an adjustment to accommodate to this absence must be made in the computation of the family's assistance grant. For this purpose, enter as "other income" on the PA-3A form: $25.00 in AFDC-C, -F and -N cases.

10:82-1.7 Eligible AFDC child regularly attending school or in vocational training at a Residential Job Corps Center

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

(e) If the student is in fact living apart from the eligible unit and is receiving all expenses for room and board from other sources, an adjustment to accommodate for this absence must be made in computing the family's grant. For this purpose, the amount of $25.00 per month for AFDC-C, -F and -N children shall be entered as "other income" on the PA-3A form.

10:82-1.10 Prospective budgeting

(a) Eligibility and the amount of the assistance payment for all AFDC applicants and recipients shall be determined using prospective budgeting methodology.

1. Prospective budgeting policy shall be applied to recipients of Medicaid benefits, including AFDC-related Medicaid and Medicaid Special.

(b) AFDC eligibility and benefit calculations shall be based on a best estimate of the family's income and other circumstances that will exist until the next reported significant change in circumstance or redetermination, whichever is first. The best estimate of income is based on the family's and the agency's reasonable expectations and knowledge of current, past, and future circumstances. In determining the best estimate of income, the CWA shall use income averaging and the concept of "significant and non-significant" income and circumstance changes. Verification of the income used must be clearly documented in the case record.

1. For purposes of determining the family's eligibility and benefits, the CWA shall determine earnings by obtaining wage information for the four consecutive week period immediately preceding the date of application, redetermination, or change in circumstance. Likewise, all unearned income received within this four week period is also determined. All earned and unearned income received within this four week period must be verified and documented in the case record, even if all four weeks of income are not ultimately used to calculate the best estimate.

2. In order to maintain consistency in policy application between the AFDC and Food Stamp (FS) programs, the CWA shall utilize the same income estimate for both the AFDC application/redetermination period and the Food Stamp application/recertification period, whenever possible. Therefore, in those public assistance (PA)/FS cases where the Food Stamp calculation encompasses a five-paycheck (or a three paycheck month for bi-weekly income) month, CWAs are authorized to use that same estimate for AFDC if it is also representative for AFDC best estimate purposes. Documentation of the best estimate determination must be in the case record.

3. The payment schedule of receipt of income by an AFDC individual occurs weekly, biweekly, or on a semi-monthly basis. The CWA shall convert the average income amount to a gross monthly amount by multiplying the averaged income amount by the ap-

propriate conversion factor as follows: weekly amounts by 4.333; biweekly amounts by 2.167; and semi-monthly amounts by two.

(c) Significant income and circumstance changes are defined as changes in sources or amounts of earned or unearned income or changes to the eligible unit size which are expected to continue into the future. Examples of significant changes include, but are not limited to: starting a new job or gaining a new source of unearned income; losing a job or a source of unearned income; permanent or long term changes in hours worked and/or rate of pay; permanent or long term changes in unearned income; changing from part-time to full-time employment (or vice versa); promotion or demotion; beginning to work piece work or regular overtime (or vice versa); changing employers; short term plant closings (such as one or more weeks) or periods of sick leave without compensation (more than one day); or addition of or loss of an eligible family member.

1. The CWA shall use information about past significant changes of a continuous nature in estimating future income. The date of an anticipated significant income/circumstance change may be used to schedule a desk review to coincide with the expected date of the change, in order to recalculate the best estimate of income.

2. Families shall be required to report all significant changes in income and circumstances that could affect eligibility and grant amount as soon as possible, but in no event later than 10 calendar days of the date the change happened. The CWA shall initiate appropriate action on the reported change within 10 calendar days of receiving the report of the change, subject to timely and/or adequate notice requirements.

(d) Non-significant income/circumstance changes are defined as temporary, very short term variations in the earned or unearned income amount *[of]* ***or*** eligible unit size caused by a situation which is not of an ongoing nature, or which is of a variable nature. Examples include, but are not limited to: fluctuations in wages due to ongoing (reported) earnings from piece work; occasional changes in wages due to very irregular overtime; or an occasional unpaid day off.

(e) The following procedures are to be followed in determining the best estimate of income.

1. Verification through wage stubs or documentation from the employer, of income received within the specified timeframe in (b) above. All earned and unearned income received within this four week period must be verified and documented in the case record even if all four weeks of income are not ultimately used to calculate the best estimate.

2. Determination, through a review of the income documentation and discussion with the family, if there have been any significant changes during that period. If a significant change has occurred and the change is of a continuous nature, the change must be documented and taken into consideration when determining the best estimate. For example, if a family has received an increase in hourly rate, the new hourly rate must be multiplied by the appropriate number of hours (either stable or averaged) to determine anticipated income.

3. Determination if any significant changes are expected in the future. If a significant change is expected and the exact nature of the change is known, the CWA shall use the information in determining the best estimate of income and shall require that the family provide the required verification subsequent to the change to determine if the best estimate was correct or needs to be recalculated. If the exact nature of the anticipated change is not known, then a desk review can be scheduled to coincide with the expected date of change and/or the client advised to report the change within 10 days of the date of change.

4. Determination, through review of the documentation, the case record and discussion with the client, if any of the income received is not expected to be representative of the future. For instance, the first pay check of new employment may not represent a full-pay period; a missing week's income may represent a summer plant closing; or a larger check may represent nonrecurring overtime, all of which may not be anticipated to occur in the future. Non-representative income (or lack of income) shall not be used in calculating the best estimate. The case record must be clearly documented to explain why any income was not used, and to show how the best estimate was calculated. For example, the family receives regular weekly income but is missing one week's pay due to a plant closing for that week only. The three available amounts would be averaged to determine average weekly income and that average converted to monthly gross income as described in (b)2 above.

5. If income fluctuates (that is, is not exactly the same each time received and/or is not received on a regular schedule) to the extent that a four-week period is not expected to provide the best estimate of income until the next redetermination, the CWA shall require the family to submit verified wage information for those months subsequent to the month of review, in order that the CWA may recalculate the best estimate. When income fluctuates dramatically, the CWAs shall rebudget the case as often as deemed necessary to ensure the most accurate best estimate and correct assistance payment.

i. When four consecutive weeks of income fluctuate but are representative of the family's anticipated fluctuation in income for future months, the CWA shall average the income from the four-week period and project that gross income estimate for future months, taking into account any anticipated significant changes.

6. The final step shall be to average the income that has been determined to be representative of the eligible family's circumstances and to convert that average to a gross monthly income "best estimate" amount by using the conversion factors set forth in (b)2 above. The best estimate amount shall then be used to determine eligibility until the next redetermination or report of a significant change.

(f) If there are no significant changes in circumstances, a new best estimate of income shall, at a minimum, be completed at the time of the next redetermination of eligibility.

1. When non-significant changes are reported, it shall not be necessary to redetermine eligibility immediately. Non-significant changes shall, however, be taken into consideration when determining the best estimate of income at the next regularly scheduled redetermination. When such changes are reported, the case record must be clearly documented to show that the change was non-significant.

2. A significant change in circumstances of the eligible family may result in an adjustment upward or downward in the amount of the assistance payment. Unless (i) below applies, the adjustment must be effective no later than the first day of the month following the month in which the significant change in circumstance occurred, or 10 business days after the change is reported to the CWA, whichever is later. Downward adjustments shall be subject to timely and adequate notice.

i. Under certain circumstances which in the judgment of the CWA would otherwise result in undue hardship to the eligible family, a supplemental payment to the last regular benefit payment shall be issued during the current payment period for the reasons stated at N.J.A.C. 10:82-2.20.

ii. Any supplemental payment to an eligible family for the reason of undue hardship shall be subject to proration based on the date of the change.

10:82-1.11 (Reserved)

10:82-2.1 Form PA-3A or Form 105

(a) (No change.)

(b) Form PA-3A shall be completed in the following order:

1. (No change.)

2. Part VI: For all new applications, Part VI, Determination of Initial Eligibility, must be completed first, in accordance with N.J.A.C. 10:82-2.7.

3. Part V: When one or more members of the eligible unit have earned income, compute the calculated earned income in Part V. See N.J.A.C. 10:82-2.8 for methods for determining calculated earned income.

4.-6. (No change.)

10:82-2.2 Initial grant

(a) When eligibility has been determined, the initial grant shall be computed as follows:

1. All income which has been received or which will be received in the month of application shall be counted in accordance with the best estimate policy found at N.J.A.C. 10:82-1.10. The countable income shall be subtracted from the appropriate monthly assistance standard and the result shall be prorated by multiplying that amount by the factor appropriate for the date of application in the table below. If the result is not a whole dollar amount, the amount shall be rounded in the next lower whole dollar.

Date of Application	Multiplication Factor	Date of Application	Multiplication Factor
1	1.000	16	.5000
2	.9666	17	.4666
3	.9333	18	.4333
4	.9000	19	.4000
5	.8666	20	.3666
6	.8333	21	.3333
7	.8000	22	.3000
8	.7666	23	.2666
9	.7333	24	.2333
10	.7000	25	.2000
11	.6666	26	.1666
12	.6333	27	.1333
13	.6000	28	.1000
14	.5666	29	.0666
15	.5333	30 and 31	.0333

(b) In determining the amount of the initial grant, the appropriate disregards shall be applied to earned income.

(c) (No change.)

10:82-2.3 Income from eligible and noneligible individuals in the household

(a) Family groups living together: For purposes of AFDC, in family groups living together, income of the spouse is considered available for children under 18. If the spouse or parent is living with his or her spouse or children, respectively, income is considered available regardless of whether the spouse or natural or adoptive parent is noneligible or sanctioned. However, if a spouse or parent is receiving SSI benefits, including mandatory or optional State supplementary payments, then for the period for which such benefits are received, his or her income and resources shall not be counted as income and resources available to the eligible family.

1. (No change.)

2. For earned income, the net amount to be considered available to the eligible family shall be determined by deducting only the first $90.00 of such income for each employed individual in the AFDC-C, -F and -N segments to cover work-related expenses, including, but not limited to, transportation and mandatory payroll deductions and the actual expenses of child care or care for an incapacitated individual in the household (when applicable as set forth in N.J.A.C. 10:82-2.8 and 4.4) that do not exceed the following rates:

i.-iv. (No change.)

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

10:82-2.6 Initial eligibility

(a) On all new applications, reapplications, or reopened applications, initial financial eligibility must be established before a determination of the amount of the monthly grant can be made.

1. Earned income disregards: For AFDC-C, -F and -N cases, when the eligible family received assistance in one of the four months prior to the month of application, all earned income disregards at N.J.A.C. 10:82-2.8 shall apply to the determination of initial financial eligibility. For AFDC-C, -F and -N cases which have not received assistance in one of the four months prior to the month of application, the earned income disregards apply, except that the disregard of the first $30.00 of the remaining income plus one-third of the remainder does not apply. If total income equals or exceeds the public assistance allowance payment standard in Schedule II for the eligible family size, the family is ineligible for assistance. In the computation of the initial AFDC grant, application of the $30.00 and one-third earned income disregards is subject to the limitations at N.J.A.C. 10:82-2.8.

2. (No change.)

10:82-2.7 Initial eligibility; AFDC-C, -F and -N procedures

(a) The procedures regarding initial income eligibility are:

1. (No change.)

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). 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. (No change.)

2. For a period of not longer than four consecutive months, deduct the first $30.00 of the remaining earned income plus one-third of the remainder for each employed individual in the eligible family. For REACH participants in the work supplementation program (WSP) see N.J.A.C. 10:81-14.11 and 14.21.

i. This deduction shall cease after a period of four consecutive months and shall not be applied again so long as the wage earner is a recipient of AFDC-C, -F or -N benefits. This deduction will again be applied after the original four consecutive month period only after the wage earner has not been a recipient of AFDC-C, -F or -N benefits for a period of 12 consecutive months. (See also N.J.A.C. 10:82-4.4.)

3. For a period not exceeding eight months from the end of the four consecutive months of the $30.00 plus one-third of the remainder disregard, a deduction of the first $30.00 of the remaining income shall be applied.

i. Upon expiration of the eight-month period, this deduction shall not be applied again so long as the wage earner is a recipient of AFDC-C, -F or -N benefits. This deduction will again be applied after the eight-month period only after the wage earner has not been a recipient of AFDC-C, -F or -N benefits for a period of 12 consecutive months.

4. Deduct an amount equal to the actual expenditures for child care or for care of an incapacitated individual living in the same home as the AFDC-C, -F or -N eligible family. In no event shall this deduction exceed the limits as follows:

i.-iv. (No change.)

(b) The deduction described in (a)4 above shall be made for actual expenditures for child care or for care of an incapacitated adult living in the same home as the AFDC-C, -F or -N eligible family when any of the following circumstances apply to the eligible family:

1. (No change.)

2. The family pays expenditures for care of an incapacitated adult living in the AFDC-C, -F or -N household to enable the AFDC-C, -F or -N employed individual to remain employed. This disregard process shall be used in determining the calculated earned income to an AFDC-C, -F or -N family to meet the costs of care of an incapacitated adult in the household if the family incurs such expenses, regardless of the fact that direct payment for child care costs may be paid by the agency (see N.J.A.C. 10:82-5.3(b) and 10:81-14.18(d)1);

3. An AFDC-C, -F or -N applicant family which has an employed family member who is defined as a REACH/JOBS mandatory participant (that is, not exempt from REACH/JOBS participation) shall use the disregard method for costs of child care due to employment during the interim time period covering referral of the mandatory individual to REACH/JOBS case management; and until such time (subject to timely and adequate notice provisions at N.J.A.C.

10:81-7.1 and 14.7) that income maintenance is subsequently advised by case management of the direct payment of child care costs through REACH/JOBS;

4. (No change.)

5. The REACH/JOBS child care payment is made to a child care provider selected by the AFDC-C, -F or -N family participating in REACH/JOBS, and that provider does not meet the criteria at N.J.A.C. 10:82-5.3(c) through (f) and N.J.A.C. 10:81-14.18(f) as an authorized child care arrangement for direct payment through REACH/JOBS; or

6. (No change.)

10:82-2.9 Stepparents: AFDC-C procedures

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

(c) When the stepparent 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 grant for the eligible unit shall be the appropriate payment standard on Schedule II less any income to the eligible unit, including the countable income of the stepparent as determined in (d) below.

(d) When a stepparent of eligible AFDC-C children lives in the same home as the children and is not included as a member of the eligible family, his or her income shall be considered available to the eligible family in accordance with the following procedures:

1.-2. (No change.)

3. Further reduce the remaining income by the appropriate amount in the Standard of Need (N.J.A.C. 10:82-1.1A) for the stepparent and any other individuals residing in the household who are or could be claimed by the stepparent as dependents for Federal personal income tax liability and who are not recipients of AFDC-C, -F or -N.

4.-5. (No change.)

6. All income remaining shall be counted as unearned income available to the eligible unit and shall be counted toward total income (N.J.A.C. 10:82-1.2(a)) and in the determination of grant amount.

10:82-2.11 (Reserved)

10:82-2.12 (Reserved)

10:82-2.13 Companion cases

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

(c) The public assistance allowance for each segment shall be the payment standard for the total eligible unit on Schedule II or III, as appropriate.

(d) When there is no income, earned or unearned, to any member of the eligible unit, the total payment standard for the family size in Schedule III shall represent the monthly grant for the eligible unit.

(e) When any member of the eligible unit has income, earned or unearned, follow the procedures described in N.J.A.C. 10:82-1.2 (c), (f) and (g).

10:82-2.14 Contract earnings

Earnings payable under the terms of renewable contract, for example, earnings of school teachers, are to be prorated over the stated term of the contract only.

10:82-2.19 Overpayments and underpayments

(a) Overpayments: Overpayment means a financial assistance payment received by or for an eligible unit for the payment month which exceeds the amount for which that unit was eligible. Upon discovery of an overpayment, the CWA shall take all reasonable steps necessary to promptly correct any overpayment as outlined in this subsection. The CWA shall seek recovery of all overpayments regardless of fault, including overpayments caused by administrative action or inaction and overpayments resulting from assistance paid pending hearing decisions.

1.-3. (No change.)

4. Recovery may be accomplished by securing repayment from the existing income and resources of the eligible unit, by reducing the assistance payable to the eligible unit, or by securing repayment through court action, if necessary.

5. In the circumstances of an overpayment to an eligible unit which is currently receiving assistance (including recipients whose overpayment occurred during a prior period of eligibility), the amount may be repaid (in part or in full) by the eligible unit, or the grant shall be reduced by an amount which is equal to 10 percent of the appropriate allowance standard for the family size. The AFDC grant shall be reduced by this amount until such time as the full amount of the overpayment is recovered. If the grant is reduced to zero because of recovery, members of the eligible unit will continue to be considered recipients of AFDC. If the amount payable because of recovery is less than $10.00, the AFDC check shall be issued in that lesser amount.

i. (No change.)

6.-14. (No change.)

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

10:82-2.20 Change in need while assistance is being received

(a) A change in the circumstances of the eligible unit may result in an adjustment upward or downward in the amount of the assistance payment. Unless (b) below applies, the adjustment must be effective no later than the first day of the month following the month in which the significant change in circumstance occurred. Downward adjustments are subject to timely and adequate notice.

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

10:82-3.13 Eligibility of sponsored aliens and deeming of sponsor's income and resources to a sponsored alien

(a) (No change.)

(b) The amount of income of a sponsor which shall be deemed to be the unearned income of an alien shall be determined as follows:

1.-2. (No change.)

3. The amount determined in (b)2 above shall be reduced by the following:

i. The appropriate amount from the Standard of Need (N.J.A.C. 10:82-1.1A) for the sponsor, spouse, and other persons residing in his or her household who are or could be claimed by the sponsor as dependents for determination of Federal personal income tax liability and who are not recipients of AFDC-C, -F or -N;

ii.-iii. (No change.)

4.-5. (No change.)

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

10:82-3.14 Deeming income of parents and guardians of adolescent parents

(a) (No change.)

(b) When an adolescent parent lives in the same home as his or her own parent(s) or legal guardian(s), the income of such parent(s) or legal guardian(s) shall be considered available to the eligible family in accordance with the following procedures. These rules do not apply if the parent(s) or guardian(s) receive(s) SSI or AFDC or if the adolescent parent is categorically eligible for the -N segment only. For the purposes of this section, the term parent shall include legal guardian.

1. Reduce the gross earned income (and net income from self-employment) of each employed parent by $90.00.

2. (No change.)

3. Further reduce the remaining income by the appropriate amount from the Standard of Need (N.J.A.C. 10:82-1.1A) for the parent(s) and any other individuals residing in the household who are or could be claimed by the parent(s) as dependents for Federal personal income tax liability and who are not recipients of AFDC-C, -F or -N.

4.-5. (No change.)

6. All income remaining shall be counted as unearned income available to the eligible unit and shall be counted toward total income (N.J.A.C. 10:82-1.2) and in the determination of grant amount.

(c) (No change.)

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. This disregard shall apply to the earned income of a person for a period of four consecutive months. Once this disregard has applied for a four consecutive month period, it shall not again be applied on behalf of that individual as long as he or she continues to receive AFDC-C, -F or -N. If after receiving this disregard for a four consecutive month period, the individual becomes ineligible for AFDC-C, -F or -N, this disregard shall not be applied to his or her income unless the individual has remained ineligible for AFDC for a period of 12 consecutive months.

2.-3. (No change.)

(c) For a period not exceeding eight months from the end of the four consecutive months of the $30.00 plus one-third of the remainder disregard, a deduction of the first $30.00 of the remaining income shall be applied.

1. Upon expiration of the eight-month period this deduction shall not be applied again so long as the wage earner is a recipient of AFDC-C, -F or -N benefits. This deduction will again be applied after the eight-month period only after the wage earner has not been a recipient of AFDC-C, -F or -N benefits for a period of 12 consecutive months.

(d) The CWA shall disregard from the remaining earned income, the actual costs paid for child care or for care of an incapacitated individual in the same home as the AFDC-C, -F or -N eligible family when the circumstances described at N.J.A.C. 10:82-2.8(b) exist. The amount of the disregard shall not exceed the limits as follows:

1.-4. (No change.)

(e) 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.-2. (No change.)

Recodify existing 4. as 3. (No change.)

10:82-4.5 (Reserved)

10:82-4.15 Nonrecurring earned or unearned lump sum income

(a) When a recipient receives nonrecurring earned or unearned lump sum income, including retroactive R.S.D.I. payments and other monthly benefits, and payments in the nature of a windfall, such as inheritances and lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it was paid (for example, monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, and so forth), that income will be added together with all other income received that month by the eligible family after application of the disregards in N.J.A.C. 10:82-2.8 and the exemption of income in N.J.A.C. 10:82-2.7. The AFDC assistance payment shall not be considered income. No portion of lump sum or other income may be applied toward the resource limit in the month of its receipt. When this total exceeds the Standard of Need for the eligible family size as set forth at N.J.A.C. 10:82-1.1A, the family will be ineligible for AFDC for the number of full months derived by dividing this total income by the Standard of Need applicable to the eligible family. Any remaining income from this calculation is treated as if it is unearned income received in the first month following the period of ineligibility and is considered available for use at that time. SSI payments shall not be subject to lump sum treatment.

1.-4. (No change.)

5. Once established, the period of ineligibility may be reduced only in the circumstances below. It is the responsibility of the former eligible family to provide all necessary information and documentation required to make a determination to shorten the period of ineligibility. The basis for a determination to shorten the period of ineligibility shall be thoroughly documented in the case record.

i. The period of ineligibility may be recalculated when the AFDC Standard of Need is increased. Upon request of a former AFDC eligible family, the period of ineligibility will be reduced as follows:

(1) The number of months of ineligibility already elapsed shall be multiplied by the Standard of Need used to compute the original period of ineligibility;

(2) (No change.)

(3) The remaining amount shall be divided by the new AFDC Standard of Need for the eligible family size and the result will be the number of months of ineligibility remaining.

ii.-iii. (No change.)

6. (No change.)

(b) (No change.)

(c) These regulations are not to be construed to limit any policy pertaining to reimbursement in any program but must be applied in conjunction with any repayment agreement.

10:82-5.10 Emergency assistance

(a) "Emergency Assistance" (EA) is hereby established as any initial, extra or additional payment(s), authorized in accordance with (d) through (n) below during the period of 30 consecutive days immediately following the date the application for EA is made/approved as a result of the occurrence of an emergency as defined in (d) below. Emergency assistance can be issued to AFDC families in receipt of presumptive eligibility benefits or continuing assistance or to non-AFDC families satisfying AFDC eligibility with the exception of those requirements at (a)1 below. The PA-1J form shall be used to determine eligibility for emergency assistance. Once immediate need is apparent, and the family is otherwise eligible, emergency assistance shall be authorized and/or provided as appropriate. Except as noted in (g) below, payments of emergency assistance in AFDC shall be made as vendor payments whenever feasible, or as direct payments to the eligible unit, or as a combination of both.

1. (No change.)

2. Financial eligibility for all applicants for emergency assistance shall be determined using Schedule II *[or III]* of N.J.A.C. 10:82-1.2 and the maximum income levels for AFDC-C and AFDC-F segments of Schedule I of N.J.A.C. 10:82-1.2.

(b)-(n) (No change from proposal.)

10:82-5.11 (Reserved)

(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Manual Household Size

Adopted Amendments: N.J.A.C. 10:85-3.1, 3.3 and 4.1

Proposed: March 16, 1992 at 24 N.J.R. 926(a).
Adopted: May 20, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services
Filed: May 27, 1992 as R.1992 d.260, **without change.**

Authority: N.J.S.A. 44:8-111(d).

Effective Date: June 15, 1992.
Expiration Date: December 20, 1994.

Summary of Public Comments:
One favorable comment was received from the Ocean County Board of Social Services.

Full text of the adoption follows:

10:85-3.1 Persons eligible for General Assistance

(a) (No change.)

(b) Eligibility for general assistance is determined according to the number of persons applying as a unit (eligible unit).

1. (No change.)

2. (No change in text.)

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

10:85-3.3 Financial eligibility

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

(f) Assistance allowance standards are as follows:

1. (No change.)

2. Allowance schedules: Schedules I and II at N.J.A.C. 10:85-4.1 have been established under the authority in N.J.S.A. Title 44 and give the standards, in monthly amounts, to be used as the basis for granting assistance.

i. (No change.)

Recodify existing iii. through vii. as ii. through vi. (No change in text.)

3. (No change.)

4. Room and board living arrangements: When an individual is purchasing a room and board living arrangement, the following shall apply:

i. (No change.)

ii. Other boarding homes: When an individual is purchasing room and board in a group facility or a boarding home (including a private home) other than a Residential Health Care Facility as in (f)4i above, or a center for treatment of drug or alcohol abuse as in (f)4iv below, the total monthly allowance shall be the amount for a single individual as given in Schedule I or Schedule II, as appropriate, less any countable income.

(1) (No change.)

iii.-v. (No change.)

5. (No change.)

(g) (No change.)

10:85-4.1 State and local responsibilities

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

Schedule I (All Eligible Unit Members Unemployable)	Number in Eligible Unit	Schedule II (One or more Eligible Unit Members employable)
$ 210	1	$140
289	2	193
366	3	244
420	4	280
480	5	320
540	6	360
597	7	398
655	8	437
705	9	470
753	10	502
811	11	541
868	12	579
930	13	620
979	14	653
1029	15	686
Add $48.00 Each Person	More Than 15	Add $32.00 Each Person

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

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

Reporting Financial Disclosure and Excess Profits

Adopted Repeal and New Rule: N.J.A.C. 11:3-20—Appendix

Adopted Amendment: N.J.A.C. 11:3-20.5

Proposed: February 18, 1992 at 24 N.J.R. 529(a).

Filed: May 22, 1992 as R.1992 d.254, 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), 17:1C-8.1 and 17:29A-5.6 et seq., 17:30A-16 and 17:33B-5.6.

Effective Date: June 15, 1992.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

Thirteen public comments were received from insurance companies (Aetna Casualty and Surety Company, Allstate Insurance Company, Chubb and Son Incorporated, Liberty Mutual Insurance Company, New Jersey Citizens United Reciprocal Exchange, New Jersey Manufacturers Insurance Company, Prudential Property and Casualty Insurance Company, Royal Insurance Company, State Farm Insurance Companies, Selective Insurance Group Incorporated, and United Services Automobile Association Casualty Insurance Company) and insurance trade associations (Alliance of American Insurers and the American Insurance Association).

COMMENT: Several commenters objected to N.J.A.C. 11:3-20.5 which specifically provides that assessments and surtaxes paid by insurers pursuant to N.J.S.A. 17:30A-8(a)9 and 17:33B-49 (FAIR Act assessments and surtaxes) may not be included as expenses in the Excess Profits Report. One commenter disagreed with the Department's interpretation that FAIR Act assessments and surtaxes should not be included as valid expenses for excess profits reporting purposes.

The commenter argued that surtaxes and assessments may be classified as "other expenses" such as taxes, licenses, fees, and general expenses which are specifically listed as permissible expense items pursuant to the excess profits statute. The commenter stated that nothing in the FAIR Act precludes including these charges as expense items in an excess profits filing. The commenter further argued that their position is consistent with the New Jersey Supreme Court's ruling in *State Farm Mutual Automobile Insurance Company et al. v. The State of New Jersey,* 124 *N.J.* 32 (1991) (hereinafter cited as *State Farm v. State).*

The commenter stated that the current New Jersey Excess Profits Law, N.J.S.A. 17:29A-5.6 et seq. was enacted in 1988 to establish a consumer protection mechanism against unreasonable profits by private passenger automobile insurance carriers. (See *American Employers Insurance Company v. Commissioner of Insurance,* 236 *N.J. Super.* 428 (A.D. 1989).

Additionally, the commenter argued that the excess profits statute in defining underwriting income specifically permits "other expenses" to be deducted from earned premiums in the excess profits calculation (see N.J.S.A. 17:29A-5.6(m)). The commenter also argued that N.J.S.A. 17:29A-5.7(c)(3)(b)(e) requires separate itemization and inclusion of taxes, license fees and general expenses as "other expenses."

Finally, the commenter stated that the FAIR Act provides that the Commissioner shall take such action as is necessary so that policyholders will not pay for the surtaxes. Reporting the surtaxes as an expense in the excess profits filing, however, will not in any way result in policyholder payments.

A second commenter stated that FAIR Act surtaxes and assessments represent substantial costs to insurers writing private passenger automobile insurance in New Jersey. The commenter stated that by disallowing these expenses in excess profit calculations, the Department is reducing an insurer's allowable operating return to a level far below that permitted under the excess profits formula. The commenter further stated that in many instances, disallowed FAIR Act surtaxes and assessments will exceed a company's excess profits, which the commenter believes is fundamentally unfair. The commenter believes that FAIR Act surtaxes and assessments are legitimate expenses which should be included in excess profit calculations.

A third commenter stated that N.J.A.C. 11:3-20.5 places an unduly burdensome penalty on insurers. The commenter stated that these FAIR Act assessments, which the Department claims are loans to the Property-Liability Guaranty Association, assess significant financial strains on insurers.

A fourth commenter stated that FAIR Act assessment and surtax payments represent a portion of the actual, full cost of doing business in the New Jersey private passenger automobile market; therefore, they should be included in the excess profits calculation.

A fifth commenter stated that excluding the FAIR Act surtax and assessments could result in insurers being required to return "excess profits" when in fact no profits exist. The commenter stated that under the excess profit rules insurers are allowed to earn an expected return plus of 2.5 percent of premium. The current FAIR Act assessment totals 7.6 percent of premium. The commenter argued that depending upon individual company circumstances, a company could have excess profits declared when profits are less than 7.6 percent of premium. Under these

circumstances a company would have to provide refunds or credits even though it had no profit, because the FAIR Act assessement was not included in the profit calculation.

RESPONSE: The Department disagrees. The court in *State Farm v. State, Ibid.* in upholding the constitutionality of the FAIR Act, found that the sections of the FAIR Act prohibit direct pass through to policyholders of surcharges and that assessments imposed on insurers by the Act did not make it impossible for an insurer to achieve a fair rate of return.

In accordance with N.J.S.A. 17:30A-16 and 17:33B-51, the Department adopted rules that generally prohibit insurers from including FAIR Act assessments and surtaxes as expenses in private passenger automobile insurance rate filings (N.J.A.C. 11:3-16). The determination of excess profits involves a retrospective review of an insurer's rates for private passenger automobile insurance for the immediately preceding three years. The data in the Excess Profits Report therefore must reflect the insurer's condition for the relevant period. Including FAIR Act assessments and surtaxes in the Excess Profits Report, which were not reflected in the insurer's approved private passenger automobile insurance rates for the relevant period, will distort the insurer's excess profits results. Further, including FAIR Act assessments and surtaxes as expenses, which were not reflected in the insurer's approved rates pursuant to N.J.A.C. 11:3-16.11, could result in policyholders indirectly paying the assessment or surtax through reduction or elimination of the refund or credit of excess profits, in contravention of N.J.S.A. 17:30A-16 and 17:33B-51. The Department, therefore, believes it appropriate to provide that insurers may not include those assessments and surtaxes as expenses for purposes of the excess profits calculation.

COMMENT: Several commenters argued that in the excess profits calculation that the Department exceeded its scope of authority by excluding FAIR Act surtaxes and assessments from expenses. One commenter argued that N.J.S.A. 17:33B-51 concerns prospective ratemaking and not the excess profits calculation which is a retrospective review of actual profit and losses. The FAIR Act limitation that such surtaxes may not be "passed through" to private passenger policyholders and that the assessments may not be recouped through a surcharge, does not preclude an insurer from including these amounts when looking back to determine if "excess profits" have been earned.

RESPONSE: The Department does not believe that it has exceeded its authority. As noted in response to the previous comments, including assessments and surtaxes as expenses, which were not reflected in the insurer's approved rates pursuant to N.J.A.C. 11:3-16.11, could result in policyholders indirectly paying the assessment or surtax through a reduction or elimination of the refund or credit of excess profits in contravention of N.J.S.A. 17:30A-16 and 17:33B-51. The Department, therefore, believes that these statutes authorize it to promulgate this amendment.

COMMENT: One commenter stated that the Department's rules are silent on the inclusion of the Market Transition Facility ("MTF") apportionment of loss payments as expenses in excess profits reports. The commenter stated that the Department has admitted that the MTF deficit is currently $375 million and has begun to indicate insurers responsibility for the MTF losses, but the Department's current apportionment of the MTF losses is in contravention of the FAIR Act. The commenter stated that the MTF apportionment of loss payments should be included as an expense in excess profits report filings.

RESPONSE: This comment is beyond the scope of the proposal. These rules were not intended to address any MTF deficits at this time, since no cash call has been made to insurers and the MTF's accounting system requires that the deficit, if any, be apportioned at the end of the MTF's three-year accounting cycle. The Department will address any needed changes to these rules at the appropriate time.

COMMENT: Two commenters objected to Exhibit I, Item 1A. One commenter stated that the calculations require that Unsatisfied Claim and Judgment Fund (UCJF) assessments be subtracted from premium. The result is that the premium used to compute its permissible profits is reduced. The commenter argued that it is inappropriate to treat an expense item as negative income rather than as an expense. The commenter further argued that the calculation artificially inflates the calculation of actual profit as a percentage of premium. The commenter believes that this Exhibit should be revised to include UCJF assessments as an expense.

A second commenter stated that the treatment of UCJF assessments is inconsistent with that of losses. The commenter stated that insurers are instructed to deduct ultimate incurred losses from premiums, but the deduction for UCJF assessments is limited to that actually paid in a given year. The commenter stated that since the goal of the excess profits test is to determine the profitability of the insurer over the three-year period, all costs attributed to that period should be included. Additionally, the commenter stated that this includes additions to PIP reserves necessitated by the occurrence of excess medical losses during that time.

RESPONSE: The Department disagrees. It is proper to subtract UCJF assessments from premium because the corresponding losses (that is, PIP losses over $75,000) are deducted from losses. The Department believes that considering only the actual UCJF assessment paid by an insurer for each year reported in the Excess Profits Report more accurately reflects an insurer's financial condition for the year on which excess profits are determined, and is consistent with the legislative intent of providing reimbursement of medical expenses to insurers by the UCJF.

COMMENT: Another commenter objected to the requirement that UCJF assessments be reported on a paid basis. The commenter does not believe that UCJF assessments reported on a paid basis properly reflect an insurer's cost for a calendar year because it ignores costs incurred but not paid during that period. The commenter suggested that the Department amend this provision to permit companies to report UCJF assessments on an "incurred" rather than paid basis.

RESPONSE: The Department disagrees. The UCJF assessment is the amount the insurer incurs on PIP losses in excess of $75,000.

COMMENT: One commenter in objecting to the Department's UCJF calculation, stating that historically companies have not been permitted to charge adequate rates for the UCJF assessment, and there have been time lag problems with delayed reporting, inadequate projections and inability to use the current assessment in rates. The commenter further stated that the current reporting requirements (reserving of two future UCJF assessments for the two years immediately preceding the report) recognize the historic inadequacy and time lag. The commenter suggested that the Department modify the rule to include only the actual assessment paid. The commenter's recommendation is as follows:

The change only be made on a prospective basis (i.e., reporting for 1992 be done for 1991 and prior years should continue as reported previously);

The Commissioner, via regulation or bulletin, permit insurers to pass through the current UCJF assessment annually to policyholders apart from a rate filing. The direct pass through could be made exclusive of taxes, expenses and commission to lower the overall amount.

RESPONSE: The Department disagrees. The reserving suggested by the commenter might overstate a company's liability for purposes of reporting excess profits.

COMMENT: Two commenters objected to combining the reporting of loss data for uninsured/underinsured motorist coverage with bodily injury liability coverage. One commenter stated that combining the reporting of loss data for uninsured/underinsured motorist coverage with bodily injury liability coverage will require changes in the data reporting in all but one of the 10 Exhibits currently being submitted. The commenter stated that in order to acccurately complete Exhibit I, insurers will have to separate and recombine this data for each of the last 10 years.

A second commenter believes that the separation of property damage liability and uninsured/underinsured motorists coverages is theoretically a better approach. However, the commenter takes issue with the Department's statement that uninsured/underinsured motorists coverage should be combined with loss data for bodily injury liability coverage. The commenter believes loss data for each coverage should be reported separately. Additionally, the commenter noted that this provision requires an insurer to undertake a great deal of work and a company may be unable to comply with this provision for the current year.

RESPONSE: The Department believes that the combination of uninsured/underinsured motorist coverage with bodily injury liability coverage is appropriate because they both cover the same type of loss. Furthermore, uninsured/underinsured losses by themselves may exhibit an erratic emergence pattern because there are few uninsured/underinsured motorist claims.

COMMENT: One commenter stated that N.J.A.C. 11:3-20.4(d) should be amended to group the the reporting requirements for the uninsured/underinsured motorists coverage with the bodily injury liability coverage rather than the property damage liability coverages.

RESPONSE: The Department agrees with the commenter. Action on the suggested amendment to N.J.A.C. 11:3-20.4(d) will be taken separately.

COMMENT: One commenter stated that Exhibit I, Item 5 includes a typographical error. The provision currently reads the "JUA/MIF." The commenter stated that it should be changed to "JUA/MTF."

RESPONSE: The Department agrees with the commenter and has amended this section accordingly.

COMMENT: One commenter stated that Exhibit Two, which is to be completed for each of the calendar years 1983 through 1989, will require insurers to segregate and recombine loss development data over the last eight calendar/accident year periods. The commenter argued that in order for companies to make these changes accurately, companies need time to determine what system changes need to be made to identify the required data elements, write programs to identify, segregate, and combine the necessary data. Additional time is required to thoroughly test the changes in order to be confident that the data they report to the Department accurately reflects their private passenger automobile experience. The commenter does not believe that the time available between the adoption of the rule and the time of the first submission of data is sufficient to allow companies to make these changes. The commenter suggested that companies be given the option of filing the 1991 data report under the existing rule and the 1992 report under the new rules.

RESPONSE: The Department disagrees. Insurers have been reporting this information in previous Excess Profits Reports. The Department is not requiring new information; rather it is changing the manner in which companies combine this information. The Department believes this method adequately reflects an insurer's private passenger automobile experience.

COMMENT: One commenter stated that Exhibits Three, Four, Five and Six will require companies to segregate and recombine the appropriate data in order to determine paid loss development patterns.

RESPONSE: The Department disagrees. Insurers have been reporting this information in previous Excess Profits Reports. The Department is not requiring new information; rather it is changing the manner in which companies combine this information. The Department believes this method adequately reflects an insurer's private passenger automobile experience.

COMMENT: One commenter stated that in Exhibit Five, the "75-87" selected factor is based only on one accident year. The commenter argued that this could result in an inappropriate projection of ultimate accident year losses. The commenter stated that an additional problem is the fact that the projection uses this factor for both the "75-87" and "87 to ultimate" factors. The commenter suggested that an additional accident year be added to remedy this problem.

RESPONSE: The Department believes that its current data requirements are adequate and that the extra data will cost more than it is worth. Therefore, the Department does not believe it is necessary at this point to include an additional accident year.

COMMENT: One commenter objected to Exhibit Seven which relates to country-wide expenses from the Insurance Expense Exhibit ("IEE"). The commenter stated that this provision will require insurers to identify expense data by categories which were not previously required.

RESPONSE: The Department disagrees. Insurers are currently submitting this data to the Department, and the Department is only requiring insurers to combine this data differently.

COMMENT: One commenter argued that the proposed new procedure (Exhibit Eight—Part A) uses different lines of data from the Interest, Dividends and Real Estate section of the Annual Statement (other than just Other Bond income) and uses a broader range of assets (than merely Corporate and Industrial Bonds) in the calculation of actual investment income. The commenter argued that this calculation is inconsistent with the rule governing an insurer's yield rate for rate filing, and that it is inappropriate to hold an insurer to this different standard.

The commenter stated that it is the investment income that is actually generated by policyholder-supplied funds invested during the relevant period which should be calculated. Including such other sources of income has the effect, at least theoretically, of inflating an insurer's yield rate and retroactively adjusts the yield an insurer should have earned over the past three years.

Finally, the commenter stated that re-filing this report involves a great deal of work. The Department's statement that it will require an insurer to either re-file its 1991 Excess Profits Report or submit a letter waiving the option as a result of recent litigation regarding the calculation of actual investment income is unclear and needs clarification. The commenter stated that it is not aware of what rights it would be waiving by not re-filing the report.

RESPONSE: The Department disagrees. Since ratemaking is prospective and excess profits reporting is retrospective, the standard used in calculating an insurer's yield rate is different. In excess profits reporting the Department is looking at what actually happened. The Department does not believe that its calculation inflates the insurer's yield rate. The Department calculation adjusts the yield rate based on what the insurer has earned over the past three years.

As to re-filing the July 1, 1991 report, in a decision dated July 25, 1991, in *In the Matter of the Adoption of N.J.A.C. 11:3-20.1 et seq. and N.J.A.C. 11:3-20A.1,* Docket Nos. A-1401-89T1, A-5312-88T1, A-5315-88T1, the Appellate Division invalidated the Department's prior calculation of "actual investment income" and left the Commissioner the development of a more appropriate methodology. This regulation embodies that appropriate methodology. However, prior to the date of the Court's decision, the July 1, 1991 filing was made using the now-invalidated methodology for actual investment income.

The Department is unable to calculate excess profits under the new actual investment income methodology by using the filings which were submitted using the Appendix forms which are being replaced by this regulation. The Department cannot continue to have excess profits reports filed under an invalidated methodology, so insurers *must* file their July 1, 1992 report and all subsequent reports under the new methodology. However, if the insurers do not wish to recalculate their July 1, 1991 reports, they will be permitted to avoid that recalculation by waiving any right to appeal an excess profits determination from the July 1, 1991 filing on the grounds that the Department's determination used the now-invalidated actual investment income methodology. The insurers cannot both refuse to refile using the new methodology, and appeal because the Department used the filing which was based upon the old methodology. The Department is not seeking to foreclose the insurers from any other rights which they may have to appeal.

COMMENT: One commenter objected to the rules which relate to the subject of investment income. The commenter stated that it stresses its necessity of establishing a realistic minimum percentage which reflect available years. The commenter argued that the reserved nine percent yield used in the past is no longer a reasonable standard.

RESPONSE: The Department disagrees. The Department believes that nine percent is a realistic minimum percentage at this time and therefore no change is warranted. Moodys seasoned "AAA" bond rate is in the range of nine percent for the last three years based on the Federal Reserve Statistical Release publication.

COMMENT: One commenter argued that the revised formula for calculating the investment earnings rate is nearly identical to the formula used in the Insurance Expense Exhibit. The commenter stated that the Department has omitted from that formula the write-in line for deductions from investment income which is found in the Annual Statement on page 6, Part 1, Line 13. The commenter stated that the Exhibit should be amended so that such write-in deductions are allowed in order to properly reflect investment income.

RESPONSE: The Department disagrees. The write-in line may include expense deductions which arise from investing in stocks which are excluded from the calculation. The Department believes its calculation better reflects an insurer's investment earnings on policyholder-supplied funds.

COMMENT: In objecting to Exhibit Eight, another commenter stated that this Exhibit calculates investment income on a calendar year basis without regard to accident year data. Additionally, the commenter stated that this provision ignores an insurer's actual investment income on policyholder supplied funds and overstates investment income, contrary to the statute and Appellate Division's decision which invalidated the prior rule.

RESPONSE: Investment income is a calendar year calculation. The Department believes that its calculation reflects as clearly as possible, the investment income actually generated by policyholder-supplied fund invested during the relevant period, in accordance with the Court's decision in *In the Matter of Adoption of N.J.A.C. 11:3-20A.1,* Dkt. Nos. A-5312-88Ta, A-5315-88T1, and A-1401-89T10 (July 25, 1991) (hereinafter cited at *"In re N.J.A.C. 11:3-20A.1"*).

COMMENT: One commenter objected to Exhibit Eight, Part One A, which requires investment data to be tracked by the purchase year of the particular investment. The commenter argued that this requirement poses serious compliance problems for insurers. The commenter argued that the establishment of such a system of data reporting will be extremely burdensome and is not required by any other state or the National Association of Insurance Commissioners (NAIC). Additionally, the com-

menter argued that other sections of the Excess Profit Report require that investment expenses be reported on a calendar year basis. The commenter argued that it will not be possible to accurately allocate these expenses to investments recorded by purchase year unless some very arbitrary and unreliable allocation methods were used. Finally, the commenter argued that this approach cannot work because the calculated investment year is applied to calendar year loss and loss adjustment expense reserves in Exhibit Eight, Part 1. The commenter argued that the calendar year reserves include numerous accident years, and that it would be inconsistent to apply an investment earnings rate for single "purchase" year to reserves which include numerous accident years. The commenter suggested that the Department delete the requirement that investment data be tracked by purchase year since the Excess Profit Report covers multiple years. Measurement of earnings over a multiple year period is also appropriate. The commenter argued that an exact match between investment earnings by purchases, year and net policyholder-supplied funds is not possible or desirable.

RESPONSE: The Department disagrees. The Department believes that it is necessary to track investments year by year in order to adequately address the court's concerns in the *In re N.J.A.C. 11:3-20.1* decision.

COMMENT: Two commenters expressed concern with the Department's calculation of investment income (Exhibit Eight). One commenter stated that it appears to be based on average invested assets and total income on those assets for the three years requested. The commenter agreed with the formula but was confused by the provision which states that the data is for investments purchased during the three years, not for the investments held. The commenter requested the Department to clarify this point because the commenter assumed that the figures requested are for investments held, not for purchased investments.

A second commenter asserted that the instructions are unclear. The commenter stated that as a first interpretation, the heading stating "made during three (3) years 1990, 1989, and 1988 as contained in the statutory annual statement for each calendar year" suggests that the columns 1990, 1989, and 1988 should contain calendar year information from three different annual statements. As a second interpretation, the phrase "Year Investment Purchased" suggests that data from a single calendar year should be allocated based on year purchased. As a third interpretation, the 1990 column would refer to income in calendar year 1990 from investments purchased in 1990 and the 1989 column means income in calendar year 1989 from investments purchased in 1989, etc. The commenter believes that this exhibit needs to be clarified. The commenter suggested that the Department delete the phrase "Year Investment Purchased" and thereby adopt the first of the above three alternatives. The commenter stated that it is inappropriate to analyze investment income by year purchased. The commenter stated that the Department is apparently trying to apply a new money rate to the entire balance of reserves which includes reserves from accidents which occurred in prior years and are already invested at other rates. The commenter believes that the proper matching would be the entire reserve with the total investment portfolio. The commenter suggests that the Department use the calendar year approach. Additionally, the commenter suggested that the calculation be consistent with the decision of the court in *In re N.J.A.C. 11:3-20A.1* to calculate an insurer's actual investment income.

RESPONSE: The Department agrees with the first interpretation of the second commenter. The columns for 1990, 1989, and 1988 should contain calendar year information from three different annual statements. The Department does not believe it is necessary to delete the phrase "Year Investment Purchased."

COMMENT: One commenter objected to Exhibit Eight because the commenter believes that assets and investment income by year of asset purchase are not readily available. The commenter stated that they are researching whether this data could be produced at all. The commenter argued that this requirement is unduly burdensome and time consuming, with questionable improvement in the accuracy of the final result. The commenter does not believe that there is any necessary correlation between the investment income generated by the assets purchased in a given year and the reserves and for policies written in those years. Additionally, the commenter stated that the calculation, which is supposed to result in mean invested assets, is meaningless for the latest year. For example, the commenter stated that for 1991 the assets purchased in 1991 had a value of zero at the end of the prior year, so the calculation simply divides in half the assets purchased during the year. The commenter stated that this is equivalent to assuming that all investments were made on July 1 and if investments are not made evenly throughout the year, the rate of return will be biased.

RESPONSE: The Department disagrees that the data cannot be produced, but otherwise understands the commenter's concern. The Exhibit has been revised to calculate an average for the 1989 and 1990 years, the 1988 figures now reflect the full year end amount.

COMMENT: One commenter stated that the investment income (dividends) from common and preferred stocks of non-affiliated companies should be included in the analysis. The commenter argued that including dividend income would make the calculation of actual investment income consistent with the Clifford Formula decision and with the treatment of investment income in the IEE. The commenter believes this would establish consistency with the investment income calculation underlying 1983 and 1988 ISO rates. The commenter believes this would lead to a fair comparison of actual and anticipated investment income for insurers whose rates are still based on ISO rates. Finally, the commenter stated that the exclusion from the analysis of dividends on stocks will result in a calculated yield rate which exceeds the insurer's actual yield rate.

RESPONSE: The Department disagrees. The Department believes it is appropriate to exclude capital gains or losses and income from investments in stocks in determining the income generated from policyholder-supplied funds. Policyholder-supplied funds are generally held by the insurer to pay claims; prudent insurers therefore invest policyholder-supplied funds in investments which provide liquidity necessary to pay claims when due. Capital gains or losses and income from investment in stocks, however, may result from short-term fluctuations in the investment market. Further, an insured pays the premium for private passenger automobile insurance to receive coverage for potential losses which are covered, not to speculate in the investment market. The Department therefore believes that insureds should not bear the risk of capital losses nor receive any benefit of capital gains.

COMMENT: One commenter stated that as a result of information requested in Exhibits Eight and Ten companies will be required to identify considerable amounts of data that were not previously required.

RESPONSE: The Department recognizes that this data was not previously required but believes that the data is necessary in order to comply with the court's decision in *In re N.J.A.C. 11:2-20A.1.*

COMMENT: One commenter stated that the Department inappropriately and unlawfully failed to take in account AIRE assessments and reimbursements, property loss adjustments expenses, loss development and expenses.

RESPONSE: The Department disagrees and believes that AIRE assessments are adequately addressed in Exhibit Nine.

COMMENT: One commenter stated that the excess profits statute requires a four year development adjustment. The commenter argued that the Department is not adhering to the requirement for property damage and physical damage coverages data which use only a one year development adjustment. The commenter suggested that the Department define the development adjustment for the oldest three years as the change in paid losses for those years during the latest calendar period. In the report due July 1991, the adjustments for the accident years 1986, 1985 and 1984 should be losses paid (positive or negative) for each of those accident years from 4/1/90 to 3/31/91.

RESPONSE: The Department believes that property damage liability and physical damage data which is four years old is already at ultimate. Therefore, it is not necessary to define the developmental adjustment for the oldest three years as the change in paid losses for those years during the latest calendar period.

COMMENT: One commenter noted that the excess profits statute (N.J.S.A. 17:29A-5.6 et seq.) states that "The excess profits computation for an insurance holding company system shall be performed on its combined profits report, except that the commissioner may order an adjustment in the combined profits report if in his judgment, upon examining each insurer's profits report in the insurance holding company system, one or more of the insurers in that system are excessively subsidizing other insurers in that system."

The commenter stated that the regulation's non-excessive subsidization of 0.5 percent is so minimal that the regulation is effectively reversing the statutory intent. Under the regulation the excess profits for a group is done on an individual company basis except that a minimal allowance is made to offset the profits in one company with losses in another.

The commenter suggested the 0.5 percent be significantly increased so that a group's calculation is truly on a group basis as intended by the Legislature. This is important because groups form separate companies for New Jersey automobile insurance, and for some transitional period of time have business in more than one company.

RESPONSE: The Department believes that its standard is a reasonable one. This rule has been in existence since 1990 by Order No. A90-132 and was codified by rules on January 7, 1991 (N.J.A.C. 11:3-20). This comment was adequately addressed in the Department's proposal of July 16, 1990 at 22 N.J.R. 2082(b), and at the time of the adoption of these rules (see 23 N.J.R. 106(a)).

COMMENT: One commenter objected to the revisions to Exhibit Eleven which only allow actual paid UCJF assessments to be deducted as an expense item. The commenter stated that it is committed by its policies to contract to pay all PIP payments to its insureds. The commenter stated that excess profit statutes requires each insured to list "PIP losses to ultimate." The commenter argued that the UCJF Board has acknowledged and unfunded liability in excess of $2 billion over and above what the actual assessments will yield. The commenter stated that this provision must take into account an insurer's proportional share of this recognized liability. The commenter stated that the failure of the Department to allow reflection of an insurer's ultimate liability will cause an overstatement of excess profits and the failure of the excess profits report to accurately reflect an insurer's ultimate liability and actual profits. The commenter stated that the Department should revise Exhibit Eleven to allow the excess profit report to reflect the ultimate UCJF liabilities and reflect UCJF as an expense item on Exhibit Eleven.

RESPONSE: The Department disagrees. It is proper to subtract UCJF assessments from premiums because the corresponding losses (that is, PIP losses over $75,000) are deducted from losses. The Department believes that considering only the actual UCJF assessment paid by an insurer for each year reported in the Excess Profits Report more accurately reflects an insurer's financial condition for the year on which excess profits are determined, and is consistent with the legislative intent of providing reimbursement of medical expenses to insurers by the UCJF.

COMMENT: One commenter requested that N.J.A.C. 11:3-20 and its Appendix be revised to state that a not-for-profit reciprocal or interinsurance exchange formed pursuant to N.J.S.A. 17:50 is not required to file a financial disclosure or excess profits report, for the following three reasons:

1. A reciprocal exchange is regulated exclusively by N.J.S.A. 17:50 and N.J.S.A. 17:29A-5.6 does not apply to it.

2. N.J.S.A. 17:29A-5.6 by its own language, and therefore N.J.A.C. 11:3-20, apply to an "insurer" and not to an N.J.S.A. 17:50 "reciprocal exchange."

3. It is unnecessary for a not-for-profit reciprocal exchange to be subjected to the time and expense of excess profits reports because it is not-for-profit by definition and distributes any excess premium to its policyholders.

RESPONSE: The Department disagrees. N.J.S.A. 17:29A-5.7 requires each insurer to annually file an excess profits report on or before July of each year, unless exempt pursuant to N.J.S.A. 17:29A-5.11. N.J.S.A. 17:29A-5.6j defines "insurer" as "an entity authorized or admitted to transact private passenger automobile insurance business in New Jersey, but does not include the New Jersey Automobile Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq." The Department believes that a reciprocal insurance exchange is an "insurer" under this definition and is thus statutorily required to file an excess profits report each year, unless exempt pursuant to N.J.S.A. 17:29A-5.11.

Summary of Agency-Initiated Changes:

The Department recognizes that Exhibit 1 in the proposal does not include spaces for information to be recorded with respect to Column (5) (Dividend on Direct Business) and Column (6) (Direct Unearned Premium Reserves) for Items 3 through 11. The Department has included spaces for these items in this adoption.

The Department also omitted Exhibit 1, Items 14A (Ratio Item 14, Col (3), to Item 12, Col (3)) and 14B (Ratio Item 14, Col (4) to Item 12, Col (4)) from the proposal. These items have been included in Exhibit 1 for this adoption.

The information omitted from Exhibit 1 is not new information, it is information that insurers currently gather in accordance with the Department's current rules.

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

11:3-20.5 Profits report

(a) Each insurer shall submit a complete and accurate profits report in the format of the exhibits appended to this subchapter, which exhibits are hereby incorporated by reference as part of these rules.

(b) (No change.)

(c) In addition to the requirements in (b) above, each insurer shall file in the format of the exhibits appended to this subchapter, the following information for the calendar-accident year ending December 31 immediately preceding the date the profits report is due:

1.-3. (No change.)

4. Allowance for profit and contingencies (obtained by multiplying premiums earned by the profit and contingency factors authorized for use with the insurer's approved rate filings);

5.-7. (No change.)

(d) (No change.)

(e) No expenses included in the Excess Profits Report shall include assessments paid to the New Jersey Property Liability Insurance Guaranty Association pursuant to N.J.S.A. 17:30A-8a(9) or surtaxes paid pursuant to N.J.S.A. 17:33B-49, except to the extent the insurer was permitted to reflect the assessments and surtaxes in its approved rates for private passenger automobile insurance pursuant to N.J.A.C. 11:3-16.11 for any of the three years reported in the Excess Profits Report.

Recodify existing (e) as (f) (No change in text.)

APPENDIX

EXCESS PROFIT EXHIBITS—INSTRUCTIONS

In all Exhibits, dollars are stated as whole numbers, ratios and fractions are expressed as decimals and rounded to the third decimal place. Where a three year sum is expressed as a ratio, the ratio required is the ratio of three years' dollar figures and not the sum of three ratios.

The Exhibits attached are 1990 exhibits. Where exhibits for prior years or later years must be reported, the filer is required to submit Exhibits which are substantially similar to the attached Exhibits to report the prior years' or later years' data, and which contain all information, including dates, adjusted accordingly.

Exhibit One

General Instructions

Exhibit One is to be completed using data for calendar year 1990. Exhibits substantially similar to Exhibit One are to be completed for each of the years 1983 through 1989.

The filer is completing and submitting five Exhibits One (i.e. one for each of four coverages and a total of all four coverages) for each of eight calendar years (i.e. 1983 through 1990, inclusive) for a total of forty Exhibits One.

Item 1 is the premium and loss data as shown on Page 14 for New Jersey of the statutory annual statement for the various calendar years. For the various private passenger auto coverages, for 1990, use the data shown on Page 14 of the 1990 annual statement as follows:

BI Liability and Uninsured/Underinsured Motorists
Coverage included in ..... Page 14 Line 19.2
PD Liability included in ..... Page 14 Line 19.2
No fault ..... Page 14 Line 19.1
Physical Damage ..... Page 14 Line 21.1

For years prior to 1990, use corresponding Page 14 data for those years. In Item 1, fill in the Page 14 line which is the source of the data. Item 1A is the UCJF Assessment for the year. Items 2 through 10 are deductions from Item 1 for loss data (see Col (3), Col (4), or Col (7)) or Item 1B for premium data (see Col (1) or Col (2)), as described below. Items 2 through 10 are to be completed ONLY IF PREMIUM, LOSS OR DIVIDEND DATA FOR ITEMS 2 THROUGH 10 ARE INCLUDED IN ITEM 1.

In listing the exclusions in Items 2 through 10, note that where a premium, loss or dividend amount is contained in an Item, it is not to be contained in another Item.

For example, all excess medical benefits are to be contained in Item 2 (see below), and not contained in any of the other Items 3 through 10. Therefore, any excess medical benefits paid on a motorcycle policy are to be included in Item 2, and not in Item 3. Item 3 is to contain motorcycle premiums, losses and dividends not included in Item 2.

As another example, premiums, losses and dividends contained in Item 6, Excess and Umbrella Policies are premiums, losses and dividends on Excess/Umbrella policies that are not contained in Items 2 through 5.

Individual Items

Item 2 is the dollars of losses included in Item 1 which are excess medical benefits, and for which the insurer may be reimbursed by the UCJF, per NJSA 39:6-61 et seq.

With regard to Item 5, please note that the New Jersey Automobile Full Insurance Availability Act (NJSA 17:30E-1 et seq.), which established the "JUA", was effective 01 January 1984, and the Market Transition Facility established pursuant to the Fair Automobile Insurance Reform Act of 1990 which was operative as of October 1, 1990.

Premiums, losses and dividends for private passenger type commercial vehicles are to be listed in Item 7 as a "write in", but only if they are contained in Item 1, for loss data, or Item 1B, for premium data, and then only the dollars of premiums and losses not contained in Items 2 through 6.

Provision is made for other "write in" exclusions in Items 8 and 9. A filer may modify the form to add more lines for exclusions if three lines are not sufficient.

Where any "write in" exclusion is used, a written explanation as to what is listed as an exclusion, and why it is appropriate to list the exclusion, is to be provided on a piece of paper attached to Exhibit One.

Premiums and losses for private passenger motor homes are NOT to be listed as exclusions.

Item 12 states the premiums, losses and dividends which are to be used for the excess profits calculation. For premium data, Item 12 is Item 1B minus Item 11. For loss data, Item 12 is Item 1 minus Item 11.

Item 13, Col (3) states the claim settlement costs paid during 1990 that are directly assignable to specific claims for which loss data is included in Item 12. Item 13, Col (4) states the claim settlement costs incurred during 1990 that are directly assignable to specific claims for which loss data is included in Item 12.

Item 14, Col (3) states the costs associated with the claim settlement function that were paid during 1990, which are not directly assignable to specific claims, but which are assignable to claims for which loss data is included in Item 12. Item 14, Col (4) shows the costs associated with the claim settlement function that were incurred during 1990, which are not directly assignable to specific claims, but which are assignable to claims for which loss data is included in Item 12.

Item 15 states unpaid claim settlement costs as of 31 December 1990, which are assignable to unpaid losses shown in Item 12, Col (7).

Exhibit Two

A corresponding Exhibit Two is to be completed for each calendar year and coverage for which an Exhibit One is to be completed. Therefore, the filer is completing and submitting forty Exhibits Two. The six parts of Exhibit Two show incurred and paid losses and expenses by calendar/accident year during each calendar year for which data is reported in an Exhibit One, and also during the first three months of 1991.

For example, for the Exhibit Two that corresponds to Exhibit One for 1990, Exhibit Two—Part One shows:

(a) payments for losses that occurred during calendar/accident year 1990, and were paid during 1990, and during the first three months of 1991.

(b) payments for losses that occurred during calendar/accident year 1989, and were paid during 1990, and during the first three months of 1991.

(c) etc.

For example, for the Exhibit Two that corresponds to Exhibit One for 1989, Exhibit Two—Part One shows:

(a) payments for losses that occurred during calendar/accident year 1989, and were paid during 1989, and during the first three months of 1990.

(b) payments for losses that occurred during calendar/accident year 1988, and were paid during 1989, and during the first three months of 1990.

(c) etc.

A description of each part of Exhibit Two follows.

Exhibit Two—Part One states the calendar year losses paid, as stated in Exhibit One, Item 12, Col (3), according to calendar/accident year. Col (2) shows losses paid during 1990, and Col (3) shows further losses paid during the first three months of 1991.

Exhibit Two—Part Two states the calendar year losses incurred in Exhibit One, Item 12, Col (4), according to calendar/accident year. Col (2) states losses incurred during 1990, and Col (3) shows further losses incurred during the first three months of 1991.

Exhibit Two—Part Three states the calendar year allocated loss adjustment expenses paid in Exhibit One, Item 13, Col (3), according to calendar/accident year. Col (2) states the allocated loss adjustment expenses paid during 1990, and Col (3) shows further allocated loss adjustment expenses paid during the first three months of 1991.

Exhibit Two—Part Four states the calendar year allocated loss adjustment expenses incurred in Exhibit One, Item 13, Col (4), according to calendar/accident year. Col (2) states incurred allocated loss adjustment expenses incurred during 1990, and Col (3) shows further allocated loss adjustment expenses incurred during the first three months of 1991.

Exhibit Two—Part Five states the calendar year unallocated loss adjustment expenses paid in Exhibit One, Item 14, Col (3), according to calendar/accident year. Col (2) states unallocated loss adjustment expenses paid during 1990, and Col (3) shows further unallocated loss adjustment expenses paid during the first three months of 1991.

Exhibit Two—Part Six states calendar year unallocated loss adjustment expenses incurred in Exhibit One, Item 14, Col (4), according to calendar/accident year. Col (2) shows unallocated loss adjustment expenses incurred during 1990, and Col (3) shows further unallocated loss adjustment expenses incurred during the first three months of 1991.

Exhibit Three states the "development triangles" of incurred losses for BI Liability and Uninsured/Underinsured Motorists and PIP.

Exhibit Three—Part One states the losses incurred for the various calendar/accident years during various intervals (the first 15 months, the next 12 months, etc.).

Exhibit Three—Part Two states the accumulated losses for each calendar/accident year as of the various stages of development (15 months, 27 months, etc.).

Exhibit Three—Part Three states the historical development factors based on the accumulated losses shown in Exhibit Three—Part Two.

In Exhibit Three—Part Three the "selected factor" stated in Col (5A) is determined as follows. Of the various historical factors for each development interval (15-27 months, 27-39 months, etc.) a simple mean is determined with the high and low values omitted. Where there are fewer than three factors, the low and high values are not to be omitted from the calculation. The "projection factor" stated in Col (6A) is the group of factors from Col (5A) accumulated to project losses at each stage of development to ultimate. The projection factor for 87 months to ultimate is the selected factor for development from 75 to 87 months.

In Exhibit Three—Part Three the "Ultimate Incurred" stated in Col (3) is determined by multiplying the calendar/accident year losses evaluated as of 31 March 1991 by the Projection Factor from Col (6A). Each "Projection Factor to Ultimate" in Col (2) of Exhibit Three—Part Three is identical to the "Projection Factor" stated in Col (6A).

Exhibit Four summarizes data from Exhibit Two to get the "development triangles" of paid losses, for Property Damage Liability and Physical Damage. The various parts of Exhibit Four analyze paid losses in the same way that Exhibit Three analyzes incurred losses. The only difference is that, for Physical Damage and Property Damage Liability, ultimate paid is deemed to be reached at 51 months of development.

Exhibits Five and Six analyze the sum of losses and loss adjustment expenses in the same way that Exhibits Three and Four analyze losses.

Note that Exhibit Five, Parts Four, Five and Six are to be completed with data through calendar/accident year 1989. The projections based on data through calendar/accident year 1989 are used to produce the "Development Adjustment" in Exhibit Five—Part Seven.

Note that Exhibit Six, Parts Four, Five and Six are to be completed with data through calendar/accident year 1989. The projections based on data through calendar/accident year 1989 are used to produce the "Development Adjustment" in Exhibit Six—Part Seven.

Exhibit Seven, Part One, states countrywide premiums and expenses from the statutory Insurance Expense Exhibit. An Exhibit Seven, Part One, is to be completed for each of the years 1990, 1989 and 1988. Other Acquisition and General Expenses are to be stated, in Col (2) and Col (3A) as ratios to Net Earned Premium. Commission and Brokerage and Taxes, Licenses and Fees are to be stated, in Col (2) and Col (3A) as ratios to Net Written Premium. Loss Adjustment Expenses Incurred are to be stated in Col (2) and Col (3A) as ratios to Losses Incurred.

Exhibit Seven—Part Two

Exhibit Seven, Part Two, states New Jersey expenses for each coverage, with ratios, in Col (2), to earned premium, written premium and losses as described for Exhibit Seven—Part One above.

Exhibit Seven, Parts Three-A, Three-B and Three-C develop the Commission and Brokerage expenses to be stated in Exhibit Seven, Part Two. Exhibits substantially similar to Parts Three-A, Three-B and Three-C are to be completed to develop the Taxes, Licenses and Fees expenses to be stated in Exhibit Seven, Part Two.

Exhibit Seven, Parts Four-A, Four-B and Four-C develop the General Expense expenses to be stated in Exhibit Seven, Part Two. Exhibits substantially similar to Parts Four-A, Four-B and Four-C are to be completed to develop the Other Acquisition expenses stated in Exhibit Seven, Part Two and to develop the Loss Adjustment expenes stated in Exhibit Seven, Part Two.

Exhibit Seven, Part Two, Prepaid Expenses, Item 9, Col (1) = (½ × (Item 2, Col (1), + Item 3, Col (1)) + Item 5 + Item 6.

Exhibit Seven, Part Two, Item 9, Col (2) = (Item 9, Col (1))/(Item 4, Col (1)).

Exhibit Seven, Part Two, Three and Four are to be completed for each of the calendar years 1990, 1989 and 1988.

Exhibit Eight, Part One shows investment income attributable to New Jersey private passenger auto for the purpose of completing excess profits reports.

Item 1 is countrywide data from the 1990 statutory annual statement, page 2, column 1, the sum of lines 9.1, 9.2, 9.3, 10 and 11.

Item 2 is countrywide data from the statutory annual statement, page 3, column 1, line 9.

NOTE: Limit Item 3 to a maximum of 1.000.

Item 4 is Exhibit Seven—Part Two, Col (1), Item 9.

Item 5 is Exhibit One, Col (1), Item 12.

NOTE: Limit Item 6 to a maximum of 1.000.

Item 7 is Exhibit One, Col (6), Item 12, for 1990.

Item 8 is Exhibit One, Col (6), Item 12, for 1989.

Item 9A = Item 9 × (1–Item 3–Item 6). Limit Item 9A to a minimum of zero.

Item 10 is Exhibit One, Col (7), Item 12, for 1990.

Item 11 is Exhibit One, Col (7), Item 12, for 1989.

Item 13 is Exhibit One, Col (7), Item 15, for 1990.

Item 14 is Exhibit One, Col (7), Item 15, for 1989.

Item 16G is the expected loss and loss adjustment expense ratio which is used to determine the investment income offset in the filer's filed and approved rate filings. The filer must submit a copy of the portion of the filing showing this figure, and show how it was used to determine the investment income offset.

Item 18 is Exhibit Eight Part One-A, Item 7, for 1990.

Item 19 is Actual Investment Income for 1990.

Exhibit Eight—Part Two shows Anticipated Investment Income and Excess Investment Income.

Item 1 is Exhibit One, Col (2), Item 12.

Item 2 shows the filed and approved investment income offset, expressed as a ratio to premiums, for the filer's approved filings over the interval 1988 through 1990. The investment income offset is the percent used in the company's rate filing to reduce the "Clifford" target 3.5% rate of return to premiums for the effect of investment income. A copy of the portion of the filing showing this calculation is to be attached to Exhibit Eight—Part Two. If the filer submits no documentation of the investment income offset that has been approved by the Department, then Item 2 is the number zero.

Item 3 is Item 1 multiplied by Item 2.

Item 4 is Exhibit Eight—Part One, Item 19.

Item 5 = Item 4 – Item 3.

Exhibit Nine shows the estimate of the ultimate amount the filer reasonably expects to receive, as "AIRE Compensation", provided by NJSA 39:6A-22 et seq. In estimating the ultimate value of the compensation, keep in mind that there are few data points of actual experience. The estimate involves projecting to ultimate paid reimbursement for liability claims. For these reasons, the Department believes significant development beyond payments already received may be reasonable.

Exhibit Ten uses the data developed in Exhibits One through Nine to calculate excess profits.

The sources of data for Exhibit Ten follow.

Item 1: Direct Calendar Year Written Premium, Exhibit One, Item 12.

Item 2: Direct Calendar Year Earned Premium, Exhibit One, Item 12.

Item 2A: Exhibit Nine—Part Three, Col (3).

Item 2B: AIRE Charges are the amounts the filer is assessed, according to NJSA 39:6A-22. The calendar/accident year in which an AIRE charge is assigned is the calendar year in which the filer is informed of the AIRE charge and not the calendar year in which the filer pays the AIRE charge, if different.

Item 3: For BI Liability and Uninsured/Underinsured Motorists and PIP, "Ultimate Incurred", per Exhibit Five—Part Three, Col (3). For Property Damage Liability and Physical Damage, "Ultimate Incurred", per Exhibit Six—Part Three, Col (3).

Item 5: Exhibit Seven—Part Two

Item 7: Exhibit Seven—Part Two

Item 9: Exhibit Seven—Part Two

Item 11: Exhibit Seven—Part Two

Item 13: Exhibit One, Item 12B.

Item 14: Exhibit One, Item 12A.

Item 18: Insurer's filed and approved allowance for profits and contingencies in the filer's approved rate filing, expressed as a ratio, and multiplied by the earned premium stated in Item 2.

Item 19 = Item 17 – Item 18

Item 20: Exhibit Five—Part Seven, Total, Col (3), for BI Liability and Uninsured/Underinsured Motorists and PIP; Exhibit Six—Part Seven, Col (3), for Property Damage Liability and Physical Damage.

Item 21 = Item 19 – Item 20

Item 22: Exhibit Eight—Part Two, Item 5.

Item 24 = Item 21 + Item 22 – Item 23.

Item 25 is .005 × Item 2 for a filer that is a member of a holding company system, and 0 for all other filers.

Item 26 is Item 24 minus Item 25.

Exhibit Eleven must be completed for calendar years 1988, 1989 and 1990.

Item 1 states what PIP losses would have been without the portion that is assumed by the UCJF.

Items 2, 3, 4, and 5 are self-explanatory.

Exhibit 1

Private Passenger Auto

THESE EXHIBITS MUST BE SENT SO THAT THEY ARE RECEIVED BY THE DEPARTMENT OF INSURANCE BY 01 JULY 1991

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE ACCOMPANYING INSTRUCTIONS
NEW JERSEY
Private Passenger Auto Data

Exhibit One

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Calendar Year 1990
(This exhibit is also to be completed for each of the years 1983 through 1989)

		Col (1) Direct Premiums Written	Col (2) Direct Premiums Earned	Col (3) Direct Losses Paid	Col (4) Direct Losses Incurred	Col (5) Dividends on Direct Business	Col (6) Direct Unearned Premium Reserves	Col (7) Direct Losses Unpaid
Item 1	Source line ____ of Page 14	____	____	____	____	____	____	____
Item 1A	UCJF Assessments	____	____	X	X	X	X	X
Item 1B	Item 1 minus Item 1A	____	____	X	X	X	X	X
NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM ONE.								
Exclusions:								
Item 2	Excess Medical Benefits	X	X	____	____	X	X	____
Item 3	Motorcycles	____	____	____	____	*[X]*	*[X]*	____
Item 4	"Off Road" Vehicles	____	____	____	____	*[X]*	*[X]*	____
Item 5	*[JUA/MIF]* **JUA/MTF* Business	____	____	____	____	*[X]*	*[X]*	____
Item 6	Excess/Umbrella Policies	____	____	____	____	*[X]*	*[X]*	____
Other Exclusions (list):								
Item 7	____	____	____	____	____	*[X]*	*[X]*	____
Item 8	____	____	____	____	____	*[X]*	*[X]*	____
Item 9	____	____	____	____	____	*[X]*	*[X]*	____
Item 10	Finance and Service Charges	____	____	X	X	X	*[X]*	X
Item 11	Subtotal (Sum Items 2 through 10)	____	____	____	____	____	____	____
Item 12	Excess Profits Data	____	____	____	____	____	____	____
Item 12A	Refund of Excess Profits Included in Item 12, Col (5)	X	X	X	X	____	X	X
Item 12B	All Other Dividends Included in Item 12, Col (5)	X	X	X	X	____	X	X
Item 13	Allocated loss adjustment expenses corresponding to Item 12, Cols. (3) and (4), respectively	X	X	(Col 3) Paid Allocated LAE ____	(Col 4) Incurred Allocated LAE ____			
Item 13A	Ratio Item 13, Col (3), to Item 12, Col (3)	X	X	____	X			
Item 13B	Ratio Item 13, Col (4), to Item 12, Col (4)	X	X	X	____			

				Col (3) Paid Unallocated LAE	Col (4) Incurred Unallocated LAE			
Item 14	Unallocated loss adjustment expenses corresponding to Item 12, Cols. (3) and (4), respectively	X	X	____	____			
***Item 14A**	**Ratio Item 14, Col (3), to Item 12, Col (3)**	X	X	____	X			
Item 14B	**Ratio Item 14, Col (4), to Item 12, Col (4)**	X	X	X	____*			
Item 15	Unpaid less adjustment expenses (allocated plus unallocated) corresponding to unpaid losses shown in Item 12, Col (7)	X	X	X	X	X	X	____

Exhibit Two
Calendar year 1990
(This Exhibit is also to be completed for each of the calendar years 1983 through 1989)

Check one:

BI Liability & Uninsured/Underinsured Motorists ____

Property Damage Liability ____

PIP ____

Physical Damage ____

Total of above four coverages ____

Exhibit Two—Part One

Calendar/Accident Years:	Col (2) Losses Paid During 1990	Col (3) Losses Paid During 1Q 1991
1990	____	____
1989	____	____
1988	____	____
1987	____	____
1986	____	____
1985	____	____
1984	____	____
prior	____	____
Total	____	____

Exhibit Two—Part Two

Calendar/Accident Years:	Col (2) Losses Incurred During 1990	Col (3) Losses Incurred During 1Q 1991
1990	____	____
1989	____	____
1988	____	____
1987	____	____
1986	____	____
1985	____	____
1984	____	____
prior	____	____
Total	____	____

Exhibit Two—Part Three

Calendar/Accident Years:	Col (2) ALAE Paid During 1990	Col (3) ALAE Paid During 1Q 1991
1990	____	____
1989	____	____
1988	____	____
1987	____	____
1986	____	____
1985	____	____
1984	____	____
prior	____	____
Total	____	____

Exhibit Two—Part Four

Calendar/Accident Years:	Col (2) ALAE Incurred During 1990	Col (3) ALAE Incurred During 1Q 1991
1990	____	____
1989	____	____
1988	____	____
1987	____	____
1986	____	____
1985	____	____
1984	____	____
prior	____	____
Total	____	____

Exhibit Two—Part Five

Calendar/Accident Years:	Col (2) ULAE Paid During 1990	Col (3) ULAE Paid During 1Q 1991
1990		
1989		
1988		
1987		
1986		
1985		
1984		
prior		
Total		

Exhibit Two—Part Six

Calendar/Accident Years:	Col (2) ULAE Incurred During 1990	Col (3) ULAE Incurred During 1Q 1991
1990		
1989		
1988		
1987		
1986		
1985		
1984		
prior		
Total		

Exhibit Three

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

PIP _____

Exhibit Three—Part One
Development of Incurred Losses
Calendar/Accident Year

Losses Incurred During	84	85	86	87	88	89	90
0-15 months							
15-27 months							
27-39 months							
39-51 months							
51-63 months							
63-75 months							
75-87 months							

Exhibit Three—Part Two
Development of Incurred Losses
Calendar/Accident Year

Losses Incurred As Of	84	85	86	87	88	89	90
15 months							
27 months							
39 months							
51 months							
63 months							
75 months							
87 months							

Exhibit Three—Part Three
Incurred Loss Development Factors
Calendar/Accident Year

Development Factors	84	85	86	87	88	89	Col (5A) Selected Factor	Col (6) Incurred Losses As Of	Col (6A) Projection Factor
15-27 months								15 months	
27-39 months								27 months	
39-51 months								39 months	
51-63 months								51 months	
63-75 months								63 months	
75-87 months								75 months	
								87 months	

Calendar/ Accident Year	Col (1) Losses at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
90			
89			
88			
87			
86			
85			
84			

Exhibit Four

Check One:

Property Damage Liability _____

Physical Damage _____

Exhibit Four—Part One
Development of Paid Losses
Calendar/Accident Year

Losses Paid During	84	85	86	87	88	89	90
0-15 months							
15-27 months							
27-39 months							
39-51 months							

Exhibit Four—Part Two
Development of Paid Losses
Calendar/Accident Year

Losses Paid As Of	84	85	86	87	88	89	90
15 months							
27 months							
39 months							
51 months							

Exhibit Four—Part Three
Development of Paid Losses
Calendar/Accident Year

Development Factors	84	85	86	87	88	89	Col (5A) Selected Factor	Col (6) Paid Losses As Of	Col (6A) Projection Factor
15-27 months								15 months	
27-39 months								27 months	
39-51 months								39 months	

Calendar/ Accident Year	Col (1) Losses at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
90			
89			
88			

Exhibit Five

Check One:

BI Liability & Uninsured Motorists _____

PIP _____

Exhibit Five—Part One
Development of Incurred Losses and LAE
Calendar/Accident Year

Losses and LAE Incurred During	84	85	86	87	88	89	90
0-15 months							
15-27 months							
27-39 months							
39-51 months							
51-63 months							
63-75 months							
75-87 months							

Exhibit Five—Part Two
Development of Incurred Losses and LAE
Calendar/Accident Year

Losses and LAE Incurred During	84	85	86	87	88	89	90
15 months							
27 months							
39 months							
51 months							
63 months							
75 months							
87 months							

Exhibit Five—Part Three
Incurred Loss and LAE Development Factors
Calendar/Accident Year

Development Factors	84	85	86	87	88	89	Col (5A) Selected Factor	Col (6) Incurred Losses and LAE As Of	Col (6A) Projection Factor
15-27 months								15 months	
27-39 months								27 months	
39-51 months								39 months	
51-63 months								51 months	
63-75 months								63 months	
75-87 months								75 months	
87 mos-ultimate								87 months	

Calendar/ Accident Year	Col (1) L+LAE at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
90			
89			
88			
87			
86			
85			
84			

Exhibit Five—Part Four
Development of Incurred Losses and LAE
Calendar/Accident Year

Losses and LAE Incurred During	83	84	85	86	87	88	89
0-15 months							
15-27 months							
27-39 months							
39-51 months							
51-63 months							
63-75 months							
75-87 months							

Exhibit Five—Part Five
Development of Incurred Losses and LAE
Calendar/Accident Year

Losses and LAE Incurred As Of	83	84	85	86	87	88	89
15 months							
27 months							
39 months							
51 months							
63 months							
75 months							
87 months							

Exhibit Five—Part Six
Incurred Loss and LAE Development Factors
Calendar/Accident Year

Development Factors	83	84	85	86	87	88	Col (5A) Selected Factor	Col (6) Incurred Losses and LAE As Of	Col (6A) Projection Factor
15-27 months								15 months	
27-39 months								27 months	
39-51 months								39 months	
51-63 months								51 months	
63-75 months								63 months	
75-87 months								75 months	
87 mos-ultimate								87 months	

Calendar/ Accident Year	Col (1) L+LAE at 3/90	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
89			
88			
87			
86			
85			
84			
83			

Exhibit Five—Part Seven
Development Adjustment

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

PIP _____

Calendar/ Accident Year	Col (1) Ultimate Incurred per Exhibit Five—Part Six Col (3)	Col (2) Ultimate Incurred per Exhibit Five—Part Three Col (3)	Col (3) Difference Col (2) minus Col (1)
87			
86			
85			
84			
Total	X	X	

Exhibit Six

Check One:

Property Damage Liability _____

Physical Damage _____

Exhibit Six—Part One
Development of Paid Losses and LAE
Calendar/Accident Year

Losses and LAE Paid During	84	85	86	87	88	89	90
0-15 months							
15-27 months							
27-39 months							
39-51 months							

Exhibit Six—Part Two
Development of Paid Losses and LAE
Calendar/Accident Year

Losses and LAE Paid As Of	84	85	86	87	88	89	90
15 months							
27 months							
39 months							
51 months							

Exhibit Six—Part Three
Paid Loss and LAE Development Factors
Calendar/Accident Year

Development Factors	84	85	86	87	88	89	Col (5A) Selected Factor	Col (6) Paid Losses and LAE As Of	Col (6A) Projection Factor
15-27 months								15 months	
27-39 months								27 months	
39-51 months								39 months	

Calendar/ Accident Year	Col (1) L+LAE at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
90			
89			
88			
87		1,000	

Exhibit Six—Part Four
Development of Paid Losses and LAE
Calendar/Accident Year

Losses Paid During	83	84	85	86	87	88	89
0-15 months							
15-27 months							
27-39 months							
39-51 months							

Exhibit Six—Part Five
Development of Paid Losses and LAE
Calendar/Accident Year

Losses Paid As Of	83	84	85	86	87	88	89
15 months							
27 months							
39 months							
51 months							

Exhibit Six—Part Six
Paid Loss and LAE Development Factors
Calendar/Accident Year

Development Factors	83	84	85	86	87	88	Col (5A) Selected Factor	Col (6) Paid Losses As Of	Col (6A) Projection Factor
15-27 months	____	____	____	____	____	____	____	15 months	____
27-39 months	____	____	____	____	____		____	27 months	____
39-51 months	____	____	____	____			____	39 months	____

Calendar/ Accident Year	Col (1) L+LAE at 3/90	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
89	____	____	____
88	____	____	____
87	____	____	____

Exhibit Six—Part Seven
Development Adjustment

Calendar/ Accident Year	Col (1) Ultimate Incurred per Exhibit Six— Part Six Col (3)	Col (2) Ultimate Incurred per Exhibit Six— Part Three Col (3)	Col (3) Difference Col (2) minus Col (1)
87	____	____	____

Exhibit Seven
Part One—Countrywide Expenses From Insurance Expense Exhibit
Calendar Year 1990
(This Exhibit is also to be completed separately for calendar years 1989 and 1988.)

	Private Passenger Auto Liability Col (1)	Col (2)	Private Passenger Auto Physical Damage Col (3)	Col (3A)
Net Earned Premium	____	1.000	____	1.000
Other Acquisition	____	____	____	____
General Expenses	____	____	____	____
Net Written Premium	____	1.000	____	1.000
Commission and Brokerage	____	____	____	____
Taxes, Licenses, Fees	____	____	____	____
Losses Incurred	____	1.000	____	1.000
Loss Adjustment Expenses Incurred	____	____	____	____

Exhibit Seven
Part Two—New Jersey Expenses
Calendar/Accident Year 1990
(This Exhibit is also to be completed for calendar/accident years 1989 and 1988.)

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

		Col (1)	Col (2)	Col (3)	Col (3A)
Item 1:	Direct Earned Premium		1.000		1.000
Item 2:	Direct Other Acquisition				
Item 3:	Direct General Expenses				
Item 4:	Direct Written Premium		1.000		1.000
Item 5:	Direct Commission and Brokerage				
Item 6:	Direct Taxes, Licenses, Fees				
Item 7:	Direct Losses Incurred		1.000		1.000
Item 8:	Direct Loss Adjustment Expenses Incurred				
Item 9:	Prepaid Expenses				

Exhibit Seven—Part Three—A

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and Brokerage Fees to Calendar/Accident Year 1990

		Col (2)
Item 1:	1990 Direct Written Premium	
Item 2:	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	
Item 3:	Dollars of 1990 Direct Written Premium that are earned in 1990	
Item 4:	Ratio Item 3 divided by Item 1	
Item 5:	Item 2 multiplied by Item 4	
Item 6:	1989 Direct Written Premium	
Item 7:	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	
Item 8:	Dollars of 1989 Direct Written Premium that are earned in 1990	
Item 9:	Ratio Item 8 divided by Item 6	
Item 10:	Item 9 multiplied by Item 7	
Item 11:	1990 Commission and Brokerage Incurred Item 10 plus Item 5	

Exhibit Seven—Part Three—B

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and Brokerage Fees to Calendar/Accident Year 1989

		Col (6)
Item 1:	1989 Direct Written Premium	
Item 2:	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	
Item 3:	Dollars of 1989 Direct Written Premium that are earned in 1989	
Item 4:	Ratio Item 3 divided by Item 1	
Item 5:	Item 2 multiplied by Item 4	
Item 6:	1988 Direct Written Premium	
Item 7:	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	
Item 8:	Dollars of 1988 Direct Written Premium that are earned in 1989	
Item 9:	Ratio Item 8 divided by Item 6	
Item 10:	Item 9 multiplied by Item 7	
Item 11:	1989 Commission and Brokerage Item 10 plus Item 5	

Exhibit Seven—Part Three—C

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and Brokerage Fees to Calendar/Accident Year 1988

		Col (11)
Item 1:	1988 Direct Written Premium	
Item 2:	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	
Item 3:	Dollars of 1988 Direct Written Premium that are earned in 1988	
Item 4:	Ratio Item 3 divided by Item 1	
Item 5:	Item 2 multiplied by Item 4	
Item 6:	1987 Direct Written Premium	
Item 7:	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	
Item 8:	Dollars of 1987 Direct Written Premium that are earned in 1988	
Item 9:	Ratio Item 8 divided by Item 6	
Item 10:	Item 9 multiplied by Item 7	
Item 11:	1988 Commission and Brokerage Incurred Item 10 plus Item 5	

Exhibit Seven—Part Four—A

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses
Calendar Year 1990

		Col (3)
Item 1:	General Expenses Paid During 1990	
Item 2:	General Expenses Unpaid at 12/31/90	
Item 3:	General Expenses Unpaid at 12/31/89	
Item 4:	Item 1 + Item 2 - Item 3	

Exhibit Seven—Part Four—B

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses
Calendar Year 1989

		Col (7)
Item 1:	General Expenses Paid During 1989	
Item 2:	General Expenses Unpaid at 12/31/89	
Item 3:	General Expenses Unpaid at 12/31/88	
Item 4:	Item 1 + Item 2 - Item 3	

Exhibit Seven—Part Four—C

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses
Calendar Year 1988

		Col (12)
Item 1:	General Expenses Paid During 1988	
Item 2:	General Expenses Unpaid at 12/31/88	
Item 3:	General Expenses Unpaid at 12/31/87	
Item 4:	Item 1 + Item 2 - Item 3	

Exhibit Eight

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Exhibit Eight—Part One
Actual Investment Income
Calendar Year 1990
(This exhibit is also to be completed for each calendar year 1988 and 1989.)

		Col (2)
Item 1	Agents Balances—Countrywide	
Item 2	Unearned Premium Reserve—Countrywide	
Item 3	Ratio (Item 1)/(Item 2)	
Item 4	Direct Prepaid Expenses	
Item 5	Direct Premiums Written	
Item 6	Ratio (Item 4)/(Item 5)	
Item 7	Direct Unearned Premium Reserves—1990	
Item 8	Direct Unearned Premium Reserves—1989	
Item 9	(Item 7 + Item 8)/2	
Item 9A	Investable Unearned Premiums	
Item 10	Direct Losses Unpaid—1990	
Item 11	Direct Losses Unpaid—1989	
Item 12	(Item 10 + Item 11)/2	
Item 13	Direct Loss Adjustment Expenses Unpaid—1990	
Item 14	Direct Loss Adjustment Expenses Unpaid—1989	
Item 15	(Item 13 + Item 14)/2	
Item 16	(Item 12 + Item 15)	
Item 16A	Exhibit One, Item 12, Col (4)	
Item 16B	Exhibit One, Item 13, Col (4)	
Item 16C	Exhibit One, Item 14, Col (4)	
Item 16D	Item 16A + Item 16B + Item 16C	
Item 16E	Ratio Item 16/Item 16D	
Item 16F	Exhibit One, Item 12, Col (2)	
Item 16G	Filed and Approved Expected Loss Ratio	
Item 16H	Item 16E × Item 16F × Item 16G	
Item 17	(Item 16H + Item 9A)	
Item 18	Exhibit Eight—Part One—A Item 7	
Item 19	(Item 18) × (Item 17)	

Exhibit Eight—Part One—A

Note: The data for Exhibit Eight—Part One—A is the investments made during the three (3) years 1990, 1989 and 1988 as contained in the data reported in the statutory annual statement for each calendar year at the pages indicated.

ADJUSTED INVESTED INCOME		Year Investment Purchased 1990	1989	1988
Data is for investments purchased during 1990, 1989 & 1988				
Item 1	TOTAL OF INT, DIVS & R/EST INCOME pg. 6, part 1, col 8, line 10	____	____	____
Item 2	TOTAL INVESTMENT EXPENSES INC'D pg. 6, part 1, line 11	____	____	____
Item 3	DEPRECIATION ON REAL ESTATE pg. 6, part 1, line 12	____	____	____
Item 4a	PREFERRED STOCKS (unaffiliated) pg. 6, part 1, col 8, line 2.1	____	____	____
Item 4b	PREFERRED STOCKS OF AFFILIATES pg. 6, part 1, col 8, line 2.11	____	____	____
Item 4c	COMMON STOCKS (unaffiliated) pg. 6, part 1, col 8, line 2.2	____	____	____
Item 4d	COMMON STOCKS OF AFFILIATES pg. 6, part 1, col 8, line 2.21	____	____	____
Item 5	TOTAL DEDUCTIONS Item 2 + 3 + 4a + 4b + 4c + 4d	____	____	____
Item 6	ADJUSTED INVESTMENT INCOME Item 1–Item 5	____	____	____
ADJUSTED MEAN INVESTED ASSETS				
Data is for investments purchased during 1990, 1989 & 1988				
Item 1.1	BONDS (pg. 2, col 1, line 1 + pg. 2, col 2, line 1)/2 ***for years 1989 and 1990. 1988 = pg. 2, col 1, line 1.***	____	____	____
Item 2.1	MORTGAGE LOANS ON REAL ESTATE (pg. 2, col 1, line 3 + pg. 2, col 2, line 3)/2 ***for years 1989 and 1990. 1988 = pg. 2, col 1, line 3.***	____	____	____
Item 2.2	REAL ESTATE (occupied + other props) ((pg. 2, col 1, line 4.1 + line 4.2) + (pg. 2, col 2, line 4.1 + line 4.2))/2 ***for years 1989 and 1990. 1988 = pg. 2, col 1, line 4.1 + line 4.2***	____	____	____
Item 3.1	COLLATERAL LOANS (pg. 2, col 1, line 5 + pg. 2, col 2, line 5)/2 ***for years 1989 and 1990. 1988 = pg. 2, col 1, line 5.***	____	____	____
Item 4.1	CASH ON HAND AND ON DEPOSIT (pg. 2, col 1, line 6.1 + pg. 2, col 2, line 6.1)/2 ***for years 1989 and 1990. 1988 = pg. 2, col 1, line 6.1.***	____	____	____
Item 4.2	SHORT-TERM INVESTMENTS (pg. 2, col 1, line 6.2 + pg. 2, col 2, line 6.2)/2 ***for years 1989 and 1990. 1988 = pg. 2, col 1, line 6.2***	____	____	____
Item 5.1	OTHER INVESTED ASSETS (pg. 2, col 1, line 7 + pg. 2, col 2, line 7)/2 ***for years 1989 and 1990. 1988 = pg. 2, col 1, line 7.***	____	____	____
Item 6.1	ADJUSTED MEAN INVESTED ASSETS Item 1.1 + 2.1 + 2.2 + 3.1 + 4.1 + 4.2 + 5.1	____	____	____
Item 7	INVESTMENT INCOME AS % OF INVESTED ASSETS Item 6/Item 6.1 Note: The value of Item 7 may be subject to a minimum as provided by a regulation issued pursuant to N.J.S.A. 17:29A-5.8	____	____	____

Exhibit Eight—Part Two

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Anticipated Investment Income

	Calendar/Accident Year	1988	1989	1990
Item 1:	Earned Premium			
Item 2:	Filed and Approved Investment Income Offset			
Item 3:	Anticipated Investment Income			
Item 4:	Actual Investment Income			
Item 5:	Excess Investment Income			

Exhibit Nine—Part One
Development of AIRE Compensation to Ultimate

AIRE Compensation Received During	Calendar/Accident Year 88	89	90
0-15 months			
15-27 months			
27-39 months			

Exhibit Nine—Part Two
Development of AIRE Compensation to Ultimate

AIRE Compensation Received As Of	Calendar/Accident Year 88	89	90
15 months			
27 months			
39 months			

Exhibit Nine—Part Three
AIRE Compensation Development Factors
Calendar/Accident Year

Development Factors	88	89
15-27 months		
27-39 months		

Calendar/ Accident Year	Col (1) AIRE Comp'n at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Comp'n
90			
89			
88			
87			
86			

Exhibit Ten
Excess Profit Calculation

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

		1988	1989	1990	Three Year Total
Item 1:	Direct Calendar Year Written Premium				
Item 2:	Direct Calendar Year Earned Premium				
Item 2A:	AIRE Compensation, Developed to Ultimate				
Item 2B:	AIRE Charges				
Item 2C:	Item 2A–Item 2B				
Item 3:	Direct Calendar/Accident Year Losses and Loss Adjustment Expenses Incurred, Developed to Ultimate				
Item 4:	Item 3 as a Ratio to Item 2				
Item 5:	Direct Commission and Brokerage Fees Incurred				
Item 6:	Item 5 as a Ratio to Item 1				
Item 7:	Direct Other Acquisition, Field Supervision and Collection Expenses Incurred				

Item 8:	Item 7 as a Ratio to Item 1	____	____	____	____
Item 9:	Direct General Expenses Incurred	____	____	____	____
Item 10:	Item 9 as a Ratio to Item 2	____	____	____	____
Item 11:	Direct Taxes, Licenses and Fees Incurred	____	____	____	____
Item 12:	Item 11 as a Ratio to Item 1	____	____	____	____
Item 13:	Direct Policyholder Dividends Other Than Excess Profits, Refunds or Credits Incurred	____	____	____	____
Item 14:	Credit or Refund of Excess Profits	____	____	____	____
Item 15:	Subtotal Item 13 + Item 14	____	____	____	____
Item 16:	Item 15 as a Ratio to Item 2	____	____	____	____
Item 17:	Underwriting Income = Item 2 + Item 2A – Item 2B – Item 3 – Item 5 – Item 7 – Item 9 – Item 11 – Item 15	____	____	____	____
Item 18:	Allowance for Profit and Contingencies	____	____	____	____
Item 19:	Actuarial Gain	____	____	____	____
Item 20:	Total Development Adjustment	X	X	X	____
Item 21:	Total Actuarial Gain	X	X	X	____
Item 22:	Excess Investment Income	____	____	____	____
Item 23:	Item Two times .025	____	____	____	____
Item 24:	Excess Profit	X	X	X	____
Item 25:	Non-excessive Subsidization (.005 times Item 2)	X	X	X	____
Item 26:	Excessive Subsidization	X	X	X	____

Exhibit Eleven—Supplementary Data
Year ____

Item 1:	PIP Incurred Losses exclusive of limitation due to reimbursement by UCJF, as provided by N.J.S.A. 39:6-61 et seq.	____
Item 2:	Dollars of PIP Losses Assumed by UCJF	____
Item 3:	UCJF Assessments Paid	____
Item 4:	UCJF Reimbursements Rec'd	____
Item 5:	Item 2 + Item 4 – Item 3	____

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service Insurance Verification

Adopted Amendment: N.J.A.C. 13:18-6.9

Proposed: April 20, 1992 at 24 N.J.R. 1467(a).
Adopted: May 27, 1992 by Stratton C. Lee, Jr., Director, Division of Motor Vehicles, after consultation with Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: May 28, 1992 as R.1992 d.263, **without change.**

Authority: N.J.S.A. 17:33B-41, 39:3-4e and 39:3-32.

Effective Date: June 15, 1992.
Expiration Date: March 30, 1995.

Summary of Public Comments and Agency Response:
Opportunity to be heard with regard to the proposal was invited via notice published in the April 20, 1992 New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Full text of the adoption follows:

13:18-6.9 Return of surrendered registration plates to registrant

(a) In those instances in which a registrant has surrendered registration plates to the Division pursuant to section 50 of the FAIR Act and thereafter acquires motor vehicle liability insurance and furnishes proof of same to the Director as required by section 50 of the FAIR Act and this subchapter, the Division shall return to the registrant a valid set of replacement registration plates upon payment to the Division of a fee of $5.00 for the set of replacement plates.

(b) If a registrant seeking the return of surrendered registration plates in accordance with (a) above desires plates which contain the same combination of letters and numbers as had been contained on the surrendered plates, he or she shall first be issued a set of replacement plates at a fee of $5.00 as set forth in (a) above. Upon receipt of the replacement registration plates, the registrant may apply to the Division for plates which contain the same combination of letters and numbers as had been contained on the surrendered plates. Plates which contain the specific combination of letters and numbers requested, unless already issued to another registrant or unless such issuance is prohibited by N.J.S.A. 39:3-33.5, shall be issued to the registrant upon payment to the Division of a fee of $10.00 for the set of such plates.

(b)

DIVISION OF MOTOR VEHICLES

Identifying Marks

Adopted Amendments: N.J.A.C. 13:20-34.2, 34.3, 34.5 and 34.7

Proposed: April 20, 1992 at 24 N.J.R. 1467(b).
Adopted: May 27, 1992 by Stratton C. Lee, Jr., Director, Division of Motor Vehicles.
Filed: May 28, 1992 as R.1992 d.264, **without change.**

Authority: N.J.S.A. 39:2-3, 39:3-33.3 et seq., 39:3-32, 39:3-33, 39:3-20, 39:3-27, 39:3-27.4, 39:3-27.8, 39:3-27.39 and P.L. 1991, c.168.

Effective Date: June 15, 1992.
Expiration Date: December 13, 1995.

Summary of Public Comments and Agency Response:
Opportunity to be heard with regard to the proposal was invited via notice published in the April 20, 1992 New Jersey Register. A media

advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Full text of the adoption follows:

13:20-34.2 Registration numbers reserved

(a) The following registration numbers are reserved as specified:

1. Registration numbers comprised of two alphabetic characters only and registration numbers comprised of one alphabetic character and a single digit for *[vehicle]* ***vehicles*** owned or leased by members of the Senate of the State of New Jersey; SP for a vehicle owned by, or leased by or for, the President of the Senate of the State of New Jersey;

2. Registration numbers comprised of two alphabetic characters and one digit for vehicles owned or leased by members of the General Assembly of the State of New Jersey; SPKR for a vehicle owned by, or leased by or for, the Speaker of the General Assembly of the State of New Jersey;

3.-6. (No change.)

7. NYP 1 through NYP 999 and 1 NYP through 9999 NYP for vehicles owned or leased by persons accredited as members of the "Press" in the City of New York, New York;

8. (No change.)

9. QQA 1 through QQZ 999, 1 QQA through 999 QQZ, QQ1 A through QQ999 Z, 100 AQQ through 999 ZQQ, and QQ 1000 through QQ 99999 for "historic" vehicles registered pursuant to N.J.S.A. 39:3-27.3 et seq.; QQ1 to QQ99 and Q 100 through Q 9999 for "historic" motorcycles;

10.-12. (No change.)

13. A11A through Z99Z and 1AA1 through 9ZZ9 for vehicles owned by any bona fide firefighter (paid, partially paid, or volunteer);

14.-22. (No change.)

23. DO 1000 through DO 9999 and 1000 DO through 9999 DO for vehicles owned or leased by osteopathic physicians licensed to practice medicine and surgery in New Jersey or neighboring states;

24. AA1AA through ZZ9ZZ for vehicles owned or leased by the mayor or chief executive of a municipality in this State;

25. USS NJ, USS NJ 1 through 9 to be set aside for the members of the USS New Jersey Battleship Commission;

26. Three alphabetic characters plus 1 through 20 and 1 through 20 plus three alphabetic characters designated as "courtesy plates" approved by county senators.

(b) (No change.)

13:20-34.3 Registration numbers excluded

(a) The following registration numbers shall be excluded from issuance as "particular identifying marks" and, where so indicated, shall be used for the purpose specified:

1. Any combination except those hereinbefore reserved having the following arrangements: three alphabetic followed by three numeric characters (for example ABC 123); three numeric followed by three alphabetic characters (for example 123 ABC); three alphabetic followed by two numeric and one alphabetic character (for example, ABC 12D); three alphabetic followed by four numeric characters (for example, ABC 1234), except that the letters I, O and Q shall not be utilized in such seven character non-personalized plate combinations. Any combination herein excluded and not in a series designated for special classes of vehicles may be reissued as "personalized marks" if the registrant to whom the marks were previously issued has surrendered said marks and corresponding registration certificate. Designated for general issue;

2.-3. (No change.)

4. Except as otherwise provided by N.J.A.C. 13:20-34.2(a)1, any combination consisting of less than three characters or more than seven characters;

5.-10. (No change.)

11. "J" followed by three numeric characters (for example J 123) and three numerics followed by "J" (for example, 123 J). Designated for motorcycles owned by governmental agencies;

12. "MV 1" through "MV 10" and "1 MV" through "10 MV". Designated for State vehicles assigned to Division of Motor Vehicles personnel;

13. "O" as a single character;

14. "Q" as a single character;

15. "S1100A" through "S1999Z", "100AS1" through "999ZS1" for School Vehicle Type I and "S2100A" through "S2999Z", "100AS2" through "999ZS2" for School Vehicle Type II;

16. "TA 100" through "TZ 9999", "TAA 100" through "TZZ 9999", "TA100A" through "TZ999Z", "100 TAA" through "999 TZZ", and "T100AA" through "T999ZZ" for commercial trailers and semitrailers; provided, however, that the letters I, O and Q shall not be utilized in seven character combinations issued for commercial trailers and semitrailers;

17. "XA 100" through "XZ 9999", "XAA 100" through "XZZ 9999", "XA1000" through "XZ9999", "X10000" through "X99999", "X1A100" through "X9Z999", "XAA10A through "XXZ99Z", "XX10AA" through "XX99ZZ", and "X100AA" through "X999ZZ" for commercial motor vehicles; provided, however, that the letters I, O and Q shall not be utilized in seven character combinations issued for commercial motor vehicles;

18. SGA 1 through SGZ999, 1 SGA through 999 SGZ, SG 1000 through SG 99999, and 1000 SG through 9999 SG for State-owned vehicles; CGA 1 through CGZ 999, 1 CGA through 999 CGZ, CG 100A through CG 999Z, CG 1000 through CG 99999, and 1000 CG through 9999 CG for county-owned vehicles; MGA 1 through MGZ 999, 1 MGA through 999 MGZ, MG 10AA through MG 99ZZ, MG 1000 through MG 99999, and 1000 MG through 9999 MG for municipal-owned vehicles; TD 1000 through TD 9999 and 100 TD through 9999 TD for State-owned vehicles assigned to the Department of Transportation;

Recodify existing 20.-25. as 19.-24. (No change in text.)

25. SPA 100 through SPA 999, 100 SPA through 999 SPA, SPB 100 through SPB 999, 100 SPB through 999 SPB, SP 1000 through SP 9999, and 1000 SP through 9999 SP, used for State Police designated vehicles;

26. OL 1000 through OL 3999 and 1000 OL through 3999 OL for vehicles utilized as limousines or taxis for hire with PUC approval;

27. AAA 100 through ZZZ 9999, 100 AAA through 999 ZZZ and AAA 10A through ZZZ 99Z for vehicles utilized as pleasure vehicles; provided, however, that the letters I, O and Q shall not be utilized in seven character non-personalized plate combinations issued for vehicles utilized as pleasure vehicles;

28. 1A1A1 through 9Y9Y9 for motorized bicycles;

29. Any combination of alphabetic and numeric characters that constitutes amateur radio call letters as issued by the Federal Communications Commission;

30. Three letters followed by CMH. Designated for vehicles owned or leased by New Jersey residents who have been awarded the Congressional Medal of Honor;

31. AR 1000 through AR 9999, NR 1000 through NR 9999, CR 1000 through CR 9999, AF 1000 through AF 9999 and MR 1000 through MR 9999 for vehicles owned by persons serving in military reserve units;

32. NFA 100 through NFZ 999 and NF 10000 through NF 99999 for vehicles that qualify for registration at no fee pursuant to N.J.S.A. 39:3-27 and which are not assigned specific combinations by any other provision of this subchapter;

33. Except as otherwise provided by this subchapter, any combination consisting of two alphabetic followed by four numeric characters (for example, AB 1234) or four numeric followed by two alphabetic characters (for example, 1234 AB). Designated for use on special organization vehicle registration plates issued by the Division pursuant to N.J.S.A. 39:3-27.35 et seq. and N.J.A.C. 13:20-39;

34. Any combination of alphabetic characters or numbers, or both, that may carry connotations offensive to good taste and decency.

13:20-34.5 Fees

(a) Fees for particular identifying marks, which shall be paid with the application therefor, shall be as follows unless otherwise provided by law:

1. "Courtesy Marks": $15.00;
2. "Personalized marks": $50.00;
3. Replacement of lost, stolen or obliterated "particular identifying marks": $10.00.

(b) Except as otherwise provided by (a)3 above, a fee of $5.00 shall be paid for replacement of lost, stolen or obliterated license plates.

13:20-34.7 Reissue

In the event a registrant fails to renew the registration for a particular identifying mark for two years from the date of expiration or surrenders said mark and corresponding registration certificate to the Division, said marks shall be available for reissuance to any applicant therefor upon payment to the Division of the applicable fee specified in N.J.A.C. 13:20-34.5(a) for said marks.

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Fees

Adopted Amendment: N.J.A.C. 13:40-6.1

Proposed: April 6, 1992 at 24 N.J.R. 1231(a).
Adopted: May 11, 1992 by the State Board of Professional Engineers and Land Surveyors, Joseph Wiseman, President.
Filed: May 20, 1992 as R.1992 d.247, **without change.**

Authority: N.J.S.A. 45:8-27 et seq.

Effective Date: June 15, 1992.
Expiration Date: August 3, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows.

13:40-6.1 Fee schedule

(a) The following fees shall be charged by the Board:

1. Application fees:	
i. Engineer-in-training	$30.00;
ii. Professional engineer	$75.00;
iii. Land surveyor	$75.00.
2. Examination fees:	
i. Engineer-in-training (fundamentals of engineering)	$70.00;
ii. Professional engineer:	
(1) Fundamentals	$70.00;
(2) Specialized training	$85.00.
iii. Land surveyor:	
(1) Fundamentals	$70.00;
(2) Specialized training (Principles of land surveying and New Jersey State portion)	$150.00;
3. Initial license fee:	
i. During the first year of a biennial renewal period	$80.00
ii. During the second year of a biennial renewal period	$40.00
4. Biennial renewal fee	$80.00
5. Late renewal fee	$50.00
6. Reinstatement fee	$125.00
7. Duplicate license fee	$20.00
8. Replacement wall certificate	$40.00

9. All licensees, and the clerks of each municipality in the State, shall receive without charge one copy of the roster of licensed professional engineers and land surveyors. Additional copies, if and when available, may be purchased at a fee of $20.00 each.

Recodify existng 8.-10. as 10.-12. (No change in text.)

(b) (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF RESPIRATORY CARE

Fees

Adopted New Rule: N.J.A.C. 13:44F-8.1

Proposed: January 6, 1992 at 24 N.J.R. 52(a).
Adopted: May 7, 1992 by Emma N. Byrne, Director, Division of Consumer Affairs.
Filed: May 20, 1992 as R.1992 d.248, **without change.**

Authority: N.J.S.A. 45:14E-7(f) and (g).

Effective Date: June 15, 1992.
Expiration Date: June 15, 1997.

The Board of Respiratory Care afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:44F-8.1, relating to fees. The official comment period ended on February 5, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 6, 1992 at 24 N.J.R. 52(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Hospital Association, various practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Respiratory Care, Post Office Box 45031, Newark, New Jersey, 07101.

Summary of Public Comments and Agency Responses:

During the official 30-day comment period, the Board of Respiratory Care received 19 letters, including six pre-printed form letters, one letter signed by eight individuals, and a letter on behalf of the membership of the New Jersey Society for Respiratory Care. Subsequent to the 30-day comment period, the Board received five additional letters, including two form letters identical to those previously received and one letter signed by nine respiratory care practitioners. The comments received after the close of the comment period will be considered by the Board as a courtesy to the commenters.

A list of the commenters together with a summary of the issues raised and the Board's responses follows.

Katherine S. Knauer
Patti Chili, CRTT
Elsie Cinkowski
Nancy G. McGee
Vicki Haviland, RRT
Dorothy H. Gordon, RRT
Diane Sclafani, CRTT, Dorothy L. Nieluse, CRTT, Nancy Guida, CRTT, Sondra Marple, CRTT, Geeli Bakhra, Ann M. Boutilier, Lorraine DeMary, CRTT, and James S. Sweir, CRTT (one letter)
William Rosen, RRT, GN
Louis N. Lembo, RRT
Gail Horn, RRT, Director of Respiratory Care Kennedy Memorial Hospitals, University Medical Center
William F. Clark, M.Ed., RRT, Director of Respiratory Care, Bayonne Hospital, on behalf of 25 respiratory care practitioners
Alison Morrison, CRTT (two letters)
Mark Feuer, CRTT
Esther Robbins
Mary J. Drager, Cardiopulmonary Dept., Elmer Community Hospital
Jennie Pulaczewski, CRTT
Robin K. Cranston, CRTT
Sharon K. Williams-Colon, President, New Jersey Society for Respiratory Care
Norman R. Merckx, Jr., Supervisor of Respiratory Therapy, Underwood Memorial Hospital
Atlantic City Medical Center (no signature on letter)
Judith A. Smith, CRTT
West Jersey Health System, by Frank Austan, Dave Malick, Debbit Morgan, Jennie Pulaczewski, David Winter, Mary Lupo, Pat Jones, Kishor Nagada, Sheldon Blunt

COMMENT: All of the commenters stated that the fees are too high. The comments included the assertion that the fees represent a hardship for the majority of practitioners, particularly in light of the current economic recession.

RESPONSE: The Board recognizes the adverse impact of rising costs on practitioners. However, pursuant to N.J.S.A. 45:1-3.2, each board is required to be self-funding; that is, operating costs must be met through licensing and other fees. The statute also requires the board to assess fees which are estimated not to exceed the amount required. The Board is confident that the estimate of operating fees required for the current biennial period complies with these statutory requirements. In the unlikely event excess funds are raised, they will be carried over for the benefit of the Board.

COMMENT: Several commenters pointed out that the fees are the highest in the State and the highest in the nation, and many referenced the significantly lower biennial fee for nurses.

RESPONSE: While the Board is unable to comment on national licensing fees, the commenters are incorrect that the fees are the highest in the State. The Board reiterates that each board is required by statute to meet its operating costs through licensing and other fees. Since licensing fees are based upon the number of licensees (that is, since operating costs are allocated proportionately among licensees), boards with a smaller number of licensees will pay proportionately higher fees in order to meet their administrative expenses. Since the Board of Respiratory Care estimates licensing approximately 2,400 individuals during the current biennial period, it must of necessity charge a significantly higher fee than the Board of Nursing, which has approximately 137,000 licensees sharing operating costs.

COMMENT: Several commenters stated that the high biennial licensing fee will cause practitioners to leave the State.

RESPONSE: The Board does not view this as likely, particularly in the case of long-established New Jersey practitioners.

COMMENT: One commenter requested the ability to pay the licensing fee with a credit card.

RESPONSE: Payment by this method would result in an administrative charge to the Board. This charge would have to be prorated among all licensees, placing an unfair burden upon licensees not choosing to pay by credit card.

COMMENT: Several individuals and the representative of the New Jersey Society for Respiratory Care requested justification for the fees and asked for a copy of the Board's budget and proposed expenses.

RESPONSE: Justification for the fees is the statutory requirement that all boards be self-funding. Projections of the amounts required to fund the Board's operations for fiscal year 1992-1993 have been included in the Governor's Budget Message and will be included in the Appropriations Act for 1993, a public document scheduled to be published and available in local libraries within the next few months.

COMMENT: Two commenters stated that they did not know who the Board members are or when meetings are held.

RESPONSE: All Board meetings are conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-8. Pursuant to the Act, the Board provides public notice of all meetings, and copies of the minutes (which include the names of all members present) are available to interested parties upon request.

COMMENT: One commenter suggested that fees of $180.00 for the first year and $90.00 for the second year were exorbitant. Another individual asked the length of the license term. The New Jersey Society for Respiratory Care asked when the biennial period begins and ends.

RESPONSE: The license term is two years, beginning April 1 and ending March 31. The Board notes misunderstanding by the first commenter concerning the manner in which the licensing fee is charged. The licensing fee is prorated over the two-year term for the benefit of individuals applying during the second year of a biennial period. Accordingly, an individual applying during the first year of a biennial period would pay $180.00 and an individual applying during the second year would pay only $90.00.

COMMENT: Several individuals as well as the representative of the New Jersey Society for Respiratory Care commented upon the licensure application process. Although the issues raised by these commenters are not pertinent to the proposal at hand, which concerns only the Board's fee schedule, the Board wishes to take this opportunity to respond for the benefit of others who may have similar concerns.

1. One individual noted that although not all practitioners are NBRC members, the NBRC has transcripts and other records which should satisfy Board requirements. In response, the Board notes that it cannot rely upon the NBRC for transcripts and other records because not all practitioners hold the NBRC credential and because requirements for this credential have varied over time. More important, however, pursuant to the Respiratory Care Practitioner Licensing Act, N.J.S.A. 45:14E-1 et seq., the Board has a statutory obligation to establish minimum qualifications for licensure and to identify to the public those individuals who are qualified and legally authorized to practice respiratory care (see N.J.S.A. 45:14E-2). Among its specific duties, the Board is required to review the qualifications of applicants for licensure (see N.J.S.A. 45:14E-7(a) and (f). The Board views the submission of original documents verifying the licensee's educational and professional qualifications to be the minimum requirements necessary to fulfill these statutory obligations.

2. One commenter suggested it was unnecessary to request official high school transcripts since the majority of practitioners have associates degrees. The Board reiterates that it has a statutory obligation to identify to the public individuals who are qualified and legally authorized to practice respiratory care. Only by seeking substantiating documents from all potential licensees can it fulfill this obligation.

3. One commenter asked why the Board did not send application packages to all New Jersey practitioners, stating that the AARC and the NBRC have mailing lists. The Board points out that not all potential licensees have these credentials and that the AARC and NBRC lists do not provide complete mailing addresses. In any event, sending complete application packages to individuals who might not have an interest in becoming licensed in New Jersey would create an unnecessary economic burden on the Board. In order to reach those most likely to be affected by the licensing requirements, notice was disseminated through the New Jersey Hospital Association, the New Jersey Society for Respiratory Care and publication in a professional journal.

4. The New Jersey Society for Respiratory Care stated that the delay by the Division of Consumer Affairs in providing application guidelines has created an unfair burden on applicants seeking an 18-month temporary license. The Society asserted that these individuals would have had additional opportunities to pass the Entry Level Exam had these guidelines been available on August 20, 1991, when the statute was enacted. In response, the Board points out that the legislation creating the Board was approved on February 21, 1991 and that the appointment of several Board members was not confirmed until approximately July. Accordingly, the Board did not have adequate time prior to the effective date of the Act to carefully craft implementing regulations. Moreover, even if it had, it is not likely that individuals seeking an 18-month temporary licensure would have had sufficient time to apply and prepare for the November exam, since the application cut-off date for this exam was on or about September 1, 1991.

5. The New Jersey Society for Respiratory Care stated that the regulations should have been made available in advance of the application process so that its membership could be adequately informed of the implications of being licensed in New Jersey. For the reasons set forth above, it was not possible to promulgate implementing regulations prior to the effective date of the legislation. In any event, the implications of being licensed in New Jersey may be found in the statute, which was approved several months prior to the actual effective date; the regulations merely interpret and implement the statute.

Full text of the adoption follows:

CHAPTER 44F
STATE BOARD OF RERSPIRATORY CARE

SUBCHAPTERS 1.-7. (RESERVED)

SUBCHAPTER 8. FEES

13:44F-8.1 Fees

(a) State Board of Respiratory Care charges for licensure and other services are as follows:

1. Application fee	$125.00
2. Initial license fee	
i. During the first year of a biennial renewal period	180.00
ii. During the second year of a biennial renewal period	90.00
3. License renewal fee, biennial	180.00
4. Late renewal fee (within 30 days)	100.00
5. Duplicate license fee	75.00
6. Six-month temporary license	45.00
i. Temporary license renewal	45.00
7. Eighteen-month temporary license	135.00

8. Temporary visiting license	90.00
i. Temporary visiting license renewal	90.00
9. Reinstatement fee (after 60 days)	175.00
10. Duplicate wall certificate	50.00
11. Verification of licensure	50.00

TREASURY-GENERAL

(a)

STATE PLANNING COMMISSION

State Planning Rules

Letter of Clarification; Voluntary Submission of Plans for Consistency Review; Amendment of the Resource Planning and Management Map

Adopted New Rules: N.J.A.C. 17:32-6, 7 and 8
Adopted Amendment: N.J.A.C. 17:32-1.4

Proposed: April 6, 1992 at 24 N.J.R. 1241(a).

Adopted: May 20, 1992 by State Planning Commission, James G. Gilbert, Chairman.

Filed: May 22, 1992 as R.1992 d.253, **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. 52:18A-203.

Effective Date: June 15, 1992.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

Notice of the proposed rules pertaining to Plan clarifications, consistency reviews and amendments to the Resource Planning and Management Map was published in the New Jersey Register on April 6, 1992. The notice invited written comments to be submitted on or before May 6, 1992. Written comments were received from the following:

1. Township of Cherry Hill
2. South Jersey Land Plan Coalition
3. New Jersey Builders Association
4. NAIOP/The Association of Commercial Real Estate
5. New Jersey Association of Consulting Planners
6. Peter Buchsbaum
7. McCarter & English for Nillburn Board of Education
8. Richmond Riley
9. New Jersey Farm Bureau
10. Helen Hendrickson Heinrich
11. N.J. Future

Comments are available for inspection at the offices of the State Planning Commission, 150 West State Street, Trenton, N.J. 08625.

The comments and responses regarding each subchapter follow.

Subchapter 6. Letters of Clarification

COMMENTS: Eligibility—

1. All petitions for clarification should first be endorsed by a resolution of the affected municipal governing body.

2. Permit "site specific" requests for clarification and limit them to the property owner and municipal governing bodies.

RESPONSE: From the outset of the cross-acceptance process, the State Planning Commission has endeavored to conduct as open a process as possible in the formulation of the SDRP. The Commission has made every attempt to include citizens, organizations and governmental entities in the dialogue that has taken place over the past six years. It would be counterproductive at this point, to exclude anyone from a process that will clarify and refine the Plan that has resulted from that dialogue. While the Commission is aware that numerous requests for clarification that are, as one commenter put it, of a "frivolous nature," may overload the system, it is more important to maintain an open process and dispense of the "frivolous" requests as quickly as possible.

COMMENT: Authority of the Director—

3. The State Planning Commission should be required to approve all clarifications.

RESPONSE: While the Commission will not be acting directly on requests for clarification, neither will the Commission be totally divorced from the process. The proposed rules, at N.J.A.C 17:32-6.3(c) and (d), foresee the Director consulting with the Commission on individual clarifications and the Commission being informed of all clarifications through regular reports from the Director. As stated in several comments, there is the potential for numerous and diverse requests being made for clarifications. Subjecting every one of those requests, no matter how inconsequential, to the full Commission, would only serve to prolong the time required to respond to a given request.

COMMENT: Range of requests—

4. Requests for clarification involving "trivial" matters should be discouraged.

5. The OSP should monitor requests to determine if further limits should be placed on the process and if, in fact, all responses shouldn't be held until the first triennial revision of the SDRP.

RESPONSE: As there is no precedent for the proposed process, it is difficult to determine at this point just how many requests will be received and of what quality those requests will be. The Commission has no desire, however, to see the process stall due to excessive volume and will depend on the Director of the Office of State Planning to ensure that all requests are in keeping with those issues that are eligible for clarification under N.J.A.C. 17:32-6.2. As suggested, the OSP will monitor the system and if necessary make recommendations to the Commission for revisions to these rules.

COMMENT: Regulatory disclaimer—

6. The regulatory disclaimer found in the summary and in subchapter 8 should also be included in the body of subchapter 6.

RESPONSE: The Commission agrees to repeat the regulatory disclaimer in subchapter 6.

COMMENT: Time periods—

7. The time period for rendering a clarification should be shortened.

8. An open ended provision to extend or suspend the time frame for clarifications is unacceptable. The SPC/OSP should make sure they have the resources to operate under the rules before the rules are adopted.

9. The SPC should extend time frames for clarifications by no more than 60 days.

10. The Director of OSP should file **monthly,** rather than **periodic,** reports on clarifications to the SPC.

RESPONSE: The Commission has no desire to take any longer than is absolutely necessary to respond to any of the requests covered by these proposed rules. In fact, it would be counter-productive to the efficient implementation of the SDRP to in any way forestall a common understanding of any of the Plan's provisions. As noted earlier, there is no precedent upon which to gage the exact amount of time and effort that will be required to process a given petition. When an adequate number of petitions have been processed, however, the Commission will re-assess the time periods and amend them as necessary.

As to the recommendation that the Director file "monthly" reports as opposed to "periodic" reports, the Commission agrees to revise the rule accordingly at N.J.A.C. 17:32-6.3(d).

COMMENT: General process—

11. The rule should allow for **site specific** letters of clarification—contrary to the rule summary, the Plan is site specific.

RESPONSE: The Commission stands by its statement that the SDRP is not designed to deal with site-specific issues for all the reasons stated in the proposed rules and in the Plan itself. This does not mean that requests for clarification that emanate from a site-specific issue will not be accepted by the Office of State Planning. It does mean, however, that the response will be based on the general application of the State Plan provisions in question. The response will not speak to, or otherwise "validate" or "invalidate," the local application of those policies to any specific site. N.J.A.C. 17:32-6.2(b) has been revised to clarify this point.

Subchapter 7. Voluntary Submission of Plans for Consistency Review

COMMENTS: Purpose—

1. Consistency reviews are the first step toward the regulatory use of the Plan. Consistency certification would enable other State agencies to require such certification for permit and funding approvals.

2. The SDRP is too complex and vague to properly determine consistency.

3. These rules may be the first step toward mandatory consistency.

4. What are the legal ramifications of consistency?

5. This subchapter should be eliminated.

RESPONSE: This subchapter responds to the concerns of local government officials and citizens about how agencies at each level of government would know whether their plans are consistent with the State Plan. Hopefully, a finding of consistency will bolster local plans against

challenges which may be brought against them. The notion of "consistency" is actually drawn from the State Planning Act. In the outline of the cross-acceptance process, the Act speaks to a determination of the degree of consistency or inconsistency between the State Plan and county and municipal plans.

In drafting the proposed rules, the Commission purposefully included language that rejected the use of consistency reviews for regulatory purposes or from becoming mandatory. For instance, the first sentence of N.J.A.C. 17:32-7.1 states that the State Planning Act recommends **but does not require** that municipal and county plans be consistent with the SDRP. N.J.A.C. 17:32-7.2(b) specifically states that codes, ordinances, administrative rules, regulations and other instruments of Plan implementation are not eligible for review. To further stress this point, the Commission has revised the proposed rules at N.J.A.C. 17:32-7.1 to indicate that no municipal, county or State agency should delay any decision making process because of a pending review of their plans by the Commission for consistency with the SDRP.

It is the intention of the Commission to further the goal of the State Planning Act relative to the coordination and integration of Planning Statewide. As stated in the proposal Summary, the State Planning Act anticipates that State agency functional plans will be drawn to be consistent with the SDRP. Administrative rules, codes, regulations and other devices designed to implement the agency's functional plans should then be drawn to be consistent with the functional plans of that agency. Local compliance with those departmental procedures should be based on consistency with that department's goals, objectives, etc., and not on local consistency with the SDRP.

As to the suggestion that the SDRP is too vague and complex to determine consistency, it is expected that these proposed rules, as a package, will serve to clarify various provisions of the Plan (subchapter 6) and further refine the RPMM (subchapter 8).

COMMENT: Action by Commission—

6. Consistency should be determined by an affirmative action of the SPC and not based on the Commission's **failure to act** within 60 days as is currently proposed in the rule.

RESPONSE: It is the Commission's intention to take action on determinations of consistency. The purpose of the 60 day window is to encourage the Commission to act expeditiously. It is not meant to be used by the Commission as a means to avoid taking action.

COMMENT: Regulatory disclaimer—

7. The regulatory disclaimer found in the summary and in subchapter 8 should be included in the body of this subchapter.

RESPONSE: The Commission agrees to repeat the regulatory disclaimer in subchapter 7.

COMMENTS: Time periods—

8. An open ended provision to extend or suspend the time frame for consistency review is unacceptable. The SPC/OSP should make sure they have the resources to operate under these rules before the rules are adopted.

9. The 180 day period for amending local master plans for reconsideration by the Director should be extended to one year.

RESPONSE: The Commission has no desire to take any longer than is absolutely necessary to respond to any of the requests covered by these proposed rules. As noted earlier, there is no precedent upon which to gage the exact amount of time and effort that will be required to process a given petition. When an adequate number of petitions have been processed, however, the Commission will re-assess the time periods and amend them as necessary.

As to the 180 day opportunity to revise a master plan for reconsideration in the same application stream, it is not expected that any major overhaul of that plan will take place in that time period. This is an opportunity to correct relatively minor inconsistencies without having to start the review process all over again. Major changes will most likely require more time, easily the one year suggested in the comment. It does not appear reasonable to keep an application file "open" for that extended period of time.

COMMENT: Consistency standards—

10. The rules should clearly explain what standards will be used to measure consistency or non-consistency.

RESPONSE: As stated in N.J.A.C. 17:32-7.1(b), "consistency" is defined in N.J.A.C. 17:32-1.4 and for the purposes of this subchapter also includes the notion of "compatibility," also defined in N.J.A.C. 17:32-1.4. (these definitions have been revised to up-date them and bring them into comformity with the purposes of this subchapter and the State Development and Redevelopment Plan as opposed to the Preliminary Plan.) Additionally, the Director is required under N.J.A.C. 17:32-7.4(d)2 to identify the reasons for finding a plan inconsistent in writing to the petitioner and indicate the actions necessary to bring the plan into consistency.

COMMENT: Public input—

11. The proposed rule does not contain any provisions for opposing opinions to be heard by the SPC.

RESPONSE: N.J.A.C. 17:32-7.3(e)4 requires that public notifications of petition filing include instructions to forward comments on said petition to the Office of State Planning. All State Planning Commission meetings are open to the public and opportunity is provided at those meetings for public comment.

COMMENTS: State agency plans—

12. In order to achieve horizontal integration of plans, SPC review of State agency plans should be mandatory rather than voluntary.

13. Individuals, public or private agencies, should be allowed to request that a specific State agency's plans be reviewed by the SPC for consistency.

RESPONSE: It is not within the authority of the State Planning Commission to require State agencies to submit their plans for consistency review.

COMMENT: Attorney General review—

14. What are the ramifications of N.J.A.C. 17:32-6.3(c), that is, that the OSP may refer consistency questions to the Office of the Attorney General? What effect would the opinion of the OAG have on any subsequent legal actions taken by or against a municipality?

RESPONSE: The Office of State Planning will not request the Office of the Attorney General to make determinations as to whether a local plan is consistent with the State Plan. Determinations of consistency under the rules are the responsibility of the Office of State Planning and the State Planning Commission, not the Office of the Attorney General.

The Office of State Planning may seek legal advice from the Office of the Attorney General regarding the interpretation of State statutes and regulations in the course of its review of a petition for consistency. The advice provided by the Attorney General in response to such requests will be utilized by the Office of State Planning and the State Planning Commission in ultimately determining whether consistency exists between local plans and the State Plan. As in the case of any determination made by a State agency which is based, in whole or in part, on the advice received from the Attorney General's Office, such determinations may be subject to judicial review. In the course of such reviews, legal opinions rendered by the Attorney General are given deference but are not considered controlling with regard to any legal issues which they address.

Subchapter 8. Amendment of the Resource Planning and Management Map

COMMENTS: Eligibility—

1. All petitions for map amendments should first be endorsed by a resolution of the affected municipal governing body.

2. Permit "site specific" requests for map amendments and limit them to the property owner and municipal and county governments.

3. Petitions to amend the RPMM should be limited to State agencies, county and municipal governments, and property owners within one square mile of the area proposed for change.

4. A person petitioning for a map amendment must have a financial, contractual or ownership interest in at least a portion of the subject property.

5. The term "governing bodies" should be replaced with "public bodies" to allow other public entities, such as boards of education, to petition for a change on the RPMM. Public policy interest may go beyond simply "planning and/or regulatory."

RESPONSE: From the outset of the cross-acceptance process, the State Planning Commission has endeavored to conduct as open a process as possible in the formulation of the SDRP. The Commission has made every attempt to include citizens, organizations and governmental entities in the dialogue that has taken place over the past six years. It would be counter-productive at this point, to exclude anyone from a process that will clarify and refine the Plan that has resulted from that dialogue. The Commission is mindful, however, of the need to protect the rights of and to involve a property owner who may be affected by a change in the RPMM. It is expected that the fairly broad notification requirements, both of filing and of eventual disposition, will keep the affected parties informed.

The Commission is also aware that the broad eligibility of petitioners will likely result in a large number of petitions being filed. The proposed rules are meant to address the need for substantive changes that will have a direct and immediate impact on public sector decisions and as a result cannot wait for the next triennial review of the SDRP. Requests for minor, "non-impact" changes will not be accepted (see N.J.A.C. 17:32-8.5(b)3ii and iii, and 4ii).

Throughout the cross-acceptance process, the Commission has looked to the local governing body to sanction or represent the official position of the municipality as it relates to the SDRP. This has insured at least some degree of clarity and certainty when determining municipal policy. The SDRP will in large part be implemented at the local level. Therefore, it is important that a municipality continue to speak or respond as one voice.

COMMENT: Authority of the Director—

6. The screening of RPMM petitions by the Director should be limited to objective/administrative decisions such as completeness of a petition or history of regulatory actions. All other determinations, for example, improper application or misunderstanding of the Plan, should be reserved for the Commission.

RESPONSE: The latitude provided the Director in N.J.A.C. 17:32-8.5(f) and 8.2(b) to disapprove a petition to amend the RPMM, is not considered an infringement on either the authority or the responsibility of the Commission. The Commission considers the parameters clear and objective enough to avoid any excessive degree of subjectivity on the part of the Director.

COMMENT: Range of requests—

7. Minor changes to planning areas and center should be made locally with the municipality or county informing the SPC of the changes.

RESPONSE: The proposed rules are meant to address the need for substantive changes that will have a direct and immediate impact on public sector decisions and as a result cannot wait for the next triennial review of the SDRP. Requests for minor, "non-impact" changes will not be accepted (see N.J.A.C. 17:32-8.5(b)3ii and iii, and 4ii). If the commenter's concept of "minor" coincides with that of the Commission, that is, those changes that would not be considered by the Commission, then the Commission agrees that those changes could be made locally and sent to the Commission for consideration/inclusion during the next SDRP revision.

COMMENTS: Time periods—

8. The 180 day waiting period for submitting requests to amend the RPMM should be eliminated.

9. The time allowed for SPC/OSP review of amendment petitions should be shortened.

10. An open ended provision to extend or suspend the time frame for reviewing map amendment petitions is unacceptable. The SPC/OSP should make sure they have the resources to operate under the rules before the rules are adopted.

RESPONSE: The purpose for installing a 180 day waiting period for submitting requests to amend the RPMM, is to allow the Plan to become "stationary" for a period of time. It was heard on several occasions during cross-acceptance that the Plan was a "moving target" and could never be properly digested or analyzed. The 180 days will allow at least some time for those who choose to implement the Plan to get a better sense of the whole document before any changes are made.

The Commission has agreed, however, to make an exception to the 180 day provision. The adopted RPMM will include over 500 identified centers. Several counties and municipalities have already begun to take the necessary steps to qualify identified centers for designation by the Commission. So as not to inhibit their progress, the proposed rule has been revised at N.J.A.C. 17:32-8.5 to exempt the designation of previously identified centers from the 180 day waiting period.

The Commission has no desire to take any longer than is absolutely necessary to respond to any of the requests covered by these proposed rules. As noted earlier, there is no precedent upon which to gage the exact amount of time and effort that will be required to process a given petition. When an adequate number of petitions have been processed, however, the Commission will re-assess the time periods and amend them as necessary.

COMMENTS: General process—

11. Property owners should be provided with legal notice of any petition involving his or her property.

12. The basis by which the SPC may consider petitions to amend planning areas needs clarification. N.J.A.C. 17:32-8.2 ("new research, conditions and events") does not coincide with N.J.A.C. 17:32-8.3 ("new or updated capacity based planning information"). N.J.A.C. 17:32-8.2 should be the basis—8.3 is too limiting.

13. The rule should be clarified to state exactly what kind of regulatory involvement will bar a petition from being considered by the SPC. Additional langauge should be added to reference the "filing of an application" under the MLUL, County Planning Act or for any other State, county or Federal permit. Reference should also be made to completed and valid regulatory approvals.

RESPONSE: The Commission is mindful of the need to protect the rights of and to involve a property owner who may be affected by a change in the RPMM. It is expected that the fairly broad notification requirements, both of filing and of eventual disposition, will keep the affected parties informed.

The language in N.J.A.C. 17:32-8.3, Eligibility, is a refinement of that found in the more general statement in N.J.A.C. 17:32-8.2, Purpose. Capacity based planning information will continue to serve as the basis for planning area and center boundaries.

The Commission agrees to expand the language at N.J.A.C. 17:32-8.5(f)3, to further define the term "active regulatory review" as a filing of an application under the Municipal Land Use Law, County Planning Act or any other State, county or Federal permit process.

General Agreement with Proposal

COMMENTS: Several comments expressed a level of support (given certain revisions discussed in other sections of this summary) for the proposed rules regarding clarifications and map amendments. There was general agreement within these comments that there is a need to install a process for the continuation of mapping planning areas and centers and to allow for further clarification of the Plan. Most, but not all, commenters in this category also agreed with the purpose and intent of the proposed rules for consistency reviews. (The South Jersey Land Plan Coalition is opposed to subchapter 7 as noted under that heading.)

General Disagreement with Proposal

COMMENTS: Several comments questioned the need for any of the proposed rules. The reasons for objecting to the proposed rules included the following:

1. If the SDRP is advisory and not regulatory, there is no need for such procedures. Specific boundary determinations should be made at the local level.

2. The proposed rules will entail considerable costs for private and public entities to either file or respond to petitions. Additionally, these proposed rules will result in added costs for the SPC/OSP in their administration of the rules.

3. The State Plan should reflect local plans not vice versa. The State Plan should be amended to reflect local changes.

4. The proposed rules would paralyze the State with legal and land use questions.

5. Municipalities with limited resources would be penalized for non-conformance and, as a result, lose priorities.

6. There is no need for another level of State review.

7. Extend the Issue Resolution phase as an alternative to the proposed rules.

RESPONSE: Proposed subchapters 6, 7 and 8, are, in large part, a response to comments and concerns received from the public and private sectors during cross-acceptance. Both government officials and private citizens wanted to know how they could tell if a local plan was consistent with the State Plan. A comment received during the Commission's last rule proposal (N.J.A.C. 17:32-5) stated that "... the Commission should consider arranging entirely separate proceedings for the resolution of site specific disputes. While separate proceedings would necessitate the establishment of a special review board, that review board ... could provide continuous oversight of any additional disputes that might arise after the issue resolution phase has been completed."

As the State Development and Redevelopment Plan moves from cross-acceptance to implementation, it will be important for all levels of government and the general public to possess a comprehensive and shared understanding of the Plan and all its provisions. It will be just as important for the Commission to be responsive to new information and changing events that will keep the Plan current, relevant and useful to those who will be working to implement it. These proposed rules will ensure that the dialogue that has taken place over the last six years in formulating the Plan, will be allowed to continue through the implementation of the Plan.

Plan-Related Comments Not Specific to Proposal

Several comments were received that related to the preparation and content of the State Plan and the Resource Planning and Management Map, and to the role of the Office of State Planning as it relates to local technical assistance. None of these comments are considered to be within the scope of the proposed rules.

1. The RPMM does not reflect intergovernmental consensus.
2. The RPMM is unnecessary. The SDRP does not need a map.
3. The Plan is so severely flawed that it should not be adopted.
4. The OSP should not get involved in local planning such as the preparation of local master plans.

Summary of Agency-Initated Changes:

N.J.A.C. 17:32-6.3 was revised by adding a new subsection (e) to allow the Director of the Office of State Planning more flexibility in considering various requests for information about the SDRP as official petitions for clarification. N.J.A.C. 17:32-7.4(b) was revised at the request of the Office of Administrative Law to define the contents of the form to be filed with the OSP by a petitioner. Revisions at N.J.A.C. 17:32-7.4(b)3 and 7.5(d) are corrections to the original publication.

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

SUBCHAPTER 1. GENERAL PROVISIONS

17:32-1.4 Definitions

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

"Compatibility" means that a policy or *[standard]* ***set of policies*** in a local, county *[or]* ***,*** regional ***or State agency*** plan *[or regulation]* is equally effective as the *[policy or standard]* ***comparable provisions*** contained in the *[Preliminary]* ***State Development and Redevelopment*** Plan in achieving the pertinent *[State goal, objective or strategy]* ***goals, strategies, objectives, policies, criteria or definitions*** set forth in the *[Preliminary]* State Development and Redevelopment Plan.

"Consistency" means that a policy or *[standard]* ***set of policies*** in a local, county *[or]* ***,*** regional ***or State agency*** plan *[or regulation]* is substantially the same as the *[policy or standard]* ***comparable provisions*** in the *[Preliminary]* State Development and Redevelopment Plan.

SUBCHAPTER 6. LETTERS OF CLARIFICATION

17:32-6.1 Purpose

(a) For the State Development and Redevelopment Plan to serve as a useful guide to officials in both the public and private sectors in making planning and investment decisions, it must be well understood and accurately interpreted. The purpose of this subchapter, therefore, is to enhance this understanding and to assure that clarification of the State Plan reflect as closely as possible the intentions of the State Planning Commission in its approval of the Plan. This purpose is served by creating a process for these officials and the general public to obtain clarification of these provisions.

(b) Neither the State Development and Redevelopment Plan nor its Resource Planning and Management Map is regulatory and neither should be referenced or applied in such a manner. It is not the purpose of this process to either "validate" or "invalidate" a specific code, ordinance, administrative rule, regulation or other instrument of plan implementation.

17:32-6.2 Eligibility

(a) Any individual or organization, public or private, may petition the State Planning Commission for a letter of clarification regarding any goal, strategy, objective, policy, criterion or definition contained in the State Development and Redevelopment Plan.

(b) The State Planning Commission will not *[consider petitions for]* ***issue letters of*** clarification that involve the application of State Plan provisions to specific parcels of land or that seek to either "validate" or "invalidate" a specific code, ordinance, administrative rule, regulation or other instrument of plan implementation.

17:32-6.3 Procedures

(a) The individual or organization shall submit the petition in writing to the Director of the Office of State Planning, who shall act as agent for the State Planning Commission in the administration of these rules, citing:

1. The exact provision of the State Development and Redevelopment Plan on which the clarification is being requested;
2. The nature of the provision that makes it unclear to the petitioner; and
3. As much detail as possible on the specific circumstances surrounding the potential application of the provision that makes its application of interest or concern to the petitioner.

(b) Except as provided in (c) below, the Director of the Office of State Planning shall provide a clarification in writing to the petitioner within 60 days of receipt of the petition.

(c) Where the purposes of these rules are served, the Director of the Office of State Planning may, prior to rendering a clarification to the petitioner, seek the counsel of the State Planning Commission, one of its duly authorized subcommittees, if any, a State department or the Office of the Attorney General, in which case the Director shall so inform the petitioner in writing within the 60 day period specified in (b) above and provide a clarification within 120 days of receipt of the petition.

(d) The Director of the Office of State Planning shall file *[periodic]* ***monthly*** reports of such clarifications with the State Planning Commission.

(e) The Director of the Office of State Planning may consider "unofficial" requests for clarification of the Plan that may be submitted from time to time as "official" petitions for clarification if the Director determines that the request contains sufficient information to be processed in accordance with this subchapter.

17:32-6.4 Suspension or extension of time requirements

(a) At the request of the Director of the Office of State Planning, the State Planning Commission may suspend or extend the time allowed for certain actions under these rules in the event that the number of requests for clarifications exceeds the resources of the Office of State Planning to process those requests in accordance with these rules.

(b) The Director of the Office of State Planning shall notify petitioners of any suspension or extension of time periods resulting from (a) above.

17:32-6.5 Tenure of clarifications

Clarifications rendered by the Director of the Office of State Planning shall stand until the State Planning Commission adopts the next triennial revision of the State Development and Redevelopment Plan.

SUBCHAPTER 7. VOLUNTARY SUBMISSION OF PLANS FOR CONSISTENCY REVIEW

17:32-7.1 Purpose

(a) The State Planning Act recommends but does not require that municipal and county plans be consistent with the State Development and Redevelopment Plan. During the cross-acceptance process, however, many government officials and citizens expressed concern, given the complexity of public plans and processes in general and of the State Plan in particular, about how agencies at each level of government would know whether their plans are consistent with the State Plan. The purpose of this subchapter is to establish a process for the voluntary submission of plans for a determination of consistency, as a service to governments and agencies at all levels.

***(b) Neither the State Development and Redevelopment Plan nor its Resource Planning and Management Map is regulatory and neither should be referenced or applied in such a manner. It is not the purpose of this process to either "validate" or "invalidate" a specific code, ordinance, administrative rule, regulation or other instrument of plan implementation.**

(c) No municipal, county, regional or State agency should delay any decision making process due to a pending review of their plans by the State Planning Commission for consistency with the SDRP.*

*[(b)]***(d)*** For purposes of this subchapter, "consistency," as defined in N.J.A.C. 17:32-1.4, shall also include the notion of "compatibility," also defined in N.J.A.C. 17:32-1.4.

17:32-7.2 Eligibility

(a) Any municipal or county governing body, commissioner or secretary of a State department, regional, or interstate agency may petition the State Planning Commission for a review of the consistency between its plan and the State Development and Redevelopment Plan.

(b) The master plans of municipalities (including elements as defined in the municipal Land Use Law), and counties (as defined in the County Planning Enabling Act), functional plans of State agencies, and the adopted comprehensive plans of regional and interstate agencies are eligible for review by the State Planning Commission under these rules. Codes, ordinances, administrative rules, regulations and other instruments of plan implementation are not eligible for review. Nothing in these rules shall be interpreted to mean, however, that the staff of the Office of State Planning and the Commission may not provide technical assistance and advice to agencies at any level of government on matters falling under the mandates of the Commission or Office, as set forth in the State Planning Act, N.J.S.A. 52:18A-196 et seq.

17:32-7.3 Notification of petition filing

(a) Municipalities shall provide public notice of their filing of a petition under this subchapter in a newspaper of general circulation within the municipality, prior to their submission of a petition for consistency review. Notice shall also be sent to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities.

(b) Counties shall provide public notice of their filing of a petition under this subchapter in a newspaper of general circulation within the county, prior to their submission of a petition for consistency review. Notice shall also be sent to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties.

(c) State agencies shall notify the 21 county planning boards of their filing of a petition under this subchapter prior to the agency's submission of a petition for consistency review and shall further cause notice of their petition to be published in the New Jersey Register.

(d) Regional and interstate agencies shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the New Jersey portion of their jurisdiction, prior to the agency's submission of a petition for consistency review. Notice shall also be sent to the planning boards of all New Jersey municipalities and counties within the agency's jurisdiction.

(e) All notifications required under this section shall contain, at a minimum, the following information:

1. The name and address of the person or organization filing the petition;

2. A description of the action being requested;

3. Where copies of the petition and supporting documentation can be examined; and

4. Instructions to forward comments on said petition to both the petitioner and the Office of State Planning.

(f) Newspaper notices may be published as a standard legal advertisement.

17:32-7.4 Procedures

(a) Petitions for determinations of consistency may be submitted to the Director of the Office of State Planning, who is herewith authorized to act as agent for the State Planning Commission in the administration of these rules, no sooner than 60 days after adoption of the State Development and Redevelopment Plan by the State Planning Commission.

(b) A petition shall consist of the following:

1. A form, prepared by the Office of State Planning, fully completed and signed by the petitioner or a duly authorized official, with proof thereof, representing the petitioner*[;]* ***. Said form shall contain the following:**

i. The name and address of petitioner;

ii. A list of the documents being submitted;

iii. A certified copy of the resolution adopting the plan(s) being submitted; and

iv. Proof that the notification requirements of this subchapter have been met;*

2. A resolution of the municipal or county governing body or regional or interstate agency, authorizing submission of the petition, or in the case of a State agency, a transmittal letter on letterhead from the departmental Commissioner or Secretary requesting consideration of the petition; and

3. At least three copies of the municipal *[or]* ***,*** county ***or regional*** master plan or State agency functional plan and all elements thereof.

(c) In cases where the Director of the Office of State Planning finds that the petition is not submitted in accordance with these rules, the Director shall inform the petitioner in writing within 30 days after receipt of the petition of the deficiencies of the petition and declare whether these deficiencies can be corrected. The petition shall then proceed as follows:

1. If the deficiencies can be corrected, the petitioner shall have 30 days after receipt of the Director's letter to resubmit a corrected petition. If a corrected petition is resubmitted, the petition will be considered in accordance with (d) through (g) below.

2. If a corrected petition is not resubmitted within the time period provided in (c)1 above, or is resubmitted incorrectly, the petition will be considered withdrawn and the petitioner so notified. No further action by the Director will be taken;

3. If the deficiencies cannot be corrected, the Director shall so inform the petitioner and the petition will be considered withdrawn.

(d) In cases where the Director of the Office of State Planning finds that the petition is submitted in accordance with these rules, or is resubmitted correctly pursuant to (c)1 above, he or she shall, within 90 days of such a finding, review said plan(s), make a preliminary determination and proceed as indicated below:

1. In cases where the Director finds that said plan is consistent with the State Development and Redevelopment Plan, the Director shall process the petition in accordance with (e) through (g) below;

2. In cases where the Director finds that said plan is not consistent with the State Development and Redevelopment Plan, the Director shall identify the reasons therefor in writing to the petitioner and indicate the actions the Director considers necessary to bring the plan into consistency. In such cases the petitioner may:

i. Within 180 days after receipt of the Director's letter, amend said plan in a manner that satisfies the cited inconsistencies and request reconsideration of the petition, including with such request evidence of official action amending said plan; or

ii. Within 60 days after receipt of the Director's letter, request to appear before the State Planning Commission, or its duly authorized subcommittee if any, to appeal the findings, in whole or in part, of the Director;

3. If the petitioner does not act in accordance with either (d)2i or (d)2ii above, the petition will be considered withdrawn.

(e) Except for petitions withdrawn under (c) or (d) above, the Director of the Office of State Planning shall submit the final recommendations on petitions, or appeals filed pursuant to (d)2ii above, to the State Planning Commission or its duly authorized subcommittee(s).

(f) The State Planning Commission shall consider the recommendations of the Director of the Office of State Planning and any duly authorized subcommittee, and shall, at least in the case of (d)2ii above, provide opportunity for the petitioner to appear in behalf of its petition.

(g) Within 60 days after receipt of a petition, or an appeal filed pursuant to (d)2ii above from the Director of the Office of State Planning, the State Planning Commission may act on said petition; if the Commission does not act within 60 days, the Director's determinations and actions regarding the petition shall prevail.

17:32-7.5 Notification of disposition

(a) The Director of the Office of State Planning shall, within 30 days after State Planning Commission action, or nonaction as set

forth in N.J.A.C. 17:32-7.4(g), notify the petitioner in writing of the Commission's disposition of the petition.

(b) Municipalities shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the municipality, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities within the same 30-day time period.

(c) Counties shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the county, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties within the same 30-day time period.

(d) State agencies shall notify the 21 county planning boards of the disposition of their petition under this subchapter, within 30 days of their receipt of the Director's notification pursuant to (a) above, and shall further cause notice of its *[petition]* ***disposition*** to be published in the next available New Jersey Register.

(e) Regional and interstate agencies shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the New Jersey portion of their jurisdiction, within 30 days of the receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of all New Jersey municipalities and counties within the agency's jurisdiction within the same 30-day time period.

(f) All notifications required under (b), (c), (d) and (e) above shall contain, at a minimum, the following information:

1. The name and address of the person or organization that filed the petition;
2. A description of the action that was requested; and
3. A description and date of the State Planning Commission's disposition of the petition.

(g) Newspaper notices may be published as a standard legal advertisement.

17:32-7.6 Suspension or extension of time requirements

(a) At the request of the Director of the Office of State Planning, the State Planning Commission may suspend or extend the time allowed for certain actions under these rules in the event that the number of requests for consistency reviews exceeds the resources of the Office of State Planning to process those requests in accordance with these rules.

(b) The Director of the Office of State Planning shall notify petitioners of any suspension or extension of time periods resulting from (a) above.

SUBCHAPTER 8. AMENDMENT OF THE RESOURCE PLANNING AND MANAGEMENT MAP

17:32-8.1 Resource Planning and Management Map

(a) The official map of the State Development and Redevelopment Plan is entitled the "Resource Planning and Management Map" (RPMM) and is comprised of a series of maps corresponding to the 1:24,000 scale United States Geological Survey (U.S.G.S.) 7.5 inch topographic quadrangle maps comprising the geographic area of the State of New Jersey.

(b) Each said quadrangle map is labelled "RPMM" and reflects at a minimum the following State Planning Commission approved delineations and information:

1. Planning areas;
2. Identified or designated centers;
3. Community development boundaries;
4. Population and employment allocations for each Center;
5. Critical Environmental Sites; and
6. The certification, signature, and appropriate initialing of revisions, if any, by the Secretary of the Commission.

(c) Any other graphic representation, at any scale, of delineations and other pertinent data contained on the Resource Planning and Management Map that is included in the State Development and Redevelopment Plan or any other document, is for illustrative purposes only and is not to be considered the official map of the State Plan as outlined in (a) and (b) above.

17:32-8.2 Purpose

(a) In most cases, the Resource Planning and Management Map reflects the intergovernmental consensus arrived at during the cross-acceptance process. While the cross-acceptance process provided sufficient data, coordination and dialogue to prepare an initial Map, new research, conditions and events may also suggest appropriate changes to the Map. The purpose of this subchapter, therefore, is to create a process for amending the Resource Planning and Management Map after adoption of the State Development and Redevelopment Plan in order to accommodate such newly discovered or newly important conditions, situations or knowledge that emerge as the State Plan is applied, as well as to update the Map as progress is made by municipalities and counties in their own planning.

(b) Neither the State Development and Redevelopment Plan nor its Resource Planning and Management Map is regulatory and it is not the purpose of this process to provide for amendments to the Map to reflect, or "validate," land use changes or to serve as a legal basis for making such changes. There is no site specific change of land use that is inherently inconsistent with the State Plan. To the extent that such a change of use may be inconsistent with another public entity's plan, code, ordinance or regulation formulated to be consistent with the State Plan, and as a result be disapproved by that entity, resolution of the issue resides with that public entity and the interested or aggrieved party.

(c) Individuals or organizations considering submitting a petition to the State Planning Commission to amend the Resource Planning and Management Map are encouraged to submit petitions for a letter of clarification pursuant to N.J.A.C. 17:32-6, where the petition to amend may involve a clarification of a provision of the State Development and Redevelopment Plan relative to the geographic area in question. Municipalities, counties and State agencies also are encouraged to voluntarily petition the Commission for review for consistency pursuant to N.J.A.C. 17:32-7, to obviate the need for numerous requests for letters of clarification and petitions to amend the Resource Planning and Management Map.

17:32-8.3 Eligibility

(a) Any State agency, county or municipal governing body, and private citizen or organization may submit a petition to the State Planning Commission to amend the Resource Planning and Management Map.

(b) The State Planning Commission may consider the following petitions:

1. Petitions to amend planning areas supported by new or updated capacity based planning information, as defined in the State Development and Redevelopment Plan, that would realign the boundary(ies) of planning areas;
2. Petitions to amend centers and growth allocations supported by new or updated capacity based planning information, as defined in the State Development and Redevelopment Plan, that:

i. De-designate, or otherwise eliminate, a center that was identified/designated in the State Plan, said petition including appropriate adjustments to population and employment allocations among centers;

ii. Identify or designate additional centers based on new or updated information, said petitions including appropriate adjustments to population and employment allocations;

iii. Identify, or adjust, the population and employment allocation among centers, maintaining the municipal and county population and employment levels, or ranges, identified in the State Plan; or

iv. Delineate, or adjust the delineation of, the "community development boundary" of a center(s), said delineation or adjustment accompanied by appropriate adjustments, if any, of the population and employment allocation among centers; and

3. Petitions to include new critical environmental sites on, or remove them from, the Resource Planning and Management Map

based on new information related to the criteria for such sites found in the State Development and Redevelopment Plan.

17:32-8.4 Notification of petition filing

(a) Municipalities shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the municipality, prior to their submission of a petition to amend the Resource Planning and Management Map. Notice shall also be sent to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities.

(b) Counties shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the county, prior to their submission of a petition to amend the Resource Planning and Management Map. Notice shall also be sent to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties.

(c) A private citizen or organization shall provide notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the municipality effected by the petition, prior to their submission of a petition to amend the Resource Planning and Management Map. Notice shall also be sent to the planning boards of the subject municipality and county.

(d) State agencies shall provide notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the county effected by the petition, prior to their submission of a petition to amend the Resource Planning and Management Map. Notice shall also be sent to the planning boards of the subject municipality and county.

(e) All notifications required under this section shall contain, at a minimum, the following information:

1. The name and address of the person or organization filing the petition;

2. A description of the action being requested;

3. Where copies of the petition and supporting documentation can be examined; and

4. Instructions to forward comments on said petition to both the petitioner and the Office of State Planning.

(f) Newspaper notices may be published as a standard legal advertisement.

17:32-8.5 Procedures

(a) Petitions to amend the Resource Planning and Management Map may be submitted to the Director of the Office of State Planning, who shall serve as agent for the State Planning Commission in the administration of these rules, no sooner than 180 days after adoption of the State Development Plan by the State Planning Commission. ***Centers that are identified on the RPMM at the time of the adoption of the first SDRP, are exempt from the 180 day waiting period for the purposes of petitioning for their designation.***

(b) A petition to amend the Resource Planning and Management Map shall include at a minimum:

1. Petitioner's name, address and telephone number, including the same information for the duly authorized agent, if any, who will represent the petitioner, with proof of authorization;

2. A statement describing the petitioner's interest in the land area under consideration, including, at a minimum:

i. For a public entity, its public policy (planning and/or regulatory) interests;

ii. For a private citizen or organization, his her, or its financial, ownership or contractual interests and a description of any pertinent regulatory actions occurring during the immediate past five years or planned/anticipated in the next three years regarding the use of the property;

3. A statement describing:

i. How the amendment promotes local, regional and State goals and objectives;

ii. How the amendment will impact public sector decisions; and

iii. The reason(s) why the amendment cannot await the triennial revision of the State Development and Redevelopment Plan;

4. A statement describing:

i. How the proposed amendment is consistent with the provisions of the State Development and Redevelopment Plan and with municipal and county plans, citing the pertinent provisions in each plan; and

ii. How the amendment helps the municipality and county to achieve consistency with the State Development and Redevelopment Plan;

5. Map(s), at a scale of 1:24,000 on drafting film and corresponding to U.S.G.S. 7.5 inch topographic quadrangle maps, delineating the geographic area that is the subject of the amendment and a sufficient amount of the vicinity to adequately identify the location and issues; and

6. Proper authorization and endorsement as follows:

i. For a municipality or county, the petition shall include a resolution of the governing body authorizing submission of the petition;

ii. For a State department, the petition shall include a transmittal letter on letterhead from the departmental Commissioner or Secretary requesting consideration of the petition;

iii. For a private organization, the petition shall include a certified copy of the authorization to submit the petition; and

iv. For a private citizen, at the discretion of the petitioner, the petition may include endorsements of the amendment by public and private organizations.

(c) In cases where the petition to amend the Resource Planning and Management Map is submitted by an entity other than the municipality or county within which the subject geographic area is located, the Director of the Office of State Planning shall forward one copy of the petition to the appropriate municipal and county planning board(s) for their review and comment. If no comment is received within 90 days after mailing said petition, the municipality and/or county shall be deemed to have no comment on the petition.

(d) The State Planning Commission may, at its discretion, appoint one or several subcommittees to hear and review petitions. Only the Commission may dispose of a petition, except as set forth in (f) below.

(e) The Director of the Office of State Planning shall ensure prompt review of the petition and submit both the petition and the Director's recommendation(s) to the State Planning Commission or its duly authorized subcommittee(s), if any.

(f) The Director of the Office of State Planning may disapprove petitions to amend the Resource Planning and Management Map under the following circumstances:

1. The petition is incomplete, contains false information or is improperly submitted;

2. The petition involves land areas that have been the subject of a previous petition submitted and disposed of in accordance with this subchapter within the previous three years;

3. The petition involves land areas that are actively under regulatory review at any level of government ***(active regulatory review includes the filing of an application under the Municipal Land Use Law, the County Planning Act or any other State, county or Federal permit process)***;

4. The petition requests an amendment that conflicts with the criteria set forth in the State Development and Redevelopment Plan;

5. The petition is based on an imporper application of, or a misunderstanding of, the role of the State Development and Redevelopment Plan, as described in N.J.A.C. 17:32-8.2(b);

6. In the case of planning areas, the petition involves a land area smaller than one square mile in size; or

7. For reasons not anticipated in this rule but, in the judgment of the Director of the Office of State Planning, the petition conflicts with the purposes described in N.J.A.C. 17:32-8.2 for providing this amendment process, in which case the Director shall advise the State Planning Commission to act in emergency and subsequently, but with reasonable speed, promulgate appropriate amendments to these rules.

(g) In cases where petitions are disapproved pursuant to (f) above, the Director of the Office of State Planning shall inform the petitioner and the State Planning Commission in writing of the reasons therefor.

(h) All meetings of the State Planning Commission, or its duly authorized subcommittee(s), to consider petitions shall be conducted in accordance with the Open Public Meetings Act, and opportunity shall be provided to the public at all said meetings to comment on petition(s) being considered prior to action being taken.

(i) The State Planning Commission or the Director of the Office of State Planning shall consider the petition in accordance with this subchapter within a period of 120 days after receipt of the petition, or 210 days in the event a petition is forwarded for municipal or county comment pursuant to (c) above, or in a period of time established pursuant to N.J.A.C. 17:32-8.7.

17:32-8.6 Notification of disposition

(a) The Director of the Office of State Planning shall, within 30 days after State Planning Commission action, notify the petitioner in writing of the Commission's disposition of the petition.

(b) Municipalities shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the municipality, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities within the same 30-day time period.

(c) Counties shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the county, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties within the same 30-day time period.

(d) A private citizen or organization shall provide notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the municipality effected by the petition, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of the subject municipality and county within the same 30-day time period.

(e) State agencies shall provide notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the county effected by the petition, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of the subject municipality and county within the same 30-day time period.

(f) All notifications required under (b), (c), (d) and (e) shall contain, at a minimum, the following information:

1. The name and address of the person or organization that filed the petition;
2. A description of the action that was requested; and
3. A description and date of the State Planning Commission's disposition of the petition.

(g) Newspaper notices may be published as a standard legal advertisement.

17:32-8.7 Suspension or extension of time requirements

(a) At the request of the Director of the Office of State Planning, the State Planning Commission may suspend or extend the time allowed for certain actions under these rules in the event that the number of requests for amendments to the Resource Planning and Management Map exceeds the resources of the Office of State Planning to process those requests in accordance with these rules.

(b) The Director of the Office of State Planning shall notify petitioners of any suspension or extension of time periods resulting from (a) above.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Financial Disclosure By Lobbyists and Legislative Agents

Lobbying Fee Schedules

Adopted Amendments: N.J.A.C. 19:25-20.8 and 20.19

Proposed: April 6, 1992, at 24 N.J.R. 1245(a) (see also 24 N.J.R. 1692(a)).

Adopted: May 21, 1992, by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: May 22, 1992 as R.1992 d.251, **without change.**

Authority: P.L. 1991, c.244, section 12, and N.J.S.A. 52:13C-22.3.

Effective Date: June 15, 1992.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on April 6, 1992, and a press release announcing the proposed amendments was circulated and copies were mailed to registered legislative agents and other interested persons. The comment period expired on May 15, 1992 (see Notice of Extension of Comment Period at 24 N.J.R. 1692(a)). The Commission received comments from: Association of Environmental Authorities, Ellen Gulbinsky, Executive Director; New Jersey Bankers Association, Alfred H. Griffith, C.A.E., Executive Vice President; New Jersey State Nurses Association, Andrea W. Aughenbaugh, M.S.N., R.N., Deputy Director; and Renee Gast Associates.

COMMENT: The commenters objected to the proposed filing fee increase. Some suggested that the Commission establish a sliding scale of filing fees based on the financial size of the filing entity, or on non-profit status, or on the likelihood that the Commission may have to review the filed reports of the entity. Two commenters noted that the duties of the Commission had been increased by legislative amendments adopted last year to the lobbying regulation statutes, but suggested that since the Commission had advocated those changes it should not pass along the increased costs of regulation to legislative agents.

RESPONSE: On January 1, 1992, comprehensive amendments to the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18, et seq., became effective and significantly expanded the duties of the Commission and the scope of the activity subject to disclosure reporting (see P.L. 1991, c.243 and c.244). The amendments did not contain any appropriation for implementation of these new duties, but did specifically authorize the Commission to establish reasonable fees for the filing of lobbying reports. The Commission believes that increasing the annual fee paid by legislative agents (which fee covers the filing of registration statements and four quarterly reports as well as issuance by the Commission of a legislative agent identification badge) from $100.00 per year to $200.00 per year is reasonable. The Commission estimates that in the next fiscal year its costs for forms and instructions, identification badges, mailing, electronic data processing, filing and other handling activities will exceed $160,000. Since some of the 700 to 800 legislative agents expected to file in the next year will be statutorily exempt from fees, the Commission believes even the increased fee of $200.00 will not entirely cover its projected costs.

The Commission considered but rejected establishment of a sliding fee scale based upon the size or non-profit status of a filing entity because it believes the most equitable approach is to base the fee on the number of legislative agents. Under the Legislative Activities Disclosure Act, each legislative agent must file reports, and each must be issued an identification badge. Excluded from these filing requirements, and therefore from any fees, is a person who receives compensation of $100.00 or less in a three-month period in a calendar year for lobbying (see N.J.S.A. 52:13C-23(j) and 54:32B-9(b)). Each filed report, and each identification badge, generates approximately the same processing and handling costs for the Commission. Therefore, the Commission concludes it cannot justify waiving fees or charging more or less for the filings and identification badge of any particular class of legislative agents in the absence of specific statutory exemptions or direction.

COMMENT: One commenter expressed the view that the exemption from filing fees of certain legislative agents is "discriminating and unfair."

RESPONSE: Organizations which qualify for an exemption from State sales and use taxes are exempt from lobbying filing fees by virtue of the Legislative Activities Disclosure Act (see N.J.S.A. 52:13C-23(j)). Organizations wishing to determine if they qualify for this exemption are advised to apply to the Division of Taxation in the Department of Treasury for an exempt organization certificate pursuant to N.J.S.A. 54:32B-9(b).

COMMENT: One commenter objected to any registration or filing requirement for a "volunteer" legislative agent.

RESPONSE: A "volunteer" legislative agent is a person who receives no compensation for lobbying. Such a person is not required under the Legislative Activities Disclosure Act to register or to file reports as a legislative agent (see N.J.S.A. 52:13C-20(g), defining the term "legislative agent"). However, the Agent provides that a person not required by that law to file reports may do so if that person so wishes (see N.J.S.A. 52:13C-35). Reports or statements filed with the Commission without any legal duty to file are deemed as "voluntary" filings. In making the proposal that such "voluntary" filings be exempted from filing fees, the Commission did not intend to suggest that there was any legal duty on a non-compensated volunteer to file them, or to obtain identification badges.

Full text of the adoption follows:

19:25-20.8 Voluntary statements

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

(c) Voluntary filings pursuant to this section are exempt from the fees provided in N.J.A.C. 19:25-20.19.

19:25-20.19 Annual Fee

(a) Effective August 1, 1992, and each August 1 thereafter, each legislative agent who is an individual and whose activities during any part of a 12-month period commencing on August 1 and ending on the following July 31 are subject to the Act shall pay an annual fee of $200.00.

(b) In the event that the legislative agent is a partnership, committee, association, corporation, or other organization or group of persons, the annual fee shall be $200.00 for each individual from the partnership, committee, association, corporation, or other organization or group of persons, who is required to wear a name tag pursuant to N.J.A.C. 19:25-20.6.

(c)-(e) (No change.)

(a)

CASINO CONTROL COMMISSION

Applications
Fees
Adopted Amendments: N.J.A.C. 19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12, and 9.20.
Adopted Repeal: N.J.A.C. 19:41-9.5

Proposed: April 6, 1992 at 24 N.J.R. 1247(a).
Adopted: May 21, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: May 22, 1992 as R.1992 d.256, **without change.**

Authority: N.J.S.A. 5:12-69(a), 70(e), 139 and 141.

Effective Date: June 15, 1992.
Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

19:41-9.4 Casino license fees

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

(d) No casino license shall be renewed unless the applicant shall first have paid in full a renewal fee of not less than $100,000 for each one-year license renewal, and not less than $200,000 for each two-year license renewal.

(e) As a component of its initial license fee or renewal fee and as a condition of casino licensure, each applicant or licensee shall be required to pay for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at hourly rates to be set by the Commission in accordance with this subsection, and to reimburse any unusual costs or out of pocket expenses incurred by the Commission or the Division in regard to such matters.

1. Prior to the start of each fiscal year, the Commission shall determine the hourly fee rates to be paid by licensees and applicants pursuant to this subchapter. These rates shall be based upon the hourly costs of services provided by Commission professional staff, Commission inspection staff and Division professional staff during the fiscal year, as estimated from the projected fiscal year budget for the Commission and the Division.

2. The projected hourly fee rates established pursuant to (e)1 above may be adjusted by the Commission during the fiscal year based upon the final fiscal year budget approved for the Commission and the Division by the Legislature.

3. Notice of the hourly fee rates established pursuant to (e)1 above shall be published in the New Jersey Register.

(f) (No change.)

19:41-9.5 (Reserved)

19:41-9.6 Slot machine fees

(a) (No change.)

(b) In accordance with Section 100(h) of the Act, no slot machine shall be used to conduct gaming unless it is identical to a model thereof which has been specifically tested by the Division and licensed for use by the Commission. Any person seeking to have a prototype slot machine so tested and licensed shall pay an initial minimum amount of $500.00 which shall be applied to the total fee. Such person shall be required to pay for the efforts of the Commission and the Division on matters directly related to the examination, testing and consideration of the prototype slot machine at hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e).

19:41-9.7 Casino hotel alcoholic beverage licenses

(a) (No change.)

(b) The fee for the issuance or renewal of a casino hotel alcoholic beverage license for a casino licensee conducting alcoholic beverage activity in a casino hotel shall be assessed as follows:

1. Payment for the efforts of the Commission and the Division on matters directly related to the casino hotel alcoholic beverage license or application at hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e); and

2. (No change.)

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

19:41-9.11 Casino key employee license fees

(a) (No change.)

(b) The fee for the issuance of a casino key employee license shall be as follows:

1. (No change.)

2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant at hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e); and

3. (No change.)

19:41-9.11A Junket representative license fees

(a) (No change.)

(b) The fee for the issuance or renewal of a junket representative license shall be as follows:

1. (No change.)

2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e); and

3. (No change.)

19:41-9.12 Gaming school resident director license fees

(a) (No change.)

(b) The issuance fee or renewal fee for a three-year resident director license shall be as follows:

1. (No change.)

2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e); and

3. (No change.)

19:41-9.20 Fees for services provided to other governmental bodies

(a) Whenever the Commission or Division is authorized by law to provide services to any State, county or municipal department, board, bureau, commission, authority or agency, and to receive compensation for the performance of such services, the Commission shall assess fees for the cost and expense of providing these services as follows:

1. Payment for the efforts of the Commission and the Division on matters directly related to other governmental bodies at hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e); and

2. (No change.)

(a)

CASINO CONTROL COMMISSION

Casino Service Industries
General Provisions

Adopted Amendment: N.J.A.C. 19:43-1.3

Proposed: April 6, 1992 at 24 N.J.R. 1249(a).
Adopted: May 21, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: May 22, 1992 as R.1992 d.257, **without change.**

Authority: N.J.S.A. 5:12-70(a) and 92.

Effective Date: June 15, 1992.
Expiration Date: April 27, 1994.

Summary of Public Comments and Agency Responses:

Comments stating general support of the proposal were submitted by the Division of Gaming Enforcement, Bally's Park Place Casino Hotel and Tower, and the Sands Hotel, Casino and Country Club.

Full text of the adoption follows:

19:43-1.3 Standards for qualification

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

(d) Any enterprise directed to file an application for a casino service industry license pursuant to subsections 92(c) and (d) of the Act may request permission from the Commission to submit a modified form of such application. The Commission, in its discretion, may permit such modification if the enterprise can demonstrate to the Commission's satisfaction that securities issued by it are listed, or are approved for listing upon notice of issuance, on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers' Automated Quotation system (NASDAQ) National Market system.

(e) (No change.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Accounting Controls Within the Cashiers' Cage
Jackpot Payouts of Cash or Slot Tokens That Are Not Paid Directly From the Slot Machine

Adopted Amendments: N.J.A.C. 19:45-1.15 and 1.40

Proposed: March 16, 1992 at 24 N.J.R. 932(a).
Adopted: May 21, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: May 22, 1992 as R.1992 d.258, **without change.**

Authority: N.J.S.A. 5:12-63(c) and 70(f).

Effective Date: June 15, 1992.
Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Response:

COMMENT: Sands Hotel and Casino, the Casino Association of New Jersey, and the Division of Gaming Enforcement support the proposed amendments, as published.

RESPONSE: Accepted.

Full text of the adoption follows:

19:45-1.15 Accounting controls within the cashiers' cage

(a) (No change.)

(b) 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, the following:

i.-xi. (No change.)

xii. Receive Voucher forms in accordance with N.J.A.C. 19:45-1.9A for the processing of travel expense reimbursements;

xiii. Exchange Slot Counter Checks in accordance with N.J.A.C. 19:45-1.25A; and

xiv. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40.

2. Check cashiers shall not have access to cash, gaming chips and plaques and such cashiers' functions shall be, but are not limited to, the following:

i.-vii. (No change.)

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, the following:

i.-v. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall be, but are not limited to, the following:

i. Receive cash, cash equivalents, issuance copies of Slot Counter Checks, 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.-vi. (No change.)

5. Master coin bank cashiers' functions shall be, but are not limited to, the following:

i.-ii. (No change.)

iii. Provide slot cashiers with currency, coin and slot tokens in exchange for proper documentation;

iv. Prepare the daily bank deposit of excess cash and coin; and

v. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40.

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

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 or slot tokens to be exchanged 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.

(b) Jackpot payout slips shall be serially prenumbered forms, each series of which shall be used in sequential order, and the series of numbers of all jackpot payout slips received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department. All original and duplicate void jackpot payout slips shall be marked "VOID" and shall require the signature of the preparer. Notwithstanding the above, a serially prenumbered combined jackpot payout hopper fill form may be utilized in conjunction with N.J.A.C. 19:45-1.41(b), as approved by the Commission, provided that the combined form shall be used in a manner which otherwise complies with the procedures and requirements established by this section.

(c) For establishments in which jackpot payout slips are manually prepared, the following procedures and requirements shall be observed:

1. Each series of jackpot payout slips shall be a three-part form, at a minimum, and shall be inserted in a locked dispenser that will permit an individual slip in the series and its copies to be written upon simultaneously while still locked in the dispenser, and that will discharge the original and duplicate while the triplicate remains in a continuous, unbroken form in the dispenser; and

2. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of jackpot payout slips, placing jackpot payout slips in the dispensers, and removing from the dispensers each day the triplicates remaining therein. These employees shall have no incompatible functions.

(d) For establishments in which jackpot payout slips are computer prepared, each series of jackpot payout slips shall be a two-part form, at a minimum, and shall be inserted in a printer that will: simultaneously print an original and a duplicate and store, in a machine-readable form, all information printed on the original and duplicate; and discharge the original and duplicate. The stored data shall not be susceptible to change or removal by any personnel after preparation of a jackpot payout slip.

(e) On originals, duplicates, triplicates, or in stored data, the preparer shall record, at a minimum, the following information:

1.-4. (No change.)

5. The serial number of the casino check, if applicable;

6. The location from which the amount is to be paid; and

7. The signature or, if computer prepared, identification code of the preparer.

(f) (No change.)

(g) All coin or currency 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; or

2. Disbursed by a slot cashier, general cashier or master coin bank cashier to a slot attendant or slot supervisor, and if the manual jackpot is $1,200 or more, to a slot supervisor who shall transport the coin, currency or casino check directly to the patron.

(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. (No change.)

2. The duplicate:

i. The slot cashier, or general cashier or master coin bank cashier upon preparation;

ii.-iv. (No change.)

(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.

(j) At the end of each gaming day, at a minimum, the original and duplicate of the jackpot payout slip 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 shall be forwarded to the accounting department for agreement with the triplicate or stored data or, if prepared in the master coin bank, the master coin bank cashier shall forward the original directly to the accounting department for agreement with the triplicate or stored data;

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. The duplicate jackpot payout slip shall be forwarded directly to the accounting department for recording on the Slot Win Sheet, agreement with the meter reading stored on the Slot Meter Sheet, and agreement with the triplicate or stored data.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedure for Filling Payout Reserve Containers of Slot Machines

Adopted Amendment: N.J.A.C. 19:45-1.41

Proposed: October 7, 1991 at 23 N.J.R. 2921(a).

Adopted: May 21, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: May 22, 1992 as R.1992 d.255, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f) and (m), 99(a)(10) and (11).

Effective Date: June 15, 1992.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Harrah's Casino Hotel indicated that it supported the proposed amendment. The Division of Gaming Enforcement indicated that it also supported the proposed amendment, because it would expedite hopper fills without compromising accounting and internal controls or slot booth transactions.

RESPONSE: Accepted.

COMMENT: The Casino Association of New Jersey, TropWorld Casino and Entertainment Resort and the Sands Hotel, Casino and Country Club (Sands) supported the proposed amendment, but indicated that, in their opinion, proposed new paragraph (e)7, which would require "the name and identification code of the person requesting coins to fill the hopper fill," is unnecessary.

RESPONSE: Rejected. The Commission disagrees with the comments that paragraph (e)7 is unnecessary. The name or identification code of the person requesting the hopper fill is specifically required in order to maintain the integrity of the hopper fill process, by preventing unnecessary or possibly fraudulent hopper fill requests.

COMMENT: Sands and the Casino Association indicated that the proposed amendment should be broader, and should permit any "mechanical or electronic device as approved by the Commission" to trigger the process of generating a Hopper Fill Slip.

RESPONSE: Rejected. Existing regulations already permit hopper fills to be triggered by electronic or mechanical means if appropriate internal controls have been approved. This proposal simply addresses the requirements and procedures for the generation of a hopper fill slip once the hopper fill request has been made, whether electronically, mechanically or manually.

Summary of Agency-Initiated Change:

The word "name" has been changed to "signature" in proposed N.J.A.C. 19:45-1.41(e)7. This minor substantive change was made to conform the language in paragraph (e)7 with similar language in paragraph (e)6.

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

19:45-1.41 Procedure for filling payout reserve containers of slot machines

(a) Whenever a slot supervisor, attendant or mechanic requests that the payout reserve container ("Hopper") of a slot machine be filled, a Hopper Fill Slip ("Hopper Fills") shall be prepared, in accordance with procedures approved by the Commission.

(b) Hopper Fills shall be serially prenumbered forms, each series of Hopper Fills shall be used in sequential order, and the series numbers of all Hopper Fills received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department. All originals and duplicate void Hopper Fills shall be marked "VOID" and shall require the signature of the slot booth cashier ("Slot Cashier"). Notwithstanding the above, a serially prenumbered combined Jackpot Payout/Hopper Fill form may be utilized in conjunction with N.J.A.C. 19:45-1.40(b), as approved by

the Commission, provided that the combined form shall be used in a manner which otherwise complies with the procedures and requirements established by this section.

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

(e) On originals, duplicates and triplicates, or in stored data, the following information shall be recorded:

1.-4. (No change.)

5. The location from which the coins are distributed;

6. The signature and, if computer prepared, the identification code of the slot cashier; and

7. The *[name]* ***signature*** or identification code of the person requesting coins to fill the hopper.

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

(j) Upon meeting the signature requirements as described in (i)1 and 2 above, the security department member shall maintain and control the duplicate and the slot cashier shall maintain and control the original.

(k) (No change.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Baccarat and Minibaccarat Tables; Physical Characteristics
Adopted Amendment: N.J.A.C. 19:46-1.12

Proposed: February 18, 1992 at 24 N.J.R. 568(a).

Adopted: May 21, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: May 22, 1992 as R.1992 d.259, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30).

Authority: N.J.S.A. 5:12-63(c), 69, and 70(f).

Effective Date: June 15, 1992.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement supports the proposed amendment, as published.

RESPONSE: Accepted.

COMMENT: Resorts International Hotel, Inc. generally supports the proposed amendment; however, Resorts currently has minibaccarat tables which deviate slightly from the published size dimensions.

RESPONSE: Since the deviation is so minor, the language of the rule has been modified upon adoption to accommodate the size dimensions of Resorts' minibaccarat tables. This minor change will accommodate Resorts' concerns and still provide minimum size dimensions which insure security and integrity over gaming operations.

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

19:46-1.12 Baccarat and minibaccarat tables; physical characteristics

(a) Baccarat-Punto Banco shall be played on a table having numbered places 10 to 14 seated players. The cloth covering the table shall have imprinted thereon the name of the casino and shall be marked in a manner similar to that depicted in the following diagram.

Editor's Note: A diagram for an acceptable baccarat table was adopted with these rules but is not reproduced herein. Information on this diagram may be obtained from the Casino Control Commission, Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey 08401.

(b) (No change.)

(c) Minibaccarat shall be played at a table having on one side places for the participants, and on the opposite side a place for the dealer.

1. (No change.)

2. The minibaccarat layout shall have specific areas designated for the placement of wagers on the "Banker's Hand," "Player's Hand" and "Tie Hand." Each table may have a maximum of nine areas for the players at the table with each area being numbered.

3. The following inscriptions shall appear on the cloth covering of the minibaccarat table:

i. Tie bets pay 8 to 1;

ii. Numbered boxes that correspond to the seat numbers for the purpose of marking vigorish; and

iii. (No change.)

4. If marker buttons are used for the purpose of marking vigorish, these marker buttons shall be placed in the table inventory float container or in a separate rack designed for the purpose of storing marker buttons and such rack shall be placed in front of the table inventory float container during gaming activity.

5. Each minibaccarat table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission. (AGENCY NOTE: The minibaccarat table diagram appearing at N.J.A.C. 19:46-1.12(c) is proposed for deletion but is not reproduced herein.)

6. The dimensions of a minibaccarat table, at its longest and widest points, shall comply with the following specifications:

i. A minibaccarat table with six or seven betting areas shall be at least *[80½]* ***79*** inches long and *[46]* ***44*** inches wide; or

ii. A minibaccarat table with eight or nine betting areas shall be at least 90¾ inches long and 68 inches wide.

(b)

CASINO CONTROL COMMISSION

Temporary Adoption of Amendments
Gaming Equipment; Rules of the Games
Blackjack
Tech Art of New Jersey MAXTime card reader device

Authority: N.J.S.A. 5:12-69(e), 70(f) and 100(e).

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments concerning the game of blackjack and the use of the MAXTime card reader device should be adopted on a permanent basis. The experiment shall be conducted in accordance with temporary rules which will be posted in each casino participating in the experiment and will also be available from the Commission upon request.

Specifically, this test would permit Trump Plaza Hotel and Casino and Bally's Park Place, Inc. and any other casino who receives the necessary approvals to install the card reader device on a limited number of blackjack tables, to use the device to determine if the dealer has blackjack prior to dealing any additional cards to a player, subject to the terms and conditions of the experiment established by the Commission. The test will begin on or after June 23, 1992, on a specific date to be determined by the Commission, which date will be posted in each casino participating in the experiment and which will also be available from the Commission upon request. This experiment would continue for the maximum period of time permissible under N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission or any of the participating licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful in the judgment of the Commission, the Commission will propose them for permanent adoption in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL PROTECTION AND ENERGY POLICY AND PLANNING

Notice of Action on Petition for Rulemaking N.J.A.C. 7:29-1.4(a)5

Petitioner: Township of Manalapan, Monmouth County, New Jersey.

Authority: N.J.S.A. 13:1D-1 et seq. and 13:1G-1 et seq.

Take notice that on April 20, 1992 the Department of Environmental Protection and Energy (Department) received a petition for rulemaking by the Township of Manalapan, Monmouth County, New Jersey, requesting that the Department promulgate reasonable rules and regulations respecting noise levels and noise control pertaining to motor vehicle race tracks in the State. A notice of receipt of the petition was published in the New Jersey Register on May 18, 1992 at 24 N.J.R. 1908(b).

Petitioner states that there is a motor vehicle race track located in an adjacent municipality near the Manalapan border, which generates noise heard in neighborhoods of Manalapan Township. The Department is investigating this condition as follows:

1. Conducting a survey of residents living in the immediate area of the motor vehicle race track;
2. Conducting investigations to quantify the noise levels at various locations near the motor vehicle race track; and
3. Reviewing activities conducted at the motor vehicle race track, and correlating these activities with noise levels.

The Manalapan Township petition incorporates, and is substantially identical to, a petition submitted by the Township of Waterford on September 17, 1991 (see 24 N.J.R. 304(b)). Accordingly, the Department is considering both petitions together, and will act upon them simultaneously.

The Department is aware that motor vehicle race track noise is of serious concern to many New Jersey residents. A public hearing on "Shaping Noise Control for the 1990's" conducted by the New Jersey Noise Control Council on February 13, 1992 elicited several comments regarding the problem of motor vehicle race track noise. In March and April, 1992 the Department received 112 telephone complaints about race track noise, primarily from residents of Manalapan and Waterford Townships, and over 100 letters from Manalapan residents requesting that the Department take immediate action to curb noise emanating from a nearby motor vehicle race track.

Because of the strong public interest in the issue of motor vehicle race track noise, the New Jersey Noise Control Council will conduct a hearing on the issue of motor vehicle race track noise. The hearing will be held in July, 1992. The Department expects that testimony presented at the Noise Control Council hearing will be valuable in the Department's deliberations, and therefore will defer its final action on both the Township of Waterford petition and the Township of Manalapan petition until after the public hearing. The Department expects to act on both petitions by August 31, 1992.

The Department has mailed a copy of this notice to both the Township of Waterford and the Township of Manalapan, as required by N.J.A.C. 1:30-3.6.

(b)

DIVISION OF PARKS AND FORESTRY

Notice of Public Hearing
Proposed Easement of Lands Comprising Part of Delaware and Raritan Canal State Park

Take notice that the State of New Jersey, Department of Environmental Protection and Energy by the Division of Parks and Forestry, will hold a **public hearing** to seek comments on the proposed easements on the following State-owned Delaware and Raritan Canal State Park lands to construct a pedestrian bridge and waterline to service the Lambertville Station and to provide natural gas service to an adjacent residence.

Easement No. 1

All that certain land at Delaware and Raritan Canal State Park containing approximately 820 square feet designated as a portion of Block 1043, Lot 3 on the current Tax Map of the City of Lambertville, County of Hunterdon, State of New Jersey appraised at $400.00. This easement is required to provide for an extension of a public water supply pipeline in conjunction with the construction of a pedestrian bridge.

Easement No. 2

All that certain land at the Delaware and Raritan Canal State Park containing approximately 780.09 square feet designated as a portion of Block 5, Lot 100 on the current tax map in the Borough of Stockton, County of Hunterdon, State of New Jersey appraised at $500.00, to provide natural gas easement to adjacent landowner N/F Mr. Carl R. Cathers.

The **easement documents** will be available for review Monday through Friday between the hours of 9:00 A.M. to 4:00 P.M. at the Delaware and Raritan Canal State Park Office located on Canal Road, Somerset, New Jersey.

The proposed easement lands and adjacent State-owned lands serve as recreational lands for active and passive public use. These easements do not interfere with or affect the use of State-owned lands for this stated purpose.

The **public hearing** will be held on:

Thursday, July 16, 1992 at 10:00 A.M.
in the D & R Canal Commission Office
Route 29
Stockton, New Jersey 08559-0539

Persons wishing to make oral presentations are asked to limit their comments to a three to five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing record will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until July 23, 1992 to:

Gregory A. Marshall, Director
Division of Parks and Forestry
Department of Environmental Protection and Energy
CN 404
Trenton, New Jersey 08625

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast 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 Northeast Water Quality Management (WQM) Plan. This amendment proposal was submitted by Chatham Township. This proposed amendment is for the Chatham Township Wastewater Management Plan (WMP). The WMP proposes expansion of the Chatham Township Sewage Treatment Plant (STP) from a design capacity of 0.75 million gallons per day (mgd) to 1.0 mgd and delineates the expanded sewer service area to this STP. The WMP delineates the expanded sewer service area to the Chatham Glen STP and specifies expansion of the STP to 0.155 mgd. In addition, the WMP delineates the expanded sewer service area to the Madison—Chatham Joint Meeting STP located in Chatham Borough.

This notice is being given to inform the public that a nonadversarial public hearing will be held by the New Jersey Department of Environmental Protection and Energy (NJDEPE) on the above mentioned plan amendment. The hearing will be held on Thursday, July 23, 1992, at 7:00 P.M. in the Chatham Municipal Building, 58 Meyersville Road, Chatham, New Jersey. All information dealing with the aforesaid WQM

Plan and the proposed amendment is located at the Office of Municipal Clerk, Chatham Municipal Building and at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 9:00 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Chatham Municipal Building at (201) 635-4600 or the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel at the NJDEPE address cited above with a copy sent to Mr. Kenneth Hetrick, Chatham Township Administrator, at the Chatham Township address cited above. All comments must be submitted by Friday, August 7, 1992. 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.

(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 comment on a proposed amendment to the Monmouth County Water Quality Management (WQM) Plan. The amendment request, submitted by the Township of Holmdel, would add the site of AT&T-Bell Laboratories to the sewer service area of 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. One (NJPDES Permit NJ0000477), treats an average flow of 0.095 MGD of sanitary wastewater, the second (NJPDES Permit NJ0000485), treats an average flow of 0.125 MGD of laboratory wastewater. The surface water discharges from both of these facilities to Hop Brook will be eliminated. The laboratory waste water 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.

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 John Wadington, Holmdel Township Clerk, Box 410, 4 Crawford Corner Road, Holmdel, New Jersey 07733-0410. 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 to close 15 days after the public hearing.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Ocean 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 Ocean County Water Quality Management (WQM) Plan. An amendment has been proposed by the Jackson Township Municipal Utilities Authority (JTMUA). 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. NJ0052345. The method of discharge, spray irrigation, will not change.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEPE, Office of Regulatory Policy, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the proposed amendment to Mr. Alan Avery, Ocean County Planning Board, at the address cited above. A copy of the comments should be sent to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. All comments must be submitted within 30 days of the date of this notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment, which was proposed by the Gloucester County Utilities Authority (GCUA), would adopt the Logan Township Municipal Utilities Authority (LTMUA) Wastewater Management Plan (WMP). This WMP specifies a future wastewater planning flow to the LTMUA sewage treatment plant (STP) of 3.08 million gallons per day (MGD). The WMP also proposes additional portions of Logan Township to be sewered by that facility. In addition, the WMP identifies a ground water discharge of 0.072 MGD to service the Logan Asphalt Plant. Those areas of Logan Township not designated as sewer service area will remain as individual on-site ground water disposal service area of less than 2,000 gallons per day. Adoption of this WMP will update and correct the Tri-County WQM Plan mapping for this region by removing areas shown as future sewer service areas which are not presently served or part of this proposal. However, the GCUA is presently preparing a regional WMP for those portions of its district within the Unconsolidated Region which will address these areas.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-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, 3rd 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 proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. James G. Coe, Vice President, Killam Associates, Salem Industrial Park, Building 9, Route 22 East, P.O. Box 463, Whitehouse, New Jersey 08888. 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 and must be submitted within 30 days of the date of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Lower Delaware 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 Lower Delaware Water Quality Management (WQM) Plan. This amendment was proposed by the Landis Sewerage Authority (LSA) on behalf of Cumberland County College (CCC). The amendment would expand the sewer service area of the LSA to include those portions of the CCC campus located within the City of Millville. Those portions of the CCC campus located within the City of Vineland are already within the sewer service area of the LSA but are not presently receiving sewer service. The entire college site has a projected wastewater flow of 11,500 gallons per day.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Delaware WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 3rd Floor, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above with a copy sent to Mr. William Goelzer, Executive Director, Landis Sewerage Authority, 1776 S. Mill Road, Vineland, New Jersey 08360. All comments must be submitted within 10 working 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 ten working days 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 to close 15 days after the public hearing.

HUMAN SERVICES

(b)

NEW JERSEY COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Notice of Availability of Grant Funds

Technical Assistance for Adult Education Programs

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Commission for the Blind and Visually Impaired announces the availability of the following grant program funds.

A. Name of program: Technical Assistance for Adult Education Programs.

B. Purpose: To increase the number of persons who are blind and visually impaired in employment by increasing their educational and literacy opportunities by accessing, developing and using local adult education programs throughout the State.

C. Amount of available funding for the program: A total of $150,000 for each of three years. It is anticipated that two or three awards will be given with the awards ranging from $50,000 to $75,000 per year.

D. Organizations which may apply for funding under this program: Profit or not-for-profit organizations, agencies, institutions and schools.

E. Qualifications needed by an applicant to be considered for funding: An applicant needs to be capable of providing technical assistance to adult education programs, knowledge of adult education, experience with students who are disabled, knowledge or ability to become knowledgeable of adaptive equipment, aids, and materials for persons who are blind or visually impaired, ability to modify or adapt curriculum for students who are disabled. Experience with ESL and/or bi-lingual, GED and basic literacy programs is preferred. Preference will be given to those applicants who have previous experience with blind adults.

F. Procedure for eligible organizations to apply: RFP available as of June 22, 1992 from the address indicated below or by telephone.

G. Address to which applications must be submitted:
Program Development/Contract Unit
New Jersey Commission for the Blind and Visually Impaired
153 Halsey Street, PO Box 47017
Newark, New Jersey 07101
(201) 648-4799 or (201) 648-2899

H. Deadline by which applications must be submitted: August 7, 1992.

I. Date the applicant is to be notified of acceptance or rejection: September 4, 1992.

(c)

NEW JERSEY COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Notice of Availability of Grant Funds

Private Industry Outreach Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Commission for the Blind and Visually Impaired announces the availability of the following grant program funds.

A. Name of program: Private Industry Outreach Program.

B. Purpose: A Statewide effort to increase employment of adults who are blind by intensively marketing their abilities to private business concerns through a development of a sales/marketing campaign.

C. Amount of available funding for the program: $150,000 for a one year non-renewable contract.

D. Organizations which may apply for funding under this program: Profit or not-for-profit agencies, organizations businesses, companies, or consulting firms.

E. Qualifications needed by an applicant to be considered for funding: Experience with developing and carrying out a sales/marketing campaign including the development of sales presentations and materials, access to and knowledge of the business and industry community in New Jersey.

F. Procedure for eligible organizations to apply: RFP available as of June 29, 1992 from the address indicated below or by telephone.

G. Address to which applications must be submitted:
Program Development/Contract Unit
New Jersey Commission for the Blind and Visually Impaired
153 Halsey Street, PO Box 47017
Newark, NJ 07101
(201) 648-4799 or (201) 648-2899

H. Deadline by which applications must be submitted: August 14, 1992.

I. Date the applicant is to be notified of acceptance or rejection: September 4, 1992.

OTHER AGENCIES

(a)

WATERFRONT COMMISSION OF NEW YORK HARBOR

Notice of Appending of Rules and Regulations of the Waterfront Commission of New York Harbor to Title 19 of the New Jersey Administrative Code

Take notice that, pursuant to a request made to the Office of Administrative Law by the Waterfront Commission of New York Harbor, a body corporate and politic and an instrumentality of the States of New Jersey and New York, duly constituted by the Waterfront Commission Compact, an enactment of the States of New Jersey and New York (see N.J.S.A. 32:23-1 et seq. and McKinney's Unconsolidated Laws §§9801 et seq., respectively) approved by the Congress of the United States (Pub.L. 252, c.407, 83rd Cong. 1st Session), the Rules and Regulations of the Waterfront Commission of New York Harbor will be published in the New Jersey Administrative Code as an Appendix to Title 19, Other Agencies.

Take further notice that the Commission's Rules and Regulations are not promulgated in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and are not codified in accordance with the standards of the Office of Administrative Law. The rules and regulations are being published in the form in which they are published by the Department of State of the State of New York in Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York (21 Miscellaneous (A)), with the exception of minor format changes conforming to the style standards of the New Jersey Administrative Code.

Full text of the Rules and Regulations of the Waterfront Commission of New York harbor will be published in the June update to Title 19 of the New Jersey Administrative Code.

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 May 4, 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 APRIL 20, 1992

NEXT UPDATE: SUPPLEMENT MAY 18, 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. 1855 and 1980	June 17, 1991
23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 2079 and 2204	July 15, 1991
23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 2561 and 2806	September 3, 1991
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

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
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

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	Uniform administrative procedure	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
1:1-10.6	Discovery in conference hearings	24 N.J.R. 675(a)	R.1992 d.212	24 N.J.R. 1873(a)
1:6, 1:7, 1:10, 1:10A, 1:11, 1:13, 1:20, 1:21	Special hearing rules	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
1:6A-9.2, 14.1, 14.4, 18.1, 18.3, 18.5	Special Education Program	24 N.J.R. 1936(a)		
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
1:31	Organization of OAL	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
	Most recent update to Title 1: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
AGRICULTURE—TITLE 2				
2:22	Insect control	24 N.J.R. 1662(a)		
2:24-4	Volunteer Inspector Program: noncommercial apiaries and bees	24 N.J.R. 1140(a)		
2:32	Sire Stakes Program	24 N.J.R. 1142(a)	R.1992 d.239	24 N.J.R. 2241(a)
2:50	Milk producers	24 N.J.R. 893(a)	R.1992 d.229	24 N.J.R. 2048(a)
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing nonagricultural uses of enrolled lands	24 N.J.R. 893(b)		
2:76-6.15	Farmland Preservation Program: pre-existing nonagricultural uses on lands permanently deed restricted	24 N.J.R. 896(a)		
	Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)			
BANKING—TITLE 3				
3:1-6.6	Entity examination charges	24 N.J.R. 1420(a)	R.1992 d.250	24 N.J.R. 2242(a)
3:1-16.1	Mortgage processing: administrative change regarding definition of "receipt"	_____	_____	24 N.J.R. 1791(a)
3:1-19	Consumer checking accounts	24 N.J.R. 1662(b)		
3:4-1	Capital requirements for depository institutions	24 N.J.R. 1665(a)		
3:12-1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1–5.5, 5.7	Qualified corporations as fiscal or transfer agents	24 N.J.R. 675(b)	R.1992 d.242	24 N.J.R. 2242(b)
3:23	Department license fees	24 N.J.R. 1667(a)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)	R.1992 d.226	24 N.J.R. 2048(b)
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period	23 N.J.R. 3686(c)		
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 1992-4 (supplement April 20, 1992)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1, 2, 5, 7, 9, 10	Preproposal regarding readoption of chapters	24 N.J.R. 1667(b)		
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
	Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.3	Maintenance of hotels and multiple dwellings: administrative correction regarding completion of inspections by municipality or county	———	———	24 N.J.R. 1791(b)
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)		
5:13	Limited dividend and nonprofit housing corporations and associations	24 N.J.R. 1668(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, 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)		
5:18-3	State Fire Prevention Code: administrative corrections	———	———	24 N.J.R. 1875(a)
5:18A-2.9, 4.6	Fire Code enforcement: conflict of interest	24 N.J.R. 678(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
5:22-1, 2	Rehabilitation of one and two-unit residences and multiple dwellings: exemptions from taxation	24 N.J.R. 1669(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)		
5:23-2.15, 2.18, 2.20, 3.14	Uniform Construction Code: special inspections	24 N.J.R. 1147(a)	R.1992 d.244	24 N.J.R. 2243(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)		
5:23-3.10, 5	UCC: enforcing agency classification; licensing of enforcement officials	24 N.J.R. 1446(a)		
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-3.21	Uniform Construction Code: one and two-family dwellings in flood zones	24 N.J.R. 680(a)	R.1992 d.208	24 N.J.R. 1879(a)
5:23-4.3	Elevator Safety Subcode: enforcement	24 N.J.R. 1148(a)	R.1992 d.245	24 N.J.R. 2244(a)
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)	R.1992 d.230	24 N.J.R. 2052(a)
5:23-4.5, 4.11, 4.14	UCC enforcement: conflict of interest	24 N.J.R. 678(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)		
5:23-4.20	Departmental fees: administrative correction regarding electrical fixtures and receptacles	———	———	24 N.J.R. 1879(b)
5:23-5.4	Uniform Construction Code: enforcement interns	24 N.J.R. 1669(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:24-3	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)		
5:25-2.5, 5.2, 5.4, 5.5	New home warranty and builders' registration: violations and penalties; claim eligibility	24 N.J.R. 1149(a)	R.1992 d.246	24 N.J.R. 2244(b)
5:26-9.1, 9.2	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:70	Congregate Housing Services Program	24 N.J.R. 513(a)	R.1992 d.214	24 N.J.R. 1880(a)
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)	R.1992 d.216	24 N.J.R. 1880(b)
5:100-2.3, 2.4, 2.5	Ombudsman for Institutionalized Elderly: resident advance directives	24 N.J.R. 1455(a)		
5:100-2.3, 2.4, 2.5	Ombudsman for Institutionalized Elderly: extension of comment period on resident advance directives	24 N.J.R. 1847(a)		
	Most recent update to Title 5: TRANSMITTAL 1992-4 (supplement April 20, 1992)			
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
EDUCATION—TITLE 6				
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-3.4	Tuition rates for county special services schools: administrative correction	———	———	24 N.J.R. 1882(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 898(a)		
6:22-6.1	Accommodation of pupils in substandard school facilities: administrative correction	_____	_____	24 N.J.R. 1882(b)
6:26	Establishment of pupil assistance committees	24 N.J.R. 1670(a)		
6:28	Special education	24 N.J.R. 1150(a)		
6:46	Private vocational schools	24 N.J.R. 514(a)	R.1992 d.203	24 N.J.R. 1793(a)
6:46	Private vocational schools: correction to chapter expiration date	_____	_____	24 N.J.R. 1883(a)
6:53	Vocational education safety and health standards	24 N.J.R. 516(a)	R.1992 d.204	24 N.J.R. 1793(b)
6:79-1	Child nutrition programs (recodify to 6:20-9)	24 N.J.R. 324(a)	R.1992 d.202	24 N.J.R. 1791(c)
	Most recent update to Title 6: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1A	Water supply loan programs	24 N.J.R. 707(a)	R.1992 d.252	24 N.J.R. 2245(a)
7:1F	Industrial Survey Project	24 N.J.R. 717(a)	R.1992 d.209	24 N.J.R. 1883(b)
7:1H	County environmental health standards: request for public input	23 N.J.R. 2237(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(a)		
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: waiver of sunset provision of Executive Order No. 66(1978)	24 N.J.R. 912(a)		
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	_____	_____	24 N.J.R. 2252(a)
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)	R.1992 d.219	24 N.J.R. 1884(a)
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2,. 12.2–12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)	R.1992 d.238	24 N.J.R. 2053(a)
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)	R.1992 d.237	24 N.J.R. 2056(a)
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System: change of public hearing and extension of comment period	24 N.J.R. 344(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)		
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
7:25-5	1992-93 Game Code	24 N.J.R. 1847(b)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-18.1	Filleting of flatfish at sea	24 N.J.R. 1456(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		
7:26-1.4, 2.13, 6.3, 6.8	Solid waste management: scrap metal shredding residue, animal manure, interdistrict and intradistrict flow	24 N.J.R. 1995(a)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions	23 N.J.R. 2458(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-4.3	Resource recovery facilities: administrative correction regarding compliance monitoring fees	_____	_____	24 N.J.R. 2058(a)
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)		
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4.6	Solid waste program fees: extension of comment period	24 N.J.R. 1458(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies: reopening of comment period	24 N.J.R. 2002(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26-8.16	Hazardous constituents in waste streams: reopening of comment period	24 N.J.R. 2003(a)		
7:26B	Environmental Cleanup Responsibility Act rules: extension of comment period	24 N.J.R. 1281(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
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)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-16.1, 16.3, 16.4, 16.5	Air pollution by volatile organic compounds: administrative corrections	_____	_____	24 N.J.R. 1889(a)
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:50-4.70	Pinelands Comprehensive Management Plan: administrative correction	_____	_____	24 N.J.R. 1891(a)
	Most recent update to Title 7: TRANSMITTAL 1992-4 (supplement April 20, 1992)			
HEALTH—TITLE 8				
8:21A	Good drug manufacturing practices; tamper-resistant packaging for over-the-counter products	24 N.J.R. 2003(c)		
8:24-1.3, 2.5, 3.3, 13.2	Retail food establishments: "community residence"; eggs and egg dishes	24 N.J.R. 915(a)		
8:31A-7.4, 7.5	SHARE Hospital system: rebasing and Minimum Base Period Challenge	24 N.J.R. 734(b)	R.1992 d.249	24 N.J.R. 2255(a)
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:31C-1.5, 1.6	Residential alcoholism treatment facilities: target occupancy penalty	24 N.J.R. 1463(a)		
8:33C	Regionalized perinatal services: Certificate of Need criteria and standards	24 N.J.R. 2005(a)		
8:33H	Long-term care services: Certificate of Need policy manual	24 N.J.R. 2014(a)		
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:35A	Maternal and child health consortia: licensing standards	24 N.J.R. 2027(a)		
8:42	Home health agencies: standards for licensure	24 N.J.R. 2031(a)		
8:43G-19	Hospital licensing standards: obstetrics	24 N.J.R. 2045(a)		
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)	R.1992 d.215	24 N.J.R. 1891(b)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: clarification of proposal summary regarding reporting of HIV infection	24 N.J.R. 59(a)		
8:65-2.5	Controlled Dangerous Substances: physical security controls	24 N.J.R. 174(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)	R.1992 d.241	24 N.J.R. 2256(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)	R.1992 d.205	24 N.J.R. 1795(a)
8:65-10.3	Controlled dangerous substances: correction regarding anabolic steroids	_____	_____	24 N.J.R. 2256(b)
8:65-10.8	Controlled dangerous substances: exempt chemical preparations	_____	_____	24 N.J.R. 1895(a)
8:71	Interchangeable drug products (see 23 N.J.R. 3336(a); 24 N.J.R. 145(a))	23 N.J.R. 1509(a)	R.1992 d.222	24 N.J.R. 1897(b)
8:71	Interchangeable drug products (see 23 N.J.R. 3334(b); 24 N.J.R. 144(b))	23 N.J.R. 2610(a)	R.1992 d.135	24 N.J.R. 948(a)
8:71	Interchangeable drug products (see 24 N.J.R. 145(b))	23 N.J.R. 3258(a)	R.1992 d.136	24 N.J.R. 948(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)	R.1992 d.137	24 N.J.R. 949(a)
8:71	Interchangeable drug products (see 24 N.J.R. 947(b))	24 N.J.R. 61(a)	R.1992 d.221	24 N.J.R. 1897(a)
8:71	Interchangeable drug products	24 N.J.R. 735(a)	R.1992 d.220	24 N.J.R. 1896(a)
8:71	Interchangeable drug products	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products	24 N.J.R. 1674(a)		
8:100	State Health Plan	24 N.J.R. 1164(a)		
8:100-16	State Health Plan regarding Long-Term Care Services: correction to Economic Impact statement	24 N.J.R. 1675(a)		

Most recent update to Title 8: TRANSMITTAL 1992-4 (supplement April 20, 1992)

HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1, 3.2, 3.4, 3.5	Teaching university	24 N.J.R. 1464(a)		
9:9-7.2, 7.3, 7.8	NJCLASS program: family income limit, maximum loan amount, repayment	24 N.J.R. 1675(b)		
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)	R.1992 d.223	24 N.J.R. 1898(a)
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	24 N.J.R. 1859(a)		
9:16-1	Primary Care Physician and Dentist Loan Redemption Program	24 N.J.R. 1192(a)		

Most recent update to Title 9: TRANSMITTAL 1992-1 (supplement April 20, 1992)

HUMAN SERVICES—TITLE 10

10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:15B-1.2	IV-A "At Risk" Child Care Program: client eligibility income schedules	_____	_____	24 N.J.R. 2257(a)
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:35	County psychiatric facilities	24 N.J.R. 208(a)		
10:36	Patient supervision of State psychiatric hospitals	24 N.J.R. 1728(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:49	New Jersey Medicaid Program: basic requirements for recipients and providers	24 N.J.R. 1728(b)		
10:52-1.6	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:53-1.5	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:72-1.1, 3.4, 4.1	New Jersey Care: Medicaid eligibility of children	24 N.J.R. 1860(a)		
10:81-14.21	Public Assistance Manual: administrative correction concerning REACH assistance	_____	_____	24 N.J.R. 2257(b)
10:82-1.2, 1.6, 1.7, 1.10, 1.11, 2.1, 2.2, 2.3, 2.6–2.9, 2.11–2.14, 2.19, 2.20, 3.13, 3.14, 4.4, 4.5, 4.15, 5.10, 5.11	Assistance Standards Handbook: AFDC program revisions regarding Standard of Need, prospective budgeting, and AFDC-N equalization	24 N.J.R. 1194(a)	R.1992 d.261	24 N.J.R. 2258(a)
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)	Expired	
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-3.1, 3.3, 4.1	General Assistance allowance determination: household size concept	24 N.J.R. 926(a)	R.1992 d.260	24 N.J.R. 2263(a)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)		
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)		
	Most recent update to Title 10: TRANSMITTAL 1992-4 (supplement April 20, 1992)			
CORRECTIONS—TITLE 10A				
10A:1	Department administration, organization, and management	24 N.J.R. 1465(a)		
10A:5-1.3, 7	Temporary close custody	24 N.J.R. 1676(a)		
10A:10	Interjurisdictional agreements and statutes	24 N.J.R. 1939(a)		
10A:16	Medical and health services	24 N.J.R. 1677(a)		
10A:18	Inmate mail, visits, and telephone use	24 N.J.R. 1204(b)		
10A:20-4	Residential Community Release Agreement Programs: administrative correction to adoption notice	———	———	24 N.J.R. 953(a)
10A:23	Lethal injection	24 N.J.R. 1677(a)		
10A:34	Municipal and county correctional facilities	24 N.J.R. 683(a)	R.1992 d.193	24 N.J.R. 1796(a)
	Most recent update to Title 10A: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
INSURANCE—TITLE 11				
11:1-31	Surplus lines insurer eligibility	24 N.J.R. 9(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-26	Insurer's annual audited financial report	24 N.J.R. 1940(a)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:3-2	Personal automobile insurance plan	24 N.J.R. 331(a)		
11:3-3	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:3-15.6, 15.7, 15.9	Automobile insurance Buyer's Guide and Coverage Selection Form	24 N.J.R. 523(a)	R.1992 d.218	24 N.J.R. 1898(b)
11:3-20.5, App.	Automobile insurance: Excess Profits Report	24 N.J.R. 529(a)	R.1992 d.254	24 N.J.R. 2264(a)
11:3-40	Insurers required to provide automobile coverage to eligible persons	24 N.J.R. 336(a)	R.1992 d.207	24 N.J.R. 1796(b)
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.9, 1.38	Real Estate Commission: fee cap for mortgage services; transmittal of funds to lenders	24 N.J.R. 1957(a)		
11:5-1.27	Real Estate Commission: administrative correction concerning requirements for broker's licensure examination	———	———	24 N.J.R. 1799(a)
11:5-1.38–1.42	Real Estate Commission: dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3424(b)	R.1992 d.232	24 N.J.R. 2058(b)
11:5-1.38–1.42	Real Estate Commission: extension of comment period regarding dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3739(b)		
11:7	Insurance of municipal bonds	24 N.J.R. 1958(a)		
	Most recent update to Title 11: TRANSMITTAL 1992-4 (supplement April 20, 1992)			
LABOR—TITLE 12				
12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:235-9.4	Workers' Compensation: appeal procedures regarding discrimination complaint decisions	24 N.J.R. 1684(a)		

Most recent update to Title 12: TRANSMITTAL 1992-1 (supplement February 18, 1992)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

Most recent update to Title 12A: TRANSMITTAL 1992-1 (supplement February 18, 1992)

LAW AND PUBLIC SAFETY—TITLE 13

13:2-22	Alcoholic Beverage Control: licensee training and certification	24 N.J.R. 1958(b)		
13:18-6.9	Replacement license plates fee upon verification of motor vehicle liability coverage	24 N.J.R. 1467(a)	R.1992 d.263	24 N.J.R. 2283(a)
13:20-34.2, 34.3, 34.5, 34.7	License plate identifying marks	24 N.J.R. 1467(b)	R.1992 d.264	24 N.J.R. 2283(b)
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6.17	Corporate medical practice: stay of operative date regarding allowable fees for medications and health aids	———	———	24 N.J.R. 1905(a)
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)		
13:37	Certification of homemaker-home health aides: open public forum	24 N.J.R. 1861(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-3.9	Pharmaceutical practice: reciprocal registration	24 N.J.R. 553(a)	R.1992 d.235	24 N.J.R. 2062(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)		
13:40-6.1	Board of Professional Engineers and Land Surveyors: fee schedule	24 N.J.R. 1231(a)	R.1992 d.247	24 N.J.R. 2285(a)
13:41-3.2	Board of Professional Planners: fee schedule	24 N.J.R. 554(b)	R.1992 d.240	24 N.J.R. 2062(b)
13:43-3.1, 4.1	Board of Shorthand Reporting: fee schedule	24 N.J.R. 1232(a)		
13:44D-1.1, 2.1, 4.6	Public movers and warehousemen: moving vehicle requirement	24 N.J.R. 341(a)	R.1992 d.199	24 N.J.R. 1800(a)
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:44E-2.7	Chiropractic practice: referral fees	24 N.J.R. 1470(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)	R.1992 d.248	24 N.J.R. 2285(b)
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)		
13:45A-26.1, 26.2, 26.4, 26.14	Automotive dispute resolution: motor vehicles purchased or leased in State	24 N.J.R. 53(a)	R.1992 d.236	24 N.J.R. 2063(a)
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(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)		
13:70-13A.8	Thoroughbred racing: stay pending appeal of officials' decision	24 N.J.R. 555(a)		
13:70-15.1	List of racing officials: administrative correction	———	———	24 N.J.R. 2063(b)
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)	R.1992 d.200	24 N.J.R. 1800(b)
13:71-3.3	Harness racing: stewards appeal hearings	24 N.J.R. 555(b)		
13:71-3.8	Harness racing: stay pending appeal of officials' decision	24 N.J.R. 556(a)		
13:71-20.6	Harness racing: passing lane in homestretch	24 N.J.R. 686(a)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)	R.1992 d.201	24 N.J.R. 1801(a)
13:75-1.7	Violent Crimes Compensation Board: denial of compensation	24 N.J.R. 1862(a)		

Most recent update to Title 13: TRANSMITTAL 1992-4 (supplement April 20, 1992)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:0	Open Network Architecture (ONA): preproposal and public hearing regarding Board regulation of enhanced telecommunications services	23 N.J.R. 3239(a)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)	R.1992 d.224	24 N.J.R. 2063(c)
14:3-6.5	Public records	24 N.J.R. 1966(a)		
14:3-7.5	Interest rate on customer deposits	24 N.J.R. 686(b)	R.1992 d.225	24 N.J.R. 2073(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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
14:18-3.19	Cable television: interest on uncorrected billing errors	24 N.J.R. 1470(b)		
	Most recent update to Title 14: TRANSMITTAL 1991-11 (supplement December 16, 1991)			
ENERGY—TITLE 14A				
14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		
	Most recent update to Title 14A: TRANSMITTAL 1991-5 (supplement December 16, 1991)			
STATE—TITLE 15				
15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		
15:5	Division of the State Museum	24 N.J.R. 1239(a)		
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)		
	Most recent update to Title 15: TRANSMITTAL 1991-2 (supplement August 19, 1991)			
PUBLIC ADVOCATE—TITLE 15A				
	Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)			
TRANSPORTATION—TITLE 16				
16:25-1.1, 1.7, 2.1, 7A.1, 7A.3, 7A.4, 11.3	Utility accommodation	23 N.J.R. 3739(c)	R.1992 d.194	24 N.J.R. 1801(b)
16:28-1.6, 1.56	Speed limit zones along U.S. 40 in Salem, Gloucester, and Atlantic counties; and along U.S. 40 and 322 in Atlantic County	24 N.J.R. 687(a)	R.1992 d.198	24 N.J.R. 1803(a)
16:28-1.25	Speed limit zones along Route 23 in Wayne	24 N.J.R. 1688(b)		
16:28-1.113	Speed limits along Route 139 in Jersey City	24 N.J.R. 928(a)	R.1992 d.227	24 N.J.R. 2074(a)
16:28A-1.7, 1.19, 1.20, 1.46, 1.57, 1.100	Restricted parking and stopping along U.S. 9 in Cape May, Route 28 in Elizabeth, Route 29 in West Amwell, U.S. 130 in South Brunswick, U.S. 206 in Mercer County, and Route 50 in Atlantic and Cape May counties	24 N.J.R. 689(a)	R.1992 d.195	24 N.J.R. 1804(a)
16:28A-1.8	Bus stop zones along Route 10 in Parsippany-Troy Hills	24 N.J.R. 1967(a)		
16:28A-1.15, 1.54	No stopping or standing zones along Route 23 in Hardyston Township and Route 181 in Jefferson Township	24 N.J.R. 1240(a)		
16:28A-1.18	Bus stop zone along Route 27 in Rahway	24 N.J.R. 692(a)	R.1992 d.196	24 N.J.R. 1806(a)
16:28A-1.32	No stopping or standing zones along U.S. 46 in Clifton	24 N.J.R. 1689(a)		
16:28A-1.36, 1.55, 1.64, 1.73, 1.97	Restricted parking and stopping along Route 57 in Warren County, U.S. 202 in Bernardsville, Route 41 in Cherry Hill, Route 32 in South Brunswick, and U.S. 1 Business in Lawrence Township	24 N.J.R. 693(a)	R.1992 d.197	24 N.J.R. 1806(b)
16:28A-1.57	No stopping or standing zone along U.S. 206 in Lawrence Township	24 N.J.R. 929(a)	R.1992 d.228	24 N.J.R. 2074(b)
16:32-1	Designated routes for double-trailer trucks	24 N.J.R. 929(b)		
16:41-8	Repeal (see 16:41C)	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:41A	Repeal (see 16:41C)	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:41C	Roadside sign control and outdoor advertising	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:44-1.8	Renewal of contractor classification rating	24 N.J.R. 703(a)		
16:54	Licensing of aeronautical and aerospace facilities: preproposed new rules	24 N.J.R. 80(a)		
16:73	NJ TRANSIT: Reduced Fare Transportation Program for Elderly and Handicapped	24 N.J.R. 556(b)	R.1992 d.217	24 N.J.R. 1905(b)
	Most recent update to Title 16: TRANSMITTAL 1992-4 (supplement April 20, 1992)			
TREASURY-GENERAL—TITLE 17				
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)		
17:16-20.1, 20.3	State Investment Council: international government and agency obligations	24 N.J.R. 1690(a)		
17:26	Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J)	24 N.J.R. 1255(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:32-6, 7, 8	State Planning Rules: letters of clarification; consistency review of plans; Resource Planning and Management Map	24 N.J.R. 1241(a)	R.1992 d.253	24 N.J.R. 2287(a)
	Most recent update to Title 17: TRANSMITTAL 1992-3 (supplement April 20, 1992)			
TREASURY-TAXATION—TITLE 18				
18:7-4.5, 5.2	Corporation Business Tax: indebtedness and entire net worth	24 N.J.R. 175(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)	R.1992 d.231	24 N.J.R. 2074(c)
18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)		
18:35-2.11	Gross income tax refunds and homestead rebates: priorities in claims to setoff	24 N.J.R. 1967(b)		
	Most recent update to Title 18: TRANSMITTAL 1992-3 (supplement April 20, 1992)			
TITLE 19—OTHER AGENCIES				
19:4-6.28	HMDC Official Zoning Map: heavy industrial zoning	24 N.J.R. 1690(b)		
19:9-1.9	Turnpike Authority: 53-foot semitrailers	24 N.J.R. 931(a)	R.1992 d.211	24 N.J.R. 1905(c)
19:16	PERS: labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:16	Compulsory interest arbitration of labor disputes in public fire and police departments: summary of public comments and agency responses to preproposal	24 N.J.R. 704(a)		
19:25-20.8, 20.19	ELEC: legislative agent annual registration and filing fee	24 N.J.R. 1245(a)	R.1992 d.251	24 N.J.R. 2294(a)
19:25-20.8, 20.19	Legislative agent annual registration and filing fee: extension of comment period	24 N.J.R. 1692(a)		
19:65	Casino Reinvestment Development Authority: project criteria and conditions	24 N.J.R. 1692(b)		
	Most recent update to Title 19: TRANSMITTAL 1992-3 (supplement April 20, 1992)			
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:41-2.2	Surveillance of gaming operations	24 N.J.R. 1246(a)		
19:41-9.4–9,7, 9.11, 9.11A, 9.12, 9.20	Fees for services of Commission and Division of Gaming Enforcement	24 N.J.R. 1247(a)	R.1992 d.256	24 N.J.R. 2295(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)		
19:43-1.2	Determination of casino service industries	23 N.J.R. 1963(a)		
19:43-1.3	Application for casino service industry license	24 N.J.R. 1249(a)	R.1992 d.257	24 N.J.R. 2296(a)
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)		
19:45-1.1, 1.14, 1.15, 1.34	Master coin bank and coin vaults	23 N.J.R. 3085(a)	R.1992 d.233	24 N.J.R. 2078(a)
19:45-1.10, 1.11, 1.46A	Location and surveillance of automated coupon redemption machines	24 N.J.R. 1472(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)		
19:45-1.15, 1.40	Slot machine jackpot payout slips	24 N.J.R. 932(a)	R.1992 d.258	24 N.J.R. 2296(b)
19:45-1.16, 1.17, 1.36	Internal design and operation of bill changers	24 N.J.R. 1472(b)		
19:45-1.24	Refund of patron cash deposits: use of counter check as documentation	24 N.J.R. 933(a)	R.1992 d.234	24 N.J.R. 2079(a)
19:45-1.37, 1.44	Slot machines and bill changers	24 N.J.R. 58(a)	R.1992 d.210	24 N.J.R. 1906(a)
19:45-1.41	Slot machine hopper fill procedure	23 N.J.R. 2921(a)	R.1992 d.255	24 N.J.R. 2297(a)
19:46-1.7	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:46-1.12	Minibaccarat betting areas	24 N.J.R. 568(a)	R.1992 d.259	24 N.J.R. 2298(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)		
19:46-1.26	Slot machines and bill changers	24 N.J.R. 58(a)	R.1992 d.210	24 N.J.R. 1906(a)
19:46-1.27	Slot machine density	24 N.J.R. 706(a)		
19:47-2.3, 2.7	Payout odds and payment of blackjack	23 N.J.R. 1781(b)	Expired	
19:47-2.11	Splitting pairs in blackjack	24 N.J.R. 1872(a)		
19:47-5.2	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:47-8.2, 10	Game of pai gow	24 N.J.R. 558(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)

Most recent update to Title 19K: TRANSMITTAL 1992-4 (supplement April 20, 1992)

RULEMAKING IN THIS ISSUE—Continued

HUMAN SERVICES
- Commission for Blind and Visually Impaired: grant funding for Technical Assistance for Adult Education Programs ..... 2301(b)
- Commission for Blind and Visually Impaired: grant funding for Private Industry Outreach Program ..... 2301(c)

WATERFRONT COMMISSION OF NEW YORK HARBOR
- Rules and regulations of Waterfront Commission ..... 2302(a)

INDEX OF RULE PROPOSALS AND ADOPTIONS 2303

July 20 issue:
- **Proposals ..... June 19**
- **Adoptions ..... June 26**

August 3 issue:
- **Proposals ..... July 6**
- **Adoptions ..... July 13**

August 17 issue:
- **Proposals ..... July 20**
- **Adoptions ..... July 27**

September 8 issue:
- **Proposals ..... August 10**
- **Adoptions ..... August 17**

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