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NEW JERSEY REGISTER

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 15, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT NOVEMBER 19, 1990

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **February 6, 1991.** Submission and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response t 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 i 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 violatio 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, unles otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the Ne Jersey Administrative Code.

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NEW JERSEY REGISTER

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

)FFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Economic Assistance Hearings; Transmission of Cases

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

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1991-18.

Submit comments by February 6, 1991 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule requires the Division of Economic Assistance (DEA) to provide the OAL with a copy of the local agency adverse action letter whenever the DEA transmits a case to the OAL for hearing. The new rule was previously proposed at 22 N.J.R. 2389(a) on August 20, 1990. However, the OAL has decided to repropose the new rule with a change rather than to adopt it as previously proposed. In the original proposed new rule, if the DEA did not have a copy of the adverse action letter, it was required to direct the local welfare agency to provide the letter to the OAL immediately, "not later than two days before the hearing date." The OAL now believes that it must have the letter much sooner than two days before the hearing in order to insure that the letter will be included in the file sent to the presiding judge. Therefore, in the reproposal, the DEA must contact the local agency immediately and direct it to provide the OAL with a copy of the adverse action letter "not later than five days after the case is transmitted to the OAL."

Social Impact

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

Economic Impact

The proposed new rule will have no significant adverse economic impact. In order to make the deadline of not later than five days after a case is transmitted, a local welfare agency may either mail a copy of the adverse action letter to the OAL or send a copy of the letter by facsimile transmission. Thus, the proposed new rule will cause some local welfare agencies to incur additional mailing or facsimile transmission charges. The OAL estimates that this amendment will cause approximately 3,000 additional letters to be mailed or faxed annually. Since these additional costs are distributed among the 21 counties, these extra expenses should be manageable by the local welfare agencies. Since the DEA regularly transmits matters to the OAL and communicates with local welfare agencies, its obligations under this rule should not result in any additional costs.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment requires the Division of Economic Assistance or local welfare agencies to provide certain information after cases are transmitted to the OAL for hearing.

Full text of the proposal follows:

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

1:10-8.1 Local agency adverse letters

Whenever a case that is not to be processed under N.J.A.C. 1:10-12.2 is transmitted to the Office of Administrative Law for hearing, the Division of Economic Assistance shall provide to the OAL a copy of the local agency's adverse action letter if there is such a letter related to the case. If the DEA does not have the letter, it shall contact the local agency no later than the date the case was transmitted to the OAL and direct the local agency to supply the OAL with a copy of the adverse action letter no later than five days after the transmittal.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Continuing Care Retirement Communities Application for Certification

Proposed Amendment: N.J.A.C. 5:19-3.1

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-358.

Proposal Number: PRN 1991-11.

Submit comments by February 6, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Among the stated purposes of the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," P.L. 1986, c.103 (N.J.S.A. 52:27D-330 et seq.), are "requiring full disclosure of each facility's financial standing" and "establishing minimum standards concerning financial status of facilities to ensure their financial solvency." This proposed amendment would advance those purposes by requiring the inclusion in every application for certification of a facility of a financial feasibility study, prepared in accordance with Generally Accepted Accounting Principles, together with an opinion letter as to the financial feasibility of the project. This documentation would be helpful to the Department in the discharge of its obligation to determine if a proposed facility should be given the certificate of authority required for operation.

Social Impact

A proposed facility whose providers are unable to provide a financial feasibility study and opinion letter that indicate that the financial plan for the facility is sound ought not to be given a certificate of authority. By not certifying such proposed facilities, the Department would protect those who might otherwise purchase care contracts from the facility and subsequently lose their investments and be subject to other difficulties if the facility were to fail.

Economic Impact

It is unlikely that any reasonably prudent person or group contemplating the establishment of a continuing care retirement community would proceed without a financial feasibility study. In most cases, therefore, a provider would be required by this proposed amendment to share an already existing document. There would probably be additional cost for an opinion letter to the Department. On the other hand, if this requirement helps the Department to screen out even one proposed facility that has a substantial likelihood of becoming insolvent, there will be consider-

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able savings to people who might have purchased care contracts from the facility.

Regulatory Flexibility Statement

None of the 13 continuing care retirement community facilities that are either currently certified or are applying for certification have less than 100 employees, and therefore such facilities cannot be considered small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since no small businesses are affected by the rule, a Regulatory Flexibility Analysis is not required. Should small businesses be among the applicants for certification at some point in the future, the documentation required in the rule would not impose any financial burden or require the hiring of additional professionals, since the documentation required by the rule would generally also be required by a public or private lender.

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

5:19-3.1 Contents of application for certification

(a) The application for certification shall contain the following documents and information:

1.-17. (No change.)

18. A projected annual budget for the facility for the next five years, or such lesser time as the Department allows, **together with a financial feasibility study prepared according to Generally Accepted Accounting Principles, as established by the American Institute of Certified Public Accountants, which study shall include an opinion letter as to the financial feasibility of the facility**;

19.-21. (No change.)

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Garden State Scholarships
Award Amounts
Proposed Amendment: N.J.A.C. 9:7-4.4

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-26.10.

Proposal Number: PRN 1991-13.

Submit comments by February 6, 1991 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment redefines the eligibility limits for Garden State Scholars and Distinguished Scholars to qualify for additional scholarship assistance based upon their financial need. In determining the student's financial need, the current rule employs the New Jersey Eligibility Index (NJEI) ranges utilized under the need-based Tuition Aid Grant (TAG) Program but allows for qualification up to the highest TAG NJEI range for all students. The proposed amendment does not change the intent of the current rule, but provides for a table which limits eligibility based upon financial need by establishing maximum NJEI ranges relative to the cost of education within the various New Jersey college sectors.

Social Impact

The proposed amendment continues to provide the same award increments ranging from $250.00 to $1,000 as in the current schedule, but will provide for a more equitable distribution of scholarship funds when taking into consideration the financial need of students. Under the current rule, by allowing increased scholarship awards based on the highest TAG NJEI, some students who were not eligible for a need-based TAG, qualified for the additional need-based portion of the scholarship. The proposed amendment would assign need-based scholarships to students taking into consideration their cost of education and would be effective for the 1991-92 academic year.

Economic Impact

The proposed amendment would continue to provide need-based scholarship awards ranging from $250.00 to $1,000 pending approval of the Fiscal Year 1992 Budget Request.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment redefines the eligibility limits for Garden State Scholars and Distinguished Scholars to qualify for additional scholarship assistance based upon their financial need.

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

9:7-4.4 Award amounts

(a) Garden State Scholars shall receive annual awards of up to $500.00 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(h). **If sufficient funds are available,** [The] **the** award may be increased up to an additional $500.00 based upon the student's New Jersey Eligibility Index (**NJEI**) pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following [formula] **table**:

[New Jersey Eligibility Index (TAG Table)	Additional Amount of Grant
0-3499	$500
3500-highest TAG NJEI eligible for an award	250]

Additional Amount of Grant

NJEI	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. NJIT & UMDNJ
Under 1500	$500	$500	$500	$500
1500- 2499	250	500	500	500
2500- 3499	250	250	500	500
3500- 4499	250	250	250	250
4500- 5499	250	250	250	250
5500- 6499	0	250	250	250
6500- 7499	0	250	250	250
7500- 8499	0	0	250	250
8500- 9499	0	0	250	250
9500-10499	0	0	250	0
Over 10499	0	0	0	0

(b) Distinguished Garden State Scholars shall receive annual awards of up to $1,000 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(c), (d), and (e). **If sufficient funds are available,** [The] **the** award may be increased up to an additional $1,000 based upon the student's New Jersey Eligibility Index (**NJEI**) pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following [formula] **table**:

[New Jersey Eligibility Index (TAG Table)	Additional Amount of Grant
0-3499	$1,000
3500-6499	500
6500-highest TAG NJEI eligible for an award	250]

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Additional Amount of Grant

NJEI	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. NJIT & UMDNJ
Under 1500	$1000	$1000	$1000	$1000
1500- 2499	500	1000	1000	1000
2500- 3499	250	500	1000	1000
3500- 4499	250	500	500	500
4500- 5499	250	250	500	500
5500- 6499	0	250	500	250
6500- 7499	0	250	250	250
7500- 8499	0	0	250	250
8500- 9499	0	0	250	250
9500-10499	0	0	250	0
Over 10499	0	0	0	0

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services Manual

Proposed Readoption with Amendments: N.J.A.C. 10:50

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

Authority: N.J.S.A. 30:4D-6b(15); 30:4D-7, 7a, b and c; 30:4D-12; 42 CFR 440.170(a).

Proposal Number: PRN 1991-14.

Submit comments by February 6, 1991 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Transportation Services Manual (N.J.A.C. 10:50) expires on March 3, 1991. The Division of Medical Assistance and Health Services has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The Transportation Services Manual was promulgated to set forth the basic policies and procedures of the New Jersey Medicaid Program relating to transportation service. Transportation service for Medicaid recipients is a required component of the Title XIX (Medicaid) program pursuant to 42 CFR 440.170(a).

Under the Medicaid program, transportation must be available to assist recipients in obtaining necessary medical examinations and treatments. The Division enrolls transportation providers and makes reimbursement for the following three modes of transportation: ambulance (ground and air), invalid coach, and livery service.

Subchapter 1 contains general provisions and policies for providers who participate in the Medicaid program, including covered services, authorization for transportation service, and reimbursement policy. The proposed amendments make several changes in subchapter 1 that are addressed below.

Subchapter 2 contains billing procedures for transportation providers, including general requirements for the submission of a claim and an accompanying certification.

Subchapter 3 contains the Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS Codes) which are the basis for Medicaid reimbursement.

Appendix I contains instructions for the completion of a Transportation Claim. Appendix II contains instructions for the completion of a Transportation Certification.

There are amendments associated with this readoption. The proposed amendments involve the general policies for participation as set forth in subchapter 1.

A provider of livery service is required to submit additional documentation to the Division's Fiscal Agent upon initial program enrollment and when the documentation is renewed. A provider of livery service must submit a Certificate of Insurance issued by the provider's insurance carrier.

A provider of livery service in the State of New Jersey is currently required to file proof of insurability with the municipality in which the company's place of business is located, pursuant to N.J.S.A. 48:16-14. The Division, pursuant to the rulemaking authority vested in N.J.S.A. 30:4D-7, 7a and b, requires a provider of livery service to submit to the Division's Fiscal Agent a Certificate of Insurance listing the Division as certificate holder. Failure to submit this document upon application and/or renewal will preclude the provider from participation as a Medicaid transportation provider.

A provider of livery service must also submit a photocopy of an Operator License for each driver of a livery service vehicle. N.J.S.A. 30:4D-3h requires licensure, where appropriate. This requirement implements the provision of Medicaid law dealing with licensure.

The proposed amendments also delete the Division's list of 19 conditions for the reimbursement of ambulance service as set forth in N.J.A.C. 10:50-1.4(a)3i-4. The Division is incorporating the Department of Health's policy governing ambulance service as a substitute for the Division's list of conditions for the reimbursement of ambulance service.

Providers of ambulance service are instructed to comply with the New Jersey Department of Health rules, with which they are familiar, as indicated in N.J.A.C. 8:40-5.1 and 8:40-6.1. N.J.A.C. 8:40-5.1 sets forth conditions for transport ambulance service; N.J.A.C. 8:40-6.1 sets forth conditions for emergency ambulance service. This proposed amendment will result in greater consistency for both the Medicaid program and providers of ambulance service.

The proposed amendments also involve a clarification of reimbursement policy for transportation service as set forth in subchapter 1. Statements concerning hospital-based transportation service are deleted involving: (1) the Medically Needy Program, and (2) rebundling (see N.J.A.C. 10:50-1.6(d)2 and (e)). Rules governing hospital-based transportation service and rebundling are set forth in the Division's Hospital Manual, N.J.A.C. 10:52. It is unnecessary to repeat the rules for hospital-based transportation service and rebundling in N.J.A.C. 10:50, because N.J.A.C. 10:50 sets forth requirements for private, fee-for-service providers of transportation service, not hospital-based providers.

Reimbursement policy is also expanded and clarified with amendments in subchapter 1 with respect to non-covered Medicaid services. Reimbursement for transportation service is permitted when the trip's purpose is for the transport of a Medicaid recipient to/from a Medicaid-covered service. Destinations that are primarily educational, vocational, or social in nature are not Medicaid-covered services (see N.J.A.C. 10:50-1.6(b)2i(1)). Reimbursement for transportation is not permitted in these instances pursuant to federal regulations cited above.

Proposed amendments to subchapter 1, specifically N.J.A.C. 10:50-1.6(b)2i(2)-(3), also inform providers of transportation service that reimbursement is not permitted for trips to/from a medical day care center. As a condition of enrollment in the Medicaid program, a medical day care center must provide transportation for Medicaid recipients both: (1) to/from the medical day care center, and (2) from the medical day care center to any service provided indirectly by the medical day care center.

There have been amendments to N.J.A.C. 10:50 since the last readoption. One significant amendment added livery service as a new provider group for the transportation of ambulatory Medicaid recipients (see R.1988 d.262 at 20 N.J.R. 1214(a)).

There are other recent amendments that cover such topics as the addition of the extra crew differential, the elimination of prior authorization for invalid coach service for Medicaid recipients transported to/from a nursing facility, and the extension of prior authorization from a maximum of six months to a maximum of twelve months (see R.1990 d.592 at 22 N.J.R. 3620(a)).

The proposed readoption and proposed amendments will enable a Medicaid recipient to continue to obtain necessary medical treatment via the mode of transportation best suited to his or her medical condition(s).

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A provider enrolled in the Medicaid program will continue to be reimbursed for transportation service rendered to a Medicaid recipient when the purpose of the trip is to obtain a Medicaid-covered service.

Social Impact

The proposed readoption impacts potentially on all Medicaid recipients who require transportation services to obtain a Medicaid-covered service, because the purpose of providing transportation is to enable Medicaid recipients who are in need of such services to be transported to and/or from a Medicaid-covered service. There are three modes of transportation that are available to Medicaid recipients, depending upon their medical condition.

The proposed readoption also impacts on all providers of transportation services who are enrolled in the Medicaid program, including ambulance, air ambulance, MICU's, invalid coach and livery services. The rules should be continued because the social situation impacting Medicaid recipients and Medicaid providers has not changed: the purpose of providing transportation is to enable Medicaid recipients to be transported to and/or from a Medicaid-covered service.

The proposed amendments have a direct impact upon providers of transportation services who are enrolled in the Medicaid program. There is also an indirect impact on Medicaid recipients who receive transportation services. The amendments involve the general policies for participation by providers in the Medicaid program, as well as the conditions for reimbursement.

Economic Impact

There is no economic effect on a Medicaid recipient as a result of the proposed readoption or the proposed amendments because there is no cost to a Medicaid recipient for transportation service.

The proposed amendments have only a negligible economic impact on Medicaid providers. The extent of the economic impact is limited to the cost of photocopying a minimal amount of material on an annual basis and the cost of mailing the material to the Division's Fiscal Agent. The proposed readoption makes no change in the reimbursement fee schedule.

The Division of Medical Assistance and Health Services reimbursed providers of transportation service approximately $16,000,000 (Federal-State share) in State Fiscal Year 1990.

Regulatory Flexibility Analysis

The proposed readoption and proposed amendments impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules do impose record keeping and other compliance requirements upon providers. The types of records a transportation provider is required to keep are proof of licensure, vehicle registration and insurance and operator license(s). These requirements apply equally to all providers of transportation service regardless of size.

The proposed amendments impose additional reporting requirements only on a provider of livery service. Currently, there are approximately 20 providers of livery service enrolled in the Medicaid program. A livery service provider is required to submit proof of vehicular insurance and a photocopy of a driver's license for each employee who operates a livery service vehicle.

The Division does not require a provider of ambulance and invalid coach service to submit similar documentation to the Division's Fiscal Agent because this provider group is regulated by the New Jersey Department of Health. Accordingly, providers of ambulance and invalid coach service are required to submit similar documentation to the New Jersey Department of Health.

The additional reporting requirements for a provider of livery service do not add to the rules that livery companies must currently follow in order to provide livery service in New Jersey. The proposed amendments are designed to minimize the adverse effect upon small businesses by not adding additional compliance requirements other than those already established by the Departments of Insurance, Law and Public Safety, or other applicable statutes such as N.J.S.A. 48:16-13 et seq.

Providers do not need outside professional services, such as accountants, to comply with these requirements, unless they choose to do so. There are no capital costs associated with this readoption. Providers may incur capital costs if they enroll as new Medicaid providers or choose to expand their existing business.

The Division believes these requirements are necessary for the health, safety and general welfare of the Medicaid recipients being transported. Compliance with the criteria contained in the proposed amendments will help ensure that a livery service vehicle is properly insured and its operator duly qualified and licensed.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:50.

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

10:50-1.3 General policies for participation

(a) The approval process for becoming a transportation service provider is as follows:

1.-3. (No change.)

4. A potential provider seeking approval to provide livery service shall attach to the Medicaid Provider Application (Form FD-20) the following documents, each of which shall bear the name and address of the livery company or the company's principal owner(s), for each vehicle in the provider's fleet:

i. A photocopy of the license to operate a livery service, issued by the clerk of the municipality in which the place of business is located;

ii. A photocopy of the State of New Jersey Insurance Identification Card, issued by the provider's insurance company; [and]

iii. A photocopy of the vehicle registration bearing the classification "Livery", issued by the New Jersey Division of Motor Vehicles[.];

iv. A Certificate of Insurance, including a 10-day notice of cancellation, listing as Certificate Holder: State of New Jersey, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625-0712; and

v. A photocopy of an Operator License for each driver, issued by the New Jersey Division of Motor Vehicles.

(1) (No change.)

[5. All documentation must bear the name and address of the livery company or the company's principal owner(s).]

[6.]**5.** An approved provider of livery service shall forward to the fiscal agent for the New Jersey Medicaid Program photocopies of the above-mentioned documents (license, registration and insurance) when the documents are renewed on an annual basis, and when additional livery service vehicles are added to a provider's fleet. A provider shall also forward written notification to the fiscal agent when a livery service vehicle is taken out of service.

[7.]**6.** A Medicaid-enrolled provider of ambulance and/or invalid coach service seeking approval to provide livery service shall complete another Medicaid Provider Application (Form FD-20) and attach the required photocopies as indicated above.

[8.]**7.** For livery service, specific requirements concerning vehicles and drivers are located at N.J.A.C. 10:50-1.4.

8. The completed provider agreement, disclosure statement, and/or provider application shall be submitted to the fiscal agent for the New Jersey Medicaid Program.

9. Once approved, the applicant will receive a Medicaid provider number and an initial supply of pre-printed claim forms from the fiscal agent for the New Jersey Medicaid Program.

(b) (No change.)

10:50-1.4 Services covered by the New Jersey Medicaid Program

(a) Ambulance service is a covered service under the following conditions:

1.-2. (No change.)

3. When the use of any other method of transportation is medically contraindicated and the service is provided [to a patient who:] **as specified in New Jersey Department of Health rules N.J.A.C. 8:40-5.1 and 6.1.**

[i. Is transported in an emergency situation, for example, as a result of accident, injury, or acute illness;

ii. Is unconscious or in shock;

iii. Requires oxygen, ventilation, or other emergency treatment en route;

iv. Has to remain immobile because of a fracture that has not been set or the possibility of a fracture;

v. Has sustained an acute stroke or myocardial infarction;

vi. Is experiencing severe hemorrhage;

vii. Has suffered severe brain damage;

viii. Requires intravenous therapy;

ix. Is post cardiac catheterization;

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x. Is suffering from uncontrolled seizure disorders;
xi. Is confined in a total body cast;
xii. Is confined in hip spicas and/or other casts preventing hip exion;
xiii. Is confined in an isolette (incubator);
xiv. Has undergone a tracheostomy (requiring suction);
xv. Is heavily sedated;
xvi. Is comatose;
xvii. Is post pneumoencephalogram;
xviii. Is suffering life threatening third degree burns;
xix. Needs to be restrained due to likelihood of serious harm:
(1) Substantial risk of physical harm to the person himself or erself as manifested by evidence of threats of, or attempts at, suicide r serious bodily harm;
(2) A substantial risk of physical harm to other persons as mani-ested by evidence of homicidal or other violent behavior or evidence hat others are placed in reasonable fear of violent behavior and erious physical harm to them; or
(3) A very substantial risk of physical impairment or injury to the erson himself or herself as manifested by evidence that such person's udgment is so affected that he or she is unable to protect himself r herself in the community and that reasonable provision for his r her protection is not available in the community.
4. The Department recognizes that there will be isolated instances ecessitating ambulance transportation which do not meet the riteria in (a)3 above. Claims for these services will be honored roviding the documentation of medical need is sufficient. Un-vailability of other means of suitable transportation, such as an nvalid coach, or the need for assistance in getting to or from the ehicle will not constitute a medical necessity.]
Recodify 5-7 as **4-6** (No change in text.)
(b) (No change.)
(c) Livery service is a covered service under the following con-ditions:
1. When the service is provided to an individual as indicated in N.J.A.C 10:50-1.6(b).
2. [Livery service provided to an individual to and/or from non medical facilities, such as educational, vocational, or nutritional sites, s not Medicaid reimbursable.] Livery service shall be limited to the transport of ambulatory passengers. Only a New Jersey-based com-pany is eligible to participate in the New Jersey Medicaid Program as a provider of livery service.
3.-5. (No change.)

10:50-1.6 Reimbursement policy
(a) (No change.)
(b) Transportation service provided to a Medicaid recipient is reimbursable by the New Jersey Medicaid Program under the follow-ing conditions only:
1. (No change.)
2. The medical service rendered to the Medicaid recipient by the provider/facility is a covered Medicaid service (as listed in N.J.A.C. 10:49-1.4) at the time the transportation is provided.
(c) Reimbursement is not permitted when a Medicaid recipient is transported:
1. For the purpose of obtaining a non-Medicaid-covered service, such as a service that is primarily educational, vocational, or social in nature;
2. From home to a medical day care center or the reverse; or
3. From a medical day care center to any service provided indirectly by a medical day care center.
[(c)](**d**) (No change in text.)
[(d) Hospital-based transportation service is reimbursable when a Medicaid recipient is transported to the base hospital and admitted as an inpatient or treated as an outpatient. If the Medicaid recipient is admitted, the hospital submits a claim for the service on Form UB-82 as a trailer. If the Medicaid recipient is not admitted, the hospital submits a claim for the service on Form UB-82 as an outpa-tient service. A revenue code shall be used to identify the transpor-tation service.]
[1.](**e**) Hospital-based transportation service provided to a Medi-caid recipient who is transported to other than the base hospital is reimbursable on a fee-for-service basis in the same manner as a non-hospital-based transportation provider. In such instances, the hospi-tal shall be enrolled as a transportation provider as defined in N.J.A.C. 10:50-1.2. A "Transportation Claim" (Form MC-12) and Transportation Certification shall be used when submitting a claim for transportation services, as described in N.J.A.C. 10:50-2.5 and 2.7.
[2. Hospital-based transportation service provided to an individ-ual eligible for the Medically Needy Program is reimbursable only when the individual is treated in the outpatient department of a hospital. Exception: Transportation service provided to an individual eligible for the Medically Needy Program as a pregnant woman is reimbursable when the individual receives either inpatient or outpa-tient care.]
[(e)](**f**) [Transportation service provided to an inpatient of a hospi-tal by an outside provider shall be billed by the hospital as a "rebun-dled" service.] When a transportation provider renders a round trip service to an individual **in a general hospital** whose status remains "inpatient", the transportation provider bills the hospital for the service. [The hospital reimburses the transportation provider and submits a claim to the New Jersey Medicaid Program on Form UB-82 as a trailer. A revenue code shall be used to identify the transportation service as a "rebundled" service.]
Recodify existing (f)-(k) as (**g**)-(**l**) (No change in text.)

APPENDIX I
Instructions for the completion of the "Transportation Claim" (Form MC-12).
Items 1-10 (No change.)
Item 11: [Practitioner] **Individual** ordering transportation. [Not applicable.]
Items 12-12C (No change.)
Item 12D: Indicate the street address and city of both the origin and destination points. [Indicate name and address of hospital or nursing facility, if applicable.] **Include the name of the provider's office, medical clinic, hospital, or nursing facility to which or from which the individual is transported.** Indicate the total number of miles being billed. Indicate waiting time, if any, in accordance with Subchapter 3 of this manual and attach an explanation of the need for waiting time to the Form MC-12 claim form. (Waiting time for livery service is not reimbursable.)
Items 12E-16 (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled
Fair Automobile Insurance Act
Proposed Amendment: N.J.A.C. 10:69A-6.11

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4D-20, 21, 24; P.L. 1990, c.8.
Agency Control Number: 90-P-13.
Proposal Number: PRN 1991-15.

Submit comments by February 6, 1991, to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The following terms and acronyms will be used in this proposal:
The Pharmaceutical Assistance to the Aged and Disabled Program is identified by the acronym "PAAD." The PAAD program is administered by the Division of Medical Assistance and Health Services (the Division).
The Division of Motor Vehicles is identified by the acronym "DMV."

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This proposed amendment is necessary due to enactment of the Fair Automobile Insurance Act of 1990, commonly referred to as the "FAIR Act" (P.L. 1990, c.8).

The term "registrant" refers to a person who registers a vehicle with the New Jersey DMV.

Amendments to the New Jersey Motor Vehicles Laws established an increase in vehicle registration fees. However, the law also created an exemption if the registrant is eligible for PAAD.

Therefore, in order to implement the provisions of this law, certain information must be provided by PAAD to the DMV. The administrative coordination between the two State agencies has already commenced.

This proposed amendment is designed to authorize PAAD to share information or allow the release of PAAD eligibility files to the DMV for the purposes of implementing the "FAIR Act." Information pertaining to eligibility contained in the PAAD files can be disclosed to DMV for this limited purpose.

Registrants of commercial vehicles are not entitled to the exemption for the registration fee increase.

Therefore, the Division is amending N.J.A.C. 10:69A-6.11 to indicate that the PAAD release of information to DMV is an authorized disclosure.

Social Impact

This proposed amendment impacts on PAAD beneficiaries who are also registrants of motor vehicles. Those registrants who are PAAD eligible are exempt from the increase in motor vehicle registration fees. The registrant must file for the exemption with DMV.

All registrants of commercial vehicles are required to pay full motor vehicle fees.

There is no impact on providers because this issue is not related to pharmaceutical services.

This proposed amendment impacts on DMV, which is responsible for vehicle registration and determining the correct fee for each registrant.

Economic Impact

There is no economic impact upon the Division except for administrative costs associated with the development of the necessary administrative mechanisms to share information with DMV.

Those aged or disabled persons who are eligible for PAAD will pay less to register non-commercial vehicles in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required for this proposed amendment. The proposed amendment impacts upon registrants of non-commercial vehicles who are also eligible for PAAD. The registry of motor vehicles is administered by the DMV, which is a State agency. Neither registrants nor the DMV are defined as a small business under the terms of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-16 et seq.

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

10:69A-6.11 Confidentiality and disclosure of information

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

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1.-7. (No change.)

8. The release of information or files to the Division of Motor Vehicles in the Department of Law and Public Safety for the implementation of the Fair Automobile Insurance Act of 1990 (P.L. 1990, c.8).

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual
Child Care Plus Demonstration
Proposed New Rules: N.J.A.C. 10:81-15

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

Authority: N.J.S.A. 44:10-3.

Proposal Number: PRN 1991-1.

Submit comments by February 6, 1991 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules set forth requirements for Child Care Plu (CCP), a Demonstration Of Enhanced Child Care Options For Low Income Families, which is a project within the Department of Huma Services. Child Care Plus is a child care research demonstration, funde by the Rockefeller Foundation and the Federal government in cooper ation with the Department and Mathematica Policy Research (MPR It seeks to test in three counties two major advances over the level an quality of child care services mandated by the Family Support Act, th national welfare reform legislation. These advances are child care benefit extended beyond the one year post-AFDC (Aid to Families with Depen dent Children) period until the youngest child starts attending first grad or reaches age seven, whichever is earlier, and enhanced child care, a a quality and payment level in excess of that provided by REACH.

The demonstration will attempt to measure short, medium and long term outcomes of extended and enhanced child care on welfare families particularly the effect of child care services on the child's pre-school, in school and post-school performance. Child Care Plus is planned to b a large demonstration relative to other studies in the field, involving ove 2,000 children of approximately 1,800 REACH participants. The observa tional and analysis period will extend 15 or more years.

There will be three treatment groups in the demonstration. Group will receive basic REACH child care services as set forth at N.J.A.C 10:81-14.18. Group 2 will receive basic REACH child care services an REACH services extended during the post-REACH period after employ ment until the youngest child begins attending first grade or reaches ag seven, whichever is earlier. Group 3 will receive enhanced child car benefits at a level of quality and payment in excess of that provided b REACH, as well as extended enhanced services for the same post-REACH period as Group 2.

The Department and MPR have been developing and planning the demonstration for about one year. Demonstration sites are being choser from among counties with large urban populations. Mercer and Passai counties have already been selected as two sites. Camden, Hudson, and Union counties are under consideration for the demonstration. Essex County has indicated they are not in a position to participate due to the nascent nature of their REACH program. The choice will be made by MPR, as Rockefeller's agent, with concurrence by the Department o Human Services.

The following summarizes the proposed new rules:

N.J.A.C. 10:81-15.1 sets forth the general provisions of the CCP demonstration. This section explains the purpose of the demonstration to provide child care and early education services to 1,800 AFDC families and 2,000 children whose parents are REACH participants. It sets forth existing program practices to be targeted to the population, including REACH participation, case management, guaranteed child care benefits while participating, and assistance from the county lead child care entity in locating suitable child care. New program practices of extended and enhanced child care services for Groups 2 and 3 are described.

Additionally, the section sets forth criteria for selection of counties, including: a sufficient flow of AFDC applications and reapplications to provide the desired sample sizes within the 24-month intake; sufficient child care options, particularly in the enhanced care group; a diverse ethnic/racial mix of clients to permit separate examinations of cultural experiences; a willingness to participate in the demonstration and implement demonstration procedures, such as the randomization of clients into the three treatment groups; and a REACH program operating long enough to ensure eligible clients will be referred to REACH and likely to receive employment and training and support services within a reasonable time after referral. The demonstration commenced in October 1990, in one county by referral of individuals to the REACH program and to CCP. The remaining counties will start the demonstration at dates to be selected by the Department of Human Services. One county is expected to begin operation with Groups 1 and 2; another with Groups 1, 2 and 3. Operation of the demonstration is subject to available funding.

N.J.A.C. 10:81-15.2 sets forth definitions for the demonstration. Of particular significance is the definition of qualifying child, which is the youngest child less than or equal to age 36 months at the time of REACH

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initial assessment of employability and referral to the CCP demonstration. The qualifying child is used to determine the duration of extended CCP benefits for Groups 2 and 3.

N.J.A.C. 10:81-15.3 specifies the eligibility criteria for the demonstration. AFDC applicants and recipients who meet those criteria are required to be referred to the demonstration. Such criteria include: residing in a project county; REACH participation; single mothers (not two-parent families); and a child in the family less than or equal to 36 months at time of individual evaluation with the REACH case manager. Eligibility for CCP is determined at this evaluation. Individuals who are exempt from REACH due to TEEN PROGRESS are exempt from CCP. All other individuals exempt from REACH may volunteer for REACH and therefore for CCP. If an individual becomes exempt from REACH during CCP participation, the individual may continue to participate and receive CCP benefits. If the individual opts to take the exemption, the individual will not receive Group 1 or Group 2 benefits during the exemption, but may receive Group 3 benefits under certain circumstances, depending on whether the child remains in the enhanced care arrangement. Group 1 and Group 2 CCP participants who are sanctioned for noncompliance with REACH program requirements are not eligible for CCP child care benefits for the duration of the sanction. Sanctioned Group 3 CCP participants are eligible for continued enhanced CCP benefits for a period of three months during the sanction. Such benefits are CCP funded.

N.J.A.C. 10:81-15.4 specifies the procedures for entry into the demonstration. At individual evaluation, for families who meet the eligibility criteria, case management will contact the evaluator for random assignment into Group 1, 2 or 3. Once the assignment is made, the case manager will advise the participant of her rights and responsibilities in the demonstration, conditions of receipt of benefits, and of the interviews by the evaluator. The participant and the case manager must sign a four-part acknowledgement form (CCP-1, CCP-2 or CCP-3), as appropriate for the group assignment. The form contains the information explained by the case manager, and is distributed to the participant, evaluator, lead child care entity and case manager. The participant will then meet with a child care counsellor from the lead child care entity who will explain the demonstration in detail.

Group 1 and Group 2 participants need only to comply with REACH to receive CCP benefits. In order for Group 3 participants to receive CCP benefits, they must place their young children in enhanced care arrangements approved by the demonstration within six months of the CCP offer. If the Group 3 participant does not do so, the case manager must send the participant Form CCP-4, Notice of Termination of Group Three Benefits, advising of ineligibility for Group 3. In those instances, she will revert to Group 1 (REACH) child care benefits. Child Care Plus benefits may be terminated for other reasons, including noncompliance with REACH program and the CCP demonstration, by the case manager sending Form CCP-5, Termination of CCP Benefits. If the CCP participant changes residence to another county involved in the demonstration, CCP child care benefits will continue according to the original group designation if the participant is determined eligible for CCP in the receiving county. If the participant changes residence to a county not involved in the demonstration, the participant will be eligible for REACH child care benefits under N.J.A.C. 10:81-14.18.

REACH case management functions for the demonstration are set forth at N.J.A.C. 10:81-15.5. These include: identifying CCP eligible REACH participants at individual evaluation, initiating random assignment, providing an overview of the CCP demonstration and explaining rights and responsibilities, completing the acknowledgement forms, referring participants to the lead child care entity counselor, and processing REACH and CCP child care payments.

REACH lead child care entity functions for the demonstration are set forth at N.J.A.C. 10:81-15.6. These include: assessing the child care needs of CCP participants, child care counselling about the benefits of enhanced care, referring participants to providers approved by REACH and CCP, assisting in the child care selection process as needed, and serving as the contact person about CCP during REACH participation and during the post-AFDC and post-REACH periods. The lead child care entity is responsible for notifying Group 2 and 3 CCP participants when their extended benefits are about to expire.

As specified at N.J.A.C. 10:81-15.7, the CCP participant must comply with the relevant REACH participation requirements to receive CCP benefits. Group 3 participants must ensure that their children attend the enhanced care arrangement. All participants receiving REACH and CCP benefits in the post-AFDC and post-REACH period must pay a fee toward the cost of care.

N.J.A.C. 10:81-15.8 sets forth the child care benefits, payments and services available in the demonstration. Group 1 benefits are REACH child care benefits at REACH payment rates. Group 2 benefits are payable at the REACH rates through the extended period. Group 3 benefits are payable at maximums of: $150.00 per week for infant care (child through age two years and five months), $125.00 per week for preschool care (child age two years six months through age five) at child care centers and registered family day care homes approved by the demonstration, and $125.00 per week for school-aged care. Group 3 participants will be eligible for child care payments to bridge the period between REACH activities and during a sanction for up to three months. Group 2 extended benefits and Group 3 enhanced extended benefits are available until the qualifying child begins attending first grade or reaches age seven, whichever is earlier. Group 3 children must remain in enhanced care for the full program day, regardless of the parent's REACH participation requirements.

Child Care Plus funds are considered the payor of last resort for the demonstration. All other program funds, including REACH funds, are to be used before CCP funds can be used. Special payments may be made to Group 3 providers for special agency costs associated with the demonstration, including keeping child care slots unfilled until a Group 3 child can be placed. The demonstration will establish maximum payment rates for these providers. Under N.J.A.C. 10:82-5.2, payment for transportation to and from licensed centers is available at $10.00 per week per child. Additional CCP funds may be made available to Group 3 providers for transportation at amounts to be determined by the evaluator.

Additional services described at N.J.A.C. 10:81-15.9 will be provided for Group 3 participants. These included licensed centers and family day care homes providing enhanced care; monitoring and evaluation to ensure that enhanced care is maintained; and social services, health and nutrition services, and parent education services for Group 3 parents.

N.J.A.C. 10:81-15.10 specifies notice and hearing requirements for the demonstration. All CCP participants receiving AFDC and post-AFDC REACH child care benefits will be governed by N.J.A.C. 10:81-14.7. Post-REACH CCP participants will be entitled to notice and may request a review by the evaluator and Department of Human Services prior to reduction or termination of CCP child care benefits.

Social Impact

The social impact of the demonstration is expected to be positive. For the individual family, the full REACH child care benefits will provide support needed to help a working family make the transition from welfare to self-support through employment. For those families receiving benefits under Group 2, the extended post-REACH child care will provide needed support for the transitional period between AFDC receipt and self-support. This period often extends beyond the one year available through REACH, which the State is not able to fund Statewide due to budget limitations. The families receiving Group 3 benefits will also have the benefit of longer transitional support services between AFDC and employment, and the children will also receive the immediate and long-term benefits of high quality developmental care.

Of special interest at the Statewide level is national social significance of the demonstration. Child Care Plus will provide critical information for shaping our nation's child care policy in years to come. This information includes: the level of transitional child care assistance that will best promote job retention and minimize welfare recidivism; the choices mothers will make for child care when given access to additional types and quality of providers; the effects of different types and quality of child care on the development and future well-being of children; and the social and personal benefits of different types and quality of child care and the relationship of these benefits to costs.

Currently, the development of an adequate national child care policy is facing an uphill battle because proponents must rely on very thin evidence to confront the concerns of substantial costs, the degree of regulation that might be implied, and the general concept of non-maternal care. Child Care Plus will yield findings, both during the demonstration and after the results are evaluated, that will help make these critical funding and policy decisions.

Economic Impact

While the budget of the demonstration is subject to some revision, it is anticipated that the total cost of CCP will be $31 million (1989 dollars). The project will require no additional State funding beyond regular budgeted REACH child care expenditures and modest in-kind staff costs.

The demonstration is funded by a combination of Federal and foundation monies. Approximately $9 million will be received as a grant from

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the Rockefeller Foundation grant, with $1 to $2 million expected from other foundations. The Federal government (United States Department of Health and Human Services) has already committed a special $7.9 million grant from Federal welfare savings due to REACH. The remaining amount, approximately $13 million, is in the form of regular REACH child care services, funded at the normal 50 percent Federal/50 percent State ratio. This $6.5 million in State spending is an integral part of REACH and would occur regardless of the demonstration program.

The approximate demonstration expenditures for State Fiscal Year 1991 are $1.6 million.

The economic impact on the individual participants will be positive. No REACH participant will be disadvantaged; all participants will receive the full array of child care benefits available through the REACH program at N.J.A.C. 10:81-14.18. During the post-AFDC period, all participants will be required to pay a fee toward the cost of care, as required by the Federal Family Support Act. The fee is expected to average $64.00 per month. Approximately 600 employed families formerly receiving AFDC will continue to receive child care benefits at the REACH payment levels for an average post-REACH period of five years after the start of employment. An additional 600 employed families formerly receiving AFDC will have the benefit of enhanced quality child care services, for the same post-REACH period as Group 2. Groups 2 and 3 must continue to pay the fee toward the cost of child care for the post-REACH period, averaging $64.00 per family per month.

Regulatory Flexibility Statement

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 as defined under the Act; 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:

SUBCHAPTER 15. CHILD CARE PLUS DEMONSTRATION

10:81-15.1 General provisions

(a) This subchapter is for use by counties participating in the Child Care Plus (CCP) Demonstration. The subchapter shall at all times be used and interpreted in conjunction with N.J.A.C. 10:81, 10:82, and 10:90, as appropriate.

(b) The purpose of this subchapter is to:

1. Identify individuals included in the Child Care Plus Demonstration;

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

3. Establish procedures for providing child care services to demonstration participants.

(c) The purpose of CCP is to provide child care and early education services to approximately 1,800 applicants and recipients of AFDC who are REACH mothers, and who have at least one child less than or equal to the age of 36 months. In the operation of the demonstration, it is intended that CCP will build upon the existing county REACH system as much as possible.

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

1. Mandatory and voluntary participation in an employment-directed activity in the REACH program;

2. REACH case management;

3. Guarantee of child care benefits, including post-AFDC child care, as required by the Federal Family Support Act of 1988 (P.L. 100-485);

4. Assistance from the county REACH lead child care entity in locating suitable child care, that meets the REACH requirements and guidelines of the Department of Human Services; and

5. Use of the REACH child care voucher payment system.

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

1. Extended child care services beyond the one year post-AFDC period for Group 2 and Group 3;

2. Enhanced child care services for Group 3 at a quality and payment level above that available through the REACH program; and

3. Expanded services for Group 3 participants in excess of those available through the REACH program, including child care counselling, social services, health and nutrition services, and parent education services.

(f) A minimum of three counties will be selected for the demonstration in accordance with criteria developed by the evaluator and approved by the Department of Human Services. Criteria for selection include, but are not limited to, the following:

1. A sufficient number of AFDC applications and redeterminations within the 24-month intake period of the CCP demonstration to provide the desired sample size;

2. A sufficient number and geographical concentration of child care slots of the quality needed for the demonstration;

3. A sufficiently diverse ethnic/racial mix to support separate analysis;

4. Willingness of the county to implement and adhere to demonstration procedures including random assignment; and

5. An operational REACH program with adequate case management that ensures eligible clients will likely receive training, employment and supportive services, and a lead child care entity for the REACH program which has the proven ability to obtain child care services for REACH participants.

(g) The demonstration commenced in October 1990, in one county by referral of individuals to the REACH program and to CCP. The remaining counties will start the demonstration at dates to be selected by the Department of Human Services. The intake period for the demonstration for each county will extend for 24 months, or until the sample size required by the evaluator is achieved, whichever is earlier. Extended child care services to be provided for the relevant experimental groups, as determined by the criteria in this subchapter, are scheduled to be available through 1996. Operation of the CCP demonstration will be subject to available funding.

10:81-15.2 Definitions

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

"AFDC family" means the family unit members eligible to receive assistance under the Aid to Families with Dependent Children program.

"Case Manager" means the individual in the agency responsible for an AFDC recipient's participation in the REACH program, in accordance with N.J.A.C. 10:81-14.4.

"CCP" is the acronym for the Child Care Plus demonstration.

"CCP participant" or "participant" is a mandatory or voluntary REACH participant, defined at N.J.A.C. 10:81-14.3, who meets demonstration criteria at N.J.A.C. 10:81-15.3 and who has been randomly assigned into the CCP demonstration.

"Control group" means those CCP participants who will not receive demonstration services, but can receive all REACH child care benefits and post-AFDC child care benefits under N.J.A.C. 10:81-14.18(e) for which they are eligible. Control group is also known as "Group 1" or the "Basic REACH Child Care Group."

"Demonstration" means the Child Care Plus demonstration.

"Employment-directed activity" or "REACH employment-directed activity" means REACH employment-directed activities designed to lead to economic self-sufficiency through employment, as set forth in N.J.A.C. 10:81-14.2.

"Enhanced CCP benefits" are those child care benefits in excess of the maximum REACH benefit amounts provided for Group 3 mothers while receiving AFDC and for the one year post-AFDC period.

"Evaluator" means the organization performing random assignment of participants and ongoing management and evaluation of demonstration.

"Experimental group" means those CCP mothers who will receive demonstration services as either "Group 2" or "Extended Child Care Subsidies Group" or "Group 3" or "Extended Child Care with Enhancements Group."

"Extended CCP benefits" are those child care benefits provided for Group 2 mothers for the post-REACH period after the one year post-AFDC REACH benefits expire, payable at REACH rates.

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"Extended enhanced CCP benefits" are those child care benefits provided for Group 3 mothers for the post-REACH period after the one year enhanced post-AFDC REACH benefits expire, payable at the CCP rates.

"Lead child care entity" is that entity within the county selected to be responsible for child care services for the REACH program (see N.J.A.C. 10:81-14.18, 14.18A and 14.18B).

"Post-AFDC" means that 12-month period after the AFDC case is closed due to excess income from employment. Certain REACH services, including child care, are available to a REACH participant during this period (see N.J.A.C. 10:81-14.18, 14.18A, 14.18B and 14.20).

"Post-REACH" means that period after the 12-month post-AFDC period expires, in which REACH program benefits are no longer available to the individual.

"Qualifying child" means the youngest child less than or equal to the age of 36 months at the time of the REACH initial assessment of employability (individual evaluation with the REACH case manager) and referral of the mother to the CCP demonstration who renders the parent eligible for participation in CCP.

10:81-15.3 Eligibility

(a) AFDC applicants and recipients who meet the following criteria are required to be referred to the demonstration:

1. The AFDC family resides in one of the selected project counties;

2. The family's AFDC eligibility has been certified or approved;

3. The individual is a mandatory REACH participant, defined in N.J.A.C. 10:81-14.3, or volunteers for REACH if exempt from REACH participation requirements;

4. The individual completes a REACH initial assessment of employability (individual evaluation) with the REACH case manager during the CCP intake period;

5. The AFDC eligible family is headed by a single female (two-parent AFDC families and families headed by a single male are not eligible for the demonstration); and

6. The age of the youngest child in the AFDC eligible family is less than or equal to 36 months at time of individual evaluation.

(b) Eligibility for participation in the demonstration is determined after referral to the REACH program, when the individual meets with the REACH case manager for the initial assessment of employability (individual evaluation) described at N.J.A.C. 10:81-14.4(f)3.

(c) All individuals who meet the criteria in (a) above are eligible for the CCP demonstration, regardless of their exemption from the REACH program, subject to the following:

1. Individuals exempt from REACH participation due to participation in the TEEN PROGRESS demonstration are exempt from the CCP demonstration (see N.J.A.C. 10:81-14.3(b) and 14.3(a)12). When the TEEN PROGRESS exemption expires, the mother may be referred to CCP.

2. An individual who is determined to be exempt from the REACH program at time of referral to the CCP demonstration may volunteer for participation in REACH and, consequently, the CCP demonstration and be eligible for CCP benefits and services according to group designation. If the individual does not volunteer for REACH, she will be eligible for CCP benefits, as appropriate, after the exemption expires.

3. A CCP participant who becomes exempt from the REACH program while participating in CCP will continue to receive CCP benefits and services according to the REACH rules governing the participant's CCP group designation.

i. CCP Group 1 and Group 2 participants who become exempt will be subject to REACH rules concerning exemptions at N.J.A.C. 10:81-14.3(b) and 14.3A. If the individual stops participating in the REACH activity due to the REACH exemption, CCP child care services will not be provided for the duration of the exemption. If the individual continues to participate regardless of her exemption from REACH, she will be considered a voluntary REACH participant for CCP purposes and CCP child care services will be provided for the duration of participation in the REACH activity.

ii. Group 3 participants will continue to receive CCP benefits and services during the period of exemption as follows.

(1) If the Group 3 child remains in care and the duration of the exemption is less than or equal to three months, CCP child care benefits and services will be provided for the three-month period to bridge the time between REACH participation (see N.J.A.C. 10:81-15.8(f)).

(2) If the duration of the exemption exceeds three months, the lead child care entity will counsel the participant about the benefits of enhanced quality child care and the requirement of participation in employment-directed activities to qualify for enhanced care and extended child care benefits. If the Group 3 participant does not enter an employment-directed activity within three months, she will no longer qualify for Group 3 services. She will then be reassigned to Group 1 and will receive Group 1 CCP benefits in accordance with Group 1 eligibility criteria.

(A) If the Group 3 child remains in care during the period of exemption, CCP child care benefits and services will be provided for three months.

(B) If the Group 3 child does not remain in care, CCP social services will be provided for three months.

(C) If the duration of the exemption exceeds three months, extension of Group 3 eligibility after three months of nonparticipation in employment-directed activities may be granted in special circumstances, as authorized on a case-by-case basis by the evaluator and the Department of Human Services.

(d) A CCP participant sanctioned for any reason relating to AFDC eligibility or REACH participation will continue to be eligible for CCP services and benefits during the sanction period according to the REACH rules governing her group designation.

1. Sanctioned Group 1 and Group 2 participants will be subject to REACH rules at N.J.A.C. 10:81-14.8. The sanctioned participant will not be eligible for AFDC and REACH. Therefore, REACH supportive services including Group 1 and Group 2 CCP benefits may not be provided for the duration of the sanction period.

2. Sanctioned Group 3 participants may continue to receive CCP benefits during the period the sanction is imposed for up to three months as a bridge payment (see N.J.A.C. 10:81-15.8). No payment of CCP benefits will be made in any sanction period, as defined at N.J.A.C. 10:81-14.8, for the fourth and subsequent months of a sanction period.

i. Each sanction period for a Group 3 participant will be eligible for a separate three-month bridge payment. See N.J.A.C. 10:81-15.8 for funding of bridge payments during the sanction period.

ii. Example: A CCP participant is sanctioned in three separate instances of noncompliance with REACH program requirements. The length of the first sanction period is the longer of one month or compliance; the second sanction period is the longer of three months or compliance; and the third sanction period is the longer of six months or compliance. During each of the three sanction periods, the Group 3 participant would be eligible for a bridge payment for up to three months.

10:81-15.4 Entry into the demonstration

(a) As required by the demonstration, all individuals who meet the eligibility requirements must be given random assignment into the demonstration, must receive the offer of CCP services, and must sign a form acknowledging receipt of the offer. Signing the acknowledgement form by itself does not obligate an individual to participate in the demonstration nor will it affect the REACH child care benefits for which the participant would be otherwise eligible. The individual must take the appropriate action set forth in (e) below to participate in the demonstration and receive CCP services.

(b) Upon the initial assessment of employability (individual evaluation) with the REACH case manager, case management will determine if the individual meets the eligibility requirements for the demonstration at N.J.A.C. 10:81-15.3. If so, case management will contact the evaluator for random assignment of the participant to Group 1, 2 or 3. Upon receipt of the random assignment, the case manager will provide the CCP offer for the assigned group designation and will advise the participant of the following:

1. The participant's rights and responsibilities in the designated group, including the type and duration of child care benefits and services;

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2. The responsibilities of the participant to receive such benefits, including the requirement of Group 3 participants to accept the offer of enhanced benefits within six months of the date of the REACH individual assessment of employability (individual evaluation);

3. The conditions under which the Group 2 participant will lose extended benefits and the Group 3 participant will lose enhanced benefits or extended enhanced benefits; and

4. That the participant will be contacted by the evaluator for interviews, that the participant may refuse to answer any interview questions, and that such refusal will not jeopardize the participant's AFDC, REACH, or CCP benefits.

(c) Upon receipt of the random assignment into Group 1, 2 or 3, the participant must sign an acknowledgement form, Acknowledgement of Offer for Child Care Plus, designated as Form CCP-1 for Group 1, CCP-2 for Group 2, and CCP-3 for Group 3. The acknowledgement form is a four-part form that contains the information in (a) above explained by case managers, and a statement that the offer has been explained to the participant and that the participant understands her rights and responsibilities in accordance with the requirements of the demonstration. The acknowledgement form will be signed by the CCP participant and initialed by the REACH case manager, with copies distributed to the participant, evaluator, lead child care entity and case manager.

(d) On the same day or within one week after the participant has received random assignment into CCP, the participant will meet with a counselor from the lead child care entity. The counselor will explain in detail the benefits and responsibilities of the participant in the assigned group and will provide child care counselling. For Group 3 participants, the counselor will also explain the standards for enhanced care, the types of providers offering enhanced care, and advantages of selecting these providers for placement of their child(ren) in care.

1. For Group 3 participants, the counselor will provide extended counselling during the six-month period after initial assessment of employability (individual evaluation) to assist the participant in the decision whether to accept the offer of enhanced child care benefits. The lead child care entity will also remind the Group 3 participant of the time limit, and will notify the participant and case management when the six-month period is about to expire.

(e) Upon receipt of form CCP-1, CCP-2, or CCP-3, as appropriate, and after child care counselling, the participant must take action as follows:

1. If the participant has been randomly assigned to Group 1 or Group 2, no further action is required. The participant must only comply with REACH program requirements in order to receive CCP benefits.

2. If the participant has been randomly assigned to Group 3, the participant must accept the offer of enhanced care within six months of the date of the CCP offer by placing a child in an enhanced child care arrangement approved by the demonstration.

i. During the six-month period before acceptance of the Group 3 offer, the Group 3 participant is eligible for REACH child care benefits in accordance with N.J.A.C. 10:81-14.18.

ii. If the Group 3 participant accepts the offer by placing her child in enhanced care arrangements within six months of the date of the offer, no further action is required.

iii. If the Group 3 participant does not accept the offer because she fails to place a child in the enhanced care arrangement within six months, she will not be eligible for enhanced or extended CCP services but will be eligible for all child care benefits available through the REACH program, payable up to the maximum REACH rates. The lead child care entity must notify the REACH case manager in writing, by Form R-3 or similar form, immediately upon expiration of the six-month period.

(f) If a participant randomly assigned to Group 3 does not accept the offer by placing a child in enhanced care within six months of the date of initial assessment of employability (individual evaluation) and signing of Form CCP-3, the case manager must send to the participant Form CCP-4, Notice of Termination of Group 3 CCP Benefits, advising that she has not accepted the offer of Group 3 CCP benefits, will not be eligible for enhanced CCP benefits, but will be eligible for all child care benefits available through the REACH program for as long as she complies with REACH participation requirements. Form CCP-4 will be distributed to the participant evaluator, and lead child care entity, with a copy retained by the REACH case manager.

1. If the failure to place a child in enhanced care within six months is not the fault of the participant, the Department of Human Services may grant a waiver extending the period by an additional month. The decision to grant a waiver is within the discretion of the Department and is to be made on a case-by-case basis considering all relevant factors. A participant would not be at fault if a REACH employment-directed activity consistent with the individual's employment goal or employability plan was not available by the end of the six-month period.

(g) CCP benefits may be terminated for several reasons, including, but not limited to, expiration of time-limited benefits for Group 1, 2 and 3, noncompliance with REACH program requirements, and noncompliance with attendance requirements for Group 3 children. Prior to termination of CCP benefits the case manager must send to the participant Form CCP-5, Termination of CCP Benefits, listing the reason that CCP benefits are terminated and the effective date of termination. Form CCP-5 must be signed by the case manager, with copies distributed to the participant, lead child care entity, evaluator, Group 3 provider(s), and the case manager.

(h) If a CCP participant changes residence and moves to another county, continuation of child care services under CCP will depend upon whether the receiving county is participating in the demonstration.

1. If the receiving county is participating in the demonstration, the CCP participant will continue to receive CCP child care services according to the group designation assigned in the county of origin if the participant was determined to be CCP eligible in the receiving county.

2. If the receiving county is not participating in the demonstration, the CCP participant will be eligible to receive REACH child care benefits in the receiving county, according to the rules of the REACH program at N.J.A.C. 10:81-14.

10:81-15.5 Case management

(a) Case management functions for the CCP demonstration will include:

1. Identifying eligible REACH participants at the initial assessment of employability (individual evaluation);

2. Initiating the random assignment process with the evaluator;

3. Providing an overview of the CCP demonstration, benefits, and responsibilities associated with the group assignment at the time of the initial assessment of employability (individual evaluation);

4. Explaining Form CCP-1, CCP-2, or CCP-3, as appropriate, and ensuring that all CCP participants sign the form acknowledging that the demonstration has been explained to them;

5. Referring all CCP participants to meet with a counsellor from the lead child care entity;

6. Processing child care payments for all CCP participants during the period of REACH participation and post-AFDC period, including those activities required by the REACH program, such as verification of attendance and sending notices of expiration of REACH child care benefits; and

7. Processing child care payments for Group 2 and Group 3 during the post-REACH period.

(b) Case management must also inform the lead child care entity of changes in the CCP participant's REACH status and of changes in circumstances that may affect the CCP demonstration.

10:81-15.6 Lead child care entity

(a) The lead child care entity will be responsible for providing the following services to CCP participants:

1. Assessment of the child care needs of each participant, including her preferences for the type of care, for example, licensed child care center, registered family day care home, or self-arranged care; location of care; child(ren)'s ages; and desired start date;

2. Child care counselling, advising Group 3 participants of the advantages of enhanced quality developmental child care and en-

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ouraging the participant to make the most of the offer of Group benefits;

3. Referring Group 1 and Group 2 participants to approved ›roviders, and referring Group 3 participants to Group 3 providers;

4. Helping parents schedule appointments to meet with referred ›roviders and make a final selection;

5. Serving as the contact person for CCP participants who must hange providers while they are receiving AFDC and during the post-AFDC period; and

6. Serving as the contact person for Group 2 and Group 3 partici-›ants who must change providers during the post-REACH period.

(b) The lead child care entity must notify the CCP participant and ıer REACH case manager of the expiration of Group 2 or Group 1 benefits, prior to the expiration of such benefits.

:0:81-15.7 CCP participant responsibilities

(a) All CCP participants must comply with the relevant REACH ›articipation requirements in order to receive CCP benefits.

(b) Group 3 participants must ensure that their child(ren) attend :hild care services as specified by the demonstration.

(c) All CCP participants who receive post-AFDC REACH child :are benefits at N.J.A.C. 10:81-14.18(e) are required to pay a fee toward the cost of child care, in accordance with N.J.A.C. 10:81-14.18(e)7, 14.18A and 14.18B.

1. Group 2 and Group 3 participants must continue to pay the fee, computed according to N.J.A.C. 10:81-14.18A, for extended or extended enhanced CCP child care benefits during the post-REACH period. For each Group 2 and Group 3 participant, an annual renewal date will be established, which will be 12 months after the expiration of the post-AFDC REACH child care benefits and annually thereafter. On or before that annual renewal date, the participant will be required to submit documentation of current earnings. Upon receipt of that documentation, the post-REACH fee will be recomputed. The participant will be required to pay the recomputed fee until the fee is recomputed again the following year or until the CCP child care benefits expire, whichever is earlier.

10:81-15.8 Child care benefits, payments and services

(a) The following basic child care benefits will be available to CCP participants.

1. Group 1 participants will be eligible for all REACH child care benefits set forth at N.J.A.C. 10:81-14.18.

2. Group 2 participants will be eligible for all REACH child care benefits set forth at N.J.A.C. 10:81-14.18, as well as extended post-REACH child care benefits until the qualifying child begins attending first grade or reaches age seven, whichever is earlier. The dollar amount of extended post-REACH child care benefits are payable from CCP funds and may not exceed the maximum REACH rates for the type(s) of care provided.

3. Group 3 participants will be eligible for all REACH child care benefits set forth at N.J.A.C. 10:81-14.18 for child care centers and registered family day care homes approved by the demonstration, supplemented up to the CCP child care maximum rates at (b) below, as well as extended enhanced post-REACH child care benefits until the qualifying child begins attending first grade or reaches age seven, whichever is earlier. The dollar amount of post REACH child care benefits are payable from CCP funds and may not exceed the CCP child care maximum rates for the type(s) of care provided.

i. For Group 3 participants, payment for child care provided for the period between REACH activities, to bridge the period of care, is available for a period of three months. Extensions beyond three months require approval of the Department of Human Services. Federal financial participation (FFP) will be sought for the first month of bridge payments through the REACH program (see N.J.A.C. 10:81-14.18(d)3). CCP funds will be used to pay for the extended bridge payments not subject to FFP and for all bridge payments made during a sanction period.

(b) The maximum rates payable under the CCP demonstration for enhanced care in licensed child care centers and registered family day care homes approved by the demonstration will be established at the start of the demonstration and may change during the course of the demonstration.

1. The current CCP child care maximum rates payable are:

i. $150.00 per child per week for infant care (a child through age two years and five months);

ii. $125.00 per child per week for pre-school care (a child from age two years and six months through age five); and

iii. $125.00 per child per week for care of a school-age child (age six and older);

2. The CCP child care maximum rates include an allowance for care of an infant or pre-school child with special needs, as defined in N.J.A.C. 10:81-14.18(c)1. However, if the provider must make special changes to the facility, equipment or services to accommodate the needs of this child, a differential of up to $25.00 per week above the CCP maximum rate payable for an infant or pre-school child, as appropriate, may be authorized on a case-by-case basis by the Department of Human Services.

(c) Child care benefits will be available to a Group 2 participant for all of the participant's children under age 13 until the qualifying child begins attending first grade or reaches age seven, whichever is first.

1. In order to receive extended child care benefits during the post-REACH period, a Group 2 participant must meet all of the following requirements:

i. The participant must exhaust all REACH benefits;

ii. The participant's qualifying child must not yet have entered the first grade; and

iii. The participant must continue to comply with REACH rules governing eligibility for REACH post-AFDC child care.

(1) All other REACH procedures pertaining to child care payments will be continued into the period of extended post-REACH CCP benefits.

(d) Child care benefits will be available to a Group participant for all of the participant's children under age 13 until the qualifying child begins attending first grade or reaches age seven, whichever is first.

1. In order to receive Group 3 benefits, all of the participant's pre-school children who are in care must be placed in enhanced care in either a licensed child care center or a registered family day care home approved by the demonstration. Children age six or older may be placed in either an enhanced care arrangement, if available, or in a REACH-approved child care arrangement. If the participant places a pre-school child in self-arranged care or in a licensed center or registered family day care home that is not approved by the demonstration, eligibility for Group 3 benefits will cease and revert to Group 1 benefits. Exceptions on a case-by-case basis require authorization by the Department of Human Services.

2. Group 3 child care services will be available for a full day regardless of the number of hours the parent is actually participating in a REACH employment-directed activity or in employment.

(e) CCP funds will be considered the payor of last resort in the demonstration. REACH funds will be used to pay for all REACH child care benefits at N.J.A.C. 10:81-14.18, up to the maximum or scheduled REACH rates, as determined by the Department of Human Services. CCP funds will pay for extended post-REACH benefits for Group 2; for enhanced benefits for Group 3, determined as the difference between the CCP rates paid (up to the maximum CCP rates at (b) above) and the REACH maximum rates at N.J.A.C. 10:81-14.18; and for extended enhanced post-REACH benefits for Group 3.

(f) Special types of payments may be made only on behalf of Group 3 participants to Group 3 providers, as determined by the Department of Human Services and the evaluator, to further the purposes of the demonstration. Such payments may include one-time prospective payments prior to the child care service being rendered, or payments for unfilled slots to reserve a place or slot for future placement of a Group 3 participant's child. The demonstration may establish maximum amounts for such payments.

(g) Payment for transportation of the child(ren) to and from licensed child care centers and for special needs child(ren) is available for all CCP participants as set forth at N.J.A.C. 10:82-5.2.

1. Additional funds from CCP for transportation for a particular Group 3 provider may be made available, determined by the evaluator, on a case-by-case basis.

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10:81-15.9 Additional Group 3 services

(a) Only licensed child care centers and registered family day care homes that meet certain criteria will be approved as Group 3 providers.

(b) In order to be eligible to be a Group 3 provider, licensed child care centers and registered family day care homes must meet certain criteria for high quality care outlined below. Enhanced quality child care programs should provide a learning environment for children that will help them develop cognitively, socially, physically and emotionally in a manner appropriate to their age. The following components are considered to indicate a strong developmental orientation and will be used to select licensed child care centers and registered family day care homes to provide care for Group 3 children:

1. Staff well-trained in child development and/or child education, with minimum educational requirements for lead teachers, assistant teachers, and specific preservice training for registered family day care providers;

2. Minimum standards for group size and for staff-to-child ratios, that exceed the requirements of DYFS licensing at N.J.A.C. 10:122 and registered family day care homes at N.J.A.C. 10:126;

3. Curricula based in theory, research and practice as related to children's development learning processes, social/emotional development and group dynamics, that balance child-initiated and teacher-directed activities;

4. Documentation and monitoring of each child's development and performance;

5. Frequent supportive staff-child interaction and guidance;

6. Parental education and involvement in the development of the children, in partnership with teachers and child care providers, including information-sharing via written materials, parent-provider conferences, and support groups; and

7. Sufficient and appropriate indoor and outdoor space, and equipment and materials appropriate for ages of children served.

(c) To ensure that the quality and level of service will be maintained during the demonstration and that program goals are being achieved, evaluation of the program(s) will be conducted by visits and written evaluations by CCP demonstration staff and by monitoring of CCP contractual arrangements with the lead child care entity.

(d) In addition to enhanced quality child care services described above, the following services will be available to Group 3 participants, either directly through CCP or by referral:

1. Social services are available to help families make the transition from welfare into employment. While the Group 3 participant is receiving AFDC and during the post-AFDC period, referral to social services is made through the REACH program or the CCP staff at the lead child care entity. During the post-REACH period, social services will be provided by a CCP social worker or other CCP staff person who will:

i. Assist families and providers to identify and resolve problems;

ii. Provide parenting sessions; and

iii. Coordinate referrals to community-based support services.

2. Health and nutrition services will be available for Group 3 children and mothers. Services may include:

i. Assistance in assessing and scheduling necessary health services for children, such as proper immunization, basic health screenings, and annual physical examinations;

ii. Health and nutrition education to mothers through seminars, workshops, counselling and informational materials; and

iii. Using providers who participate in the Federal Child Care Food Program, or who provide an equivalent menu daily.

3. Mothers in Group 3 will be trained through parent education services to understand and to reinforce the developmental concepts of enhanced quality care. Training will be conducted by the provider or CCP staff through monthly support group sessions and special counselling by the CCP social services worker.

10:81-15.10 Notice and hearings

(a) For all CCP participants receiving AFDC and during the post-AFDC period, the notice and hearing requirements of N.J.A.C. 10:81-14.7 will apply to reduction or termination of CCP child care benefits.

(b) Post-REACH CCP participants will be entitled to notice and may request a review by the evaluator and the Department of Human Services before reduction or termination of CCP child care benefits.

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephones
Attorneys and Court Related Personal Visits
Proposed New Rule: N.J.A.C. 10A:18-1.4
Proposed Amendment: N.J.A.C. 10A:18-6.7

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1991-17.

Submit comments by February 6, 1991 to:
Elaine W. Ballai, Esq.
Supervisor, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Corrections is proposing an amendment which modifies N.J.A.C. 10A:18-6.7(a) to add "licensed in any jurisdiction" and adds a new subsection N.J.A.C. 10A:18-6.7(e) which specifies that Form 292-I may be used to verify the inmate's desire to meet with an attorney in an attorney-client relationship. A new rule, N.J.A.C. 10A:18-1.4, Forms, is also proposed, which authorizes correctional facilities to reproduce copies of Form 292-I from originals which may be obtained by contacting the Standards Development Unit. The amendment to N.J.A.C. 10A:18-6.7(a) was added to clearly indicate that this rule does not exclude inmate contact visits with attorneys licensed in jurisdictions other than the State of New Jersey. The new N.J.A.C. 10A:18-6.7(e) was added to specify the use of Form 292-I as a means of verifying that the inmate desires to meet with the attorney in an attorney-client relationship.

Social Impact

Due to misinterpretations of N.J.A.C. 10A:18-6.7, approval of requests for attorney-client contact visits between inmates and attorneys was not granted in some cases because the attorney was licensed in a jurisdiction other than New Jersey. The proposed amendments will ensure that the request of an inmate for a contact visit with an attorney will not be disapproved solely because the attorney is licensed in a jurisdiction other than New Jersey. No adverse reaction is anticipated as a result of the proposed amendment and new rule.

Economic Impact

The proposed amendment and new rule will have no economic impact because additional funding is not necessary to implement or maintain the proposed amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment and new rule do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment and new rule impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

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

10A:18-1.4 Forms

(a) The following form related to Mail, Visits and Telephone shall be reproduced by each correctional facility from the original that is available by contacting the Standards Development Unit:

1. 292-I REQUEST FOR ATTORNEY-CLIENT CONTACT VISIT

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0A:18-6.7 Attorneys and court related personal visits

(a) Attorneys **licensed in any jurisdiction** and representatives of ttorneys shall be permitted contact visits during regular business ours when sufficient space and staff are available.

(b)-(d) (No change.)

(e) **Form 292-I REQUEST FOR ATTORNEY-CLIENT CON-'ACT VISIT may be used to verify the inmate's desire to meet with he requesting attorney in the context of an attorney-client relationship.**

Recodify existing (e), (f) and (g) as **(f), (g) and (h)**. (No change n text.)

(a)

THE COMMISSIONER

Adult County Correctional Facilities

Medical, Dental and Health Service Care

Proposed Amendments: N.J.A.C. 10A:31-13.9 and 13.18

Proposed New Rule: N.J.A.C. 10A:31-13.10

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1991-2.

Submit comments by February 6, 1991 to:
Elaine W. Ballai, Esq.
Supervisor, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

As a result of the United States Third Circuit Court opinion in *M.C.C.I. Inmates v. Lanzaro*, 834 F 2d. 326 (3d Cir. 1987) and a December 6, 1989, public hearing requested by the Public Advocate on N.J.A.C. 10A:31, a proposed amendment has been made to N.J.A.C. 10A:31-13.9 which requires that female inmates, except those who are post menopausal or who have a history of a previous hysterectomy, be given a pregnancy test upon admission to a county correctional facility. The proposed new rule at N.J.A.C. 10A:31-13.10 specifies the basic medical and social services that are to be provided to pregnant inmates. The proposed amendment to N.J.A.C. 10A:31-13.18 corrects the cross reference to the next section which became necessary because of the addition of the proposed new rule at N.J.A.C. 10A:31-13.10. The new rule and amendments are being proposed by the Department of Corrections in order that female offenders that are admitted to county correctional facilities, especially those that are pregnant, will receive medical and health care services that are similar to the medical and health care services that are provided for female inmates at State correctional facilities.

Social Impact

The proposed amendments and new rule will ensure that female offenders will be given a pregnancy test when they enter county correctional facilities, and that pregnant inmates will receive appropriate medical and social services. The proposed amendments and new rule will not have a new social impact on counties where the services required by the amendments and new rule are currently provided. Female offenders admitted to correctional facilities in counties where services required by the amendments and new rule are not provided will receive closer medical scrutiny upon admission and pregnant offenders will receive the services required by the amendments and new rule.

Economic Impact

The proposed amendments and new rule will differ in their economic impact depending on a county's present practices. The impact will depend on whether the funds are already allocated to services and medical tests or whether the need to implement presently unavailable tests and services necessitates new allocations. It is therefore not possible to estimate or predict specific economic impact.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and new rule do not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rule impact on inmates, the New Jersey Department of Corrections, and county correctional facilities and have no significant effect on small businesses.

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

10A:31-13.9 Medical screening

(a) Upon admission, all inmates shall receive:

1. (No change.)

2. A physical examination by a licensed physician; [and]

3. A pregnancy test for all female inmates, except those who are post menopausal or who have a history of a previous hysterectomy; and

[3.]**4.** Any tests determined to be necessary by the physician who is responsible for medical services.

(b)-(d) (No change.)

10A:31-13.10 Care of pregnant inmates

(a) The county correctional facility shall provide pregnant inmates with medical and social services as soon as possible after the pregnancy is diagnosed. Medical and social services shall include:

1. Prenatal medical evaluation and care;

2. Nutritional supplements and diet as prescribed by the treating physician;

3. Non-directive counseling regarding:

i. Family planning;

ii. Birth Control;

iii. Termination of pregnancy;

iv. Child placement services; and

v. Religious counseling, if desired by the inmate.

4. Obstetrical services;

5. Abortion services, unless the treating physician and/or gynecologist determines that the pregnancy cannot be terminated; and

6. Appropriate postpartum and follow-up medical care.

(b) The delivery or termination of pregnancy shall be scheduled only at a State-licensed medical facility or hospital.

(c) The county correctional facility shall also provide the pregnant inmate with:

1. Suitable maternity clothes if the inmate is unable to provide her own;

2. Reasonable housing assignments, as permitted by available space and the inmate's security status; and

3. Appropriate exercise and reduced work schedules as deemed advisable by the treating physician.

Recodify existing 10A:31-13.10 through 10A:31-16 as **10A:31-13.11** through **10A:31-13.17**. (No change in text.)

10A:31-[13.17]**13.18** Dental Care

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

(c) Inmates shall receive dental treatment as determined by the dentist in accordance with the Classification and Priority Treatment Program (see N.J.A.C. 10A:31-[13.18]**13.19**).

Recodify existing 10A:31-13.18 through 10A:13-13.28 as **10A:31-13.19** through **10A:13-13.29**. (No change in text.)

INSURANCE

(b)

DIVISION OF FINANCIAL EXAMINATIONS

Orderly Withdrawal of Insurance Business

Proposed New Rules: N.J.A.C. 11:2-29

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), N.J.S.A. 17:17-10 and 17:33B-30 (P.L. 1990, c.8, Sections 71 and 72), and 52:14B-1 et seq.

Proposal Number: PRN 1991-33.

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Submits comments by February 6, 1991 to:
Verice M. Mason, Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

P.L. 1990, c.8 was enacted March 12, 1990. Known as the Fair Automobile Insurance Reform Act of 1990 ("FAIR Act"), it is designed to remedy the problems of availability and affordability in the New Jersey insurance market, particularly private passenger automobile insurance. One of the specific methods provided for in the FAIR Act is the regulation by the New Jersey Commissioner of Insurance ("Commissioner") of insurer withdrawals from the business of insurance, which could range from the nonrenewal of insurance policies to such actions as the reduction in agency commissions paid. Such withdrawals have the potential to cause tremendous market dislocations without statutory and regulatory provisions designed to minimize the negative impact that could occur as a result of such withdrawals.

Sections 71 (regulating domestic insurers) and 72 (regulating foreign and alien insurers) of the FAIR Act (codified and hereinafter referred to as N.J.S.A. 17:17-10 and 17:33B-30, respectively) require an insurer authorized or admitted in New Jersey to transact the business of insurance to submit a plan of orderly withdrawal, for approval by the Commissioner, if it wishes to surrender its authority to transact business or to discontinue writing or renewing the type of insurance specified in its certificate of authority. Such a plan for orderly withdrawal is designed to minimize the adverse effects of eliminating coverage on insurer policies, to prevent or minimize disruption in the marketplace and harm to the public, and to permit insurers to wind down their business in an orderly fashion consistent with N.J.S.A. 17:17-10 and 17:33B-30.

To encourage insurers to maintain their commitment to the New Jersey market, especially in insurance lines that require a market-based solution to problems of insurance availability, N.J.S.A. 17:17-10 and 17:33B-30 also grant the Commissioner the discretionary authority to require as a condition of approval of the plan the surrender of some or all certificates of authority held in New Jersey by the applicant or its insurance affiliates for such modifications as he may consider appropriate.

Proposed new rules regarding orderly withdrawal were published in the November 20, 1989 New Jersey Register at 21 N.J.R. 3622(a) (before the passage of the FAIR Act). Pursuant to N.J.A.C. 1:30-4.2(c), the proposed new rules have expired because they were not adopted and filed with the Office of Administrative Law within one year from the November 20, 1989 publication of such rules. The proposed new rules established the requirements and procedures by which insurers may initiate and execute an orderly withdrawal from insurance business in this State. This proposal seeks to implement N.J.S.A. 17:17-10 and 17:33B-30 and contains several differences from the proposed new rules of November 20, 1989.

N.J.A.C. 11:2-29.1 sets forth the purpose and scope of the proposed new rules.

N.J.A.C. 11:2-29.2 provides the definitions of words and terms used throughout this subchapter.

N.J.A.C. 11:2-29.3 sets forth the general provisions governing an orderly withdrawal of insurance business.

N.J.A.C. 11:2-29.4 contains elements of a proposed plan of orderly withdrawal.

N.J.A.C. 11:2-29.5 provides for replacement carrier and non-renewal conditions which must be satisfied by a withdrawing insurer.

N.J.A.C. 11:2-29.6 provides for the confidentiality of certain elements of the plan of orderly withdrawal.

N.J.A.C. 11:2-29.7 provides for fines and penalties for failure to comply with this subchapter.

N.J.A.C. 11:2-29.8 provides for the severability from this subchapter of provisions or applications later determined to be invalid.

Social Impact

The proposed new rules will establish formalized requirements for insurers to withdraw from this State in an orderly fashion. If the requirements contained in the proposed new rules are satisfied and the conditions of the approved plan are met, insurers will be able to withdraw from this State without unnecessarily disrupting the marketplace, or unduly affecting its current policyholders and the insurance-buying public.

Economic Impact

The proposed new rules may result in an adverse economic impact upon insurers. An insurer may (for a particular period) be required to renew existing business and take on new business as may be required by law unless it can obtain a replacement carrier acceptable to the Commissioner. However, these proposed new rules implement the legislative intent regarding an orderly withdrawal from this State to require the Commissioner to evaluate and approve a proposed plan of withdrawal upon conditions he considers necessary to prevent or minimize any disruption in the marketplace and potential harm to the public (in terms of availability and affordability of insurance coverage) as a result of a withdrawal of insurance business.

Unless a waiver is granted, an insurer seeking to withdraw from even a single line of insurance may be required to surrender its authority for all lines, and certain of its affiliates may have to do likewise. In addition the withdrawal applicant and its affiliates are prohibited from acquiring directly or indirectly, a controlling interest in any insurer that is licensed to do business in this State for a period of five years after the effective date of withdrawal.

The proposed new rules will, however, aid insurers' administrative, financial and legal staff in initiating and executing an orderly plan of withdrawal.

Regulatory Flexibility Analysis

The proposed new rules are applicable to all insurers as herein defined. It is believed that some insurers to whom the proposed new rules apply are "small businesses" within the meaning found in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq.

The Department does not anticipate that the notification and compliance requirements contained in the proposed new rules will necessarily require the addition of any permanent staff to insurer payrolls or any new capital requirements.

The proposed new rules do impose procedural requirements that could unfairly impact, economically, smaller insurers contemplating withdrawal. However, the Commissioner has the discretion to waive the filing of a plan if, for instance, the withdrawal will not adversely affect the marketplace or a replacement carrier will not be difficult to find.

Full text of the proposal follows:

SUBCHAPTER 29. ORDERLY WITHDRAWAL OF INSURANCE BUSINESS

11:2-29.1 Purpose and scope

(a) The purpose of this subchapter is to establish the requirements and procedures by which insurers may undertake an orderly withdrawal from the business of insurance in this State, thereby minimizing the adverse effects upon policyholders of eliminating coverage; preventing or minimizing the disruption in the marketplace and harm to the public that would otherwise occur in the absence of regulation; and permitting insurers to wind down their business in an orderly fashion as is consistent with N.J.S.A. 17:17-10 and 17:33B-30.

(b) This subchapter applies to all insurers that seek to withdraw from the business of insurance as defined herein.

11:2-29.2 Definitions

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

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the insurer that initiates a withdrawal, as defined in N.J.S.A. 17:27A-1.

"Annual statement" means the form of statement that is described in N.J.S.A. 17:23-1.

"Applicant" means the insurer seeking approval to withdraw from the business of insurance in this State.

"Assumption agreement" means a contract between insurers whereby one insurer transfers all or substantially all its rights, duties and obligations arising from certain policies to another insurer.

"Authority" means the power granted by the Commissioner which enables an insurer to transact the business of insurance.

"Automobile" and "automobile insurance" are as defined in N.J.S.A. 17:30E-3.

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"Business of insurance" or "insurance" means any kind, line, subline, or a portion thereof authorized by Chapters 17 or 32 of Title 17 of the Revised Statutes.

"Commencement date" of withdrawal means the date which the applicant may begin withdrawing from this State pursuant to the approved plan of orderly withdrawal.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Control" is as defined in N.J.S.A. 17:27A-1.

"Department" means the New Jersey Department of Insurance.

"Effective date" of withdrawal means the date at which the applicant has complied with any and all conditions contained in the approved plan of orderly withdrawal.

"Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer as defined in N.J.S.A. 17:27A-1.

"Insurance producer" or "producer" means any person engaged in the business of an insurance agent, broker or consultant, as those terms are defined in N.J.S.A. 17:22A-2.

"Insurer" means an insurer, reinsurer, eligible surplus lines insurer or a chartered or qualified risk retention group, and any insurance affiliates thereof, authorized or admitted pursuant to Chapters 17 or 32 of Title 17 of the Revised Statutes to transact in this State the business of insurance as defined herein.

"Plan" means a plan of orderly withdrawal from insurance business in New Jersey.

"Portfolio reinsurance agreement" means a contract between insurers whereby one insurer transfers its entire liability for in-force policies or outstanding losses, or both, to another insurer regarding a described segment of insurance business.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates, rules and forms used by any insurer or by any rating organization in determining or ascertaining a rate.

"Reinsurance agreement" means a contract between insurers whereby one insurer agrees to insure part or all of an insurance risk of an originating, or ceding, insurer.

"Residual market mechanism" means any program authorized or created by the New Jersey State Legislature which is designed to provide an insurance market for insureds who are unable to obtain insurance in the voluntary market.

"State" means the State of New Jersey.

"Withdraw" or "withdrawal" means the nonrenewal, cancellation, or termination of policies, or surrender of authority to transact the business of insurance in this State, or any insurer action that is equivalent to a withdrawal from the business of insurance in this State which may include, but is not limited to, the elimination of a rating system, termination of agency contracts, reduction in agency commissions, restrictions on agency solicitation or binding authority, insurer refusal of applications or declaration of a dividend to an affiliate. Whether the above activities are equivalent to a withdrawal shall be determined by the Commissioner on a case-by-case basis.

"Withdraw" or "withdrawal" also means the transfer to another insurer of insurance business pursuant to an assumption agreement as defined herein or a portfolio reinsurance agreement as defined herein.

11:2-29.3 General provisions

(a) Any insurer that seeks to undertake any of the actions described as withdrawals in N.J.A.C. 11:2-29.2 shall provide the Commissioner with written notification so that he or she may determine whether the insurer must file a plan of orderly withdrawal pursuant to N.J.A.C. 11:2-29.4 or, if such plan is waived by the Commissioner under circumstances he considers appropriate, a reasonable substitute withdrawal procedure approved by the Commissioner.

(b) Any insurer that is required by the Commissioner to file a plan of orderly withdrawal pursuant to N.J.A.C. 11:2-29.4 shall submit to the Department an original and 15 copies of a proposed plan for prior approval thereof.

1. The Commissioner shall not begin his or her evaluation of the proposed plan until the applicant has complied with the requirements contained herein for its submission, after which the Commissioner shall approve the plan within 90 business days, subject to the terms and conditions which he or she may consider appropriate.

i. The Commissioner shall acknowledge to the applicant the receipt of any filing within 20 business days thereafter, the failure of which may allow the applicant to treat the filing as complete.

ii. The Commissioner may extend the 90-business day time frame for approval of the plan an additional 30 business days for good cause and shall provide notice to the applicant of such extension.

2. All applicant shall not commence any action in furtherance of a withdrawal as defined herein prior to the Commissioner's approval thereof. For the purposes of this paragraph, commencing an action in furtherance of a withdrawal does not include the non-binding oral or written communication between an insurer/applicant and another insurer in negotiating a replacement of the insurer/applicant's insurance business by the other insurer.

3. The authority of an applicant to conduct the business of insurance from which it seeks to withdraw, as well as any other authority which it is required to surrender pursuant to this subchapter shall, upon approval of the plan, continue in effect, but only in accordance with the plan as approved.

4. No withdrawal shall become effective until the applicant has complied with any and all conditions contained in the approved plan which relate to the effective date of withdrawal.

5. Unless the applicant specifically requests and is granted a waiver, the applicant shall make either or both of the following special deposits, as a condition of approval of the plan, in securities or the equivalent thereof in performance bonds as determined by the Commissioner, until such time as the applicant's liabilities as determined by the Commissioner no longer exist in this State:

i. A deposit established with and in the name of the Commissioner for the benefit of all of the applicant's New Jersey policyholders, claimants and creditors which shall be equal to an amount not to exceed 125 percent of the applicant's current and potential liabilities existing or that may exist in this State;

ii. A deposit established with and in the name of the Commissioner pursuant to a consent order signed by the applicant to guarantee compliance with the approved plan, a breach of which may result in an immediate forfeiture of the deposit in whole or in part. This deposit shall be in an amount established at the discretion of the Commissioner and may equal the greater of one million dollars or 10 percent of the applicant's average annual net direct premiums written within the last three years in the line(s) from which it seeks to withdraw.

6. The applicant may substitute, with the approval of the Commissioner, in place of the deposits required in (a)5 above, the following:

i. A proper guarantee from its immediate or ultimate parent;

ii. A letter of credit;

iii. A trust agreement; or

iv. Any other financial guarantee of the applicant's total liabilities.

7. For good cause shown, the Commissioner may waive the special deposits or substitutes required in (a)5 and 6 above upon a consideration of factors including, but not limited to, the uniqueness of the applicant's circumstances, its size, and its volume of business and whether the withdrawal is being effected by a transfer of life, health or annuity business pursuant to an assumption agreement.

(c) The Commissioner may require as a condition of approval of the plan the surrender of some or all certificates of authority, issued pursuant to Chapters 17 or 32 of Title 17 of the Revised Statutes, held by the applicant or by other companies within the same insurance holding system as the applicant for amendment, termination, suspension, restriction or such other modification as the Commissioner considers appropriate. Upon specific request by the applicant for a waiver of any portion of these requirements the Commissioner may grant the waiver in whole or in part if the Commissioner finds that, based upon proofs presented, one or more of the following mitigating circumstances exist:

1. The withdrawal will not cause a market availability problem or an undue disruption in the marketplace;

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2. The applicant will enter into an agreement with a proposed replacement carrier to assume the applicant's existing book of business conditioned, however, upon an approved plan;

3. The withdrawal will not adversely affect competition;

4. The withdrawal is due to specified problems affecting the solvency of the applicant; or

5. The public interest is best served by such a waiver.

(d) If more than one insurer within the same holding company system seeks or is required by the Commissioner pursuant to this subchapter to withdraw from the business of insurance in this State, each withdrawing affiliate shall submit a separate plan to the Commissioner pursuant to this subchapter or, if such plan is waived pursuant to (a) above, a reasonable substitute withdrawal procedure approved by the Commissioner.

(e) An insurer that currently services a residual market mechanism and is subject to the withdrawal provisions contained in the plan of operation governing such mechanism is exempted from the requirements of this subchapter to the extent of the insurance business serviced by the insurer in such mechanism.

(f) The applicant and its affiliates shall be prohibited for a period of five years after the effective date of withdrawal from acquiring, directly or indirectly, a controlling interest in any insurer that is licensed to do business in this State without approval of the Commissioner.

11:2-29.4 Elements of proposed plan of orderly withdrawal

(a) A proposed plan of orderly withdrawal shall contain the following information supported by adequate proof of the validity thereof, if not specifically required herein:

1. The reasons the applicant seeks to withdraw, supported by a description and documentation of the applicant's financial condition for the last three years or such other period as the Commissioner considers appropriate, including the underlying accounting, actuarial and other relevant data or material relied upon in deciding to seek withdrawal;

2. The proposed commencement date of such withdrawal;

3. A description of the following:

i. All authority currently and previously held by the applicant in all jurisdictions (specifically listing states in which the applicant has withdrawn);

ii. The authority in New Jersey currently and previously held by its insurer affiliates, including dates of issuance, surrender, suspension or revocation; and

iii. The authority in other jurisdictions held by the applicant or its insurer affiliates that has recently been surrendered or is intended for surrender currently and in the future;

4. An organizational chart and narrative description of the relationships among the applicant and its insurer affiliates, if any, indicating at a minimum:

i. The business of insurance which each has authority to write in New Jersey;

ii. The management relationships;

iii. The financial relationships (for example, reinsurance agreements, pooling arrangements, common investments, etc.);

iv. The marketing relationships;

v. The agency relationships;

vi. The claims handling relationships; and

vii. Whether any of the applicant's insurer affiliates are also taking action or applying to withdraw from the business of insurance in this State (and if so, the details thereof);

5. A description, by line of insurance written in New Jersey, of the applicant's and its insurer affiliates' business (both property/casualty and life/health) during the last three years, including for each year the corresponding premium volume, number of current policyholders, number of exposures, approximate market share and the number of insurance producers and employees servicing the business. If employees of the applicant or any of its affiliates will be terminated in this State as a result of the applicant's withdrawal, a description of the method of termination, a description of the termination benefits, and any other financial or nonfinancial accommodations made on the employees' behalf shall be included;

6. The address of each of the applicant's offices in this State;

7. Copies of the proposed cancellation and nonrenewal notices and termination notices, the applicant intends to send to its policyholders and insurance producers, respectively, as well as any other withdrawal-related correspondence, including the proposed dates of such notices or correspondence. Producer termination notices shall comply with the requirements contained in N.J.S.A. 17:22-6.14a;

8. In the case of a proposed withdrawal of life, health or annuity business to be effected through one or more assumption agreements, the proposed certificate(s) of assumption and letters of notification (where appropriate) to policyholders informing them of the transfer of their policies to another insurer. In the case of a proposed withdrawal of other than life, health or annuity business to be effected through one or more portfolio reinsurance agreements, the reinsurance agreement(s) and letters of notification (where appropriate) to policyholders informing them of the reinsurance of their risks with another insurer;

9. The name and address of each insurance producer, as well as the number of policies sold and premium volume produced by each producer, by line of insurance, for a 12 month period prior to the filing of the proposed plan;

10. A specimen copy of each current producer contract;

11. Copies of all correspondence and notices to be sent to the following entities or their statutory successors, as well as a description of all agreements (which need not be in final form) reached with such entities or their statutory successors as to the applicant's financial and reporting obligations to them, as applicable; if not applicable, an explanation why. The following list is not intended to be exhaustive. It is the responsibility of the applicant to furnish the information required under this paragraph for any other statutorily created or authorized entity to which it owes or may owe a financial or reporting obligation. The Commissioner may require the applicant to deposit with any of the below-listed entities (or their statutory successors) an amount sufficient to meet the applicant's obligations thereto.

i. The Unsatisfied Claim and Judgment Fund established pursuant to N.J.S.A. 39:6-61 et seq.;

ii. The New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.;

iii. The New Jersey Automobile Insurance Risk Exchange established pursuant to N.J.S.A. 39:6A-21 through 22.1;

iv. The Mutual Workers Compensation Security Fund established pursuant to N.J.S.A. 34:15-112;

v. The Stock Workers Compensation Security Fund established pursuant to N.J.S.A. 34:15-105;

vi. The New Jersey Insurance Division of Fraud Prevention established pursuant to N.J.S.A. 17:33A-1 et seq.;

vii. The Commercial Automobile Insurance Procedure established pursuant to N.J.S.A. 17:29D-1;

viii. The New Jersey State Division of Taxation for premium taxes required by N.J.S.A. 54:18A-1 et seq. and 17:33B-49;

ix. The Surplus Lines Guaranty Association established pursuant to N.J.S.A. 17:22-6.70 et seq.;

x. The Medical Malpractice Reinsurance Association established pursuant to N.J.S.A. 17:30D-1 et seq.;

xi. The Market Transition Facility established pursuant to N.J.S.A. 17:33B-11;

xii. The New Jersey Automobile Full Insurance Underwriting Association for examination assessments provided by N.J.S.A. 17:30E-18.1;

xiii. The New Jersey Automobile Full Insurance Underwriting Association for residual market equalization charges and policy constants established pursuant to N.J.S.A. 17:30E-8 and 17:29A-37.1, respectively; and

xiv. The Department of Insurance for examination fees provided for by N.J.S.A. 17:23-1 et seq. and other statutory fees provided for by N.J.S.A. 17:33-1;

12. A statement, by line of insurance written in this State, of all of the applicant's current incurred liabilities and reserves, including those incurred but not reported, as developed and certified by a "qualified actuary" as defined in N.J.A.C. 11:1-21.1 for property and casualty lines and by a Fellow of the Society of Actuaries for life

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nd health lines, as of a date not earlier than 90 days prior to the ıbmission of the proposed plan and which shall include the follow-ıg in the case of insurance other than life:

i. Copies of all work papers supporting the actuarial opinions;

ii. Copies of all underlying statistics; and

iii. If not included in (b) above, development triangles, New Jersey nly and countrywide for the following. Triangles shall be con-tructed as of December 31 for as many accident years and as many evelopment years as necessary to display at least five mature acci-ent years. For the purpose of this requirement, a mature accident ear is defined as one for which paid losses equal at least 99 percent f incurred losses including IBNR. Such data shall be supplied both ı hard copy and as their ASCII equivalent. Any narrative necessary or proper interpretation of the data supplied shall be provided.

(1) Paid losses;

(2) Incurred losses; and

(3) Claim counts:

(A) Reported; and

(B) Closed;

13. A description of the manner in which the applicant has in the ɔast three years handled and intends to handle claims, premium actor charges, premium billing, and policyholder service regarding ɔolicies held by New Jersey residents remaining in force after the plan ıas been approved. Provide a description of the applicant's staff and ıdjusters servicing these claims, including the servicing location and .he procedures for consumer contact;

14. A list of all the applicant's and its affiliates' deposits, if any, currently held pursuant to N.J.S.A. 17:20-1 et seq.;

15. A description of the kind and amount of all reinsurance as-sumed and ceded by the applicant, identifying each ceding and assum-ing insurer and describing the corresponding risks in each reinsurance agreement. An explanation of whether the proposed withdrawal will affect the surplus of another insurer as a result of the loss of credit received by that insurer on any of the applicant's assumed re-insurance, as well as a description of the procedures designed to minimize any marketplace disruption or hazardous financial con-dition that may occur as a result of the loss of credit, shall be included;

16. A description of all multi-state accounts under which insurance has been provided for risks located in New Jersey, as well as an explanation of the impact of withdrawal on such risks;

17. The proposed amount of the special deposits required under N.J.A.C. 11:2-29.3(a)5, which shall be maintained until such time as the applicant's liabilities and potential liabilities no longer exist in this State;

18. Written certification from a duly authorized officer of the applicant, signed under the pains and penalties of perjury, that the information submitted in the proposed plan is accurate and complete to the best of his or her belief and that for as long as insurance policies are in force or there are unpaid losses or expenses in this State:

i. The applicant shall fully honor all of its legal obligations in this State;

ii. The applicant shall continue to service, without discrimination, all outstanding policies, bonds and surety lines of credit, which in-cludes processing all usual and customary endorsements requested by insureds during the term of such policies, subject to the applicant's normal underwriting standards;

iii. The applicant shall continue to submit annual statements and information required by the entities set forth in (a)11 above, upon request, for as long as the applicant has any unearned premiun or any unpaid or incurred losses in this State;

iv. The applicant shall continue to operate in accordance with the laws and regulations of this State and remain subject to examination by the Department for as long as considered necessary by the Com-missioner;

v. The applicant shall not accept any new business whatsoever in this State unless authorized or required by the Commissioner, includ-ing reinsurance and excess or surplus lines placements; and

vi. The applicant shall maintain its designation of the Com-missioner as its agent for service of process; and

19. The plan shall include a method acceptable to the Com-missioner to verify the applicant's compliance with its obligations under the plan as approved which may include, but is not limited to, quarterly financial and informational reports of the applicant's progress under the plan.

(b) The Commissioner may require any other information he or she considers relevant to the evaluation of the request to withdraw.

11:2-29.5 Replacement; non-renewel

(a) Notwithstanding the provisions of N.J.A.C. 11:3-8.3, if an applicant's request to withdraw involves private passenger auto-mobile insurance and the applicant is required to submit a proposed plan, the applicant is subject to the following additional conditions which must be addressed in the proposed plan:

1. The applicant shall seek to place its business with a voluntary market replacement carrier or carriers acceptable to the Com-missioner for a specified period of years after the Commissioner's approval of the plan or until all automobile insurance is replaced, whichever is sooner.

i. The period of time in which an applicant must seek to place its business with a replacement carrier will be determined by the Commissioner, but in no instance will it be less than one year or more than five years. If, at the end of the designated period, the applicant has not succeeded in placing all of its private passenger automobile insurance policies with a vountary market carrier, the applicant shall begin an orderly process of nonrenewal at a rate designated by the Commissioner. In accordance with such process, the applicant shall provide two notices of nonrenewal to remaining policyholders. Unless the Commissioner finds that good cause exists for shortening the initial notice period, the first nonrenewal notice shall be provided at least one year prior to the next policy expiration date and its contents shall comply with the provisions of N.J.A.C. 11:3-8.3. The insurer shall issue a second notice of nonrenewal in compliance with the time and content requirements of N.J.A.C. 11:3-8.3.

ii. An insurer which acts as a replacement carrier for the private passenger automobile insurance business from which the applicant seeks to withdraw assumes all of the legal rights, duties and obli-gations associated with the participation of private passenger auto-mobile insurers in the automobile insurance market in this State.

2. At the specific request of the applicant, and upon good cause shown, the Commissioner may exercise his or her discretion to permit the applicant to nonrenew two percent of the voluntary market policies that are in force in each territory at the end of a calendar year pursuant to N.J.S.A. 17:29C-7.1b, in addition to the nonrenewals permitted by N.J.A.C. 11:3-8.4.

3. Notwithstanding (a)2 above, the applicant shall not nonrenew one policy for every two newly insured automobiles which are volun-tarily written pursuant to N.J.S.A. 17:29C-7.1c because the applicant will not be voluntarily insuring new business.

4. An applicant shall be required to accept the quotas established by N.J.S.A. 17:33B-11(c)5 unless the applicant specifically requests and the Commissioner agrees to a waiver of this requirement.

(b) If an applicant's request to withdraw involves other than pri-vate passenger automobile insurance, the applicant may be subject to conditions addressed either in the approved plan or, if the plan is waived pursuant to N.J.A.C. 11:2-29.3(a), in a reasonable substitute withdrawal procedure approved by the Commissioner.

11:2-29.6 Confidentiality of plan of orderly withdrawal

All data or information contained in the plan is confidential and will not be disclosed by the Department to any person other than its employees and representatives, except the following items, but only upon written, specified request:

1. N.J.A.C. 11:2-29.4(a)3i—Description of current and prior authority to do business by jurisdiction;

2. N.J.A.C. 11:2-29.4(a)4—Organizational chart;

3. N.J.A.C. 11:2-29.4(a)4i—Lines of insurance written by each affiliate;

4. N.J.A.C. 11:2-29.4(a)4v—Agency relationships of affiliates by agent name;

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5. N.J.A.C. 11:2-29.4(a)5—Premium volume, number of current policyholders, market share and number of producers by line of business;

6. N.J.A.C. 11:2-29.4(a)6—Address of applicant's offices in this State;

7. N.J.A.C. 11:2-29.4(a)7—Policyholder nonrenewal and producer termination notices;

8. N.J.A.C. 11:2-29.4(a)8—Name and address of each insurance producer;

9. N.J.A.C. 11:2-29.4(a)11—Copies of all correspondence and notices sent to various entities, as approved, to which the applicant owes a financial obligation;

10. N.J.A.C. 11:2-29.4(a)12—Certified statement of New Jersey incurred liabilities and reserves;

11. N.J.A.C. 11:2-29.4(a)14—Deposits held by State Treasurer; and

12. N.J.A.C. 11:2-29.4(a)17—Establishment of special deposits or equivalent performance bonds as approved.

11:2-29.7 Fines and penalties

Failure to comply with this subchapter may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

11:2-29.8 Severability

If any provision of this subchapter or its application to any person or circumstance is held invalid, such determination shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are separable.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY URBAN DEVELOPMENT CORPORATION

Public and Nonpublic Information

Proposed New Rules: N.J.A.C. 12A:80-2

Authorized By: The New Jersey Urban Development Corporation, Philip P. Rowan, Executive Director.

Authority: N.J.S.A. 55:19-6(d).

Proposal Number: PRN 1991-22.

Submit comments by February 6, 1991 to:
Philip P. Rowan, Executive Director
New Jersey Urban Development Corporation
20 West State Street
CN 834
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Urban Development Corporation (Corporation) proposes two new rules concerning public and nonpublic information. N.J.A.C. 12A:80-2.1 sets forth what Corporation records are deemed public information, available for inspection, examination and copying upon request; the Corporation charges for reproduction of this information; and the address for information concerning Corporation programs. N.J.A.C. 12A:80-2.2 describes records of the Corporation which it proposes to have excluded from the public records requirements of N.J.S.A. 47:1A-1 et seq., the Public Right to Know Law. This statute provides that records may be excluded through adoption of a rule identifying which records will not be public records.

Social Impact

N.J.A.C. 12A:80-2.1 will benefit the public by providing a point of contact for information about the Corporation's programs, and describing what Corporation records are public information and the charges for copies thereof.

N.J.A.C. 12A:80-2.2, concerning nonpublic information, is considere essential to enable the Corporation to maintain confidentiality with r spect to the information it requires from prospective applicants f financial assistance; contractors and vendors; and its own current an prospective employees. Such information is personal and private, but required by the Corporation to maintain the highest integrity in i staffing and the administration of its programs. Restricting the gener availability of such information will help to assure that complete an truthful information is provided.

Economic Impact

The only direct economic impact of the proposed new rules aris through the public records copying charges set forth in N.J.A.C 12A:80-21(b). These fees are as provided under N.J.S.A. 47:1A-2. A indirect economic impact may occur for prospective and actual Corpo ation program participants, and the Corporation, in that the nonpubli records classifications may foster increased candor in information r vealed to the Corporation, resulting in more efficient and productiv program administration.

Regulatory Flexibility Analysis

The proposed new rules impose no reporting or recordkeeping require ments on small businesses, as defined under the Regulatory Flexibilit Act, N.J.S.A. 52:14B-16 et seq. The rules set forth what Corporatio records are public information and who to contact for information. Th only compliance-type requirement concerns the fees charged for copie of Corporation records. As these fees are meant to be cost offsetting and are as set forth by statute, no differentiation in charges based upo the nature (small business or otherwise) of the copy requester is provided

Full text of the proposal follows:

SUBCHAPTER 2. INFORMATION

12A:80-2.1 Public information

(a) All records of the Corporation 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 and will be made available to the public for inspection, examination and copying upon request.

(b) If the information in (a) above is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Corporation, the Corporation shall charge a fee of $.50 for pages 1 to 10, $.25 for pages 11 to 20 and $.10 for pages 21 and above.

(c) The public may obtain general information concerning Corporation programs by contacting the Executive Director of the New Jersey Urban Development Corporation, at the Mary G. Roebling Building, 20 West State Street, CN 834, Trenton, New Jersey 08625.

12A:80-2.2 Nonpublic information

(a) The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:

1. All confidential reports, executive memoranda and evaluations submitted to the Corporation, the directors, or to any other state agency or instrumentality;

2. All personnel records except those deemed public as required by an Executive Order;

3. All records concerning applications for employment with the Corporation;

4. All records concerning financial or proprietary information submitted by applicants for Corporation assistance;

5. All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Corporation;

6. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the Board of Directors, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this section; and

7. Any other reports, correspondence or other documents or data where the Corporation finds that nondisclosure is necessary for the protection of the public interest.

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LAW AND PUBLIC SAFETY

(a)

IVISION OF MOTOR VEHICLES

utomatic Vehicle Identification System

roposed Amendment: N.J.A.C. 13:20-10.1

uthorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

uthority: N.J.S.A. 39:2-3, 39:3-43 and 39:3-74.

·oposal Number: PRN 1991-8.

Submit comments by February 6, 1991 to:
Col. Clinton L. Pagano, Director
Division of Motor Vehicles
25 South Montgomery Street, 7th Floor
Trenton, New Jersey 08666

ıe agency proposal follows:

Summary

The proposed amendment of N.J.A.C. 13:20-10.1 expands the defi-tion of "automatic vehicle identification system" to include traffic anagement applications. Currently, the rule limits the use of transpon-ers on vehicles, motor vehicles or motor-drawn vehicles registered in ıis State to electronic toll collection testing programs. All other defi-tions and requirements of N.J.A.C. 13:20-10 remain in effect and are ıchanged by the proposed amendment.

Social Impact

The proposed amendment is beneficial because it allows vehicles, motor ehicles or motor-drawn vehicles registered in this State to be equipped ith transponders, subject to the approval of the Director of the Division f Motor Vehicles, for the purpose of enabling a toll authority or agency rganized under the laws of this State or any other state to collect traffic ıanagement information. Improved information on traffic conditions ın allow faster incident response and more effective traffic advisories ıcluding appropriate diversion routes. The proposed amendment has no ocial impact on the Division of Motor Vehicles.

Economic Impact

A person (such as a toll authority or agency organized under the laws f this State or any other state) choosing to participate in a testing rogram of an automatic vehicle identification system for traffic manage-ıent purposes may incur costs in connection with complying with the pplication process set forth in N.J.A.C. 13:20-10, including, but not mited to, the cost of supplying automatic vehicle identification equip-ıent samples to the Division of Motor Vehicles for examination. Aside rom the aforementioned application costs which may be incurred, the Division of Motor Vehicles has no knowledge as to what type of economic mpact a testing program of an automatic vehicle identification system or traffic management purposes will have upon a toll authority or agency ırganized under the laws of this State or any other state which chooses o undertake or participate in such a testing program; nor does the Division know what type of economic impact such a testing program will ıave upon the State. The Division of Motor Vehicles has no knowledge ıs to what type of economic impact a testing program of an automatic ehicle identification system for traffic management purposes will have ıpon those owners or operators of vehicles, motor vehicles or motor-drawn vehicles registered in this State who choose to participate in such ı testing program. The proposed amendment will impact economically on the Division of Motor Vehicles only to the extent that the Division nust review applications for approval of such an automatic vehicle identi-ication system which are submitted to it pursuant to N.J.A.C. 13:20-10.

Regulatory Flexibility Analysis

The proposed amendment will impact small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., only if they choose to participate in a testing program of an automatic vehicle identification system as set forth in the rules as amended. The Division of Motor Vehicles has no knowledge as to whether small businesses which choose to participate in such a testing program will incur costs in connection with such participation, nor does the Division know whether professional services will be required to facilitate compliance with the transponder placement requirements imposed by N.J.A.C. 13:20-10. Such costs and the need for professional services will be dictated by the specific testing program in which the business participates. Since the Division of Motor Vehicles does not know which small businesses may choose to participate in such a testing program, and in view of the need for uniformity in the transponder placement requirements, a differentiation in the requirements imposed by N.J.A.C. 13:20-10 (including the transponder placement requirements) predicated upon size of business cannot be provided.

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

SUBCHAPTER 10. AUTOMATIC VEHICLE IDENTIFICATION [SYSTEM] **SYSTEMS**

13:20-10.1 Definitions

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

"Automatic vehicle identification system" means a toll collection **or traffic management** system comprised of an interrogation/receiver unit and a remote transponder affixed to a vehicle, motor vehicle or motor-drawn vehicle.

. . .

(b)

DIVISION OF CONSUMER AFFAIRS

STATE BOARDS OF ARCHITECTS, PROFESSIONAL ENGINEERS AND LAND SURVEYORS, AND PROFESSIONAL PLANNERS

Certified Landscape Architects

Proposed Amendments: N.J.A.C. 13:27-6.2 through 6.5; 13:40-7.2 through 7.5; 13:41-4.2 through 4.5

Authorized By: State Board of Architects, Joseph E. Filippone, President; State Board of Professional Engineers and Land Surveyors, William VanBlarcom, Executive Director; and State Board of Professional Planners, Shirley M. Bishop, P.P., President.

Authority: N.J.S.A. 45:3-3; 45:8-27 et seq.; 45:14A-4.

Proposal Number: PRN 1991-25.

Submit comments by February 6, 1991 to:
Barbara Hall, Executive Director
State Board of Architects
1207 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

Following a series of interdisciplinary meetings, the Board of Architects, the Board of Professional Engineers, and the Board of Professional Planners have recognized that Certified Landscape Architects ("CLAs") are qualified to perform certain tasks relating to site plans. The rules of the three boards presently restrict these tasks to architects, planners, engineers, and in some instances, land surveyors. Consequently all three boards are proposing to amend their site plan rules, in identical fashion and with the same rationale, to make formal provision for the CLAs.

Social Impact

The proposed amendments obviously benefit certified landscape architects, whose scope of professional practice is now recognized to include site plans. Consumers of site planning services are also benefitted by the broadening of access to another class of professionals able to engage in such preparation.

Economic Impact

Certified landscape architects may be favorably impacted in an economic sense, by this recognition of their ability to render site plan services of equal merit and legal foundation with those of architects, professional engineers, professional planners and land surveyors. Consumers may benefit by the additional competition for site plan work as a result of this formal inclusion of CLAs within the classes permitted to engage in such activity.

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Regulatory Flexibility Analysis

The Board of Architects certifies approximately 500 landscape architects as individuals, but not as business entities. It is likely, however, that all practitioners in this state are in fact small businesses under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments assist these small businesses by affirming that CLAs are qualified to do site plan work. No reporting, recordkeeping or other compliance requirements are imposed on such small businesses by these amendments, there are no capital or continuing costs involved and no additional professional services are needed in order to comply.

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

THE FOLLOWING ARE AMENDMENTS TO THE RULES OF THE BOARD OF ARCHITECTS:

13:27-6.2 Depiction of existing conditions on a site plan

(a) (No change.)

(b) Vegetation, general flood plain determination, or general location of utilities, buildings, or structures: By an architect, planner, engineer, land surveyor, **certified landscape architect,** or other person acceptable to the reviewing governmental body.

13:27-6.3 Preparation of site plan

(a) (No change.)

(b) The locations of drives; parking layout; pedestrian circulation; and means of ingress and egress: By an architect, planner, [or] engineer**, or certified landscape architect**.

(c)-(h) (No change.)

(i) Landscaping, signs, lighting, screening or other information not specified above: By an architect, planner, engineer, **certified landscape architect,** or other person acceptable to the reviewing governmental body.

(j) The general layout of a preliminary site plan for a multiple building project, showing the development elements including their relationship to the site and immediate environs: By an architect, planner [or], engineer, **or certified landscape architect**.

13:27-6.4 Preparation of a major subdivision plan

(a) The general location of facilities, site improvements, and lot layouts: By an architect, engineer, land surveyor [or], planner, **or certified landscape architect**.

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

13:27-6.5 Effect of local ordinances

(a) (No change.)

(b) No municipal or county ordinance, policy or action purporting to define the scope of professional activity of architects, engineers, land surveyors [or], planners**, or certified landscape architects** in the preparation of site plans or major subdivisions shall reduce or expand the scope of professional practice recognized by the Boards.

THE FOLLOWING ARE AMENDMENTS TO THE RULES OF THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS:

13:40-7.2 Depiction of existing conditions on a site plan

(a) (No change.)

(b) Vegetation, general flood plain determination, or general location of utilities, buildings, or structures: By an architect, planner, engineer, land surveyor, **certified landscape architect,** or other person acceptable to the reviewing governmental body.

13:40-7.3 Preparation of site plan

(a) (No change.)

(b) The locations of drives; parking layout; pedestrian circulation; and means of ingress and egress: By an architect, planner, [or] engineer**, or certified landscape architect**.

(c)-(h) (No change.)

(i) Landscaping, signs, lighting, screening or other information not specified above: By an architect, planner, engineer, **certified landscape architect,** or other person acceptable to the reviewing governmental body.

(j) The general layout of a preliminary site plan for a multip building project, showing the development elements including the relationship to the site and immediate environs: By an architec planner [or], engineer, **or certified landscape architect**.

13:40-7.4 Preparation of a major subdivision plan

(a) The general location of facilities, site improvements, and l layouts: By an architect, engineer, land surveyor [or], engineer, **certified landscape architect**.

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

13:40-7.5 Effect of local ordinances

(a) (No change.)

(b) No municipal or county ordinance, policy or action purportir to define the scope of professional activity of architects, engineer land surveyors [or], planners, **or certified landscape architects** in tl preparation of site plans or major subdivision shall reduce or expan the scope of professional practice recognized by the boards.

THE FOLLOWING ARE AMENDMENTS TO THE RULE OF THE BOARD OF PROFESSIONAL PLANNERS:

13:41-4.2 Depiction of existing conditions on a site plan

(a) (No change.)

(b) Vegetation, general flood plain determination, or general lc cation of utilities, buildings, or structures: By an architect, planne: engineer, land surveyor, **certified landscape architect,** or other perso acceptable to the reviewing governmental body.

13:41-4.3 Preparation of site plan

(a) (No change.)

(b) The location of drives; parking layout; pedestrian circulatior and means of ingress and egress: By an architect, planner, [or] engi neer **or certified landscape architect**.

(c)-(h) (No change.)

(i) Landscaping, signs, lighting, screening or other information no specified above: By an architect, engineer, **certified landscap architect,** or other person acceptable to the reviewing governmenta body.

(j) The general layout of a preliminary site plan for a multipl building project, showing the development elements including thei relationship to the site and immediate environs: By an architect planner [or], engineer **or certified landscape architect.**

13:41-4.4 Preparation of a major subdivision plan

(a) The general location of facilities, site improvements, and lo layouts: By an architect, engineer, land surveyor [or], planner **o certified landscape architect**.

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

13:41-4.5 Effects of local ordinances

(a) (No change.)

(b) No municipal or county ordinance, policy or action purportin to define the scope of professional activity of architects, engineers land surveyors [or], planners **or certified landscape architects** in th preparation of site plans or major subdivision shall reduce or expanc the scope of professional practice recognized by the boards.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Fee Schedule

Proposed Amendment: N.J.A.C. 13:31-1.11

Authorized By: State Board of Examiners of Electrical Contractors, Christine T. DeGregorio, Executive Director.

Authority: N.J.S.A. 45:5A-6; N.J.S.A. 45:1-3.2.

Proposal Number: PRN 1991-24.

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Submit comments by February 6, 1991 to:
Christine T. DeGregorio, Executive Director
State Board of Examiners of Electrical Contractors
Room 503
1100 Raymond Boulevard
Newark, New Jersey 07102

ıe agency proposal follows:

Summary

The State Board of Examiners of Electrical Contractors has proposed ı increase in its application, licensing and permit renewal fees. The ›plication fee will be increased from $25.00 to $50.00, the initial license e will be increased from $75.00 to $100.00, and the biennial license newal fee will be increased from $50.00 to $100.00. Business permit newals will be increased from $12.50 to $25.00 per year; accordingly, .e biennial business permit renewal will cost $50.00.

Reference to the examination/reexamination fee has been deleted from ıe fee schedule since the examination is administered by the National ssessment Institute, which is responsible for setting and collecting this e.

The original fees were set by statute in 1962 (N.J.S.A. 45:5A-13). ursuant to N.J.S.A. 45:1-3.2, however, the Board is authorized to estab- sh, prescribe or change its charges by rule, as necessary to defray its roper expenses.

Social Impact

The new fee schedule will enable the Board to continue to fulfill its .atutory duties with maximum efficiency. The Board's legislative man- ate charges it with ensuring competence and proper business practices ı the electrical contracting profession. The protection thereby provided : of obvious benefit to society.

Economic Impact

The proposed fee increases will impact upon all applicants for licensure nd all Board licensees. However, because the Board has not increased ees since they were established by statute in 1962, the financial impact pon applicants and licensees is in line with higher prices for electrical ontracting jobs and the general rise in the cost of living. New and higher xpenses of the Board necessitate the proposed increase in fees; the chedule will prevent the Board's having to operate at a loss, which it ›therwise anticipates. The Board must by law cover its expenses, which ıave increased by virtue of administrative costs of the continuing educa- ion program and generally higher costs of operation.

Regulatory Flexibility Analysis

The proposed fee increase will affect all applicants for licensure and ıll of the approximately 7,800 active licensees and approximately 6,100 ›usiness permit holders regulated by the State Board of Examiners of Electrical Contractors. The great majority of the business permit holders :onduct small businesses, under the definition in the Regulatory Flexibili- y Act, N.J.S.A. 52:14B-16 et seq. Compliance requirements consist of ›aying increased license fees according to the new schedule; there are no 'eporting or recordkeeping requirements, and no professional services are ıeeded. The Board has considered the financial impact of this amendment ıpon these small businesses, but it has concluded that not only are the ncreased fees reasonable in view of the fact that there have been no ncreases for 27 years, but also they are imperative in order for the Board :o cover its expenses.

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

13:31-1.11 Fee[s for application and examinations] **schedule**
(a) The following fees shall be charged by the Board:
1. Application fee..... $[25.00] **50.00**
[2. Examination/reexamination..... 35.00]
2. Initial licensure..... 100.00
3. Biennial license renewal..... 100.00
4. Initial business permit..... 25.00
5. Biennial business permit renewal..... 50.00

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Bioanalytical Laboratory Directors
Examinations of Material from the Human Body
Proposed Amendment: N.J.A.C. 13:35-3.6

Authorized By: New Jersey Board of Medical Examiners, Michael Grossman, D.O., President.
Authority: N.J.S.A. 45:9-2.
Proposal Number: PRN 1991-26.

Submit comments by February 6, 1991 to:
Charles A. Janousek, Executive Director
Board of Medical Examiners, Room 602
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

The New Jersey State Board of Medical Examiners is proposing to add a new subsection (d) to N.J.A.C. 13:35-3.6, specifically authorizing from whom a bioanalytical laboratory director may accept requests for examinations of material from the human body and to whom they may report the results. N.J.S.A. 45:9-42.19, which was repealed by N.J.S.A. 45:9-42.26 et seq., embodied the same concept as the new provision the Board is proposing. The Board has become aware that in the absence of N.J.S.A. 45:9-42.19, there is no other regulation or statute that governs this issue.

Social Impact

The proposed new subsection, clearly delineating from whom a bioanalytical laboratory director is authorized to accept human specimens for examination, merely fills the gap created by the repeal of N.J.S.A. 45:9-42.19. The provision the Board is proposing will protect consumers by assuring that they will have the benefit of a Board licensee or other authorized person in initiating and interpreting the results of laboratory tests. The Board has considered that, although some consumers perceive there is a value to initiating and receiving the results of their own laboratory tests, the burden to the public in limiting their access to laboratory testing is outweighed by the layer of protection they receive in having a medical expert's guidance in the initiation and interpretation of laboratory services. It is the Board's considered view that the public's health, safety and welfare are benefitted by this insistence on treating laboratory tests as an adjunct to a patient's total medical care.

Economic Impact

The amendment the Board is proposing will proscribe licensees from accepting laboratory specimens and reporting results directly to the consumer. Therefore, a negative economic impact for bioanalytical laboratory directors may result by foreclosing that opportunity.

The Board does not expect any substantial increase in medical costs to the consumers because the proposed provision is merely requiring what is in reality the current practice. However, to the extent that the public is prohibited from submitting specimens without an authorized person's guidance, then the cost of the medical visit must be factored in as an adverse economic impact on the consumer. On the other hand, by regulating the public's access to laboratory testing, the overall cost of medical care in the State is contained by preventing an over-utilization of laboratory services.

The Board perceives the burden of added cost to the consumer of a medical expert's involvement in the laboratory process as outweighed by the benefit bestowed on the consumer.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., bioanalytical laboratory directors are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed amendment clearly delineates from whom the licensee may accept human specimens for examination and to whom they may report the results. It has the effect of proscribing direct acceptance from or reporting to the public. Therefore, the rule must be uniformly applicable to all licensees without differentiation as to size of practice. In any case, the recordkeeping entailed will remain the same. The only com-

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pliance requirement imposed is that licensees may only accept specimens from and report to individuals authorized by the proposed rule. The reporting is within the norm of ordinary office procedure and should create no burden. No additional services beyond those of the licensee's regular office staff will be needed in order to comply with the proposal.

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

13:35-3.6 Bioanalytical laboratory director license, plenary or specialty, granted to physician

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

(d) It shall be deemed to be professional misconduct for a bioanalytical laboratory director to accept a request for examination of material from the human body unless the request originates from a licensed plenary physician, osteopathic physician, dentist, podiatrist, chiropractor or any other State Board of Medical Examiners' authorized person, public health officer or agency or local board of health. The reports of the scientific data obtained shall be submitted in writing signed by a licensed laboratory director and shall be addressed to individuals who may originate a request pursuant to this subsection.

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING
Application Fee for Certification as Homemaker-Home Health Aide
Proposed Amendment: N.J.A.C. 13:37-12.1

Authorized By: State Board of Nursing, Sister Teresa L. Harris, Executive Director.

Authority: N.J.S.A. 45:11-24.1; 45:1-3.2.

Proposal Number: PRN 1991-23.

Submit comments by February 6, 1991 to:
Sister Teresa Harris, Executive Director
Board of Nursing
1207 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

This proposed amendment establishes a $5.00 application fee for the certification of homemaker-home health aides to be paid at the time of application in order to defray the administrative costs incurred in processing each application.

Social Impact

The application fee will provide the Board of Nursing with adequate funding to carry out its administrative responsibilities in certifying homemaker-home health aides who are employed by a home care service agency and who are performing delegated nursing tasks. The certification process of certifying homemaker-home health aides will serve the public interest in that it will assure consumers of health care that those certified by the Board of Nursing will be monitored in terms of the quality of services they perform as well as their continuing good moral character.

Economic Impact

The $5.00 application fee is a nominal charge imposed for the purpose of defraying the administrative costs associated with processing applications for homemaker-home health aide certification. The charge is authorized by N.J.S.A. 45:11-24.1 which permits the Board of Nursing to prescribe an application fee at the time of application. The fee places only a minimal financial burden on applicants for homemaker-home health aide certification. Moreover, no other party will be economically affected in an adverse manner.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting, recordkeeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-19. The proposed amendment imposes a fee on individuals applying for certification as homemaker-home health aides.

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

13:37-12.1 Fee schedule

(a) (No change.)

(b) An applicant for a homemaker-home health aide certificatio shall pay a $5.00 fee at the time of application.

PUBLIC UTILITIES

(b)

BOARD OF PUBLIC UTILITIES
Waiver of Executive Order No. 66(1978)
Rules of Practice
N.J.A.C. 14:1

Take notice that the Board of Public Utilities' Rules of Practice N.J.A.C. 14:1, adopted by the Board of Public Utilities (Board), wer due to expire on December 16, 1990, pursuant to the sunset provision of Executive Order No. 66(1978). Governor James J. Florio has beei informed by the Board of Public Utilities that they and the Office o Administrative Law (OAL) are now engaged in a joint effort to establisl special rules, to be included in the OAL's Rules of Practice, N.J.A.C 1:1, to address those situations which are unique to the Board and whicl are not currently covered by the OAL's Rules of Practice.

Due to the considerable confusion which would arise if the Board': rules were to expire before completion of the revision of the OAL's Rule: of Practice, Governor Florio, on December 10, 1990, as Governor of th State of New Jersey and by the authority vested in him by Executive Orde: No. 66(1978), directed that the five-year sunset provisions of Executiv Order No. 66(1978) be waived for N.J.A.C. 14:1, and the expiration dat for the rules be extended for a period from December 16, 1990 to Febru ary 14, 1991, inclusive of both dates.

(c)

BOARD OF PUBLIC UTILITIES
Notice of Withdrawal of Proposed Amendment
Regulations of Cable Television
Outage Credit
Proposed Amendment: N.J.A.C. 14:18-3.5

Take notice that, at its regularly scheduled open public meeting held on Wednesday, November 21, 1990, the Board of Public Utilities determined that the above proposed amendment, published in the September 17, 1990 New Jersey Register at 22 N.J.R. 2890(b), which would have provided cable television subscribers with a means to receive credit for intermittent service outages of a cumulative duration of six or more hours within a 24-hour period, shall be withdrawn. The purpose of this withdrawal is to allow the Office of Cable Television to gather additional information pertaining to service outages. The Board further determined that the Office of Cable Television shall continue to monitor complaints and reports concerning chronic and intermittent outages. In developing outage data to quantify the scope of the problem, the Office of Cable Television shall also assess the extent to which changes in technology since the adoption of the original rule may make automatic credits more feasible in the future.

TREASURY-GENERAL

(d)

DIVISION OF PENSIONS
Police and Firemen's Retirement System
Officers, Elections and Rate Assignments
Proposed Amendments: N.J.A.C. 17:4

Authorized By: Board of Trustees, Police and Firemen's Retirement System, Janice Nelson, Secretary.

Authority: N.J.S.A. 43:16A-13(7).

Proposal Number: PRN 1991-16.

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Submit comments by February 6, 1991 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, N.J. 08625

e agency proposal follows:

Summary

The proposed amendments establish, at N.J.A.C. 17:4-1.3, the post of ce-Chairman of the Board of Trustees of the Police and Firemen's etirement System (PFRS); add the requirement, at N.J.A.C. 17:4-1.4(c), at a member-trustee candidate provide either his or her Social Security mber or pension fund number on the nominating peitions; mandate, N.J.A.C. 17:4-1.4(d)9, that the Secretary of the PFRS Board oversee e election process for the Board members; delete the rule on rate signments at N.J.A.C. 17:4-2.4, since P.L. 1989, c.204 mandated a flat 5 percent rate of contribution for PFRS members, making the rule solete; clarify the terms of first and last month survivors benefits, at J.A.C. 17:4-3.4(b); clarify N.J.A.C. 17:4-4.7(a), concerning members spended without pay; delete the provision at N.J.A.C. 17:4-5.4(a)3 hich required payment before age 55 of purchases of service time, as andated by P.L. 1989, c.204; and establish, at N.J.A.C. 17:4-6.12(a), e requirement that all disability retirants, not only those under retire- ent age, be subject to periodic medical examinations. Additionally, ammatical and typographical errors were corrected.

Social Impact

The proposed amendments, most of which are mandated by P.L. 1989, 204, may affect present and future members of the Police and Firemen's etirement System. A flat 8.5 percent contribution rate is established, creased retirement benefits in certain cases are provided, job title igibility requirements are specified clearly, and other requirements lded or deleted, in accordance with P.L. 1989, c.204. The members, for e most part, will benefit in that the requirements regarding pensions id retirement will be more clear.

Economic Impact

The proposed amendments will not have a negative economic impact those regulated, since the amendments do not change the benefits varded beyond increasing benefits for certain categories of retirants. The position of a flat 8.5 percent contribution rate was mandated by P.L. 989, c.204. For some members, the effect of that law may be to increase e contribution rate, as compared to the former rate, determined by the ember's age at the time of enrollment. In other cases, the flat 8.5 percent te may represent a decrease in the contribution rate.

Regulatory Flexibility Statement

The proposed amendments do not place any requirements on small usinesses, as the term is defined in the Regulatory Flexibility Act, J.S.A. 52:14B-16 et seq.; therefore, a regulatory flexibility analysis is ot required. The proposed amendments conform current rules to the quirements of P.L. 1989, c.204 and correct typographical errors in the lew Jersey Administrative Code at N.J.A.C. 17:4.

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

7:4-1.3 Officers and committees

(a) The chairman **and vice chairman** of the Board will be elected y a majority vote of the members in attendance at the first meeting f each fiscal year, not less than five members to be present at such meeting.

(b) The chairman of the Board shall preside at all meetings **that e or she** attends and in his **or her** absence **the vice chairman or, if bsent,** another member selected by the majority of the members in ttendance will preside for that single meeting.

(c)-(e) (No change.)

7:4-1.4 Election of member-trustee

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

(c) Nominating petitions:

1.-3. (No change.)

4. The petition form will require the name and employer and equest the membership number **or social security number** of each etitioner.

5.-8. (No change.)

(d) Ballots:

1.-8. (No change.)

9. [The Board will appoint three judges to determine the ballots' legality and to make the election count.] **The secretary of the Board will oversee the election to ensure that the vendor complies with all requirements and assure the validity of the final election count.**

17:4-1.7 Appeal from Board decisions

The following statement shall be incorporated in every written notice setting forth the Board's determination in a matter where such determination [as] **is** contrary to the claim made by the claimant or his **or her** legal representative:

"If you disagree with the determination of the Board of Trustees in this matter, you may appeal by sending a written statement to the Board within 45 days from the date of this letter informing the Board of your disagreements and all of the reasons therefor. If no such written statement is received within the 45 day period, this determination shall be considered final."

17:4-2.4 [Rate assignment] **(Reserved)**

[(a) All new members pay contributions at a rate prescribed for their particular age at entrance. The calculation considers the nearest year for the purpose of rate assignment.

(b) Applicants calling upon military service credits to meet the age maximum for appointment enjoy no rate discount because of such credits.

(c) Female members will pay identical rates as male members.]

17:4-3.4 Survivor benefits

(a) (No change.)

(b) In the instance of an active member who died in the performance of duty (accidental death), the initial pension payment will be for the month following **the month in which the member died and the last payment will cover the month** immediately preceding the month the survivor dies or ceases to qualify for the continuance of benefits.

17:4-4.7 Suspension

(a) A [suspended] member **suspended without pay** will have insurance coverage continued for a period of 93 days following the effective date of such suspension.

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

17:4-5.4 Methods of repayment

(a) Methods of repayment include:

1.-2. (No change.)

3. Extra deductions equal to at least [½] **one-half** of the full regular pension deduction for a maximum period of 10 years. [Compulsory and temporary service purchases must be liquidated by age 55; if such member has attained the age of 55 or more at the time of purchase, two years will be specified.]

4. (No change.)

17:4-6.10 Employer disability application: employee notice

(a) If an [applicant] **application** for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of his **or her** employees, the member will be promptly notified by letter that:

1.-7. (No change.)

17:4-6.12 Disability retirant; annual medical examination

(a) All disability retirants [, under the normal retirement age,] shall be required to undergo a medical examination each year for a maximum period of five years by a physician designated by the system as of the anniversary date of their retirement, unless such examination requirement has been waived by the board.

(b) (No change.)

17:4-6.13 Medical examinations; physicians

Where the statute prescribes that a physician be designated by the [Fund] **system** to perform a medical examination, such physician shall be selected from the current membership [director] **directory** of the Medical Society of New Jersey and the New Jersey Association of Osteopathic Physicians and Surgeons; however, in the cases of those members whose personal physician has identified them as

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having a probable abbreviated life expectancy, such "imminent death" cases may be processed without the necessity of an examination by a physician designated by the [Fund] **system** if corroborating medical evidence of the diagnosis can be obtained.

17:4-6.14 Compulsory retirement

(a)-(f) (No change.)

(g) Should a member fail to file **an** "Application for Retirement **Allowance**" before his **or her** compulsory retirement date, no retirement checks will be disbursed until he **or she** files the required application.

(h)-(j) (No change.)

17:4-7.3 Intrafund transfers

(a) (No change.)

(b) A member transferring from the police to the fire department of the same employer may likewise continue his **or her** membership. Such a member may withdraw at such an occasion, but his **or her** reenrollment will be subject to age and physical requirements [and he will be assigned a rate applicable to his higher age].

(a)

DIVISION OF INVESTMENT STATE INVESTMENT COUNCIL

Waiver of Executive Order No. 66(1978) State Investment Council Rules N.J.A.C. 17:16

Take notice that the State Investment Council rules, N.J.A.C. 17:16, adopted by the State Investment Council, were due to expire on December 2, 1990, pursuant to the sunset provisions of Executive Order No. 66(1978). Although the State Investment Council is in the process of readopting these rules, the rules would expire before readoption could be accomplished. Governor James J. Florio has been informed by the State Investment Council that readoption is expected by May 2, 1991.

The State Investment Council rules at N.J.A.C. 17:16 establish the procedures by which the Division of Investment may invest the monies of the State pension funds. Because of the nature of these investments, it is important that no lapse of the rules occurs.

Therefore, as Governor of the State of New Jersey and by the authority vested in him by Executive Order No. 66(1978), Governor Florio, on November 29, 1990, directed that the five-year sunset provisions of Executive Order No. 66(1978) be waived for N.J.A.C. 17:16, and the expiration date for the rules be extended for a period from December 2, 1990 to May 2, 1991, inclusive of both dates.

(b)

GOVERNOR'S COUNCIL ON ALCOHOLISM AND DRUG ABUSE

Annual Funding Formula

Proposed Amendment: N.J.A.C. 17:40-1.3
Proposed New Rule: N.J.A.C. 17:40-3.6

Authorized By: Governor's Council on Alcoholism and Drug Abuse, J. P. Miele, Chairman.

Authority: N.J.S.A. 26:2BB-1 et seq. (P.L. 1989 c.51), specifically N.J.S.A. 26:2BB-3j.

Proposal Number: PRN 1991-29.

Submit comments by February 6, 1991 to:
Brian Hughes
Governor's Council on Alcoholism and Drug Abuse
CN 345
Trenton, N.J. 08625

The agency proposal follows:

Summary

The formula to award funds to county governments for the purpose of providing alcoholism services has been developed by the Alliance Committee of the Governor's Council on Alcoholism and Drug Abuse. The Alliance Committee represents the Local Advisory Committees Alcoholism and Drug Abuse, County Alliance Steering Subcommitte and Municipal Alliance Committees established under N.J.S.A. 26:2BI et seq. (P.L. 1989 c.51). The formula will be reviewed by the Cour annually and revised as needed, in accordance with the provisions of t Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The Drug Enforcement Demand Reduction (DEDR) award form incorporates a number of indicators of alcoholism and drug abuse a includes incentives for the collection of DEDR monies. It is focus primarily on the rehabilitation/prevention of alcoholism in young peop The formula incorporates another funding formula which was develop by the National Institute on Alcohol Abuse and Alcoholism and t National Center for Health Statistics, which has been used by the Depa ment of Health for seven years to make awards from the Alcohol Educ tion and Rehabilitation Enforcement Fund. It is based on populatic per capita income and estimates of need, based on the prevalence alcoholism, according to the current New Jersey Behavioral Heal Services Plan.

This formula constitutes 66 percent of the DEDR award formula. Sin the Alliance to Prevent Alcoholism and Drug Abuse was intended to ha a focus on young people, the DEDR award formula bases 20 perce of the award on the number of people under the age of 18 who resi in each county. A weight of 10 percent has been given to the total numb of arrests in each county, compared to arrests throughout the State. T number of total arrests was used rather than the number of specific arre involving drugs and alcohol, since there are numerous arrests which a not documented as drug and alcohol-related, but which neverthele involve the use of drugs or alcohol. The incentive to counties which ha collected DEDR fines at a better than average rate will be four perce of the total award. The Council will evaluate and revise the award formu annually, as results of research become available. It is anticipated th prevention efforts will, in the future, occupy a larger portion of the awar than they do currently.

Social Impact

The proposed new rule will establish a funding mechanism for pr grams which address the major health problems of alcohol and drug abu in New Jersey. The number of alcoholics in New Jersey is estimated be 455,000. The number of drug addicts is estimated to be 120,00 Alcohol and drugs are involved in approximately 65 percent of chi abuse and in approximately 80 percent of domestic violence. Fifty perce of cases of work-related accidents and absenteeism are caused t alcholism or other drug abuse. Addiction and substance abuse accou directly for more than 20 percent of health care costs in New Jerse Alcoholism and drug abuse are found in the histories of 70 percent the inmates in State and county correctional facilities. The seconda social costs are also significant. The proposed rule can be expected have a direct or indirect impact on a very large portion of the populatic of the State of New Jersey. The proposed new rule takes into accou the findings of the Council and of the New Jersey Department of Heal regarding need in each county, based on 1988 statistics.

Community-based efforts to address and diminish the impact of alcoh and drug abuse in targeted populations are expected to make preventic programs more effective and to ameliorate the negative social conditior caused by alcoholism and drug abuse.

Economic Impact

The proposed rule sets into place the mechanism for the distributio of funds received from DEDR collections, pursuant to N.J.S.A. 26:2BB- and 7b. DEDR collection statistics made available by the Administrativ Office of the Courts, as of July 1990, will be used in the distribution awards. The statewide DEDR collection total is $17,815,132.

Regulatory Flexibility Statement

The amendments and proposed new rule will not impose reportin recordkeeping or other compliance requirements on small businesses, a the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. The rule establishes a mechanism for the awarding of DED collections to the counties and municipalities throughout the State.

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

17:40-1.3 Definitions

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

. . .

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'Arrests" means all arrests reported in the 1988 New Jersey Uniform ime Report, compiled by the New Jersey State Police.
'Collection rate" means the amount of DEDR fines collected divided the amount assessed.

'DEDR" means the July 1990 cumulative list of the Drug Enforcent Demand Reduction funds compiled by the Administrative Office the Courts.

'Income" means three year average per capita income in the county the State, according to 1988 New Jersey Department of Labor imates.

'Need" means the estimates of the prevalence of alcoholism, as ineated in the current Behavioral Health Services Plan prepared by New Jersey Department of Health.
'Population" means the county or State population, according to 88 New Jersey Department of Labor estimates.

'Youth" means all persons in the county or State up to, but not luding, the age of 18, according to the 1988 New Jersey Department Labor population estimates.

:40-3.6 Annual funding formula
Drug Enforcement Demand Reduction funds, as appropriated, will distributed by the Council in accordance with the following formula:

$$\text{tal Program Funding)} \left\{ .66 \left(\frac{\text{County population}}{\text{State population}}\right)\left[.50 \left(\frac{\text{State income}}{\text{County income}}\right) + \left(\frac{\text{County need}}{\text{State need}}\right)\right] + .20 \left(\frac{\text{County youth}}{\text{State youth}}\right) + .10 \left(\frac{\text{County arrests}}{\text{State arrests}}\right) + \left(\frac{\text{County DEDR collections}}{\text{State average DEDR collections}}\right) \right\} = \text{County allotment}$$

TREASURY-TAXATION

(a)

IVISION OF TAXATION

'ansfer Inheritance and Estate Tax ssessment and Valuation; Returns

'oposed Amendments: N.J.A.C. 18:26-11.20, 11.21, 11.22, 11.23 and 11.27

ıthorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.
ıthority: N.J.S.A. 54:50-1.
oposal Number: PRN-1991-7.

Submit comments by February 6, 1991 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
CN 269
Trenton, New Jersey 08646

ıe agency proposal follows:

Summary

The proposed amendments make several changes related to the admin-ration of the Transfer Inheritance Tax Act, N.J.S.A. 54:33-1 et seq. ıder the current rules, an inventory of the decedent's safe deposit box nducted by a representative of the Inheritance Tax Branch was required fore the contents could be removed. The Division no longer deems it cessary to inspect and conduct inventories of all safe deposit boxes. certain instances, releases will be granted automatically and sent direct- to the financial institution. The contents of the box may be removed ıen the financial institution receives the release from the Inheritance ıx Branch, even though no inventory has been conducted.

Also proposed are several technical amendments, such as deleting ferences to "district supervisors", which no longer exist.

Social Impact

Adoption of the proposed amendments should simplify and speed up the administration of estates. Processing the handling of the decedent's estate by the executor or administrator should be simplified as to time and convenience.

Economic Impact

There would be no significant economic impact because the inheritance taxes would be the same. Costs of estate administration and tax return preparation may be reduced, and there should be some savings to the State in costs of administration and manpower.

Regulatory Flexibility Statement

These proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. Accordingly, a regulatory flexibility analysis is not required. The amendments only make changes in the administration of the Transfer Inheritance Tax, which is applicable to the estates of certain decedents.

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

18:26-11.20 Release of safe deposit box contents

No safe deposit company, trust company, bank or other institution may deliver or transfer any securities, deposits or other assets contained in a safe deposit box within its control or possession which belongs to or stands in the name of a resident decedent, principal of a one person corporation or in the joint names of a resident decedent and one or more other persons, unless [after inspection,] a release is obtained from the Transfer Inheritance Tax Bureau.

18:26-11.21 Conditions for opening safe deposit box

A safe deposit box rented in the name of the decedent, individually, as principal of one person corporation or as a joint renter is automatically sealed by the death of the decedent by law; however, the box may be opened in the presence of an officer or authorized employee of the bank and a proper representative of the estate for the purpose of ascertaining whether the contents include the decedent's last [well] **will** and testament, a deed for a cemetery lot, or the insurance policies made payable to designated beneficiaries. If the contents include any of the above items, such items only may be delivered to the proper party in interest or representative of the decedent's estate by the bank official present at the time of entry, but there shall be completed at that time a memorandum by the bank reciting the date of entry, a list of the items removed and the address of the representative of the estate. The box is then resealed until [inventoried by the Inheritance Tax Bureau] **the release is received from the Division of Taxation.**

18:26-11.22 Release of empty safe deposit box

(a) No inspection is required where, after entry to the safe deposit box for the purpose of locating and obtaining any of the items mentioned in N.J.A.C. 18:26-21, the box is found to be empty, in which event the written consent of the Director of the Division of Taxation is not required in order to effect the release and surrender of the box, provided a notice, in duplicate, containing the following information is filed with the [district supervisor having jurisdiction in the county of which the decedent died a resident] **Inheritance Tax Branch** within 10 days of the opening of the box:

1.-8. (No change.)

18:26-11.23 Inventory of safe deposit box [by district supervisor]

(a) The inventory of the contents of a safe deposit box [must] **may** be made by [the district supervisor or other] **a** representative of the Transfer Inheritance Tax [Bureau operating in the district where the box is located in the presence of a proper representative of the decedent's estate] **Branch**. Following the completion of the inventory, if an inventory is taken, a release of the box is delivered [by the district supervisor] to the bank [, unless the contents include currency or negotiable securities, not necessitating waivers. In instances of that nature the district supervisor shall exercise his judgment as to whether or not the box must be resealed pending the completion of the inheritance tax proceeding or the establishment of security for payment of the Transfer Inheritance Tax liability].

(b) (No change.)

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18:26-11.27 Box rented in name of fiduciary

(a) Single: No inspection or release [from the district supervisor] is necessary where a safe deposit box is rented in the name of one fiduciary as executor, administrator or trustee and the contents of this box are to be placed under the control of a legally appointed substitute for the deceased fiduciary; or

(b) Joint: Where a safe deposit box is rented in the names of two or more fiduciaries as executors, administrators or trustees and the contents are placed under the control of the surviving fiduciary or [fuduciaries] **fiduciaries**, no inspection or release [from the district supervisor] is necessary.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Progressive Slot Machines

Proposed Amendment: N.J.A.C. 19:45-1.39

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

Authority: N.J.S.A. 5:12-63(c) and 69(c).

Proposal Number: PRN 1991-30.

Submit comments by February 6, 1991 to:
Deno R. Marino
Deputy Director—Operations
Casino Control Commission
1300 Atlantic Avenue
CitiCenter Building, 4th Floor
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:45-1.39 would alter the method of obtaining Commission approval for Progressive Slot Machine Submissions. More specifically, casino licensees would no longer be required to wait up to 90 days for an approval. Instead, under Alternatives I, II and III, a Progressive Slot Machine Submission would be required at least 30, 20 or 10 days, respectively, prior to operating the progressive machines on the casino floor. The submission would be deemed approved unless the casino licensee is notified in writing to the contrary within 30, 20 or 10 days of receipt (depending on the Alternative) of the submission. The proposed amendment would provide casino licensees with greater flexibility to react to technological advancements and market trends.

Social Impact

The proposed amendment would benefit slot patrons since casino licensees would be able to implement progressive slot machine changes quicker and react to market trends thereby giving patrons more popular slot machine options while maintaining the integrity of the slot machine operation.

Economic Impact

The proposed amendment simplifies and expedites the method of receiving Commission approval for Progressive Slot Machine Submissions and, therefore, will reduce both the time and cost to casino licensees. In addition, casino licensees may experience increased slot revenue since they will be able to react to technological advancements and market trends in a more expeditious manner.

Regulatory Flexibility Statement

The proposed amendment will only affect the operations of casino licensees, and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.39 Progressive slot machines

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

(e) No progressive slot machine shall be placed on the casino floor [until] **unless** the casino licensee has submitted **a Progressive Slot Machine Submission** to the Commission, [and the Commission h approved] **which shall contain, at a minimum,** the following:

1. The initial and reset amounts at which the "progressi meter(s)" will be set; **and**

[2. The proposed system for controlling the keys and access cod to these machines; and]

[3.] **2.** The proposed rate of progression for each machine[;].

ALTERNATIVE I

(f) The submission referenced in (e) above shall be deemed approv by the Commission unless the casino licensee is notified in writing the contrary within 30 days of receipt of such submission.

ALTERNATIVE II

(f) The submission referenced in (e) above shall be deemed approv by the Commission unless the casino licensee is notified in writing the contrary within 20 days of receipt of such submission.

ALTERNATIVE III

(f) The submission referenced in (e) above shall be deemed approv by the Commission unless the casino licensee is notified in writing the contrary within 10 days of receipt of such submission.

(g) Progressive slot machines shall not be placed on the casino flo until the casino licensee has an approved system for controlling the ke and access codes to progressive slot machines.

[(f)] **(h)** No "progressive meter(s)" shall be turned back to a less amount unless the amount indicated has been actually paid to winning patron, or the progressive jackpot amount won by the patr has been recorded in accordance with an approved system of intern controls, or the change in the meter(s) reading is necessitated by slot machine or meter(s) malfunction, in which case an explanatic must be entered on the Progressive Slot Summary required in [(j (**l**) below and the Commission inspector must preapprove the rese ting in writing.

[(g)] **(i)** Once an amount appears on a "progressive meter(s), tl rate of progression and the probability of hitting the combinatic that will award the progressive jackpot may not be changed un there has been a winner of the payout amount registered on tl meter(s) or the payout limit, as described in [(i)] **(k)** below, is regi tered on the progressive meter(s)."

Recodify existing (h) and (i) as **(j) and (k)** (No change in tex

[(j)] **(l)** The amount indicated on the "progressive meter(s)" ar "in meter" on each slot machine shall be recorded on a Progressi Slot Summary, at a minimum, [one] **once** each day and each summa shall be signed by the preparer. Supporting documents shall be mai tained to explain any reduction in the registered amount from tl previous entry and shall indicate the date, casino number of the sl machine, and the amount of the reduction.

Recodify existing (k) as **(m)** (No change in text.)

(b)

CASINO CONTROL COMMISSION

Rules of the Games; Blackjack Wagers; Five Cards Totalling 21 Rule

Proposed Amendment: N.J.A.C. 19:47-2.3
Proposed New Rule: N.J.A.C. 19:47-2.16

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

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

Proposal Number: PRN 1991-31.

Submit comments by February 6, 1991 to:
Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

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e agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:47-2.3 and the proposed new e at N.J.A.C. 19:47-2.16 would permit a casino licensee to offer a tron odds of 2 to 1 to be paid if the patron achieves a score of 21 five cards and the dealer does not have blackjack or a score of 21.

Social Impact

The five cards totalling 21 rule, if offered by a casino licensee, will hance the variety of the game of blackjack.

Economic Impact

The economic impact on a casino licensee is difficult to determine since : five cards totalling 21 rule will be optional and the number of winning nds at the game of blackjack cannot be predicted. However, if a patron es achieve a score of 21 in five cards under this proposed amendment d new rule, he or she would experience an economic benefit of being id at 2 to 1 instead of 1 to 1 as he or she is currently paid.

Regulatory Flexibility Statement

The proposed amendment and new rule will only affect the operations New Jersey casino licensees, and therefore, will not impact on any siness protected under the Regulatory Flexibility Act, N.J.S.A. :14B-16 et seq.

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

:47-2.3 Wagers

(a) Prior to the first card being dealt for each round of play, each ıyer at the game of Blackjack shall make a wager against the dealer ıich shall win if:

1. (No change.)

2. The score of the player exceeds that of the dealer without either ceeding 21; [or]

3. The player has achieved a score of 21 in two cards and the dealer s achieved a score of 21 in more than two cards[.]; **or**

4. The player has achieved a score of 21 in five cards and the dealer s not achieved a blackjack or a score of 21, provided the casino ensee elects such option pursuant to N.J.A.C. 19:47-2.16.

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

(f) All winning wagers made in accordance with [subsection] (a) f this section] **above** shall be paid at odds of 1 to 1 with the ception of [blackjack which shall be paid at odds of 3 to 2.] **the llowing:**

1. Blackjack shall be paid at odds of 3 to 2; and

2. Five Cards Totalling 21 shall be paid at odds of 2 to 1.

(g)-(l) (No change.)

:47-2.16 Five cards totalling 21 rule

(a) Whenever a player has achieved a score of 21 in five cards and e dealer has not achieved a blackjack or a score of 21, the winning ınd shall be paid at odds of 2 to 1.

(b) If the player has achieved a score of 21 in five cards and the aler has blackjack, the player's wager shall be settled in accordance th N.J.A.C. 19:47-2.3(b). If the player has achieved a score of 21 five cards and the dealer has achieved a score of 21 in three or more rds, the player's wager shall be considered void and said wager shall returned to the player.

(c) Each casino licensee may, at its discretion, offer its patrons the 'e cards totalling 21 option authorized in this section. If a casino :ensee elects to offer the five cards totalling 21 option, it shall be made ailable to all players at all blackjack tables. A casino licensee may, ıon prior written notice to the Commission and the Division, initiate e use of the five cards totalling 21 option at the start of any gaming ıy or terminate its use at the end of any gaming day. Any casino :ensee offering the five cards totalling 21 option shall post a sign, as ıproved by the Commission, on each blackjack table in its casino.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Notice of Extension of Public Comment Period Water Pollution Control

Proposed Readoption: N.J.A.C. 7:9

Take notice that the Department of Environmental Protection is extending the public comment period from December 5, 1990 to January 10, 1991 on the proposal to readopt without amendments, N.J.A.C. 7:9, the Water Pollution Control rules. In accordance with Executive Order No. 66(1978), these rules will expire on January 21, 1991. Notice of the rule proposal was published in the New Jersey Register on November 5, 1990, at 22 N.J.R. 3297(a).

Submit comments by January 10, 1991 to:

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

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Regulations Governing Laboratory Certification and Standards of Performance

Proposed Amendments: N.J.A.C. 7:18-1.1, 1.3, 1.4, 1.6, 1.7, 2.1, 2.2, 2.3, 2.4, 2.6, 2.7, 2.10, 2.11, 2.12, 2.13, 2.14, 5.2, 5.3, 5.4, 5.5, 5.7 and 5.8

Proposed New Rules: N.J.A.C. 7:18-1.9 and 2.15

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

Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., N.J.S.A. 58:12A-1 et seq., N.J.S.A. 26:2D-1 et seq., and specifically 26:2D-70 et seq.

DEP Docket Number: 048-90-12.

Proposal Number: PRN 1991-32.

A **public hearing** concerning these proposed amendments and new rules will be held on:

January 28, 1991 at 9:00 A.M.
New Jersey Records Storage Center and Library for the Blind
2300 Stuyvesant Avenue
Trenton, N.J. 08625

Submit written comments by February 6, 1991, to:

Samuel Wolfe, Administrative Practice Officer
Department of Environmental Protection
Office of Legal Affairs
CN402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

A reproposal of the amendments first published in the New Jersey Register on Monday, November 6, 1989, has become necessary. The reproposal has given the Department the time needed to include in the amendments the most current information and policies available, which include the following:

1. One of the major requirements for obtaining certification is the submittal of a proficiency test to the Department. The original proposal allowed the use of a proficiency test supplied by the United States Environmental Protection Agency (USEPA). The frequency of proficiency test distribution by the USEPA has not been consistent. To give the laboratories a continuous source for obtaining proficiency tests the Department has established an Authorized Proficiency Program. The Program allows laboratories applying for certification to conduct analyses of radon/radon progeny to obtain a proficiency test from either the USEPA Radon/Radon Progeny Measurement Proficiency Program

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(RMP) or from a program equally stringent to the RMP. Also, all radon chambers granted Authorized Proficiency Program status must be approved by the Department in accordance with the latest edition of New Jersey Department of Environmental Protection document *New Jersey Radon Measurement Proficiency Program.* The Department plans to have three approved radon chambers, including the RMP, in the Authorized Proficiency Program.

2. One of the requirements for applying for radon/radon progeny analyses certification in the original proposed amendments was the submittal to the Department of two consecutive passing results from a proficiency test sample obtained from the RMP. However, EPA did not permit laboratories to enter round 6 if they had passed any previous round. This left the laboratories submitting aged proficiency test results. The new proposed amendments require the receipt of two passing results, one of which must have occurred in the preceding 12 months, and continuing passage of at least an annual RMP test for each measurement device/technique. Laboratories will not have to wait a year or more between proficiency test samples before having their application accepted, as was the case in the original amendments. This procedure permits new laboratories to enter the program in a timely manner but requires the continuous demonstration of performance capability by passing annual RMP tests.

3. N.J.A.C. 7:18-2.3(c)3iii and 2.4(e) require that a radon/radon progeny laboratory have an on-site audit before receiving certification. To give the Department an opportunity to complete on-site audits, and to give qualified laboratories the opportunity to continue to provide analytical services, "Interim Certification" has been included in the amendments. Interim certification status will be available for six months after the date of adoption of the amendments to the rules. It will be granted to laboratories performing successfully on proficiency tests from an authorized proficiency program and following all other application procedures as given in N.J.A.C. 7:18. Interim certification will only be granted to qualified laboratories waiting for an on-site inspection.

Exposure to radon gas has been identified as a serious health risk in the State of New Jersey. Although the health risk is serious, mitigation of indoor radon gas concentrations is easily achieved through various ventilation methods. The cost of mitigation ranges from negligible to expensive depending on the indoor radon concentration present in the sampled home. Consequently, the quality, accuracy, and reliability of radon gas sampling procedures and laboratory sample analysis are essential for the homeowner to intelligently choose the most cost effective and efficient mitigation method.

An act concerning radon gas and radon progeny contamination, N.J.S.A. 26:2D-70 et seq., (hereinafter "the Radon Act") requires the establishment of a program for certification of persons who test for the presence of radon gas and radon progeny in buildings and thus requires that N.J.A.C. 7:18 be amended to provide for the certification of laboratories which conduct analysis of radon gas and radon progeny samples.

In response to the homeowners need to have accurate and reliable radon sampling procedures and laboratory results, the New Jersey Department of Environmental Protection (Department) is proposing to amend N.J.A.C. 7:18-1, 2, and 5, Regulations Governing Laboratory Certification and Standards of Performance (Rules), to provide for the certification of laboratories performing analysis of radon gas and radon progeny samples. The rules currently provide administrative procedures for laboratories; laboratory certification categories and parameters; laboratory standards, criteria and procedures; and enforcement procedures pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Radon/radon progeny certification will be an extension of the Radiological category of certification. The addition of laboratory certification fees for radon/radon progeny will provide the Department with the necessary resources to administer this new program. The proposed amendments require radon/radon progeny laboratories to pass a recent test sample from a proficiency program authorized by the Department, for each measurement technique, directly prior to applying for New Jersey certification. "Authorized proficiency programs" are either the United States Environmental Protection Agency Radon/Radon Progeny Measurement Proficiency Program, or other program equally stringent and authorized by the Department. The Department will require radon/radon progeny laboratories to participate in an authorized proficiency program each fiscal year. In order for a laboratory to maintain its certification, it must continuously follow USEPA and Department protocols for each radon measurement technique; and pass a proficiency test from an authorized proficiency program for each measurement technique for which it is certified. These requirements are necessary to provide the public wi laboratories which are capable of properly analyzing for radon gas ar radon progeny.

Social Impact

For the past four years, the Department has been warning the citizei of New Jersey of the radon/radon progeny health risk. The citizens ha responded to this warning by sampling homes and, using the results these samples, mitigating their exposure to the deadly gas. The Depar ment's Office of Quality Assurance (OQA) is concerned with the quali of work being conducted by some of the radon laboratories within tl community. There have been instances in which unqualified radon labor tories have charged New Jersey citizens for radon analyses of questionab value. Amendment of these rules will provide a process by which tl Department can assure the quality and reliability of radon measureme data provided to New Jersey citizens and submitted to the Departme for use in its mission to protect public health and the environment. Tl results of the sample analyses are used to determine the extent and lev of exposure of New Jersey's citizens to radon and radon progeny in a and water. The purpose of the radon laboratory certification progra is to protect the public through a program which requires the use correct technical procedures and analytical methods. The program intended to eliminate the use of inaccurate or unsound analytical pra tices. Consequently, since radon analysis will be conducted only b certified laboratories, future decisions made by the Department or ind vidual homeowners should result in an increased level of confidence i the reported data.

Economic Impact

The Department's Office of Quality Assurance Laboratory Certific tion Unit presently certifies laboratories within the radiological categor Radon and radon progeny will be an expansion of the radiological ca egory of certification, with separate fees and additional technical requir ments. These parameters will be monitored in the same manner as tl rest of the program's parameters. The Office of Quality Assurance antic pates a large increase in costs to cover radon and radon progeny certific tion. A portion of its costs will be covered by the certification fees whic radon laboratories will be required to pay, in accordance with N.J.A.(7:18-2.6, which applies to all laboratories within the Department's labor tory certification program. The fees imposed by these proposed amen ments are expected to generate revenues between $60,000 and $80,0(annually. The fees will provide the estimated cost of $75,300 needed t fund the position needed to conduct on-site inspections of radon/radc progeny laboratories, review written reports, applications and proficienc test results, and perform associated administrative tasks. The breakdow for the position is as follows:

Radon/Radon Progeny Laboratory Certification Budget

1 Staff Member (based on needing staff member for 2/3 of a work year)	
Estimated Salary:	$31,5(
Employee Fringe Benefits:	$ 9,0(
Indirect Costs:	$13,2(
Operating Costs:	$21,6(
Total	$75,3(

All radon testing laboratories will be impacted by these fees. Th proposed fees distribute the costs of the radon/radon progeny laborator certification program equally among all participating laboratories.

Due to the Department's requirement that radon testing laboratori pass an annual proficiency test from an authorized proficiency progra in order to maintain certification, the laboratories will incur addition business costs. Authorized proficiency programs prefer that radon teste ship their measurement devices (together with detailed operating instru tions, etc.) rather than have the radon testers appear in person with the devices. Radon testers who wish to arrive in person with their device will incur larger business expenses than the testers who choose to shi their devices. In addition to the certification fees that a laboratory mu pay in order to comply with the amended rules, other costs, such as th cost of participating in an authorized proficiency program, the cost c equipment calibration, and the costs of performing duplicate and blin sample tests will impact the certified laboratory.

Therefore, the additional funds necessary for a laboratory to b certified for radon/radon progeny analyses will result in an increase i the cost of analyses, which will have a moderate impact on the citizer of New Jersey.

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However, the impact of the fee and compliance costs is offset by the ıefits of having only certified laboratories (that is, only certified labora-ies which meet the stringent certification standards may conduct ılyses in and for the State of New Jersey). The Department's radon/ ıon progeny laboratory certification program will also protect the blic from paying for unnecessary mitigation of their homes because inaccurate laboratory analysis.

Environmental Impact

A radon laboratory certification program will help assure the quality d reliability of radon measurement data submitted by certified labora-ies to the Department for use in administering its radon monitoring ɔgrams. New Jersey homeowners will also benefit from the radon ɔratory certification program because they will be provided with ac-rate test results which will cause them to undertake only those rem-iation measures which are needed to protect them from unnecessary ɔosure to radon gas. This will be accomplished by the Department quiring radon testers to continuously meet the certification standards d pass every required proficiency test per year, thus demonstrating to : Department throughout the year, that they are capable of accurate ıon/radon progeny measurements. A positive environmental impact ll therefore occur as New Jersey citizens are provided with accurate ta regarding their exposure to radon gas.

Regulatory Flexibility Analysis

The proposed amendments and new rules would apply to laboratories alyzing samples for radon or radon progeny. The Department is adopt-ɜ the USEPA radon/radon progeny protocols as the authorized :asurement protocols for the analysis of radon/radon progeny as its rtification standard as this will produce the desired accuracy and quality data. The certification standard will minimize any adverse impact on ıall businesses, while still accomplishing the goals of the Department d the Radon Act. The Department estimates that, as defined in the :w Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., ap-oximately 40 small businesses will be affected by the Department's ıon laboratory certification program. Most of these small laboratories : already adhering to some of the minimum requirements. The require-:nt to participate in the authorized proficiency program should have ly a minor impact on the cost of sample analysis since most of the thorized proficiency program participation can be fulfilled by mailing mples. It is expected that initial capital costs for each small business ll be minimal, with annual costs of compliance ranging between $1,800 $2,300. Also, the effect of the costs involved in participating in the thorized proficiency program is offset by the benefits of certification those laboratories (that is, only certified laboratories may conduct ıalysis in the State). Some additional requirements for certified radon ɔoratories will include recordkeeping, reporting, and creating, main-ining and following standard operating procedures and quality control actice (that is, calibrations, control charts for each instrument using ındards of known values and blanks, etc.). These recordkeeping and ıality control requirements have always been required of all radio-ıalytical laboratories participating in the Department's laboratory rtification program and are not expected to require significant ad-tional expenditures. It is unlikely that laboratories will need any ad-tional professional services to comply with these amended rules. In :veloping these amendments, the Department has balanced the need to otect the health of the citizens against the economic impact of the oposed amendments and has determined that to minimize the impact the amended rules would endanger the public health and safety; there-re, no exemption from coverage is provided.

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

JBCHAPTER 1. GENERAL PROVISIONS

18-1.1 Scope and authority

This chapter, adopted pursuant to the Safe Drinking Water Act, .J.S.A. 58:12A-1 et seq., [and] the Water Pollution Control Act, .J.S.A. 58:10A-1 et seq., **and the Radon Act, N.J.S.A. 26:2D-70 et q.,** constitutes the Department's regulations governing certification laboratories performing [water] analyses required to be performed regulations or orders issued pursuant to those acts. This chapter tablishes the procedures for obtaining and maintaining certifica-ɔns, and the criteria and procedures laboratories shall follow in ıalyzing [water] samples.

7:18-1.4 Certification Program Requirements

(a) Any laboratory wishing to analyze [water] samples for compliance with regulations adopted or orders issued pursuant to the [Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., or] the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., **the Water Pollution Control Act, N.J.S.A. 58:10-1 et seq. or the Radon Act, N.J.S.A. 26:2D-70 et seq.,** shall follow the procedure set forth herein in order to obtain and maintain certification.

(b) Certified laboratories and laboratories seeking certification shall analyze all [water] samples in accordance with the procedures and methods required by this chapter.

(c) A laboratory must be certified to analyze for radon or radon progeny pursuant to this subchapter before performing those activities.

1. A person shall be guilty of a crime of the third degree if they analyze for radon/radon progeny in air without being, at the time they perform the analyses, certified for those activities.

7:18-1.6 Program information

Unless otherwise specified, any questions concerning the requirements of this chapter should be directed to the Office of Quality Assurance, [Division of Water Resources,] New Jersey Department of Environmental Protection, [P.O. Box CN-029] **CN 027**, Trenton, New Jersey 08625, **(609) 292-3950**.

7:18-1.7 Definitions

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

. . .

"Authorized measurement protocols" means for radon measurements in air "Interim Indoor Radon and Radon Decay Product Measurement Protocols," EPA 520/1-86-04 or its latest revisions incorporated herein by reference; and, "Interim Protocols for Screening and Follow-up Radon and Radon Decay Product Measurements," EPA 520/1-86-014, incorporated herein by reference.

"Authorized proficiency program" means the United States Environmental Protection Agency Radon/Radon Progeny Measurement Proficiency Program at the Eastern Environmental Radiation Facility, Montgomery, Alabama 36109, or other program equally stringent and authorized by the Department in accordance with the latest edition of New Jersey Department of Environmental Protection document "New Jersey Radon Measurement Proficiency Program".

. . .

"Certified radon measurement business" means a commercial business enterprise certified pursuant to N.J.A.C. 7:28-27 to sell devices and/or test for radon/radon progeny.

"Certified radon laboratory" means a radiological laboratory which analyzes samples for the presence of radon and/or radon progeny in a facility separate from the location in which the sample was taken and which uses stationary measurement detection equipment and which is certified pursuant to this chapter.

"Certified radon measurement specialist" means a person certified pursuant to N.J.A.C. 7:28-27 to perform and/or evaluate radon and/or radon progeny measurements for a certified radon measurement business.

"Certified radon measurement technician" means a person certified pursuant to N.J.A.C. 7:28-27 to perform radon and radon progeny measurement activities.

. . .

"Proficiency test" means a test, sample or program that is required by the Department and which a laboratory must pass in order to demonstrate its ability to analyze for a particular parameter.

. . .

"Radon" means the radioactive noble gas radon-222.

"Radon Act" means N.J.S.A. 26:2D-70 et seq.

"Radon progeny" means the short-lived radionuclides formed as a result of the decay of radon-222. The short-lived radon progeny consist of polonium-218, lead-214, bismuth-214 and polonium-214.

. . .

"Working level (WL)" means that concentration of short-lived radon decay products that will result in 130,000 million electron volts of potential alpha particle energy per liter of air. Working level is a measure of radon decay product concentration in air.

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7:18-1.9 Signatories

(a) All applicants shall, upon submission of initial or renewal applications, sign the following certification on the application forms:

1. "I certify under penalty of law that the information provided in this application is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment".

i. The certification set forth in (a)1 above shall be signed by the highest ranking individual at the facility with overall responsibility for that facility or the highest ranking individual with overall responsibility for more than one facility in New Jersey provided that appropriate procedures to ensure compliance are in place and subject to Department review and approval.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fine and/or imprisonment".

i. The certification required by (a)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

(b) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (a)1i above is the same person as the official required to certify in (a)2i, only the certification in (a)1i need be made. In all other cases, the certifications of (a)1 and 2 shall be completed.

SUBCHAPTER 2. PROGRAM PROCEDURES AND REQUIREMENTS

7:18-2.1 Requirement of certification

(a) All [water sample] analyses performed for the purpose of determining compliance with microbiological, chemical, and radiological requirements of the State Primary and Secondary Drinking Water Regulations, N.J.A.C. 7:10-5.1 [.] and 7:10-7.1, [and] microbiological, chemical and bioassay requirements of the New Jersey Pollutant Discharge Elimination System Regulations, N.J.A.C. 7:14A-1, **and radiological requirements of the Radon Act, N.J.S.A. 26:2D-70 et seq.,** or when required by order issued by the Department pursuant to the authority of the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., **the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Radon Act, N.J.S.A. 26:2D-70 et seq.,** or any other regulations adopted pursuant to those acts, shall be performed in laboratories certified for this purpose pursuant to this subchapter. Analyses performed in laboratories not so certified shall not be accepted by the Department as being in compliance with the requirements, regulations or orders of the Water Pollution Control Act or the Safe Drinking Water Act. **Results of air and water analyses for radon/radon progeny performed in laboratories not so certified shall not be accepted for use by the Department, industry, or private citizens for compliance with the Department's rules.**

(b) (No change.)

(c) Only laboratories certified pursuant to these regulations or maintained by the USEPA may be called State Certified Water **or Radon** Laboratories and no laboratory may adopt any name or make any oral or written statement intended to mislead the public with respect to its certification status.

7:18-2.2 Categories for certification

(a) A laboratory must apply for certification in any one or more of the following categories and shall be certified in those parameters within the category for which it demonstrates acceptable performance on proficiency [samples] **tests**, when available, and meets all other requirements of this chapter. The laboratory certificate shall specify the categories and the parameters within each category for which t laboratory is certified and shall be conspicuously displayed in t laboratory in a location visible to the public. The certificati categories are as follows:

1.-.4. (No change.)

5. Radiological Testing, which comprises those tests or analy for radioactivity required to determine compliance with the Sa Drinking Water Act [and], the State Primary Drinking Water Reg lations, **and the Radon Act.** Tests for the Radiological category [sh be conducted in accordance with the methods and procedures spe fied in 40 CFR 141.] **are as follows:**

i. For drinking water, analyses shall be conducted in accordance w the methods and procedures specified in 40 CFR Part 141.

ii. For wastewater, analyses shall be conducted in accordance w the methods and procedures specified in 40 CFR Part 136.

iii. For radon and radon progeny in air, analyses shall be conduct in accordance with the methods and procedures specified in t Authorized Measurement Protocols most recent versions. Informati on obtaining the protocol is available from the Office of Quality A surance, New Jersey Department of Environmental Protection, CN 0 Trenton, N.J. 08625, (609) 292-3950.

iv. Radon/radon progeny sampling shall be conducted by a certifi radon measurement business, certified pursuant to N.J.A.C. 7:28- The laboratory shall not analyze radon/radon progeny samples that taken using measurement devices/techniques which are not specified the authorized measurement protocols of N.J.A.C. 7:28-27.

v. For radon and radon progeny in water, sampling shall be c ducted in accordance with the methods and procedures specified in t most recent update of the USEPA publication, "Radon in Wa Sampling Program" EPA/EERF-Manual 78-1, incorporated herein reference, and 40 CFR 141.

6. (No change.)

7:18-2.3 Application procedures for laboratories located in New Jersey including special provisions for the phase-in of the New Jersey [Pollutant Discharge Elimination System] **Radon** Laboratories Certification Program

(a) The owner of a laboratory in New Jersey who wishes it to certified in any or all of the categories and parameters there described in N.J.A.C. 7:18-2.2, or, if already certified, who wish to add a category or a parameter within a category, shall apply f certification to the New Jersey Department of Environmental Prot tion, Division of Fiscal and Support Services, Bureau of [Collectio and Licensing] **Revenue**, CN 402, Trenton, New Jersey 08625; (6 [292-4071] **777-1013** (hereinafter "Bureau"), on forms availa therefrom. The applicant shall provide all information requested a shall submit the appropriate fee.

1. Laboratories seeking certification in the Radiological catego shall: [have participated in the USEPA's radiological proficien testing program during the immediately preceding twelve months a shall submit copies of the USEPA's performance evaluation repo demonstrating that for each parameter in which the laboratory seeking certification at least four performance test average valu have been within the control limits established for that paramete

i. For analysis of radiological parameters in water, have participat in the USEPA's radiological proficiency testing program during t immediately preceding 12 months; and shall submit copies of t USEPA's performance evaluation reports demonstrating that for ea parameter in which the laboratory is seeking certification at least t blind proficiency evaluations and two cross checks have been within t control limits established for that parameter.

ii. For analysis of radon in water, have participated in the m recent USEPA Radon Intercomparison Study, if available, and sh submit copies of the USEPA's performance evaluation reports dem strating that at least two blind proficiency evaluations and two cr checks have been within the control limits established.

iii. For analysis of radon/radon progeny in air, be a participant an authorized proficiency program. The laboratory shall have pass two Department-authorized proficiency tests, at least one of which sh be either the most recent round of the USEPA Radon Measurem Program or a proficiency test administered within the immediate p 12 months from a Department-authorized proficiency program. T

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oratory shall pass tests for each measurement device/technique, ere certification is desired, prior to applying for certification.

iv. In addition, as part of the application procedure the Department's fice of Quality Assurance, or its designee, can send to the laboratory set of proficiency test samples for each stationary detection method r which certification is requested in accordance with N.J.A.C. 18-2.10(b). The laboratory shall be responsible for acceptably analyz- g the proficiency test samples as a condition for receiving certification.

2. Laboratories which intend to seek certification in the Radio- gical category, but which have not participated in the USEPA's diological proficiency testing program may obtain information ncerning that program from the [Bureau] **Department's Office of uality Assurance.**

(b) (No change.)

(c) If the applicant submits a complete application, the ap- opriate fee, proficiency data if required, and the information bmitted meets the minimum requirements of this chapter for the tegory or categories for which certification is requested, the appli- tion shall be accepted. Acceptance of the application does not thorize the laboratory to perform [water] analyses regulated by this apter. The applicant shall be notified of the acceptance and shall rticipate in the following laboratory evaluation:

1. (No change.)

2. Limited Chemistry, Atomic Absorption and Gas Chromato- aphy:

i. (No change.)

ii. The laboratory shall analyze the proficiency samples and return e proficiency data, within 45 days of its receipt of samples, to the ffice of Quality Assurance, [Division of Water Resources, CN029] **ew Jersey Department of Environmental Protection, 401 East State reet, CN 027,** Trenton, New Jersey 08625.

iii.-x. (No change.)

3. Radiological Testing:

i. The Department shall contact the laboratory within three weeks ter the application is accepted **and the required radiological/radon oficiency testing is completed** to arrange a mutually acceptable date r an on-site laboratory inspection, and the inspection will be con- icted by representatives of the Department [and the USEPA]; and

ii. (No change.)

iii. If the Department is unable to schedule an on-site inspection ithin 90 days after receiving an acceptable application from a lab- atory, it may grant the laboratory an interim approval to analyze diological samples until the laboratory is inspected provided the boratory continues to participate in the USEPA's proficiency tes- ng program, or in the case of radon/radon progeny in air an thorized proficiency program, and acceptably analyzes the pro- am's samples. **Other than the conditions given in (f) below, the epartment will not grant interim approval for radon/radon progeny alysis.**

iv. If the Department determines that proficiency tests are not avail- le, then the evaluation of the laboratory will be based solely on the -site laboratory inspection.

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

(f) The following special provisions are applicable to the phase- of the New Jersey [Pollutant Discharge Elimination System] **Radon** boratory certification program.

1. The owner of a laboratory who has been issued an interim proval in parameters within categories for the New Jersey [Pollu- nt Discharge Elimination System] **Radon** laboratory certification ogram shall follow the procedures and meet all the requirements all previous subsections of this section except that:

i. [The] **A** laboratory that has been granted an interim approval authorized to perform **radon/radon progeny** analyses **on air and ater samples** for [the New Jersey Pollutant Discharge Elimination stem program] **use by the Department, industry, or private clients r compliance with the Department's rules while the laboratory is being aluated for certification;**

ii. The interim approval shall be valid until the laboratory is rtified or [June 30, 1985] **until six months after the effective date these amendments,** whichever is earlier [where the laboratory dem- onstrates to the Department that it is diligently seeking to meet the requirements for certification];

iii. [A laboratory that fails to acceptably analyze the proficiency samples or otherwise fails to meet the requirements of this chapter for certification shall be allowed to remain in interimly approved status until June 30, 1985 if the laboratory submits an acceptable plan to correct the deficiencies within 30 days of receiving notification of its deficiencies to the Department's Office of Quality Assurance, Division of Water Resources, CN 029, Trenton, New Jersey 08625] **For a laboratory to receive interim status approval it must successfully perform on proficiency tests from an authorized proficiency program and follow all other application procedures as given in this chapter. Interim approval will be granted if the Department has approved a laboratory's application package and all other application procedures have been followed, but has not yet conducted an on-site audit;**

iv. Laboratories notified that their interim approval has been re- voked shall immediately cease performing analyses [required to be performed in a certified laboratory for compliance with the Water Pollution Control Act and the New Jersey Pollutant Discharge Elimination system Regulations] and shall comply with (e) above before reapplying for certification.

v. (No change.)

7:18-2.4 Procedure for laboratories not located in New Jersey

(a) The owner of a laboratory located in a State other than New Jersey which has been certified, under conditions no less stringent than those required by this chapter, by the agency having primary enforcement responsibility under the provisions of the Federal Safe Drinking Water Act or the agency delegated administrative responsi- bility for the Federal Clean Water Act NJPDES program in the State where it is located, who wishes to perform [water] analyses in any or all of the categories described in N.J.A.C. 7:18-2.2 for public water systems or NJPDES permitted facilities located in New Jersey or as required by the Water Pollution Control Act or the Safe Drinking Water Act or the Radon Act, shall:

1. Annually complete the application form provided by the New Jersey Department of Environmental Protection, Division of [Fiscal and Support Services] **Financial Management, Planning and General Services, Bureau of** [Collections and Licensing] **Revenue,** CN 402, Trenton, New Jersey 08625, (609) [292-4071] **777-1013;**

2. (No change.)

3. Return the form with the proper fee **and any necessary documen- tation** to the Bureau.

(b) (No change.)

(c) The receipt of the number authorizes the laboratory to perform [water] analyses for public water systems or NJPDES permitted facilities or as required pursuant to the Water Pollution Control Act, [or] the Safe Drinking Water, **or the Radon Act** in New Jersey for the balance of the fiscal year which expires on June 30.

(d) (No change.)

(e) The owner of a laboratory in a State other than New Jersey which is not certified by that State or the USEPA, or is certified under conditions less stringent than those required by this chapter, who wishes to perform [water] analyses in any or all of the categories described in N.J.A.C. 7:18-2.2 for public water systems [or], NJPDES permitted facilities located in New Jersey, **or for radon/radon progeny analyses,** or as required by the Safe Drinking Water Act, [or] the Water Pollution Control Act, **or the Radon Act,** shall apply for certification in accordance with the procedures set forth in N.J.A.C. 7:18-2.3. In addition, [prior] **subsequent** to conducting the on-site laboratory inspection, the laboratory shall submit to the [Bureau] **Department** as an additional fee the sum the Department determines to be sufficient to cover the travel, and room and board expenses of the certification inspectors to conduct the on-site inspection.

7:18-2.6 Fees

(a) Owners of laboratories applying for certification or renewal of certification, for [the] **each** fiscal year commencing on July 1, [1981 and for subsequent fiscal years] shall submit the appropriate fee obtained from the annual fee schedule below along with the required application materials. Fees are nonrefundable. Laboratories owned or operated by the State of New Jersey or an Agency of the Federal

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Government are exempt from this fee requirement, but, except for the Environmental Protection Agency, shall make appropriate application for certification in accordance with the other provisions of these regulations.

Laboratory Certification Annual Fee Schedule

	Fees
Microbiological Testing	$400.00
Any one of the following chemistry categories: Limited chemistry, atomic absorption, Gas Chromatography	$400.00
Any two of the above-mentioned chemistry categories	$500.00
All three of the above-mentioned chemistry categories	$600.00
Radiological Testing	
Any one or two radiological parameters	$200.00
Any additional radiological parameter	$50.00 per **each** additional parameter
Any one radon or radon progeny stationary detection method	**$1,500.00**
Any additional radon or radon progeny stationary detection method	**$150.00 each**
Bioassay Testing	$400.00

(b) (No change.)

(c) The section is applicable to [interimly approved] laboratories **with interim approval.**

(d) Radon/radon progeny laboratory certification fees, for Fiscal Year 91 only, will be prorated from the effective date of the revisions to this chapter to the end of the fiscal year.

7:18-2.7 Required laboratory personnel policies

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

(d) The laboratory supervisor shall possess the qualifications for the category which [he/she] **he or she** supervises, [or for laboratories applying for New Jersey Pollutant Discharge Elimination certification during the period in which the Department offers interim approvals, shall meet the requirements of (d)8 below:] and meet the following requirements:

1.-5. (No change.)

6. If the laboratory performs [test] **tests** or analyses in the category of Radiological Testing **for compliance with the Safe Drinking Water Act and the State Primary Drinking Water Regulations,** the supervisor shall:

i.-iii. (No change.)

7. (No change.)

[8. Prior to adoption of these regulations, the supervisor shall:

i. Have had one year of pertinent laboratory experience working in a laboratory performing compliance analyses in a category or categories for which NJPDES certification is required in accordance with the provisions of this chapter, and

ii. Demonstrate the ability of complying with the testing, analytical, and quality control requirements contained in this chapter.]

8. If the laboratory performs tests or analyses in the category of Radiological Testing for compliance with the Radon Act, the supervisor shall:

i. Hold a bachelor's degree from an accredited institution in chemistry, radiochemistry, radioisotope technology, biology, physics, engineering, or any of the physical or biological sciences;

ii. Have subsequent to graduation at least five years of laboratory training or experience in any of the sciences listed in (d)8i above, one year of which shall be in radiation and/or radioactivity measurements, and have successfully completed a governmental or privately sponsored course on radiation with emphasis on radon. In-house training is acceptable provided that a course outline is submitted with the applicati and approved by the Department; and

iii. Demonstrate competency in the operation of radon/rad progeny measurement equipment and procedures during an inspecti by representatives of the Department.

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

7:18-2.10 Proficiency testing

(a) Except when determined by the Department that an a propriate proficiency test is not readily available, all certified labo tories or laboratories seeking certification shall participate in a prc ciency testing program covering all tests, analyses and analyti methods as made available within the category and categories which the laboratory is certified or seeks certification; **and sh comply with the requirements of N.J.A.C. 7:18-2.3 and 2.4.**

1. (No change.)

(b) Appropriate samples or tests shall be distributed [by the D partment] **or made available by the Department's Office of Qual Assurance** or its designee to such laboratories at such times a frequencies as designated by the [Department] **Department's Off of Quality Assurance.**

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

(g) Certified laboratories that desire to extend the range of te or analyses offered shall submit a written request, comply with t requirements of N.J.A.C. 7:18-2.3 [or], 2.4 **or 2.10**, and shall demc strate satisfactory results in [at least one round of proficiency testir **the required number of proficiency tests or** samples **as required N.J.A.C. 7:18-2.3, 2.4 or 2.10** prior to the inclusion of this test analysis in the list of tests or analyses for which proficiency has be established.

7:18-2.11 Laboratory inspections

(a)-(f) (No change.)

(g) Whenever deviations from the requirements of this chapter a found, the laboratory shall **not** be afforded [not less than fifteen da nor] more than [thirty] **30** days from the date the inspection rep is mailed to the laboratory in which to correct such deficiencies. deficiencies affecting the accuracy of results are found, the certific tion shall be immediately suspended or revoked, in accordance w the provisions of N.J.A.C. [7:8-2.12] **7:18-2.12.**

7:18-2.12 Cancellation, suspension, and revocation of certificatio

(a) (No change.)

(b) The Department may temporarily suspend a laborator certification in any or all categories or in any parameter when t laboratory fails to fully meet the standards of this chapter and t failure does not merit immediate decertification action. The Depa ment shall notify the laboratory by letter of its suspension and t reason therefore. Suspensions may be invoked for, but are not limit to, the following reasons:

1.-5. (No change.)

6. For the Radiological category, [failing to acceptably analy two performance test average values for any one parameter duri any consecutive twelve month period shall be grounds for suspensi in the parameter;] **the following shall be grounds for suspension:**

i. For radiological analyses of parameters required to be monitor by the Safe Drinking Water Act and the State Primary Drinking Wa Regulations, failing to acceptably analyze two of USEPA's blind p formance evaluation samples or two cross check samples during t fiscal year shall be grounds for suspension for the parameter(s) fail For radon analysis required to be monitored by the Safe Drinki Water Act, failing to participate in and pass every proficiency test, r to exceed four tests per year, shall be grounds for suspension.

ii. For radon/radon progeny analyses of air samples, failing to p ticipate in and pass every required proficiency test made availal during the fiscal year through an authorized proficiency program f each stationary detection device, not to exceed four tests per year a not less than one per year, shall be grounds for suspension in th method or device.

iii. A laboratory suspended in radon/radon progeny analyses has 1 days to pass a proficiency test from an authorized proficiency progra If a laboratory does not pass a proficiency test within 120 days, it w

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decertified and required to reapply for certification in each stationary tection device for which it was decertified.

7. (No change.)

(c) [Certification may be revoked] A laboratory may be decertified / order of the Department for due cause, including, but not limited :

1.-9. (No change.)

10. For the Radiological Category, [failing to acceptably analyze /o performance test average values for any one parameter during ıy consecutive twelve month period shall be grounds for decertifica- ɔn in the parameter; or] **the following shall be grounds for decertifica- ɔn:**

i. For radiological analyses of parameters required to be monitored / the Safe Drinking Water Act and the State Primary Drinking Water egulations, failing to acceptably analyze two blind performance evalu- ion samples or two cross check samples for any one parameter during ıy consecutive 12 month period or for radon analysis of parameters quired to be monitored by the Safe Drinking Water Act, failing to ırticipate in and pass the next available authorized proficiency test 'ter being suspended in any parameter shall be grounds for decertifica- on in that parameter; or

ii. For radon/radon progeny analyses of parameters required to be onitored by the Radon Act, failing to participate in and pass an ıthorized proficiency test from an authorized proficiency program ithin 120 days of failing a required authorized proficiency test shall ɜ grounds for decertification in a stationary detection method;

(1) If a laboratory is decertified it must reapply for certification in ıch stationary detection method for which it was decertified.

11.-12. (No change.)

(d) (No change.)

18-2.13 Effect and duration of suspension [notification] and [revocation] decertification orders

(a) The results of any tests or analyses performed after issuance f a suspension [notification or revocation order] **or decertification rder** for any category or parameter suspended [revoked] **or de- ertified** shall not be **submitted to or** accepted by the Department for ɔmpliance with the requirements of the New Jersey Safe Drinking /ater Act, the New Jersey Water Pollution Control Act, **the Radon .ct** and [Regulations] **regulations** adopted pursuant to those acts.

(b) Radon/radon progeny analysis may not be performed by any ıboratory for determining radon or radon progeny levels or for com- liance with the requirements of the Radon Act or Safe Drinking Water .ct or regulations adopted pursuant thereto after the issuance of a ıspension or decertification order.

Recodify existing (b)-(d) as **(c)-(e)** (No change in text.)

(f) Use of any remedy provided by the Water Pollution Control Act, he Safe Drinking Water Act, the Radon Act or this chapter shall not reclude the use of any other remedy available to the Department.

:18-2.14 Information to State

In the event there are any changes in the name, location, own- rship, **manager,** post office address or telephone number of a labora- ory to which the provisions of this chapter apply, written notice hereof shall be sent to the Bureau of [Collections and Licensing] **Revenue** New Jersey Department of Environmental Protection, :N402, Trenton, New Jersey 08625. In the case of change in super- isor(s), the qualifications of the new supervisor showing compliance vith the requirements of N.J.A.C. 7:18-2.7(d) shall be furnished.

':28-2.15 Criminal penalties

(a) In addition to any other penalties available to the Department ıursuant to the Water Pollution Control Act, the Safe Drinking Water ıct, the Radon Act and this chapter, any person who violates the Radon Act or any rule or regulation adopted pursuant to the Radon Act is guilty of a crime of the third degree.

(b) Use of any remedy under this section shall not preclude the use of any other remedy available to the Department.

SUBCHAPTER 5. CRITERIA AND PROCEDURES FOR RADIOLOGICAL TESTING AND ANALYSIS

7:18-5.2 Laboratory facilities

(a) Laboratory facilities shall meet the following minimum requirements:

1. The counting instruments required for measurement of those activities or specific radionuclides described in 40 CFR 141 **methods, or the Safe Drinking Water Act,** shall be located in a room other than the one in which samples and standards are prepared or in which other types of chemical analyses are being performed. The temperature of the room shall not exceed 27[°C] **degrees centigrade.** Temperature variation under normal operating conditions shall not exceed [3°C] **three degrees centigrade.**

2.-4. (No change.)

7:18-5.3 Specifications for laboratory equipment and instruments

(a) Laboratories performing radiological tests and analyses shall have on the premises and under the control of the laboratory manager the equipment and instruments listed in this section necessary for the preparation and analysis of the specific standards and samples for which the laboratory is seeking certification or is certified. Such instruments, when required, shall meet the following specifications:

1. The following are specifications for general instrumentation and equipment:

i.-ix. (No change.)

x. A general purpose table-top centrifuge which shall have a maximum speed of at least 3,000 rpm and a loading option of 4x50 mL; [and]

xi. The fluorometer shall be capable of detecting 0.0005 ug of uranium[.] **and**

xii. For radon/radon progeny analyses, where required by the authorized measurement protocols, a microscope or automated counting system capable of detecting and counting alpha tracks shall be used. For analyses made with a radon progeny integrating sampling unit (RPISU), a thermoluminescent dosimeter (TLD) reader is required. The method used for detecting and counting radon/radon progeny shall give accurate quantitative results (that is, precision, accuracy, and reproducibility), and the laboratory shall demonstrate this capability.

(b) The types of radiation counting systems needed to comply with measurements described in 40 CFR 141 **methods, or the Safe Drinking Water Act** are set forth below. Laboratories shall have on the premises and under the control of the laboratory manager those instruments needed to analyze for those activities or specific radionuclides for which the laboratory is seeking certification or for which the laboratory is certified. Such instruments shall meet the [following] specifications **listed below**:

1.-5. (No change.)

6. For radon/radon progeny analyses of air samples, the instruments shall be capable of meeting a one picocurie per liter (pCi/L) minimum detectable activity with a 95 percent confidence, and for water samples, the instrument shall be capable of meeting 100 pCi/L minimum detectable activity with a 95 percent confidence.

7:18-5.4 Preservation of samples, methodology, and major instrumentation

(a) Table IV below gives the minimum requirements for sample handling including preservation, methodology, and major instrumentation.

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Table IV

Minimum Requirements for Sample Handling, Preservation, Methodology[1] and Major Instrumentation [(Minimum Requirements)]

Parameter	Preservative[2]	Container[3]	Instrumentation[4]
Gross alpha	Conc. HCl or HNO_3 to pH<2[5]	P or G	A or B
Gross beta	Conc. HCl or HNO_3 to pH<2[5]	P or G	A
Strontium-89	Conc. HCl or HNO_3 to pH<2[5]	P or G	A
Strontium-90	Conc. HCl or HNO_3 to pH<2[5]	P or G	A
Radium-226	Conc. HCl or HNO_3 to pH<2[5]	P or G	A, B or D
Radium-228	Conc. HCl or HNO_3 to pH<2[5]	P or G	A
Cesium-134	Conc. HCL to pH[X]2	P or G	A or C
Iodine-131	None	P or G	A
Tritium	None	G	E
Uranium	Conc. HCl or HNO_3 to pH<2[5]	P or G	F
Photo emitters[7]	Conc. HCl or HNO_3 to pH<2[5]	P or G	C
Radon/radon progeny in air	**None '6'**		**'6'**
Radon in water	**None**	G	**E, '6'**

[1][40 CFR 141] **With the exception of measurement of radon/radon progeny in air, all other methods are from 40 CFR part 141.**
[2]It is recommended that the [preservation] **preservative** be added to the sample at the time of collection unless suspended solids activity is to be measured. However, if the sample must be shipped to a laboratory or storage area, acidification of the sample (in its original container) may be delayed for a period not to exceed 5 days. A minimum of 16 hours must elapse between acidification and analysis.
[3]P = Plastic, hard or soft; G = Glass, hard or soft.
[4]A = Low background proportional system; B = Alpha scintillation system; C = Gamma spectrometer (NaI(Tl) or Ge(Li); D = Scintillation cell (radon) system; E = Liquid scintillation system [(Section C.2.a)]; F = Fluorometer [(Section C.1.1)].
[5]If HCl is used to acidify samples which are to be analyzed for gross alpha or gross beta activities, the acid salts must be [coveted] **converted** to nitrate salts before transfer of the samples to planchets.
[6]Methods and instrumentation requirements as specified in N.J.A.C. 7:18-2.2(a)5i, ii, iii, iv, v and N.J.A.C. 7:18-5.5(a)1 and 2.
[7]Chromium-51, Cobalt-60, Ruthenium-106, Zinc-65.

7:18-5.5 Methodology

(a) Laboratories [shall use the analytical procedures specified in 40 CFR 141.] **performing radiological analyses shall use the following analytical procedures:**

1. For drinking water analyses, the laboratory shall use the analytical procedures specified in 40 CFR 141.

2. For analyses of radon/radon progeny performed in the laboratory, the laboratory shall follow the protocols specified in N.J.A.C. 7:18-2.2(a)5i, iii, iv and v for all measurement devices/techniques.

(b) All procedures other than those set forth in [subsection (a) of this section] **(a) above** are considered alternative analytical methods as described in 40 CFR 141.27. Laboratories shall make special application to the [Commissioner] **Department's Office of Quality Assurance** for the use of alternative analytical methods and such application shall include a showing of acceptable comparability data.

7:18-5.7 Quality control

(a) Laboratories shall develop and implement quality control procedures meeting the following minimum requirements:

1.-3. (No change.)

4. **All radon/radon progeny measurement devices/techniques shall be calibrated at least once per year.** Permanent records shall be maintained of preventive maintenance, periodic inspection, testing, and calibration for the proper operation of radiation instruments and analytical balances; validation of methods; **chain of custody records and procedures;** evaluation of reagents and volumetric equipment; surveillance of results; and remedial actions taken in response to detected defects. **For radon/radon progeny analysis, all information specified by the authorized measurement protocols and methods described in N.J.A.C. 7:18-2.2(a)5i, ii and iii; and N.J.A.C. 7:18-5.5(a)1 and 2 shall be recorded and maintained.** [Such] **All** records shall be kept on file by the laboratory for a period of at least five years.

5.-8. (No change.)

7:18-5.8 Records and data reporting

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

(c) A record shall be maintained for at least five years of the daily receipt of samples. Each such record shall be numbered or otherwise appropriately identified and shall contain the following information:

1.-3. (No change.)

4. The data, time and specific location of sample collection. **For radon/radon progeny samples taken by a certified radon measurement specialist or certified radon measurement technician, the record shall also include a chain-of-custody form that will state which sampling device/technique was used and whether the authorized protocols were followed.**

5.-8. (No change.)

(d) The original or a true duplicate of the results of the tests or analyses shall be sent promptly to the person who requested such tests or analyses[,]. **The results shall be reported on the laboratory's forms** and [shall be] signed by the laboratory manager or [a] **his or her** designee whose designation [is in writing and] has been submitted to, **and approved by,** the [Department] **Department's Office of Quality Assurance.**

1. For laboratory analysis of radon/radon progeny in air, the results of such analyses shall be sent, on the laboratory's letterhead, directly to the owner of the building, or his or her agent, requesting the analysis and to the Department.

(e) Whenever a certified laboratory refers samples to another certified laboratory for analysis, the person [requesting the analysis or tests] **who ultimately receives the results** shall receive the laboratory report or a true duplicate of that report on the **report** form of the laboratory that performs the tests or analyses. In the case of tests or analyses performed under the Safe Drinking Water Act Regulations for Public Noncommunity Water Systems, where use of a specific laboratory report form is required, the laboratory performing the tests **or analyses** shall report the results on such required form.

(b) Laboratories shall follow the chain-of-custody procedures set forth in N.J.A.C. 7:18-4.4[(e)]**(f)6, 4.8(b),** 4.8(c), [and 4.8(d)] **5.8(c)4, and 5.8(g)1.**

(g) Records of radiological analyses shall be kept by the laboratory for not less than five years. This includes, but is not limited to, all raw data, calculations, quality control data, and reports. In addition, actual laboratory reports shall be kept for not less than five years. However, all data, with the exception of compliance check samples as detailed in 40 CFR 141.33(b), may be transferred to tabular summaries provided that the following information is included:

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1. The date, specific place, and time of sampling. **For radon/radon ıgeny samples taken by a certified radon measurement specialist or tified radon measurement technician, the record shall also include hain-of-custody form that will state which sampling device/technique s used and whether the authorized protocols were followed.**
2.-7. (No change.)

(a)

VISION OF FISH, GAME AND WILDLIFE SH AND GAME COUNCIL

vision of Fish, Game and Wildlife Rules

oposed Readoption with Amendments: N.J.A.C. 7:25

ıthorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection, and the Fish and Game Council, Cole Gibbs, Chairman.
ıthority: N.J.S.A. 13:1B-30 et seq., 13:1D-9, 23:1-1 et seq. and 50:1-1 et seq.
EP Docket Number: 047-90-12.
oposal Number: PRN 1991-28.
Submit comments by February 6, 1991 to:
Samuel Wolfe
Administrative Practice Officer
New Jersey Department of Environmental Protection
CN 401
Trenton, New Jersey 08625
e agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 7:25 will expire February 18, 1991. The Department of Environmental Protection epartment) has reviewed these rules and has determined them to be cessary, reasonable and proper for the purpose for which they were ginally promulgated. However, certain amendments are proposed in der to update and further refine and clarify the rules.
To ensure continuity of these programs, the Department of Enonmental Protection proposes to readopt the rules concerning Fish, ıme and Wildlife (N.J.A.C. 7:25) with amendments as described below cause they continue to be necessary to protect the environment of the ıte and to accomplish their statutory purposes.

JBCHAPTER 1. GENERAL PROVISIONS

This subchapter sets forth the scope, the rules of construction, defiions, fees and penalties which apply to the entire chapter.
Amendments are proposed to N.J.A.C. 7:25-1.5, 7:25-1.6, and 7:25-1.7.
Deletion of N.J.A.C. 7:25-1.5 is proposed because Delaware Bay leasg is now governed by N.J.A.C. 7:25-13, and the remaining regulated dustries of that section—viz., scalloping and shellfish shucking—are no ıger viable industries.
Deletion of N.J.A.C. 7:25-1.6 is proposed because of the repeal of J.S.A. 50:2-6 by P.L. 1979, c.199, section 81, which imbued the Division th the power to revoke shellfish licenses. Revocation is now governed N.J.S.A. 23:2B-14.
Amendment of N.J.A.C. 7:25-1.7 is proposed to increase the penalty r clamming without the appropriate license and to subject violators of ıtutes prohibiting taking or possession of undersized oysters and crabng without a license to the prescribed statutory penalty provisions of J.S.A. 23:2B-14 which will have the effect of significantly raising the nalties from those the Commissioner established by regulation.

JBCHAPTER 2. USE OF ALL LAND AND WATER AREAS UNDER THE CONTROL OF THE DIVISION OF FISH, GAME AND WILDLIFE

This subchapter governs activities which may be pursued in wildlife anagement areas, including special regulations for specific wildlife manement areas.

SUBCHAPTER 3. USE OF MECHANICAL NOISEMAKING DEVICES

This subchapter governs the use of noise-making devices to protect crops from animal depredation.
An amendment to N.J.A.C. 7:25-3.1 is proposed to remove the $2.00 issuance fee for the permit and to allow the wildlife control representative to perform inspections and approve applications in addition to the conservation officer. This will facilitate permit decisions when conservation officers are unavailable and allow the conservation officer to devote more time to enforcement, thus increasing compliance.

SUBCHAPTER 4. ENDANGERED, NONGAME AND EXOTIC WILDLIFE

This subchapter lists the wildlife which are categorized as nongame and exotic and prescribes a permit process for taking and possessing certain of these species.
Amendments to this subchapter clarify the types of animals to which these permits will apply in N.J.A.C. 7:25-4.2 through 4.6 and also establish a new set of five permits to be issued for particular scientific, educational, conservation or public health purposes. These permittees will be required to submit reports on their activities to the Division within one month of the expiration of their permits. An amendment to N.J.A.C. 7:25-4.8 adds the order of Crocodilia to the list of potentially dangerous species, and new subsection N.J.A.C. 7:25-4.11(c) sets forth the circumstances under which nongame and exotic animals held pursuant to these permits may be dispatched.

SUBCHAPTER 5. 1990-1991 GAME CODE

This subchapter describes the times, the means and the manner of taking game and with what equipment and in what amount.

SUBCHAPTER 6. 1991-1992 FISH CODE

This subchapter prescribes the time, the means, the manner of taking fish and with what equipment, in what quantity and in what area of the fresh waters of this state.

SUBCHAPTER 7. MISCELLANEOUS SHELLFISH RULES

This subchapter requires a license for taking of oysters, proscribes taking of mussels at night or on Sunday and prescribes the rules for crab dredging.

SUBCHAPTER 8. CLAM LICENSES

This subchapter establishes the fees for and governs the use of clam licenses, and establishes a fund into which those license fees are to be deposited.

SUBCHAPTER 9. HARD CLAMS SIZE LIMIT

This subchapter establishes a minimum size of 1½ inches for hard clams and governs the taking of such clams.

SUBCHAPTER 10. POSSESSION, PROPAGATION, LIBERATION, SALE AND IMPORTATION OF GAME ANIMALS AND GAME BIRDS

This governs the importation, possession and farming of various categories of game animals and sets up a permit process to govern those activities.
Amendments to this subchapter are designed to make the practice of game farming more humane and less wasteful. Thus, the general possession criteria are expanded to allow animals that might otherwise have to be destroyed to be kept in captivity at the discretion of the Division. Also, the purposes and circumstances under which it is permitted to dispatch these animals are now set forth, and a provision is added to clarify the fact that all parts of an animal, not just its meat, may be utilized.

SUBCHAPTER 12. SURF CLAMS

This subchapter governs the harvesting of surf claims from New Jersey waters in order to manage the surf clam population and benefit the surf clam industry.

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An amendment is proposed to N.J.A.C. 7:25-12.10 in order to allow the surf clam fishery to be closed based on a scientific projection that the season's quota will be reached prior to the actual landing of the filled quota.

SUBCHAPTER 13. LEASED TIDAL GROUNDS

This subchapter governs appropriate staking of leased Delaware Bay Bottom.

SUBCHAPTER 14. CRAB POTS

This subchapter governs the licensing of crab pots and trot lines and the means, times and manner of taking crabs on trot lines.

SUBCHAPTER 15. CLAM RELAY PROGRAM

This subchapter governs the program by which clams are removed from specified restricted, special restricted or condemned waters for growth on leased lots for the purpose of depuration.

SUBCHAPTER 16. DEFINING FISHING LINES

This subchapter lists the dividing lines in all the inland waters of the State upstream of which a license is required to fish.

SUBCHAPTER 17. DISPOSAL AND POSSESSION OF DEAD DEER

This subchapter governs road-killed deer disposal.

SUBCHAPTER 18. MARINE FISHERIES

This subchapter lists the means and manner of taking marine fish, as well as minimum sizes and amounts.

N.J.A.C. 7:25-18.1 is amended to provide a minimum size and a creel limit for hybrid striped bass. This section also contains a prohibition against mutilation.

Proposed amendments to N.J.A.C. 7:25-18.2 would increase the lighting requirements affecting pound nets in order to increase their visibility.

SUBCHAPTER 18A. FISHERIES CLOSURE AND ADVISORIES FOR STRIPED BASS, AMERICAN EEL, BLUE FISH, WHITE PERCH AND WHITE CATFISH TAKEN FROM THE NORTHEAST REGION OF THIS STATE

This subchapter lists the fisheries from which it is illegal to sell fish because of PCB content and lists the fish species for which limited consumption is advised.

SUBCHAPTER 19. ATLANTIC COAST HARVEST SEASON

This subchapter governs the method and season for harvesting oysters from the Atlantic Coast.

SUBCHAPTER 21. TERRAPIN REGULATIONS

This subchapter governs the season, method and minimum size of terrapin that may be taken.

SUBCHAPTER 22. FISHERY MANAGEMENT IN NEW JERSEY

This subchapter govern the seasons and methods of taking Atlantic menhaden.

SUBCHAPTER 23. PERMIT TO KILL WILD DEER

This subchapter governs the killing of deer causing damage to crops which would otherwise be prohibited by the Game Code.

Several amendments are proposed to this subchapter in order to render the program fairer to the permittee while maintaining protection of the deer population. Thus, use of the permit is extended to the immediate family of the permittee, the permittee will no longer be required to obtain a hunting license although a firearm purchaser identification card will now be required, a pattern of prior damage may serve as the basis for issuance of a permit and the permittee will be allowed to keep one deer per non-contiguous parcel for his or her own consumption. At the same time, the permittee's agent will now be required to have the permit in his or her possession as well as both a New Jersey firearm hunting license and a firearm purchaser identification card. No one who does not me the strict criteria of an "agent" will be allowed to assist in any wa

Both permittee and agent will be prohibited fron shooting deer bas on convictions of fish and game laws or regulations, and recordkeepir is streamlined.

SUBCHAPTER 24. LEASING OF ATLANTIC COAST BOTTOM FOR AQUACULTURE

This subchapter governs leasing of the ocean bottom along the Atlant Coast for the culturing of shellfish.

Amendments are proposed to this subchapter in order to deny a lea to violators of laws and administrative rules prohibiting the taking shellfish from the leased beds of another or from condemned water

Social Impact

In general, readoption of these rules will have little social impa beyond enabling the Department to continue its various programs gover ing fish, game and wildlife. These rules allow full use of the wildli management areas, recreational opportunity in terms of fishing and hun ing, protection of farm land, promotion of health concerns throug animal control, shellfish rules and consumption advisories, and the o portunity to pursue educational and career paths through various licen ing programs.

In addition, the amendments to subchapter 1, which increase certai penalties, should encourage compliance with the statutes and rules go erning shellfisheries.

The amendments to subchapter 3, by facilitating the permit proce for use of noise-making devices, will allow the program to serve t regulated community more effectively.

Clarification of which animals may be held pursuant to permits f nongame and exotic species in subchapter 4 will facilitate complianc Moreover, addition of a Depredation Control Permit for protection public safety, listing of crocodilia as potentially dangerous animals, a prescribing the methods of dispatch will have a positive social effect bo by protecting public health and by requiring humane treatment animals.

By ensuring a more humane approach to game farming, the amen ments to subchapter 10 will also have a positive social impact.

Because the amendment to subchapter 12 will allow the Commission to act on closure of the surf clam fishery in anticipation of reaching t season's quota, the time delay between the reaching of the quota ar closure will be eliminated and the industry will be better protected ov the long term.

The proposed amendment to N.J.A.C. 7:25-18.1 will result in so small inconvenience to the fishing public. Hybrid striped bass will longer be legally filleted before landing. In addition, there will be a sligl restriction of the hybrid striped bass fishery by virtue of the size and cre limits.

The additional lighting requirements proposed in N.J.A.C. 7:25-18 will make pound nets more visible and therefore prevent collisions, whic will inure to the benefit both of the netter and of the sportfishing ar boating public.

The amendments to subchapter 23 will allow the farmer to protect h crops more effectively while, at the same time, increasing complian through more stringent policing of agents and permittees.

The amendments to subchapter 24 should increase compliance wi laws and regulations concerning shellfish poaching as well as increasir the appearance of fairness by the Shellfisheries Council in leasing.

Economic Impact

Little economic impact as a result of readoption is anticipated. Co tinuation of these rules maintains various fee-supported programs whic have a direct impact on the regulated community. However, these pr grams serve to support commercial fisheries, shell fisheries and farmi which have a long-term positive effect on the regulated community.

The amendment to subchapter 1, which increases certain penalties, w have an intended adverse effect on violators and a resultant positive effe on the various shellfishing industries that these prohibitions are design to protect.

The amendments to subchapter 3, by allowing farmers to use a propriate noise making devices more effectively, will have a positi economic impact on agriculture.

By establishing separate categories of permits that have differing scie tific purposes and increased permit annual fees, the amendment subchapter 4 will have a slight, negative economic impact.

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By allowing a less wasteful approach to game farming, the amendments › subchapter 10 will have a positive economic impact.

The amendment to subchapter 12, which eliminates the time delay etween reaching the season's quota and closure of the surf clam fishery, ill shorten the current season, but protect the fishery as a whole. Thus, espite a short term, slight adverse impact, the long-term economic imact will be positive.

There will be some short-term adverse economic impact as a result of mendments to subchapter 18 establishing minimum size and creel limits or hybrid striped bass. However, the impact should be very slight because ie vast proportion of the needs of the commercial hybrid striped bass shery is satisfied by aquaculture. Moreover, there should be long-term conomic benefit associated with preservation of the hybrid striped bass shery.

Reduction in the number of collisions between boats and pound nets s a result of N.J.A.C. 7:25-18.2 will reduce the amount of damage and esult in an economic benefit.

The amendments to subchapter 23, by allowing the farmer to protect is crops more effectively and to keep one deer for his personal consumpon, will have a positive economic impact.

The amendments to subchapter 24 should increase compliance by deterig poaching. This will have a beneficial economic impact both by rotecting the shellfish beds of legitimate lessees and by ensuring a wholeome shellfish industry upon which the public may rely.

Environmental Impact

The readoption will have a positive environmental impact in that it ill continue the Department's various programs aimed at preserving the tate's ecosystem. This positive impact is furthered both by governing the se of wildlife management areas and by controlling the taking of the arious native species which are the subjects of these rules.

Moreover, amendments to subchapter 1, which clarify certain hellfishing provisions and increase the penalties for certain violations, ill increase compliance with shellfisheries laws and rules and will thereby enefit the environment.

The amendments to subchapter 3, by allowing better allocation of the ervices of conservation officers, will increase compliance with all fish, ame and wildlife laws and rules and thus have a beneficial environmental npact.

The amendments to subchapter 4, will increase compliance through larification. In addition, the specification of different types of scientific nd conservation permits will encourage research into wildlife biology nd management and thus have a positive environmental impact.

The amendment to subchapter 12, by ensuring that the fishery will be losed prior to exceeding the season's quota, will better protect the surf lam fishery.

Protection of the striped bass resource through the amendment to ubchapter 18 will have a beneficial environmental impact.

The amendments to subchapter 23, by instituting more efficient recordeeping and stricter policing of both permittees and agents, will have a ositive environmental impact.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 2:14B-16 et seq., the Department has determined that some entities ffected by these rules will be small businesses, as defined therein. These nclude farmers, animal dealers, exhibitors, small scientific research and educational institutions, and commercial fishermen and shellfishermen.

Farmers are currently subject to regulation pursuant to subchapter 3, Use of Mechanical Noisemaking Devices, which requires an application y the farmer for the use of such devices and its approval by a conservaion officer or wildlife control representative. The current proposal reduces the compliance requirements by deleting fees that were previously harged for permits to use these devices. No capital costs or professional ervices are required by the current rules or will be occasioned by the mendments. Farmers are also subject to the requirements of subchapter 23, Permit to Kill Wild Deer. This subchapter requires a permit as well s a firearm hunting license and a firearm purchaser ID card for the urpose of killing deer which are destroying crops. This subchapter also egulates shotgun gauge and buckshot gauge and imposes disposal and eporting requirements upon the farmer. The amendments, which ubstitute the requirement of keeping a daily record for reporting of the illing of deer within 12 hours, will ease the burden on the farmer. No apital costs would be incurred nor would professional services be necessary for these farmers.

Game farmers are also subject to the requirements of subchapter 10, Possession, Propagation, Liberation, Sale and Importation of Game Animals and Game Birds, as are exhibitors, theatrical agencies, zoos, animal rehabilitators, small research or educational institutions, pet stores and any other animal handlers. This subchapter requires applications and reports, including inventories, or, in the case of zoos or other exhibitors, quarterly reports and notification to the Division on the part of traveling exhibitions. In addition, the permittee is subject to inspection to insure that the animals are properly fed, sheltered and receive proper veterinary care. A small business which was not prepared to care adequately for the animals within its control might have to incur capital costs to provide for those animals and would have to engage professional veterinary services in order to insure that these animals received proper care. The amendments to this subchapter add animal rehabilitators to those who would be therefore required to obtain and comply with the conditions of permits under this subchapter and clarify the circumstances under which game animals or birds could be dispatched. No additional capital costs or reporting or compliance requirements are imposed by the amendment except as to the new class of permittee which would be subject to these rules for the first time.

Animal dealers, exhibitors, zoos, and small scientific or educational institutions may also be subject to subchapter 4, Endangered and Nongame and Exotic Wildlife. Recordkeeping and compliance requirements are similar to those in subchapter 10. Amendments to this subchapter add permit classes for scientific, educational, conservation or public health purposes to the extent that entities which previously would not have been allowed to hold endangered exotic or nongame species would now be entitled to a permit. There would be additional compliance and recordkeeping requirements as well as capital outlays to provide for the welfare of the animals.

Shellfishermen are subject to the requirements in subchapters 7, 8, 9, 12, 13, 14, 15, 19, and 24. Although these subchapters, which deal with oysters, mussels, clams and crabs, incorporate substantial compliance requirements—licensing, recordkeeping, adherence to seasons, creel and size limits, marking of nets, staking of leased grounds, and tagging of catch—the capital expenditure for staking and marking would not be significant, nor would there be a necessity for professional services. Amendments which are proposed to subchapter 12, Surf Clams, and subchapter 24, Leasing of Atlantic Coast Bottom for Aquaculture, will not impose any additional recordkeeping or compliance requirements.

Commercial fishermen are subject to subchapters 18, 18A and 22. Subchapter 18, Marine Fisheries, sets size limits, sets mesh size limits for nets, establishes licensing, marking, and tagging requirements for nets, sets forth the length and the allowable positions of the nets, and establishes seasons and creel limits. Subchapter 18A prohibits the selling of striped bass anywhere in the State and of American eels caught in certain northern areas of the State. Subchapter 22, Menhaden, establishes seasons, licensing requirements, recordkeeping requirements, and prohibitions against in-shore fishing for the menhaden fishery. Unless equipment is substantially out of compliance with the current rules, there would be no capital expenditure required of these businesses and there should be no necessity for engaging of professional services. The amendment to subchapter 18 which prohibits filleting of hybrid striped bass except immediately prior to its use as food would have no effect on the commercial fishery as that is supplied almost exclusively by products of aquaculture which are exempt from the requirements of this subchapter.

In developing the proposed readoption with amendments, the Department has balanced the need to protect the environment against the economic impact of these rules on small business and has determined that to reduce the impact of these rules on small businesses would endanger the environment, public health and public safety. Therefore, no exemption from coverage is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:25.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:25-1.1 to 1.4 (No change.)

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7:25-1.5 [Fee schedule] **(Reserved)**

[(a) The following schedule of fees shall become effective immediately:

1. Maurice River Cove lease fees	$1.00 per acre;
2. Resident scallop license	$5.00;
3. Duplicate license	$1.00;
4. Shucking house license (surf clams)	$100.00;
5. Shucking house license (scallops)	$10.00;
6. Picking house license (crabs)	$50.00.]

7:25-1.6 [Shellfish license revocation schedule] **(Reserved)**

[(a) The schedule of period of shellfish license revocations for Atlantic Coast is:

First Offense	Second Offense	Third Offense
1. Clamming without a license, 50:2-1:		
i. 30 days	120 days	1 year;
2. Clamming without button, 50:2-5:		
i. 5 days	10 days	2 months;
3. Clamming in condemned water, 24:14-3—Atlantic Coast Council Resolution 4, 7/6/54:		
i. 60 days	180 days	2 years;
4. Clamming after sunset, before sunrise, on Sundays, 50:2-11:		
i. 30 days	90 days	1 year;
5. Clamming leased ground, 50:4-3:		
i. 30 days	180 days	18 months.

(b) Anyone convicted of the same violation three times within a five-year period shall have his license revoked for twice the third conviction revocation period, or one year, whichever is greater. In addition, anyone who violates the same law for the fourth time shall have his license revoked for life. These penalties shall be cumulative if more than one statute has been violated.]

7:25-1.7 Penalties

(a) (No change.)

(b) Pursuant to N.J.S.A. 50:2-2, no person shall take or catch more than 150 clams a day with only a recreational license or no license. Any person violating this provision shall be liable to a penalty of $[50.00] **100.00** for the first offense and $[100.00] **200.00** for each subsequent offense.

(c) (No change.)

[(d) Pursuant to N.J.S.A. 50:3-15.1 and 16.18, no person shall take or possess undersized oysters. Any person violating this provision shall be liable to a penalty of $10.00 for the first offense and not for each oyster and $20.00 for each subsequent offense and not for each oyster.

(3) Pursuant to N.J.S.A. 23:5-35.2, no person shall take or attempt to take crabs without a license. Any person violating this provision shall be liable to a penalty of $10.00 for the first offense and $20.00 for each subseqent offense.]

SUBCHAPTER 3. USE OF MECHANICAL NOISEMAKING DEVICES

7:25-3.1 Procedure for securing a permit

(a) A formal application form as prepared by the Division of Fish, Game and Wildlife will be completed by the landowner, who will then [contact the local conservation officers for] **arrange** an on-site inspection **with the Division** to determine the facts and approve or disapprove a permit. Upon approval by the conservation officer **or a wildlife control representative**, the application shall be forwarded to the Trenton office of the Division of Fish, Game and Wildife [with a $2.00 fee for issuance of permit]. If disapproved [by the conservation officer], the property owner may apply to the Director of the Division of Fish, Game and Wildlife for timely review of the appli cation.

(b) In case of emergency, the conservation officer **or wildlife con trol representative** may give verbal approval for use of the device fo a period of five days pending processing of the application.

(c) (No change.)

[(d) A $2.00 filing fee shall be required with each application.

[(e)] **(d)** (No change in text.)

7:25-3.2 to 3.5 (No change.)

SUBCHAPTER 4. ENDANGERED, NONGAME AND EXOTIC WILDLIFE

7:25-4.1 (No change.)

7:25-4.2 Permit required

(a) (No change.)

(b) No person shall liberate within this [state] **State** any nongam **species** or exotic mammal, bird, reptile or amphibian unless sucl person has first received a permit from the Department [of En vironmental Protection] **which explicitly allows the release of nongam species or exotic mammals, birds, reptiles or amphibians**.

(c) (No change.)

7:25-4.3 Exotic species and nongame species requiring a permit for possession

(a) (No change.)

(b) The Department may issue a permit for the possession of th above exotic [species or nongame species of] mammals, birds, rep tiles[,] or amphibians **or nongame species** provided the applicant ha satisfactorily met the criteria contained within N.J.A.C. 7:25-4.7.

7:25-4.4 (No change.)

7:25-4.5 Additional species

A permit shall be required for any other exotic [species] **mammals birds, reptiles or amphibians** or nongame species not specifically ex empted by [Section] **N.J.A.C. 7:25**-4.4.

7:25-4.6 Categories of permits, expiration, fees, sales receipt required, records and reports required

(a) The Division may issue, but shall not be limited to, the follow ing categories of permits:

1. Individual hobby—issued to persons holding exotic [species **mammals, birds, reptiles or amphibians** or nongame species for hobb purposes or as pets.

2. Scientific holding—issued to qualified persons holding exoti [species] **mammals, birds, reptiles or amphibians** or nongame specie for scientific observation, captive breeding attempts and other scien tific or educational study.

3. Zoological **holding**—issued to private and public institution which exhibit exotic [species] **mammals, birds, reptiles or amphibian** or nongame species, including possession, importation, exportatior and sale of species listed in the permit.

4. Pet shop—issued to individuals and establishments engaged ir the retail sale of [animals] **exotic mammals, birds, reptiles or amphibians or nongame species**, including importation, exportation and sal of species listed in the permit.

5. Animal Dealer—issued to individuals and establishments engaged in the wholesale of [animals] **exotic mammals, birds, reptile or amphibians or nongame species**, including importation, exportatior and sale of species listed in the permit.

6. Animal Exhibitor—issued to exhibitors of exotic [species] **mammals, birds, reptiles or amphibians** or nongame species other than zoos. Traveling exhibits, small exhibitions not qualifying as zoos, and circuses are included, including importation, exportation, and sal of species listed in the permit.

7. Animal Theatrical Agencies—issued to persons owning exotic **mammals, birds, reptiles or amphibians** or nongame species to be hired for advertising, acting[,] or theatrical appearances, including importation, exportation[,] and sale of species listed in the permit.

8. Scientific Collecting—issued to persons to collect nongame species or escaped exotic mammals, birds, reptiles or amphibians for scientific studies or other approved purposes, when such activity is

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hown to have a beneficial effect on the conservation of the species, he public welfare or the environment.

9. Special Purpose Salvage—issued to persons or institutions to alvage dead migratory birds or parts thereof for scientific or educaional purposes.

10. Special Wildlife Salvage—issued to persons or institutions to alvage dead nongame species or parts thereof, other than migratory irds, for scientific or educational purposes.

11. Endangered Species—issued to persons or institutions for the ossession of endangered species for conservation or research purposes.

12. Depredation Control—issued to persons or establishments to ontrol nongame species which are creating a hazard to public safety, rops, livestock or similar concerns.

13. Rehabilitation—issued to persons to rescue, rehabilitate and reease nongame and endangered birds.

(b) All possession permits shall expire on December 31 of the year f issue, **unless otherwise indicated**.

(c) The possession permits shall require an annual issuance fee and nspection fee as listed:

Categories of Permits	Annual Inspection Fee	Annual Fee
ndividual Hobby	None	$10.00
Scientific **Holding**	$ 25.00	$10.00
Zoological **Holding**		$10.00
less than 10 animals	$ 50.00	$10.00
more than 10 animals	$100.00	$10.00
Pet Shop	$ 90.00	$10.00
Animal Dealer	$ 90.00	$10.00
Animal Exhibitor		
Single Exhibit	$ 25.00	$10.00
Annual	$100.00	$10.00
Animal Theatrical Agency	$100.00	$10.00
Scientific Collecting	**None**	**$22.00**
Special Purpose Salvage	**None**	**$ 7.00**
Special Wildlife Salvage	**None**	**$ 7.00**
Endangered Species	**None**	**$ 7.00**
Depredation Control	**None**	**$22.00**
Rehabilitation	**None**	**$ 7.00**

(d) Pet shop, animal dealer, zoo, nature center and animal theatrical agency possession permits must be displayed in a prominent place. The sale of exotic **mammals, birds, reptiles or amphibians** or nongame species to any individual must be accompanied by an "Exotic or Nongame Sales Receipt," the form of which shall be prescribed by the Department. This "Exotic or Nongame Sales Receipt" will be a temporary possession permit valid for a period of 20 days after the date of sale.

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

(g) Periodic inspections shall be made by Division designated personnel and shall consist of examination of exotic [species,] **mammals, birds, reptiles or amphibians** or nongame species, their food, facilities, holding pen and exhibit area, and a review of relevant records pertaining to these species.

(h) Animal exhibitors and animal theatrical agencies shall notify the Division no less than two weeks prior to any scheduled activity in New Jersey covered by permit in order to permit inspection of the activity by Division personnel.

(i) Persons holding permits listed above at (a)8 to 12 shall submit reports to the Division of permit activities no more than one month after the expiration of their permits.

7:25-4.7 (No change.)

7:25-4.8 Potentially dangerous species

(a) "Potentially dangerous species" is defined as any exotic [species] **mammals, birds, reptiles or amphibians** or nongame species which, in the opinion of the Division, is capable of inflicting serious or fatal injuries or which has the potential to become an agricultural pest **or a menace to the public health or indigenous wildlife populations**, including, but not limited to the following:

Class/Order	Family/**Genus**
Primates	Cebidae—New World Monkeys
	Cercophithecidae—Old World Monkeys and Baboons
	Pongidae—Apes
Carnivora	Canidae—Nondomestic dogs
	Ursidae—Bears
	Felidae—Nondomestic cats
Saura (Venomous)	**Helodermatidae—Gila Monsters**
Serpentes (Venomous)	Elapidae—Coral snakes and cobras
	Viperidae—Vipers
	Crotalidae—Pit Vipers
Crocodilia	**Alligatoridae-Alligators and caiman**
	Crocodylidae—crocodiles
	Gavialidae—gavials
[ALSO:]	
Psittaciformes	Psittaculis spp.—Ring-necked parakeets
	Myiopsitta spp.—Monk parakeets
	Cyanoliseus patagonus—[patagonias conure] **Patagonian Conures**
Rodentia	Cynomys spp.—Prairie dogs
	Spermophilus spp.—Ground Squirrels

(b) The Department, in its discretion, may issue a permit for possession of a potentially dangerous [animal] **species** only after a clear showing that the criteria for the possession of such potentially dangerous [animal] **species** contained in N.J.A.C. 7:25-4.9 have been met.

7:25-4.9 (No change.)

7:25-4.10 Endangered species prohibited

(a) (No change.)

(b) The Department, in its discretion, may issue a permit for the possession of any designated endangered species only after a clear showing by the applicant that all the [criteria] **requirements** for the possession of endangered species (N.J.A.C. 7:25-[11.2] **4.14**) [or any designated endangered species which is also designated as an exotic, nongame species, or potentially dangerous species unless the criteria established by 7:25-4.7 and 7:25-4.9 have also been] **are** met. **If the designated endangered species is also designated as an exotic mammal, bird, reptile or amphibian or nongame species or potentially dangerous species, the criteria established by 7:25-4.7 and 7:25-4.9 must also be met.**

7:25-4.11 Miscellaneous provisions

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

(c) Exotic mammals, birds, reptiles or amphibians, or nongame species possessed under these permits may be dispatched in a manner as directed by the Commissioner and consistent with the provisions of the permit for legitimate purposes, including, but not limited to, the following:

1. Euthanasia of sick, injured or surplus animals, to cull individuals to prevent overcrowding or spread of disease; such euthanasia can also be ordered by the Commissioner when necessary to prevent spread of disease;

2. To use as food, or to utilize the hide, skin, or other body parts;

3. Euthanasia by an agent of the Division or as ordered by the Commissioner;

4. When an animal creates a danger or serious threat to persons or other animals as determined by the Commissioner; or

5. Euthanasia of research animals held under the scientific holding permits or scientific collecting permit.

7:25-4.12 to 4.18 (No change.)

SUBCHAPTER 10. POSSESSION, PROPAGATION, LIBERATION, SALE AND IMPORTATION OF GAME ANIMALS AND GAME BIRDS

7:25-10.1 to 10.7 (No change.)

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7:25-10.8 General possession criteria

(a) Prior to the issuance of any permit under this subchapter the applicant shall, on forms provided by the [division] **Division**, demonstrate [that] **the following**:

1. The origin of the animal is not from the wild stock of this [state] **State** or any other state except where authorized by the [division] **Division** for [rehabilitation or] **rehabilitative,** scientific **or other** purposes **consistent with the purposes of this subchapter as determined by the Division**.

2.-6. (No change.)

7:25-10.9 to 10.12 (No change.)

7:25-10.13 Miscellaneous provisions

(a)-(f) (No change.)

(g) Game animals and birds possessed under these permits may be dispatched in a manner as directed by N.J.S.A. 23:3-31 for legitimate purpose, including, but not limited to, the following:

1. Euthanasia of sick, injured or surplus animals, in order to cull individuals to prevent overcrowding or spread of disease; such euthanasia can also be ordered by the Commissioner when necessary to prevent spread of disease;

2. To utilize as food, or to utilize the hide, skin, or other body parts; record-keeping and tagging requirements must comply with those described in N.J.S.A. 23:3-28 to 39;

3. Euthanasia by an agent of the Division or as ordered by the Commissioner;

4. When an animal creates a danger or serious threat to persons or other animals as determined by the Commissioner; or

5. Euthanasia of research animals held under the scientific holding permit.

SUBCHAPTER 12. SURF CLAMS

7:25-12.1 to 12.9 (No change.)

7:25-12.10 Harvest limitations; surf clam harvest quota and weekly vessel quota

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

(e) Based on harvest reporting, the Commissioner, with the advice of the Council, may adjust the season length and weekly vessel quota for surf clams as follows:

1.-2. (No change.)

3. If at any time during the season the Commissioner [determines] **projects** that the season quota [has] **will have** been harvested from State waters, the Commissioner may by public notice **take either of the following actions**:

i.-ii. (No change.)

(f) (No change.)

7:25-12.11 to 12.21 (No change.)

SUBCHAPTER 18. MARINE FISHERIES

7:25-18.1 Size Limits

(a) No persons shall purchase, sell, offer for sale, or expose for sale any sea sturgeon measuring less than 42 inches in length, codfish measuring less than 12 inches in length, bluefish or weakfish measuring less than nine inches in length, sea bass or kingfish measuring less than eight inches in length, blackfish, mackerel[,] or porgy measuring less than seven inches in length[,] **or** winter flounder measuring less than six inches in length[, or measuring less than 13 inches in length].

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

(f) Except for products of commercial aquaculture, no person shall take from the marine waters in this State or have in his or her possession any striped bass hybrids, being hybrids of the Morone genus, under 16 inches in length.

1. For purposes of this section, commercial aquaculture shall mean the culture or husbandry of striped bass hybrids in non-wild systems for the purpose of egg and larval production and/or of increasing size.

2. For purposes of this section, parents of striped bass hybrids shall include Morone saxatiles (striped bass), M. chrysops (white bass), M. america (white perch), and M. mississippiensis (Yellow bass).

(g) Except for the products of commercial aquaculture, a person shall not have more than two striped bass hybrids in his or her possession at one time.

(h) A person shall not remove the head, tail or skin from any striped bass hybrid except immediately prior to preparation or serving as food

(i) All hybrid striped bass which are the products of commercial aquaculture shall be accompanied by accurate and dated documentation of quantity, original description and destination.

(j) Any person violating the provisions of (f) through (i) above shall be liable to a penalty of $100.00 for each fish taken or possessed. Each fish shall constitute a separate and distinct offense.

Recodify existing (f)-(i) as **(k)-(o)** (No change in text).

7:25-18.2 Pound nets

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

(c) Specific requirements for pound net users in Raritan and Sandy Hook Bays are as follows:

1.-8. (No change.)

9. A flashing, amber light must be displayed between sunset and sunrise on **each of** the two end poles of a pound net or a continuous row of pound nets. **These lights must be placed at least 10 feet above the mean high water level and must be of sufficient brightness to be visible for at least three miles in all directions (360 degrees) at such times and under such weather conditions as would allow visibility of 10 miles.**

10.-11. (No change.)

(d) Specific requirements for pound net users in the Atlantic Ocean are as follows:

1.-8. (No change.)

9. Ocean pound nets shall be maintained in compliance with the following additional requirements:

i. (No change.)

ii. Flashing amber lights must be displayed on the inshore and offshore poles of nets or rows of nets, between [sunrise] **sunset** and [sunset] **sunrise**; these lights must be placed at least 10 feet above the mean high water level and must be visible for at least three miles in all directions [where clear visibility is possible] **360 degrees at such times and under such weather conditions as would allow visibility of 10 miles.**

10.-12. (No change.)

7:25-18.3 to 18.5 (No change.)

SUBCHAPTER 23. PERMIT TO KILL WILD DEER

7:25-23.1 to 23.3 (No change.)

7:25-23.4 Definitions

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

. . .

"Permittee" means the owner or lessee **or any member of the immediate family thereof** of lands under cultivation to whom a permit is issued by the [division] **Division**.

"State Game Code" means the regulations providing for the management of game birds, game animals[,] and fur-bearing animals promulgated by the Fish and Game Council pursuant to N.J.S.A. 13:1B-30 and appearing at N.J.A.C. 7:25-5.

7:25-23.5 Permit required; authorized permittee; agents

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

(c) A permit for anticipated damage may be issued upon demonstration to the satisfaction of the Division of documented history of damage.

[(c) No] **(d) Except as provided at (c) above, a** person shall **not** be issued the permit unless and until he [or she] makes a reasonable showing to the [division] **Division**, confirmed by a field investigation performed by [division] **Division** personnel, of substantial deer-caused damage to [a] seeded, cultivated grasses or planted crops. Under exigent circumstances, the permit may be issued for one day only without prior confirmation of necessity by field investigation; provided that within seven days thereafter a field investigation shall be performed by [division] **Division** personnel. Should the [division]

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Division then determine that conditions failed to warrant the issuance of the permit, no permit shall subsequently be issued to the same person without a prior field investigation confirming the necessity therefor.

[(d) No person, other than the permittee, shall have on their person the permit unless that person is designated on the permit as the agent of the permittee.]

(e) Any permittee or agent shall be in possession of the permit or a copy of the permit at all times when attempting to shoot deer.

[(e)]**(f)** [No person] **A permittee** convicted of [a violation of any provision in N.J.S.A. 23:4-42 to 48 shall, within five years of conviction thereof, lawfully hunt for, pursue, shoot at, take, wound or attempt to take, kill or wound any wild deer pursuant to the permit] **any two violations of any laws or regulations pertaining to hunting of this or any other state during a five-year period shall not be allowed to shoot deer pursuant to a permit for a period of two years from the date of such second conviction or of three years from the date of the latter of a third or subsequent conviction. A person convicted of any two violations of any law or regulation pertaining to fish, game and wildlife of this State or any other state during a five-year period shall not be allowed to be an agent for a period of two years from the date of such second conviction or three years from the date of the latter of a third or subsequent conviction.**

1. A permittee [or agent] killing deer under the permit **on lands on which he does not reside** must possess a [valid and proper New Jersey firearm hunting license or] New Jersey firearm purchaser identification card.

2. An agent killing deer on any land under the permit must possess a valid and proper new Jersey firearm hunting license and New Jersey firearm puchaser identification card.

7:25-23.6 Permit conditions

(a) The permittee and the agent shall adhere to the following conditions:

1.-4. (No change.)

5. Display the permit to any person requesting visual inspection thereof **and provide any Division representative access to the land under permit at any reasonable time;**

6. [Dead deer shall be reported to the appropriate district law enforcement office specified on the permit, within 12 hours of killing, by calling the telephone number specified on the permit;] **Keep a daily record of hunting activity and deer mortality during the permit period and submit it to the Division upon request; failure to comply may be cause for revocation of the permit;**

7. Deer killed pursuant to the permit shall not be sold[,] or bartered[, or consumed for food] by the permittee or the agent; **however the Division may authorize the permittee to keep for consumption one deer shot under permit annually for each separate, non-contiguous parcel of land under permit;**

8.-10. (No change.)

11. The permit shall expire as specified on the permit; [and]

12. Within two weeks of the expiration of the permit, the permittee shall file with the division a written report giving the date and sex of every deer killed under the permit[.];

13. Failure to comply with any of the provisions of this subchapter or requirements of a permit may be cause for denial of subsequent permits; and

14. Persons other than the permittee or agent are prohibited from assisting in any way in the shooting activities including, but not limited to, the driving of deer or the driving of a vehicle.

SUBCHAPTER 24. LEASING OF ATLANTIC COAST BOTTOM FOR AQUACULTURE

7:25-24.1 to 24.4 (No change.)

7:25-24.5 Lease Applications for new ground

(a) (No change.)

(b) An application for a shellfish lease for new ground may be submitted by any person who must meet the statutory requirements for leasing specified at N.J.S.A. 50:1-23 through 50:1-31, **who, in the five years prior to making application, has not been convicted of violation of N.J.S.A 50:4-3 or N.J.S.A. 58:24-3 or of any administrative rule promulgated pursuant to those statutory provisions,** and who [is the holder of] **also satisfies** the following **requirements**:

1. [A] **Holds a** valid New Jersey Commercial Shellfish License; or

2. [A] **Holds a** valid New Jersey Shellfish Certificate.

(c)-(h) (No change.)

7:25-24.6 to 7:25-24.7 (No change.)

7:25-24.8 Lease renewal

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

(d) Renewal of the lease is subject to the lessee's not having been convicted in the year prior to renewal of any violation of N.J.S.A. 50:4-3 or N.J.S.A. 58:24-3 or of any administrative rule promulgated pursuant to those statutory provisions.

[(d)] **(e)** (No change in text.)

7:25-24.9 Lease transfers

(a) Leases may be transferred only with the approval of both the Council and the Commissioner and only under the following circumstances.

1. The new lessee shall meet all statutory criteria for leasing specified at N.J.S.A. 50:1-23 through 50:1-31, [and] shall be the holder of a valid Commercial Shellfish License or a Shellfish Certificate **and shall not have been convicted in the five years prior to the transfer of violation of N.J.S.A. 50:4-3 or N.J.S.A. 58:24-3 or any administrative rule promulgated pursuant to those statutory provisions;**

2.-5. (No change.)

7:25-24.10 to 7:25-24.17 (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries
Size and Possession Limits
Winter Flounder and Red Drum
Proposed Amendment: N.J.A.C. 7:25-18.1

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

Authority: N.J.S.A. 23:2B-1 et seq., particularly 23:2B-6, 23:2B-7 and 23:2B-14.

DEP Docket Number: 045-90-12.

Proposal Number: PRN 1991-19.

Submit comments by February 6, 1991 to:
Samuel Wolfe
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would establish a 10-inch minimum size limit on winter flounder and a 14-inch minimum size limit on red drum. In addition, the amendment would establish a possession limit for red drum of no more than two fish in excess of 32 inches. The 10-inch size limit will facilitate conservation of winter flounder by providing for their opportunity to spawn at least once before being harvested. The size and possession limits on red drum will bring New Jersey into compliance with the recommendations contained in the Atlantic States Marine Fisheries Commission's coastwide management plan to perpetuate the red drum resource at fishable abundance throughout its range. New Jersey has no red drum fishery within its waters but desires to cooperate with states that do. The adoption of consistent coastwide management measures should prevent fishermen from using New Jersey for the landing or sale of red drum harvested illegally from states that do have a red drum fishery.

Social Impact

The purpose of the proposed amendment is to establish a size limit for winter flounder and a size and possession limit for red drum. The amendment is not expected to limit participation in these fisheries in New Jersey. Most recreational fishermen only keep winter flounder that exceed 10 inches in length while those less than this size are released. New Jersey

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has no fishery for red drum but wishes to implement these restrictions for red drum to be in compliance with the coastwide management plan. Consequently, no adverse social impact should fall on those in compliance with the regulations of those states with a red drum fishery.

Economic Impact

This amendment is not expected to significantly impact the commercial fishery for winter flounder. Although commercial fishermen are currently allowed to sell winter flounder greater than six inches in length, a large market does not exist for such small winter flounder and their value is extremely low compared to fish greater than 10 inches in length. A directed fishery for red drum does not exist in New Jersey or in ocean waters offshore of New Jersey. Consequently, any economic impact of the proposed amendment is expected to be minimal.

Environmental Impact

The proposed amendment should have a positive environmental impact on the winter flounder and red drum resources. The minimum size limit on winter flounder will protect immature fish less than three years old and provide them an opportunity to spawn at least once prior to harvest. This proposal should reduce the probability of recruitment failure in the winter flounder population. The minimum size limit on red drum is designed to protect spawning stock. The purpose of the proposed possession limit of two fish greater than 32 inches is to promote increased recruitment through protection of older fish and to control overexploitation of developing fisheries.

Regulatory Flexibility Analysis

The proposed amendment would apply to all recreational and commercial fishermen fishing for winter flounder or red drum. Most of the commercial fishermen are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and may be impacted to some degree. Although these small businesses will have to comply with the requirements set forth in the Summary above, no additional record keeping is involved and it is unlikely that additional professional services or capital costs will be required for compliance. In developing this amendment, the Department has balanced its environmental responsibilities against the economic impact to small businesses and has determined that to minimize the impact of the amendment would adversely affect the environment and, therefore, no exemption from coverage is provided.

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

7:25-18.1 Size **and possession** limits

(a) [No] A person shall **not** purchase, sell, offer for sale, or expose for sale any sea sturgeon measuring less than 42 inches in length, codfish measuring less than 12 inches in length, bluefish or weakfish measuring less than nine inches in length, sea bass or kingfish measuring less than eight inches in length, **or** blackfish, mackerel, or porgy measuring less than seven inches in length[, winter flounder measuring less than six inches in length, or measuring less than 13 inches in length].

(b) [No] A person shall **not** take from the marine waters in the State or have in his possession any summer flounder, commonly called fluke, under 13 inches in length, **winter flounder under 10 inches in length, or red drum under 14 inches in length.**

(c) (No change.)

(d) A person shall not possess at any one time more than two red drum both measuring in excess of 32 inches in length.

[(d)]**(e)** Any person violating the provisions of (a) [or], (b) **or (d)** above shall be liable to a penalty of $20.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

Recodify existing (e)-(i) as **(f)-(j)** (No change in text.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Removal of Iron Dextran and Strontium Sulfide from the Lists of Hazardous Wastes

Proposed Amendments: N.J.A.C. 7:26-8.15 and 8.16

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

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

DEP Docket Number: 044-90-12

Proposal Number: PRN 1991-20.

Submit written comments, identified by the Docket Number given above, by March 8, 1991 to:

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

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend its hazardous waste management program by removing strontium sulfide and iron dextran, also known and listed as ferric dextran, from the Department's lists of hazardous wastes. These amendments are being made in response to changes made to the federal program by the United States Environmental Protection Agency (EPA) in implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. (see 53 Fed. Reg. 43,878 and 43,881, October 31, 1988 for a detailed discussion of these delistings).

The proposed amendments will remove strontium sulfide from the hazardous waste list of discarded commercial chemical products, off-specification species, containers, and spill residues thereof found at N.J.A.C. 7:26-8.15(a)5 and also remove strontium sulfide from the list of hazardous constituents found at N.J.A.C. 7:26-8.16 because it generally poses no threat to human health and the environment. However, a waste containing strontium sulfide may, in certain circumstances, exhibit characteristics of hazardous waste described at N.J.A.C. 7:26-8.9 to 8.12, most likely reactivity. When a waste containing strontium sulfide exhibits a characteristic of hazardous waste, it is subject to regulation as a hazardous waste. These amendments are equivalent to the changes made by EPA in its October 31, 1988 rulemaking (see 53 Fed. Reg. 43,881).

The proposed amendments will also remove iron dextran and ferric dextran from the list of discarded commercial chemical products, off-specification species, containers, and spill residues thereof found at N.J.A.C. 7:26-8.15(a)6 because they generally pose no threat to human health and the environment.

Although EPA in its October 31, 1988 rulemaking also removed iron dextran from the list of hazardous constituents (40 C.F.R. Part 261, Appendix VIII), the Department need not do so since this material is not listed in the State's hazardous constituents list at N.J.A.C. 7:26-8.16. The Department does not consider iron dextran (ferric dextran) to be a hazardous constituent and does not regulate it as such. The list of hazardous constituents at N.J.A.C. 7:26-8.16 will now be equivalent to the current federal regulations. These amendments are otherwise equivalent to the October 31, 1988 rulemaking (see 53 Fed. Reg. 43,878).

Social Impact

The proposed amendments will have a positive social impact. The amendments will not adversely affect human health and the environment since, generally, iron dextran (ferric dextran) and strontium sulfide do not present a threat to human health and the environment. The Department believes these materials can be properly managed under the State's solid waste management scheme.

Economic Impact

The proposed amendments will have a positive economic impact on those affected by these amendments. The amendments will reduce the economic burden on generators and facilities that presently dispose of iron dextran (ferric dextran) or strontium sulfide under hazardous waste rules, since, generally, disposal of solid waste is not as costly as disposal of hazardous waste. Since the Department believes that these materials

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can be properly managed under the State's solid waste management scheme, some savings may be realized by the generators and facilities.

Environmental Impact

The amendments will not have a negative environmental impact. Since iron dextran (ferric dextran) cannot be absorbed by the oral, dermal or inhalation routes of the human body, it is not capable of posing a substantial present or potential hazard to human health or the environment and therefore, continued listing as a hazardous waste is not justified. EPA has decided to delist strontium sulfide due to the lack of reliable information to support its continued listing as a hazardous waste. However, a waste containing strontium sulfide may still be considered a hazardous waste if it exhibits a characteristic of hazardous waste, most likely reactivity. (See 53 Fed. Reg. 43,878 and 43,881 for a more detailed discussion of these delistings.) The Department believes that these materials can be properly managed under the State's solid waste management scheme.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments would not impose reporting, recordkeeping or other compliance requirements on small businesses; in fact, the amendments lessen the burden on all businesses including small businesses by removing these substances from the hazardous waste lists. Therefore, the Department has determined that a regulatory flexibility analysis is not required.

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

7:26-8.15 Discarded commercial chemical products, off-specification species, containers and spill residues thereof

(a) The following discarded commercial chemical products, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous wastes if and when they are a solid waste as defined at N.J.A.C. 7:26-1.6:

1.-4. (No change.)

5. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1 through 4 above, are identified as acute hazardous waste (H). These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste Number	Substance
. . .	
[P107	Strontium Sulfide]
. . .	

6. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1, 2 and 4 above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding EPA Hazardous Waste Numbers are:

HAZARDOUS WASTE NUMBER	SUBSTANCE
. . .	
[U139	Ferric dextran]
. . .	
[U139	Iron dextran]
. . .	

7. (No change.)

7:26-8.16 Hazardous constituents

(a) Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the corresponding waste code numbers. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.

. . .

[C408	Strontium Sulfide]
. . .	

(b) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Extentsion of Public Comment Period Incorporation by Reference

Proposed Amendment: N.J.A.C. 7:26-8.19

Take notice that the Department of Environmental Protection is extending until February 6, 1991, the comment period of the proposed amendment published at 22 N.J.R. 3299(a) on November 5, 1990 (DEP Docket Number: 036-90-10). The comment period was originally scheduled to end December 5, 1990. The extended comment period will be noticed in newspapers of general circulation in New Jersey. The proposed amendment will amend N.J.A.C. 7:26-8.19 to add subsection (d), whereby the Department will incorporate by reference 40 C.F.R. Part 261, Appendix VII as the basis for the listings of hazardous waste N.J.A.C. 7:26-8.13 and 8.14. The amendment will also correct N.J.A.C. 7:26-8.19(b)4, the name of that entity to contact for EPA publication number SW-846, "Test Methods for Evaluating Solid Waste, Physical Chemical Methods" and will update names of documents associated with this publication.

This amendment is only informational in nature. However, the amendment is necessary for the Department to remain equivalent with the Federal regulations implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., and to retain authorization to implement RCRA for the State of New Jersey.

Submit comments by February 6, 1991 to:
Samuel A. Wolfe
Administrative Practice Officer
Office of Policy and Planning
Department of Environmental Protection
CN402
Trenton, New Jersey 08625

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Control and Prohibition of Air Pollution by Vehicular Fuel

Proposed Amendments: N.J.A.C. 7:27-25.1, 25.2, and 25.5

Proposed New Rules: N.J.A.C. 7:27-25.7 and 25.8

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

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically 26:2C-8.

DEP Docket Number: 046-90-12.

Proposal Number: PRN 1991-21.

A **public hearing** concerning this proposal will be held on:
February 7, 1991, at 10 A.M.
New Jersey Records Storage Center
2300 Stuyvesant Avenue
Trenton, New Jersey 08626

Submit written comments by February 25, 1991, to:
Sam Wolfe, Esq.
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

Copies of this notice of the proposed amendments and new rules are being deposited and will be available for inspection during normal business hours until February 11, 1991, at:
Atlantic County Health Department
201 South Shore Road
Northfield, New Jersey 08225

Warren County Health Department
108 West Moore Street
Hackettstown, New Jersey 07840

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New Jersey Department of Environmental Protection
Division of Environmental Quality
401 East State Street, Second Floor
Trenton, New Jersey 08625

New Jersey Department of Environmental Protection
Northern Regional Office
1259 Route 46
Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Central Regional Office
Twin Rivers Professional Building, Route 33
East Windsor, New Jersey 08520

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Southern Regional Office
20 Clementon Road, 3rd Floor North
Gibbsboro, New Jersey 08026

New Jersey Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

These amendments will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing to adopt amendments to N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels, hereinafter referred to as subchapter 25. The proposed amendments to subchapter 25 revise the testing requirements to which refiners, importers, blenders, and distributors who provide gasoline for use in New Jersey are subject. Specifically, the amendments replace the currently promulgated test method used for determining the Reid vapor pressure (RVP) of gasoline with other test methods and extend the period, during which testing is required, by two weeks. The proposed amendments also establish procedures for the Department to grant exemptions to persons to allow them to use gasoline which exceeds the volatility standards contained in the rule for research, product development or trial use. Persons who apply for such an exemption will be subject to service fees. In addition, the amendments add eight new definitions and revise five existing definitions.

Subchapter 25 was first adopted on January 27, 1989, became effective on February 21, 1989, and was approved by the United States Environmental Protection Agency (EPA) as an amendment of New Jersey's State Implementation Plan (SIP) for the attainment and maintenance of the ambient air quality standard for ozone. This approval was published at 40 CFR Part 52 and became effective June 30, 1989. Subchapter 25 was promulgated to regulate and reduce the volatility of gasoline to control the emissions of ozone precursors.

The proposed amendment of the specified testing methods are required to fulfill a commitment made to the EPA. In EPA's review of the enforceability of subchapter 25 as originally promulgated, to determine whether to approve it as an amendment to the New Jersey SIP, the EPA found the test method promulgated in this subchapter deficient. The Department required that testing shall be conducted in accordance with the American Society for Testing and Materials (ASTM) method D-323. The EPA determined that this method understates the true RVP of gasoline when oxygenated additives are present in the fuel. As a condition of its approval of subchapter 25 as an amendment to the SIP, EPA required that the Department amend its test method section to include the EPA approved methods contained in EPA's national volatility rule. These EPA approved methods are based on an ASTM proposed modification to D-323, known as method D-4814, Annex 2 (formerly known as P-176). Method D-4814, Annex 2, is also referred to as the Herzog "dry" method to test for fuel volatility. In its April 27, 1989 letter, from former Commissioner Daggett to EPA Region II Acting Regional Administrator Muszynski, the Department made a commitment to amend its test methodology to cite Appendix E of EPA's adoption notice as the approved test methodologies for the Department's rule in 1990 and subsequent years. These proposed amendments are intended to fulfill th commitment.

Specifically, these proposed amendments to subchapter 25 make th following five changes:

The revision to N.J.A.C. 7:27-25.4(a)1 requires each refiner, importe blender or distributor to test and prepare test reports documenting th RVP of gasoline shipped out from April 15 through September 15 eac year; the originally promulgated rule requires such testing and documer tation to be carried out from April 15 to September 1.

The revision of N.J.A.C. 7:27-25.4(d) replaces test method ASTM D-323 with two EPA-promulgated test methods: Method 1—Dry RV Measurement Method and method 2—Herzog Semi-Automatic Methoc The EPA published these test methods at 40 CFR 80, Appendix E, i the Federal Register on Wednesday, March 22, 1989. Use of othe equivalent test methods may also be allowed, if such alternate metho is approved in advance in writing by the Department and EPA.

Proposed new section N.J.A.C. 7:27-25.7 establishes procedures where by a person may obtain approval to use gasoline which does not conforr with the RVP standards set forth in N.J.A.C. 7:27-25.3, for research an development projects. This section requires a person who seeks an exemp tion from the RVP standard to apply to the Department for approval The RVP standard is set forth in N.J.A.C. 7:27-25.3 and is in effect durin the May 1 through September 15 period.

Proposed new section N.J.A.C. 7:27-25.8 establishes service fees. An person applying for an exemption allowing use of non-conformin gasoline for research, development and trial use purposes, pursuant t N.J.A.C. 7:27-25.7, is subject to a $500.00 fee. Additionally, any persor for whom an exemption is approved is subject to an annual compliance inspection fee of $500.00.

Eight new terms are added to the definition section, N.J.A.C. 7:27-25.2 and five currently promulgated definitions are revised. The eight new terms are ASTM, EPA, facility, non-conforming gasoline, product development, research, trial use and volatile organic substances. The five revised terms are blender, gasoline, person, Reid vapor pressure anc standard conditions. The definition of "facility" proposed is that which is currently proposed in N.J.A.C. 7:27-8 amendments (see 22 N.J.R 292(a)). The definitions of "person" and "standard conditions" are revised to be uniform with definitions of these terms in the proposed N.J.A.C. 7:27-8 amendments. The terms "product development", "research" and "trial use" are included to clarify the types of use for which an exemption from the RVP standard may be obtained.

If these proposed amendments are adopted, any person subject to these provisions and who fails to conform with their requirements would be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 and criminal penalties pursuant to N.J.S.A. 2C-28.3.

Social Impact

The proposed amendments to subchapter 25 will reinforce the social benefits achieved by the adoption of this subchapter in 1989. By improving the procedures for verifying conformance with the gasoline volatility standards contained in the rules, these amendments help ensure conformance with the RVP standards in the rules. Such conformance will contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone.

EPA established a NAAQS for ozone for a maximum daily one-hour average concentration of 0.12 parts per million (ppm), not to be exceeded more than once a year averaged over three years. New Jersey is not in compliance with this standard. In 1988, the health standard was exceeded on 45 days. The ambient concentration of ozone in New Jersey has exceeded the standard on 18 days in 1989 and 22 days in 1990.

Ozone is a powerful oxidant and at concentrations frequently found in New Jersey during summer months represents a health risk for the residents of New Jersey. Ozone is a respiratory tract irritant, causing symptoms such as tightness in the chest, coughing, difficulty in breathing, and reduced lung function. People with pre-existing respiratory ailments are more acutely affected. More significantly, exposure to ozone at levels of 0.2 ppm, a concentration that was reached in the ambient air in New Jersey in 1988, has been shown in laboratory animals to cause lesioning of bronchiole[1], premature aging of lung tissue[2], and increased susceptibility to respiratory infection[3].

[1]Lee, S.d., J. Brian, and J.B. Mudd, eds. *Assessing Toxic Effects of Environmental Pollutants,* Ann Arbor Science, 1979

[2]Ibid.

[3]Goldstein, "Ozone: New Jersey's Health Dilemma", Clean Air Council, April, 1987

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Foliar damage to sensitive plants is one of the earliest and most obvious ıanifestations of ozone impact on the environment. Subsequent effects ith increased ozone concentrations include reduced plant growth and ecreased crop yield. A reduction in volatile organic substances (VOS) nissions will reduce ambient ozone concentrations and should thereby ssen the damage to foliage, fruits, grains, and vegetables.

The oxidizing properties of ozone at ambient concentrations lead to ccelerated degradation of various man-made materials such as rubber, lastic, textiles, dyes, and paints. Attainment of the NAAQS for ozone ill reduce the threat of degradation of natural and synthetic materials.

Continued violation of the ozone NAAQS is a serious health, agricul- ıral and material property concern. The proposed amendments, by ncouraging better compliance and thereby effectively reducing VOS missions, will help prevent ozone formation and will contribute to al- eviating these concerns.

In addition, replacing the ASTM D-323 with the EPA promulgated est methods will make New Jersey's test requirements uniform with ıational requirements and will thereby facilitate inter-state exchange and ransfer of gasoline.

These proposed amendments to subchapter 25 are expected, in ad- lition, to have a positive social impact due to their exemption of gasoline ısed in certain research and development activities from the volatility tandards in these rules. The new products and production processes that nay be developed through this research, development and trial use offer he potential for providing positive social benefits. Although the Depart- nent recognizes that granting such research and development exemptions vould allow the release of a certain amount of VOS emissions that would otherwise be prohibited, the total amount of these increased emissions vould be so small as to have a negligible impact on ozone formation.

The Department has taken the potential for adverse effects into con- sideration together with the potential for social benefits deriving from the development of new products, and has determined that on balance overall societal welfare is best served through establishment of these procedures which will allow exemptions.

Economic Impact

The Department anticipates that the two proposed changes to the required test procedures will have minimal economic impact and may, n fact, somewhat reduce the overall costs imposed by subchapter 25.

Refiners, importers, blenders and distributors are already using the EPA promulgated test methods prior to inter-state shipment of gasoline, pursuant to 40 CFR Part 80. They should, therefore, not have to incur the "set-up" costs that would normally be expected in introducing a new test method. In fact, they may experience a reduction in operational costs, as they will no longer have to maintain facilities for carrying out ASTM D-323 testing, in addition to those EPA-promulgated test methods.

Likewise, the extension of the required test period between September 1 and September 15 should impose little or no added costs on refiners, importers, blenders, and distributors. The rules as originally promulgated already required these persons to ensure that the fuel they shipped out on or before September 15 conformed with the RVP standard in N.J.A.C. 7:27-25.3(a). Most, if not all, such persons may already be performing the required testing and recordkeeping activities. Their only additional costs would be those entailed in distributing the test information to those persons to whom the gasoline is sold. Furthermore, this extension of the test period obviates the need for each retailer individually to bear the cumulatively substantial costs of having each shipment of gasoline received in this period tested to ensure the fuel he sells is in conformance with the RVP standard. The economic relief from this change afforded retailers thus substantially exceeds any added costs that it may impose on refiners, importers, blenders and distributors.

The Department anticipates that the establishment of a procedure for the persons to obtain exemptions allowing them to use gasoline that does not conform with the volatility standard for research, product development and testing may have a positive economic impact. Research and development could lead to formulation of superior gasolines. Such success in fuel research would not only have a positive effect on employment in New Jersey but could make superior fuel products available to New Jersey citizens.

The proposed service fee of $500.00 for applications would be applicable to those persons who apply for an exemption to use gasoline which does not conform to the gasoline volatility standard for research, product development and testing. The proposed annual service fee of $500.00 for compliance inspections would be applicable only to a person who is approved to use non-conforming gasoline. These fees would partially reimburse the Department for the costs it will incur in reviewing applications for exemption and in verifying conformance with approved exemptions.

The costs to the Department of reviewing and acting on the applications for exemptions that it receives and for monitoring conformance with the exemptions issued will exceed the proposed fee amounts. However, pursuant to the legislatively mandated fee "cap" established in Air Pollution Control Act N.J.S.A. 26:2C-9(g), the Department is proposing the maximum $500.00 for each of these services.

Environmental Impact

The implementation of the proposed amendments to subchapter 25 will have a positive environmental impact. Gasoline is a volatile liquid. A measure of gasoline volatility is its Reid vapor pressure (RVP). The higher the RVP of gasoline, the more readily it evaporates. Evaporative emissions occur during its use, transport, and storage. The improved testing procedures included in these amendments will encourage all persons in New Jersey who refine, import, blend or distribute gasoline to conform with the RVP standard in subchapter 25. In this way, the proposed amendments will help to prevent evaporation of gasoline and thereby contribute to reducing VOS emissions.

Two changes are being proposed to rules' testing procedure to strengthen the Department's ability to verify the conformance of the gasoline used in New Jersey between May 1 and September 15 each year with the volatility standard set forth in N.J.A.C. 7:27-25.3. The first is the replacement of the originally promulgated test method for determining gasoline volatility with other more reliable methods. The second is the lengthening of the period during which testing of gasoline RVP must be performed by refiners, importers, blenders and distributors by two weeks.

The originally promulgated ASTM D-323 test procedure is not a reliable method for measuring the RVP of those gasolines which contain additives which are oxygenates. A number of commercially available gasolines contain such additives. This includes gasolines which are gasoline-ethanol blends. Oxygenates are water soluble. Therefore, if water particles are present during the RVP testing of gasoline, the oxygenates will dissolve in water and therefore be underrepresented in the vapor phase. As a result, the RVP measurement taken will understate the gasoline's true volatility.

In the ASTM D-323 test procedure, water comes into direct contact with the inner surface of the two part apparatus, consisting of the air chamber and the gasoline chamber, and no procedural safeguards are included in the method to ensure the removal of all water droplets. During pre-test preparation of apparatus, both chambers are cleaned with water. In fact, these chambers are purged and rinsed five times with warm water having a temperature above 90 degrees Fahrenheit. The open gasoline chamber is then immersed in an ice bath at 32 to 34 degrees Fahrenheit for at least 10 minutes. When the two chambers are then coupled during the RVP test, water droplets may remain adhered to the inner surface of the apparatus. During the test, oxygenates from gasoline may dissolve in the water droplets, thereby invalidating the test results of gasoline which contain oxygenates.

The test methods proposed in these amendments eliminate this potential for water to come in contact with the gasoline being treated. These EPA test methods, Method 1—Dry RVP measurement method and Method 2—Herzog semi automatic method, prescribe that the air chamber and gasoline chamber, after cleaning with warm water, be further cleaned with acetone, then dried by either blowing dry air or pulling a vacuum to remove any residual water particles. The gasoline chamber is then corked before being refrigerated or immersed in cooling bath to reach a temperature of 32 to 34 degrees Fahrenheit to prevent any direct water contact while in the bath. The inner surfaces of the test apparatus are therefore free from any water particles during the testing, and true RVP of the gasoline can be measured even when oxygenates present.

The lengthening of the period during which testing is required will ensure conformance with the RVP standard for additional two weeks. In the originally promulgated rule, testing and recordkeeping by refiners, importers, blenders and distributors were required only through September 1, even though the gasoline sold or used by refiners, blenders, importers and distributors had to conform with the volatility standard through September 15. In the proposed amendments, refiners, importers, blenders, and distributors must continue to test the fuels they ship out from their facilities through September 15.

Pursuant to the originally promulgated rules, neither gasoline retailers nor the Department had means of knowing whether gasoline delivered during the two-week period, September 1 to September 15, conformed

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to the RVP standard, unless they independently had the fuel tested. These amendments eliminate this discrepancy, thereby ensuring that the gasoline retailers to whom the gasoline is delivered during the first two weeks of September will be provided the test results documenting that the gasoline delivered conforms with the standard.

The proposed provisions in these amendments which enable persons to obtain an exemption which enables them to use non-conforming gasoline between May 1 and September 15 for research and development purposes have been incorporated primarily in recognition of the potential social and economic benefits which may be derived from research and development activity. However, this research and development may, in the long run, also have a positive environmental impact. VOS emissions from vehicles may be reduced if this research and development leads to the production of cleaner burning fuels, more efficient fuel combustion, and better systems for controlling exhaust emissions from vehicles. In the short term, use of non-complying gasoline may result in additional VOS emissions.

Furthermore, the Department anticipates that the total quantity of non-conforming gasoline that will be used pursuant to these exemptions will not exceed 100,000 gallons in any one year. Assuming that the gasoline's RVP averages 11.5, the Department estimates[4] that the excess emissions resulting from this use will be 6.192 tons per year or 0.045 tons per day during the ozone season (see Table 1 below). This is relatively small amount. Therefore, the Department has determined that allowing such exemptions has, on balance, a positive environment impact.

TABLE 1

Estimate Of Excess VOS Emissions from Non-Conforming Gasoline Used for Research and Development Purpose

Source	Excess VOS Emissions (Tons Per year)
A. Storage	
Standing losses	0.0718
Working losses	0.0039
B. Transfer Operation	
Loading racks	0.0174
In-transit	0.0033
Tank trucks to storage tanks	0.0074
Storage tank to motor vehicles	0.0089
Tank to small containers	0.0597
C. Use	
Motor vehicles	0.4856
Laboratories	5.5335
Total	6.1915

Regulatory Flexibility Analysis

The small businesses affected by these amendments are the approximately 15 gasoline distributors and 1,000 independent gasoline retailers which meet the definition of a "small business" established in the Regulatory Flexibility Act, N.J.S.A. 14B-16 et seq.

The only aspect of these amendments that will affect the gasoline retailers and distributors is the lengthening of the required test period by two weeks. This change will benefit retailers and those distributors who receive shipments of gasoline between September 1 and 15 by ensuring that they will be provided documentation by their suppliers attesting that the gasoline they have received for sale conforms with the RVP standards.

This will obviate the need for each retailer or distributor to test individually to determine that any gasoline received for sale during the September 1 to 15 period is in conformance with the standard. They will not need to incur the laboratory costs for analyzing gasoline samples; such costs would be approximately $100.00 per sample.

However, distributors, even those that are small businesses, who sell and ship out gasoline between September 1 to September 15, will incur the added expense of testing and documenting the RVP of any gasoline they sell. If they are not already conducting such testing, this would represent about an 11 percent increase in the required testing. Such testing is an important component of the procedures for verifying that gasoline sold between September 1 and 15 conforms with the RVP standard.

[4]N.J. Department of Environmental Protection, Division of Environmental Quality, "Estimate of Excess Emissions from Non-Conforming Gasoline Used for Research and Development", Trenton, November, 1990 (Available upon request)

While proposing these amendments, the Department has balanced t need to protect the environment against the economic impact of the ru revision and determined that the effect of the rule on small business is reasonable and, therefore, no exemption of small businesses from t requirements of the rules is provided.

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

7:27-25.1 [Applicability] **Scope**

This subchapter prescribes the rules of the Department for t control and prohibition of air pollution by vehicular fuels. The fo lowing shall govern the volatility standards for fuels, used **as mot vehicle fuels,** and provided for use **as motor vehicle fuels,** in tl State, and the methods to be followed by refiners, importers, blende distributors, wholesale purchaser-consumers and retailers to assu these standards are met.

7:27-25.2 Definitions

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

"ASTM" means the American Society for Testing and Material

"Blender" means [a facility which] **any person who** carries out blending process.

. . .

"EPA" means the United States Environmental Protection Agenc

"Facility" means the combination of all structures, buildings, equi ment, storage tanks, source operations and other operations located o one or more continuous or adjacent properties owned or operated b the same person.

. . .

"Gasoline" means any petroleum distillate or petroleum distillate oxygenate blend having a Reid vapor pressure of four pounds pe square inch (207 millimeters of mercury) or greater [and which is use as a motor vehicle fuel].

. . .

"Nonconforming gasoline" means any gasoline whose vapor pressur does not conform with the gasoline volatility standards set forth i N.J.A.C. 7:27-25.3.

"Person" means corporations, companies, associations, societie firms, partnerships[,] and joint stock companies, as well as individ uals, and [shall also include] all political subdivisions of this Stat or any agencies or instrumentalities thereof.

. . .

"Product development" means investigations directed toward the es tablishment of methods of manufacture or of specific designs of salabl substances, devices, or procedures, based on previously discovered facts scientific principles or substances.

. . .

"Reid vapor pressure" [(RVP)] **or "RVP"** means the absolut vapor pressure of a petroleum product **in pounds per square incl (kilopascals)** at 100 degrees Fahrenheit (37.8 degrees [Centigrade **centigrade)** [as measured by the standard test method set forth in th American Society for Testing of Material (ASTM) Designatior D-323].

. . .

"Research" means investigation directed toward the discovery o facts, scientific principles, reactions, or substances.

. . .

"Standard conditions" means 70 degrees Fahrenheit (21.1 degree [Centigrade] **centigrade)** and one atmosphere pressure (14.7 pound per square inch absolute or 760.0 millimeters of mercury).

. . .

"Trial use" means use of a product in an experiment or series o experiments by the manufacturer or importer of that product.

. . .

"Volatile organic substance" or "VOS" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances defined as a volatile organic substance in N.J.A.C. 7:27-16.

. . .

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:27-25.4 Recordkeeping and testing

(a) Each refiner, importer, blender or distributor shall:

1. Between April 15 and [September 1] **September 15** of each year, est and [document] **prepare test reports documenting** the RVP of all ;asoline, prior to its release from the refinery, import facility, blend-ng facility or distribution facility for use in the State. A copy of [this locumentation] **the test report** shall be provided to the distributor, etailer or wholesale purchaser-consumer to whom gasoline is de-ivered.

2.-3. (No change.)

(b) (No change.)

(c) [All] **Any** sampling of gasoline required pursuant to the provisions of this subchapter shall be conducted [by] **in accordance with one of** the following [method] **methods**:

1. For manual sampling[,]: ASTM D-4057; [and] **or**

2. For continuous sampling and nozzle sampling[,]: California Administrative Code Title 14, R. 2261(R)(3) and (k)(4) (1987).

(d) All testing **required** pursuant to the provisions of this subchapter shall be conducted using [the standard method set forth in ASTM Designation D-323.] **one of the following methods:**

1. "Method 1—Dry RVP Measurement Method" promulgated at 40 CFR 80, Appendix E;

2. "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or

3. Any other equivalent test method approved in advance in writing by the Department and EPA.

(e) (No change.)

7:27-25.5 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, **any exemption,** or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) (No change.)

7:27-25.7 Exemptions

(a) The Department may, at its discretion, issue an exemption allowing any person to store, transfer, or use non-conforming gasoline, provided the gasoline is used solely for the purpose of research, product development, and trial use.

(b) Application for an exemption shall be made on forms obtained from the Department. Any person may request application forms from:

Assistant Director of Enforcement
Division of Environmental Quality
Department of Environmental Protection
CN 027
Trenton, New Jersey 08625

(c) The Department may require an applicant for an exemption to submit such details about the intended use of the non-conforming gasoline as it considers necessary to evaluate the potential effect of such use on public health, welfare and the environment. Such information shall include, but is not limited to:

1. Specification of how the non-conforming gasoline is to be used, and the purpose of this use;

2. Explanation of why the purpose could not be accomplished through use of gasoline whose volatility conforms with the N.J.A.C. 7:27-25.3 standards;

3. For any year, the maximum number of gallons and maximum RVP of non-conforming gasoline:

i. To be used from May 1 through September 15; and

ii. To be stored at the facility during the May 1 through September 15 period;

4. A calculation of the maximum potential additional VOS emissions that could occur during the May 1 through September 15 period in any year due to the storage, transfer, and use of non-conforming gasoline; and

5. A facility diagram specifying the tanks in which non-conforming gasoline will be stored.

(d) The Department may require, as a condition of approval of an exemption, the use of control apparatus.

(e) No applicant may commence storing, transferring, and using non-conforming gasoline prior to the issuance by the Department of a written approval of an exemption.

(f) Any exemption issued by the Department pursuant to this section shall be valid for a period of no longer than three years from the date of approval.

(g) Any person holding an exemption issued by the Department pursuant to this section shall make said exemption readily available for inspection on the operating premises.

(h) Any person to whom the Department has issued an exemption pursuant to this section shall:

1. Record each day between May 1 and September 15 the quantity, in gallons, of non-conforming gasoline which is:

i. Stored at the facility; and

ii. Consumed that day in research, product development, or trial use;

2. Maintain the records kept pursuant to (h)1 above at the facility for a period no less than three years;

3. Make the records kept pursuant to (h)1 above available, upon request, for review by the Department; and

4. Upon the request of the Department, submit to the Department all or any part of the information contained in the records kept pursuant to (h)1 above.

(i) The Department shall deny an application for an exemption if:

1. The Department determines that such storage, transfer, or use of gasoline may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the person has exclusive use or occupancy;

2. The applicant fails to demonstrate, to the satisfaction of the Department, that the proposed storage, transfer, and use of non-conforming gasoline are essential to the intended research, development, or trial use set forth in the application.

(j) The Department may deny an application for an exemption if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(k) The Department may revoke any approval of any exemption granted pursuant to this section if the Department determines that the person to whom the Department has issued the exemption has:

1. Stored, transferred, or used non-conforming gasoline for any purpose other than that described in the application for an exemption and approved by the Department;

2. Failed to allow lawful entry by authorized representatives of the Department to the facility for which the exemption is issued;

3. Failed to pay any penalty assessed pursuant to a final order issued by the Department; or

4. Failed to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-25.8 within 60 days after receipt of a fee invoice.

(l) If the Department seeks to revoke an exemption during the term of that exemption, the Department shall provide the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:27-25.8 Service fees

(a) Any person who applies for an exemption pursuant to N.J.A.C. 7:27-25.5 shall submit with the application, as an integral part thereof, a non-refundable service fee of $500.00.

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(b) Any person to whom the Department has issued an exemption pursuant to N.J.A.C. 7:27-25.7 shall remit to the Department within 60 days after receipt of an invoice, an annual compliance inspection fee of $500.00 for each year that the exemption remains in effect.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits
Route N.J. 57 in Warren County
Proposed Amendment: N.J.A.C. 16:28-1.38

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1991-10.

Submit comments by February 6, 1991 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

The proposed amendment will establish revised "speed limit" zones along Route N.J. 57 in the Townships of Lopatcong, Greenwich, Franklin, Washington, and Mansfield, the Borough of Washington and Town of Hackettstown, in Warren County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the revisions to current "speed limit" zones along Route N.J. 57 in Warren County are warranted, and the Department therefore proposes to amend N.J.A.C. 16:28-1.38.

The speed zones along Route N.J. 57 will be amended, changing their locations and designating them by mileposts in addition to providing other landmarks as reference points. Additionally, the Department has designated the speed zones by municipality within the county.

Social Impact

The proposed amendment will establish revised "speed limit" zones along Route N.J. 57 in the Townships of Lopatcong, Greenwich, Franklin, Washington, and Mansfield, the Borough of Washington and Town of Hackettstown, in Warren County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. The revised speed zones provide the motoring public specific areas and locations within the various municipalities to which they are applicable and provide some clarity within the rule. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment. The department will bear the costs for the installation of any additional "speed limit" zones signs as necessary. The sign costs vary based upon the materials used, their size and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public and governmental entities responsible for the enforcement of the rules.

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

16:28-1.38 Route 57

(a) The rate of speed designated for the certain part of Stat highway Route 57 described in this subsection shall be establishe and adopted as the maximum legal rate of speed:

1. For both directions of traffic **in Warren County**:

[i. 45 miles per hour from the intersection of Route US 22, to point 900 feet east of the center line of Red School Lane, Lopatcon Township, thence

ii. 50 miles per hour to the intersection of North Main Stree Greenwich Township; thence

iii. 40 miles per hour to a point 700 feet west of milepost numbe 3; thence

iv. 50 miles per hour to a point 1,300 feet west of the center lin of Montana Road, Franklin Township; thence

v. 40 miles per hour to a point 1,000 feet east of the center lin of Edison Road; thence

vi. 50 miles per hour to a point 600 feet west of the center lin of Millbrook Road; thence

vii. 40 miles per hour to a point 700 feet west of the center lin of Halfway Road; thence

viii. 50 miles per hour to a point 300 feet east of the center lin of Brass Castle Road, Washington Borough; thence

ix. 40 miles per hour to a point 600 feet west of the center lin of Prospect Street; thence

x. 30 miles per hour to the intersection of Prosper Way; thenc

xi. 40 miles per hour to a point 2,100 feet east of the center lin of Flower Avenue; thence]

i. Lopatcong Township:

(1) Zone 1: 45 miles per hour between Route U.S. 22 and 900 fee east of Red School Lane (approximate mileposts 0.00 to 0.27); thenc

(2) Zone 2: 50 miles per hour between 900 feet east of Red Schoo Lane and the Greenwich Township westerly line (approximate milepost 0.27 to 2.07); thence

ii. Greenwich Township:

(1) Zone 1: 50 miles per hour between the Lopatcong Townshi easterly line and Liberty Road-North Main Street (County Road 637 (approximate mileposts 2.07 to 2.18); thence

(2) Zone 2: 40 miles per hour between Liberty Road-North Mai Street and Richline Hill Road (approximate mileposts 2.18 to 3.07) thence

(3) Zone 3: 50 miles per hour between Richline Hill Road an Franklin Township westerly line (approximate mileposts 3.07 to 3.59) thence

iii. Franklin Township:

(1) Zone 1: 50 miles per hour between Greenwich Township easterl line and 815 feet west of Cole Lane (approximate mileposts 3.59 t 4.37); thence

(2) Zone 2: 40 miles per hour between 815 feet west of Coke Lan and 1000 feet east of Edison Road (approximate mileposts 4.37 to 5.21); thence

(3) Zone 3: 50 miles per hour between 1000 feet east of Edison Road and 750 feet west of Hillbrook Road (approximate mileposts 5.21 to 6.38); thence

(4) Zone 4: 40 miles per hour between 750 feet west of Hillbrook Road and Halfway House Road (approximate mileposts 6.38 to 7.29); thence

(5) Zone 5: 50 miles per hour between Halfway House Road and the Washington Township westerly line (approximate mileposts 7.20 to 8.37); thence

iv. Washington Township:

(1) Zone 1: 50 miles per hour between the Franklin Township easterly line and 555 feet west of Brass Castle Road (approximate mileposts 8.37 to 9.63); thence

(2) Zone 2: 40 miles per hour between 555 feet west of Brass Castle Road and the Washington Borough westerly line (approximate mileposts 9.63 to 9.79); thence

(3) Zone 3: 40 miles per hour between the Washington Borough easterly line and the most easterly driveway to Warren Plaza Shopping Center (approximate mileposts 11.63 to 11.76); thence

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(4) Zone 4: 50 miles per hour between the most easterly driveway Warren Plaza Shopping Center and the Mansfield Township westerly e (approximate mileposts 11.76 to 12.67); thence

v. Washington Borough:

(1) Zone 1: 40 miles per hour between the Washington Township sterly line and Ramapo Way (approximate mileposts 9.79 to 10.09); ence

(2) Zone 2: 30 miles per hour between Ramapo Way and Prosper 'ay (approximate mileposts 10.09 to 11.19); thence

(3) Zone 3: 40 miles per hour between Prosper Way and Washington ownship westerly line (approximate mileposts 11.19 to 11.63); thence

[xii.] **vi.** [In] Mansfield Township[, Warren County]:

(1) Zone [12] **1**: 50 miles per hour between the Washington Town-ip[-Mansfield Township] **easterly** line and 300 feet west of Komar oad (**approximate** mileposts [12.60] **12.67** to 13.80); thence

(2) Zone [12A] **2**: 45 miles per hour between 300 feet west of omar Road and [1200] **1465** feet west of [Waters Road] **Old Turn-ke Road (approximate** mileposts 13.80 to [15.53] **15.56**); thence

(3) Zone [12B] **3**: 50 miles per hour between [1200] **1465** feet west f [Waters Road] **Old Turnpike Road** and Brantwood Terrace **pproximate** mileposts [15.53] **15.56** to 18.93); thence

(4) **Zone 4**: 40 miles per hour [to a point] **between Brantwood errace and** 1,100 feet east of [the center line of] Airport Road **pproximate mileposts 18.93 to 19.54**); thence

(5) **Zone 5**: 50 miles per hour [to the intersection of Route 182 the] **between 1,100 feet east of Airport Road and the** Town of Iackettstown[.] **westerly line (approximate mileposts 19.54 to 20.53); ence**

vii. Town of Hackettstown:

(1) Zone 1: 50 miles per hour between the Mansfield Township asterly line and Lawrence Road (approximate mileposts 20.53 to 0.75); thence

(2) Zone 2: 40 miles per hour between Lawrence Road and Route N.J. 182 (approximate mileposts 20.75 to 21.10).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Routes U.S. 9 in Atlantic County; U.S. 22 in Hunterdon County; NJ 28 in Union County; and U.S. 40-322 in Atlantic County

Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.13, 1.19, and 1.104

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 17:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1991-3.

Submit comments by February 6, 1991 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

The proposed amendments will establish "no parking" bus stop zones along Routes U.S. 9 in Galloway Township, Atlantic County; U.S. 22 in Readington Township, Hunterdon County; and U.S. 40-322 in the City of Atlantic City, Atlantic County; and a "no stopping or standing" zone along Route N.J. 28 in Cranford Township, Union County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safe on/off loading of passengers at established bus stops.

Based upon requests from the local governments in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted surveys and traffic investigations. The results of the surveys and the traffic investigations proved that the establishment of "no parking" bus stop zones along Routes U.S. 9 in Atlantic County; U.S. 22 in Hunterdon County; and U.S. 40-322 in Atlantic County and a "no stopping or standing" zone along Route N.J. 28 in Union County were warranted. The "no stopping or standing" zone in Cranford Township will now include the entire length of Route 28, including all ramps and connections under the jurisdiction of the Department of Transportation.

The Department, therefore, proposes to amend N.J.A.C. 16:28A-1.7, 1.13, 1.19, and 1.104, as a result of the surveys and traffic investigations, and requests from the local governments. Additional changes are being made to conform the rules to current Department rule format, which organizes traffic rules by county and municipality.

Social Impact

The proposed amendments will establish "no parking" bus stop zones along Routes U.S. 9 in Galloway Township, Atlantic County; U.S. 22 in Readington Township, Hunterdon County; and U.S. 40-322 in the City of Atlantic City, Atlantic County; and a "no stopping or standing" zone along Route N.J. 28 in Cranford Township, Union County, for the safe and efficient flow of traffic, the enhancement of safety, the well being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs. The local governments will bear the costs for "no parking" bus stop zones signs. The costs involved in the installation and procurement of signs vary based upon the material used, size and manner of procurement. Motorists who violate the rules will be assessed the appropriate fine, as established by the State of New Jersey Statewide Violations Bureau Schedule, issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments primarily affect the motoring public and those responsible for enforcement of the rules.

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

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops.

1.-39. (No change.)

40. Along the southbound (westerly) side in Galloway Township, Atlantic County:

i. Near side bus stop:

(1) Quail Hill Boulevard—Beginning at the northerly curb line of Quail Hill Boulevard and extending 150 feet northerly therefrom.

(c) (No change.)

16:28A-1.13 Route U.S. 22

(a) (No change.)

(b) The certain parts of State highway U.S. Route 22 described in this [section] **subsection** shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-9. (No change.)

10. Along the eastbound (southerly) side in Readington Township, Hunterdon County:

i. Mid-block bus stop:

(1) Between Flemington-Whitehouse Road (County Road 523) (Old Route 28) and Cedar Drive—Beginning 260 feet east of the traffic

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signal on the island at Flemington-Whitehouse Road (County Road 523) and extending 135 feet easterly therefrom.

11. Along the westbound (northerly) side in Readington Township, Hunterdon County:

i. Near side bus stop:

(1) Flemington-Whitehouse Road (County Road 523) (Old Route 28)—Beginning at the easterly curb line of Old Route 28 and extending 105 feet easterly therefrom.

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-2. (No change.)

3. No stopping or standing in Cranford Township, **Union County**:

[i. Along the westbound side of Route 28:

(1) From the Roselle Park Borough-Cranford Township corporate line to a point 120 feet east of the easterly curb line of John Street;

(2) From the westerly curb line of Forest Avenue to the easterly curb line of Springfield Avenue;

(3) From the westerly curb line of Alden Street to a point 120 feet west of the westerly curb line of Alden Street;

(4) From a point 120 feet west of the westerly curb of Alden Street to a point 50 feet east of the easterly curb line of Eastman Street between the hours of 4:30 P.M. to 6:00 P.M., Monday through Friday;

(5) From the westerly curb line of Orchard Street to the easterly curb line of Route 59.

ii. Along the eastbound side of Route 28:

(1) From a point of 650 feet west of the westerly curb line of Eastman Street to a point 125 feet west of the westerly curb line of Eastman Street;

(2) From the easterly curb line of North Union Avenue to a point 184 feet west of the westerly curb line of Springfield Avenue;

(3) From the easterly curb line of Springfield Avenue to a point 120 feet west of the westerly curb line of Forest Avenue;

(4) From the easterly curb line of John Street to the Cranford Township-Roselle Park Borough Corporate line;

(5) From the easterly curb line of Lincoln Avenue (Rt. 59) to a point 247 feet easterly therefrom.]

i. Along both sides:

(1) For the entire length within the corporate limits of Cranford Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated Bus Stops and Time Limit Parking area. Signs to be posted only in areas where an official township resolution has been submitted.

4. (No change.)

5. No stopping or standing in **the** Town of Westfield[;], **Union County:**

i.-ii. (No change.)

6. No stopping or standing along both sides in Middlesex Borough, **Middlesex County,** from the westerly curb line of Locust Avenue to the Bound Brook Borough-Middlesex Borough line.

7. No stopping or standing in **the** Borough of Bound Brook, **Somerset County**:

i.-ii. (No change.)

8.-13. (No change.)

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

16:28A-1.104 Route U.S. 40-322

(a) The certain parts of State highway Route U.S. 40-322 described in this [section] **subsection** shall be designated and established as "[no parking] **no stopping or standing**" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-199.

1. (No change.)

(b) The certain parts of State highway Route U.S. 40-322 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-2. (No change.)

3. In the City of Atlantic City, Atlantic County:

i. (No change.)

ii. Along the eastbound (northerly) side:

(1) Far side bus stop:

(A) Crossan Avenue—Beginning at the southerly curb line Crossan Avenue and extending 100 feet southerly therefrom.

(2) Near side bus stops:

(A) Filbert Avenue—Beginning at the northerly curb line of Filb Avenue and extending 105 feet northerly therefrom.

(B) Porter Avenue—Beginning at the northerly curb line of Por Avenue and extending 105 feet northerly therefrom.

(C) South Boulevard—Beginning at the northerly curb line of Sou Boulevard and extending 105 feet northerly therefrom.

iii. Along the westbound (southerly) side:

(1) Near side bus stop:

(A) Porter Avenue—Beginning at a point on the easterly curb li directly to the east of the point where the southerly curb line of Port Avenue intersects with the westerly curb line of Albany Avenue (al being the southerly curb line of the south entrance drive to Bader Fiel and extending 105 feet southerly therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Routes N.J. 23 in Morris County and N.J. 35 in Ocea County

Proposed Amendments: N.J.A.C. 16:28A-1.15 and 1.25

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1.

Proposal Number: PRN 1990-617.

Submit comments by February 6, 1991 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

The proposed amendments will establish "no stopping or standing zones along Routes N.J. 23 in Kinnelon Borough, Morris County, an N.J. 35 in Dover Township, Ocean County, for the safe and efficient flo of traffic, the enhancement of safety, and the well-being of the populac

Based upon requests from the local governments in the interest c safety, and as part of a current review of conditions, the Department' Bureau of Traffic Engineering and Safety Programs conducted traffi investigations and surveys. The investigations and surveys proved tha the establishment of "no stopping or standing" zones along Routes N.J 23 in Kinnelon Borough, Morris County, and N.J. 35 in Dover Township Ocean County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.1 and 1.25 based upon the requests from local governments and the traffi investigations and surveys.

Social Impact

The proposed amendments will establish "no stopping or standing' along Routes N.J. 23 in Kinnelon Borough, Morris County, and N.J 35 in Dover Township, Ocean County, for the safe and efficient flow o traffic, the enhancement of safety, and the well-being of the populace Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirec costs for mileage, personnel and equipment requirements. The Depart ment will bear the costs for the installation of "no stopping or standing'

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ıne signs. Costs will vary, depending upon size, location, and other ctors. Motorists who violate the rules will be assessed the appropriate ıe in accordance with the "Statewide Violations Bureau Schedule," ıued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeep-g or compliance requirements on small buisnesses as the term is defined / the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amend-ents primarily affect the motoring public and governmental agencies sponsible for enforcement of the rules.

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

5:28A-1.15 Route 23 and Route 23 (Temporary)

(a) The certain parts of State highway Route 23 described in this ıbsection shall be designated and established as "no stopping or ıanding" zones where stopping or standing is prohibited at all times ıcept as provided in N.J.S.A. 39:4-139.

1. No stopping or standing:

i. Along both sides:

(1)-(2) (No change.)

(3) In Morris County:

(A)-(B) (No change.)

(C) Kinnelon Borough:

I. For the entire length within the corporate limits of Kinnelon ıorough, including all ramps and connections under the jurisdiction of ıe Commissioner of Transportation, except in approved designated bus tops and time limit parking areas, and No Parking certain hours. Signs hall be posted only in areas where an official borough resolution has een submitted.

ii. (No change.)

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

6:28A-1.25 Route 35

(a) The certain parts of State highway Route 35 described in this ubsection are designated and established as "no stopping or stand-ng" zones.

1.-6. (No change.)

7. No stopping or standing in Dover Township, Ocean County:

i. Along both sides [of Route 35]:

(1) (No change.)

(2) For the entire length within the corporate limits of Dover Town-ıhip, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus ıtops and time limit parking areas. Signs to be posted only in areas vhere an official township resolution or an Ordinance has been ıubmitted.

8.-21. (No change.)

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping
Route U.S. 206 in Mercer County
Proposed Amendment: N.J.A.C. 16:28A-1.57

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-139.

Proposal Number: PRN 1991-27.

Submit comments by February 6, 1991 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

The proposed amendment will establish a "no stopping or standing" zone along Route U.S. 206 in Princeton Township, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local government and in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "no stopping or standing" zone along Route U.S. 206 in Princeton Township, Mercer County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.57 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish a "no stopping or standing" zone along Route U.S. 206 in Princeton Township, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs. Motorists who violate the rules will be assessed the appropriate fine, as established by the State of New Jersey "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public and those governmental agencies responsible for the enforcement of the rules.

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

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no stopping or standing" zones:

1.-11. (No change.)

12. No stopping or standing along both sides in Princeton Township, **Mercer County**:

i. (No change.)

ii. From the northerly Princeton Borough-Princeton Township corporate line to Mansgrove Road[.]**;**

iii. From the northerly curb line of Edgerstoune Road to the southerly Princeton Township-Princeton Borough corporate line.

13.-26. (No change.)

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Mid-Block Crosswalk
Route N.J. 33 in Mercer County
Proposed Amendment: N.J.A.C. 16:30-10.4

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-34.

Proposal Number: PRN 1991-4.

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Submit comments by February 6, 1991 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

The proposed amendment will establish a "mid-block crosswalk" along Route N.J. 33 in Hamilton Township, Mercer County, where persons may legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions and upon request from the local government, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation and survey. The investigation and survey proved that the establishment of a "mid-block crosswalk" along Route N.J. 33 in Hamilton Township, Mercer County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-10.4, based upon the request from the local government and the traffic investigation and survey.

Additionally, the Department has revised the rule to indicate the municipality by county.

Social Impact

The proposed amendment will establish a "mid-block crosswalk" along Route N.J. 33 in Hamilton Township, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and to provide a designated area for persons to legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping and signage along the roadway. The costs involved in the striping and signage along the roadway vary based upon the materials used and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine as established by N.J.S.A. 39 and the state of New Jersey "Statewide Violations Bureau Schedule", issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring and pedestrian public.

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

16:30-10.4 Route 33

(a) [Under the provisions of N.J.S.A. 39:4-34, the] **The** certain parts of State highway Route 33 described in this [section] **subsection** shall be designated as a mid-block crosswalk.

[1. Along Route 33 in the Borough of Freehold, Monmouth County from a point 390 feet east of the easterly curb line of Phyllis Road to a point 10 feet easterly therefrom.]

1. In Freehold Borough, Monmouth County:

i. From a point 390 feet east of the easterly curb line of Phyllis Road to a point 10 feet easterly therefrom.

2. In Hamilton Township, Mercer County:

i. From a point 395 feet west of the westerly curb line of Ward Avenue to a point six feet westerly therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Mid-Block Crosswalk
Route N.J. 91 in Middlesex County
Proposed New Rule: N.J.A.C. 16:30-10.13

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-34.

Proposal Number: PRN 1991-5.

Submit comments by February 6, 1991 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

The proposed new rule will establish a "mid-block crosswalk" alor Route N.J. 91 in the City of New Brunswick, Middlesex County, whe persons may legally cross the roadway at other than an area which controlled and directed by a police officer or a traffic control devic

As part of a review of current conditions and upon request from tl local government, in the interest of safety, the Department's Bureau (Traffic Engineering and Safety Programs conducted a traffic investigatic and survey. The investigation and survey proved that the establishme of a "mid-block crosswalk" along Route N.J. 91 in the City of Ne Brunswick, Middlesex County, was warranted.

The Department therefore proposes new rule N.J.A.C. 16:30-10.1 based upon the request from the local government and the traffic i vestigation and survey.

Social Impact

The proposed new rule will establish a "mid-block crosswalk" alon Route N.J. 91 in the City of New Brunswick, Middlesex County t provide a designated area for persons to legally cross the roadway at othe than an area which is controlled and directed by a police officer or traffic control device. Appropriate signs will be erected to advise th motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, person nel and equipment requirements. The Department will bear the costs fo the appropriate striping and signage along the roadway. The costs in volved in the striping and signage along the roadway vary based upo the materials used and the method of procurement. Motorists who violat the rules will be assessed the appropriate fine as established by N.J.S.A 39 and the State of New Jersey "Statewide Violations Bureau Schedule" issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeepin or other compliance requirements on small businesses as the term i defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Th rule primarily affects the motoring and pedestrian public.

Full text of the new rule follows:

16:30-10.13 Route 91

(a) The certain parts of State highway Route 91 described in thi subsection shall be designated as a mid-block crosswalk.

1. In the City of New Brunswick, Middlesex County:

i. From a point 1,050 feet north of the northerly curb line o Triangle Road to a point six feet northerly therefrom.

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(a)

IVISION OF TRAFFIC ENGINEERING AND LOCAL AID

eft Turn Prohibition
oute N.J. 27 in Somerset and Middlesex Counties
oposed Amendment: N.J.A.C. 16:31-1.26

uthorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

uthority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

oposal Number: PRN 1991-6.

Submit comments by February 6, 1991 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

e agency proposal follows:

Summary

The proposed amendment will establish a left turn prohibition on oute N.J. 27 in Franklin Township, Somerset County, and South Brunsick Township, Middlesex County, at Vliet Road for the safe and effient flow of traffic, the enhancement of safety, and the well-being of e populace.

Based upon requests from the local governments in the interest of fety, and as part of a review of current conditions, the Department's ureau of Traffic Engineering and Safety Programs conducted a traffic vestigation. The investigation proved that the establishment of a "no ft turn" rule on Route N.J. 27 at Vliet Road in Somerset and Middlesex ounties was warranted.

The Department therefore proposes to amend N.J.A.C. 16:31-1.26 ased upon the requests from the local governments and the traffic vestigations and surveys.

Social Impact

The proposed amendment will establish a "no left turn" provision on oute N.J. 27 in Franklin Township, Somerset County, and South Brunsick Township, Middlesex County, for the safe and efficient flow of affic, the enhancement of safety, and the well-being of the populace. ppropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personel and equipment requirements. The Department will bear the costs for e installation of "no left turn" signs. The costs involved in the installaon and procurement of signs vary, depending upon the material used, ize and method of procurement. Motorists who violate the rules will be ssessed the appropriate fine, in accordance with the "Statewide Viotions Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping r compliance requirements on small businesses as the term is defined y the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendent primarily affects the motoring public and the governmental agencies esponsible for enforcement of the rule.

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

6:31-1.26 Route 27

(a) Turning movements of traffic on the certain parts of State ighway Route 27 described in subsection are regulated as follows:

1. (No change.)

2. In Franklin Township, Somerset County, and South Brunswick Township, Middlesex County:

i. Left turns are prohibited from Route 27 northbound onto Vliet Road.

(b)

DIVISION OF TRANSPORTATION ASSISTANCE BUREAU OF FREIGHT SERVICES

Transportation of Hazardous Materials General Requirements; Cargo Seals
Proposed Amendment: N.J.A.C. 16:49-1.3

Authorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation (State Transportation Engineer) with concurrence of the Division of State Police.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-25 et seq. (P.L. 1983, c.401).

Proposal Number: PRN 1991-12.

Submit comments by February 6, 1991 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

The proposed amendment of N.J.A.C. 16:49-1.3 will define the Department's policy concerning the removal and replacement of cargo seals during the course of an enforcement activity.

On January 2, 1990, the Department proposed to readopt N.J.A.C. 16:49, Transportation of Hazardous Materials, at 22 N.J.R. 21(a). The Department readopted these rules effective February 8, 1990, at 22 N.J.R. 837(c). These rules comply substantially with the requirements established within Title 49, Code of Federal Regulations (CFR), Parts 171, 172, 173, 174, 177, 178 and 179. The enforcement of these rules will protect the general public, their lives and their property in a manner consistent with those regulations promulgated by the United States Department of Transportation (USDOT).

Under the provisions of this rule, hazardous materials in transit must comply with all provisions of N.J.A.C. 16:49. To assure proper packaging, labeling, loading, and bracing, it may be necessary to remove cargo seals to allow inspection of the vehicle's contents. In addition, in the event of packaging failure within a vehicle protected by a cargo seal, that seal may be removed to allow enforcement personnel to inspect any leakage or damage and to determine whether or not the vehicle may continue or should be placed "out-of-service" and/or emergency response assistance summoned.

The Department, therefore, proposes to amend N.J.A.C. 16:49-1.3 to comply with the provisions of the CFR and N.J.S.A. 39:5B-25.

Social Impact

The proposed amendment will have a positive impact on the general public in that the safe transportation of hazardous materials will be ensured on New Jersey highways.

Economic Impact

The authorized inspecting agency will incur administrative and operational costs for implementation and enforcement activities related to the proposed amendment. There will be no economic impact on the general public. Shippers/carriers of hazardous materials may experience some time delay in arriving at scheduled destinations, because of the inspection of the cargo being transported. However, the time delay incurred would not outweigh the State's interest in protecting the safety of the public.

Regulatory Flexibility Statement

The proposed amendments establish requirements regarding the breaking of cargo seals on specified vehicles during the course of an inspection of such vehicles by enforcement personnel, as specified by N.J.A.C. 16:49. Enforcement personnel are employees of governmental agencies, and not small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, in the course of the inspection, should a cargo seal need to be broken, the owner, operator, driver or yardmaster responsible for the shipment shall be asked by the enforcement personnel to observe the breaking of the cargo seal and to sign the inspection report. The owner, operator, driver or yardmaster responsible for the shipment may be an employee or owner of a small business, as

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the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, such persons are not required to comply, but are only requested to observe and sign the report. All requirements in the amendments to the rule are made upon personnel of enforcement agencies. Therefore, a regulatory flexibility analysis is not required.

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

16:49-1.3 General requirements

(a) (No change.)

(b) Vehicles, railroad cars, containers, shipping records, carrier records, and places of origin in the state involved in the transportation of hazardous materials, substances, or wastes are subject to inspection by duly authorized representatives of the Division of State Police as may be necessary to carry out the provisions of N.J.S.A. 39:5B-25 et seq., and the regulations adopted supplementary thereto. **Inspections shall be conducted as follows:**

1. The Division of State Police, or personnel authorized by the Superintendent of the State Police, may break cargo seals on vehicles during the course of an inspection of the carrier's equipment under this chapter. Under no circumstances will U.S. Postal Service or Department of Defense seals or locks be broken for the purpose of inspecting cargo within any vehicle. If cargo is protected with a seal from other U.S. Government agency, prior permission shall be obtained fi such agency before removal of the seal.

2. Self-locking cargo seals inscribed with the appropriate New Jer State agency designation and sequential number shall be affixed by enforcement personnel to replace any cargo seal removed for inspecti In the event that the contents of a vehicle having no cargo seal, o broken cargo seal, are inspected, the inspecting agency's cargo s shall be applied upon completion of the inspection.

3. Seals on tank vehicles shall not be broken except in an emerge situation which poses an immediate hazard to the public, as determi by the State Police, or personnel authorized by the Superintendent State Police.

4. In the event that a cargo seal is to be broken for the purpose inspecting the vehicle contents, the owner, operator, driver or ya master shall be requested to observe the inspection and sign the insp tion report. The signature of a witness, preferably a New Jersey St Police Officer, will also be obtained.

5. Procedures to be used in conducting such inspections shall be specified by the New Jersey State Police.

(c)-(1) (No change.)

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RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

'VISION OF HOUSING AND DEVELOPMENT

ew Jersey State Housing Code

eadoption: N.J.A.C. 5:28

oposed: May 21, 1990 at 22 N.J.R. 1456(a).
lopted: December 7, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
led: December 13, 1990 as R.1991 d.18, **without change.**
ıthority: N.J.S.A. 52:27D-320.
fective Date: December 13, 1990.
ıpiration Date: December 13, 1995.

ımmary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Adminrative Code at N.J.A.C. 5:28.

(b)

IVISION OF LOCAL GOVERNMENT SERVICES

otice of Administrative Correction

ocal Public Contracts

.J.A.C. 5:30-6.1 and 5:34-4.2

Take notice that the Division of Local Government Services, Depart-ent of Community Affairs, has requested, and the Office of Adminis-ıtive Law has agreed to allow, an address correction change in the text N.J.A.C. 5:30-6.1(b) currently in the New Jersey Administrative Code, d discovered an error in N.J.A.C. 5:34-4.2(a)12 as published in the ecember 3, 1990 New Jersey Register at 22 N.J.R. 3639(a). The address forth in N.J.A.C. 5:30-6.1(b) is partially incorrect; "P.O. Box 2768" ould be changed to "CN 803." At N.J.A.C. 5:34-4.2(a)12, the reference "N.J.A.C. 5:34-4.5, Certification of Funds" is incorrect; the proper ference is "N.J.A.C. 5:34-5, Certification of Funds." This notice of ministrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (additions indicated in ldface **thus**; deletions indicated in brackets [thus]):

30-6.1 Uniform accounting system for various statutory offices in county governments
(a) (No change.)
(b) Copies of sample Requirements of Audit may be obtained om:

Local Finance Board
Division of Local Government Services
Department of Community Affairs
[P.O. Box 2768] **CN 803**
Trenton, New Jersey 08625

34-4.2 General requirements for all change orders
1.-11. (No change.)
12. The governing body shall be assured in writing that adequate opropriations are available in accordance with N.J.A.C. 5:34-[4.5] Certification of Funds.
13.-14. (No change.)

(c)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Financial Regulations

Municipal, County and Authority Employees Deferred Compensation Programs

Adopted New Rules: N.J.A.C. 5:37

Proposed: October 1, 1990 at 22 N.J.R. 3076(a).
Adopted: December 11, 1990 by the Local Finance Board, Barry Skokowski, Sr., Chairman and Director, Division of Local Government Services.
Filed: December 13, 1990 as R.1991 d.19, **without change.**
Authority: N.J.S.A. 43:15B-1 et seq., specifically N.J.S.A. 43:15B-3.
Effective Date: January 7, 1991.
Expiration Date: January 7, 1996.

Summary of Public Comments and Agency Responses:
No comments received.
The adopted new rules were proposed as a readoption with amendments; however, N.J.A.C. 5:37 expired on November 18, 1990, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are adopted herein as new rules.

Full text of the rules proposed for readoption adopted as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 5:37.

Full text of the amendments to the adopted new rules follows.

5:37-1.1 Definitions
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
. . .
"Code" means the Internal Revenue Code, as amended.
"Contractor" means any organization, firm, corporation, partnership, or individual, whether profit making or non-profit, which is not a governmental entity.
. . .

5:37-2.2 Approving plans
The Director shall be responsible for reviewing and approving all employer plans and programs.

5:37-2.3 Approving contracts
The Director shall review and approve all proposed contracts between an employer and a contractor, wherein the employer proposes to contract for services to administer all or part of the deferred compensation program.

5:37-4.1 Standard plan
The employer shall draft, or have drafted, a standard plan which shall contain all of the policies and procedures to be used in operating a deferred compensation program. At a minimum this plan shall contain policies and procedures which address each of the issues in N.J.A.C. 5:37-3 through 13. While not mandatory, it is urged that the plan be drafted in consultation with representatives of the potential participants.

5:37-4.4 Opinion and certification on Internal Revenue Service compliance
The attorney for the employer shall file with the Director an opinion stating that the employer's plan meets the requirements of Section 457 of the Internal Revenue Code, as amended. He or she must also certify that an application has been filed with the Internal Revenue Service for a ruling that the plan meets the requirements of Section 457 of the Internal Revenue Code, as amended, and that such ruling will be forwarded to the Director when received.

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5:37-4.5 Alternative certification on Internal Revenue Service compliance

(a) As an alternative to the Internal Revenue Service ruling required pursuant to N.J.A.C. 5:37-4.4, the attorney for the employer may certify that the employer is adopting a plan substantially similar to one on which a satisfactory Internal Revenue Service ruling has already been obtained. A copy of the satisfactory ruling shall be attached to the certification. The certification shall also indicate the use of the ruling for guidance only and the realization that for Internal Revenue Service purposes, the ruling of another employer is not to be considered as precedent.

(b) The decision on whether a particular plan is substantially similar shall be made by the Director.

5:37-5.3 Staff and contracts

The administrator may perform the functions in N.J.A.C. 5:37-5.2 himself or herself, with staff, or through contracts with contractors.

5:37-9.7 Timing of investments

All funds from amounts deferred shall be invested by the administrator or contractor responsible for investments within 72 hours, exclusive of Sundays and holidays, of the time the administrator or contractor receives the funds or is notified that the funds are available for investment or is in any other manner aware that the amounts deferred have been made and are available for investment.

5:37-10.4 Audit or review

(a) (No change.)

(b) If a contractor is retained to administer all or part of the program and/or is retained to invest program funds, the employer shall cause a review of all program funds within five months after the close of the employer's fiscal year by the outside, independent registered municipal accountant pursuant to (b)4 below. A copy of each review shall be transmitted to the governing body and to the Director within five days after completion.

1. The contractor must transmit to the employer a compilation of financial data in statement form giving a full accounting of all program transactions occurring during the employer's fiscal year, including beginning transactions and ending fund balance. The accounting for the transactions must reflect each participant's amount and date of each contribution received, the beginning fund balance by investment option, earnings and/or losses incurred, administrative charges and fees assessed, any transfers made among funds, all deposits and withdrawals, and the ending fund balance, including any and all adjustments made to such program funds. The contractor must also submit to the employer applicable program statements together with the opinion from their latest firm audit report prepared by their Independent Public Accountant.

2. The outside independent auditor of the employer shall then evaluate the employer payroll records and joinder agreements against the information transmitted by the contractor.

3.-5. (No change.)

6. The contractor must also furnish a letter of internal accounting control to the Director, prepared by its independent accounting attesting to the contractor's internal controls.

7. The contractor must further certify to the Director that the annual accounting data supplied to the employer is accurate and complete.

5:37-11.3 Approval of amendment

Any amendment made to an approved plan or program must be submitted to the Director for approval prior to implementation with a resolution of the governing body adopting the amendment. Any amendments required by the IRS do not require Director approval before implementation; however, such amendments must be filed with the Director.

5:37-12.2 Program records

Any records, reports or other information relating to the program as a whole, including, but not limited to, cash flow analysis, investment reports, audits and quarterly reports shall be made available by the administrator to any participant and/or the Division of Local Government Services upon request.

5:37-13.6 Conflict of interest

(a) (No change.)

(b) No employer shall enter into a contract with a contra which pays money to an organization, of which the employer member, for endorsement of its plan.

5:37-13.8 Award of contracts

Any contracts to provide all or part of the administration of employer's deferred compensation program shall comply with Local Public Contracts Law. The employer shall submit to the Di tor a certification from the employer's attorney which states that award of said contract(s) complies with the extraordinary, specifiable services bidding exemption of the Local Public Contr Law.

SUBCHAPTER 14. ENFORCEMENT

5:37-14.1 Compliance

All employers and contractors shall comply with the provision these rules at all times. Any contractor or employer deemed by Director to be in noncompliance shall be notified by certified n to appear before the Director, or his or her designee. Notice sl be given at least 14 days prior to the date of the appearance shall detail the nature of the alleged noncompliance. Failure to pear shall result in appropriate penalties pursuant to N.J.A 5:37-14.4.

5:37-14.2 Director determination

No later than 10 days after an appearance required by N.J.A 5:37-14.1, the Director shall issue a written determination on the is of regulatory compliance. A copy of the determination shall be f warded by certified mail to the contractor and/or employer, as propriate.

5:37-14.3 Grace period

A Director determination of noncompliance shall result in immediate commencement of a 60 day grace period. During this ti the contractor and/or employer shall rectify all items of n compliance, to the satisfaction of the Director.

5:37-14.4 Penalties

Failure to satisfactorily address noncompliance during provided grace period shall result in the immediate ineligibility a contractor to qualify for Division approval of any additional ferred compensation programs. The Director may also impose ot penalties as provided for by law.

(a)

COUNCIL ON AFFORDABLE HOUSING

Notice of Rule Invalidation

Substantive Rules

Drastic Alteration of the Established Pattern of Development

N.J.A.C. 5:92-7.1(b)

Take notice that the "1,000 unit cap rule" at N.J.A.C. 5:92-7.1(b) h been invalidated by the Superior Court of New Jersey Appellate Divisio in *Calton Homes, Inc., v. Council on Affordable Housing, State of N Jersey, and the Township of Middletown,* ____ N.J. Super. ____, Dkt. N A-3595-87T8 (App. Div. November 19, 1990).

Please contact the New Jersey Council on Affordable Housing regar ing any further action involving the case.

This notice is provided by the Office of Administrative Law pursua to N.J.A.C. 1:30-1.13.

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EDUCATION

(a)

ATE BOARD OF EDUCATION
tice of Administrative Correction
siness Services
erexpenditure of Funds
J.A.C. 6:20-2A.11

e notice that the Department of Education has discovered an error he text of N.J.A.C. 6:20-2A.11(b) currently appearing in the New ey Administrative Code. The cross-reference in that subsection to .A.C. 6:20-2.2(c)1 was proposed and adopted as a cross-reference to .A.C. 6:20-2A.2(c)1 (see 21 N.J.R. 2919(a) and 22 N.J.R. 176(a)). This ce of administrative correction is published pursuant to N.J.A.C.)-2.7.

ull text of the corrected rule follows (addition indicated in dface **thus**; deletion indicated in brackets [thus]):

)-2A.11 Overexpenditure of funds
a) (No change.)
b) A district board of education anticipating an over-expenditure either the current expense, capital outlay or debt service funds as ignated in N.J.A.C. 6:20-[2.2(c)1]**2A.2(c)1** shall proceed in the owing manner:
.-4. (No change.)
c)-(h) (No change.)

(b)

ATE BOARD OF EDUCATION
tice of Administrative Correction
hool Facility Planning Service
J.A.C. 6:22

Take notice that the Department of Education has discovered errors he text of N.J.A.C. 6:22, School Facility Planning Service, currently earing in the New Jersey Administrative Code. These errors, the full of which follows, represent text proposed and adopted by the Depart- at 22 N.J.R. 1253(a) and 2350(a), respectively, which was erroneous- not reproduced in the 8-20-90 update to the Code. This notice of ninistrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (additions indicated in dface **thus**; deletions indicated in brackets [thus]):

2-2.1 Approval of land acquisition for school sites
a)-(c) (No change.)
d) All school sites shall include the following:
. Sufficient acreage for the following:
.-v. (No change.)
vi. Public and service access roads onto the site including, where rranted, a one-way school bus road of 30 foot width and a two- y road of 36 foot width; a school bus dropoff area; and 18 foot le **posted fire** lines for fire apparatus;
vii.-viii. (No change.)
e)-(f) (No change.)

2-5.2 Definitions
The following words and terms, when used in this subchapter, shall ve the following meanings, unless the context clearly indicates erwise.

"Multi-purpose" means any space that has been approved for re than one non-simultaneous use, including [instructional use] **truction**.

6:22-5.3 Enhancements to Uniform Construction Code (U.C.C.)
(a) Under the authority granted to it in P.L. 1983, c. 496, the State Board of Education hereby adopts the following enhancements to the Uniform Construction Code (U.C.C.):
1. (No change.)
2. Guardrails along stair runs and landings shall be at least 42 inches above the tread nosing [without exception].
3. No fuel-fired heating appliances intended to supply domestic hot water or hot water/steam/air for space heating shall be located in any occupied space except for industrial arts and vocational **education** shops and laboratories.
4.-8. (No change.)

6:22-5.4 Educational facility planning standards
(a) (No change.)
(b) General design and construction requirements are as follows:
1.-11. (No change.)
12. The minimum dimension of [the room] **any instructional space** shall be 10 feet[;].
(c)-(h) (No change.)
(i) Pre-manufactured educational units, vans, trailers and/or other mobile units shall comply with the following:
1.-3. (No change.)
4. A self-propelled van and/or other mobile unit used for instruction shall:
i.-iv. (No change.)
v. Provide at least 50 [foot candles] **footcandles** of uniformly distributed artificial illumination;
vi.-xviii. (No change.)
5.-7. (No change.)
(j) (No change.)

6:22-5.5 School space sizes and capacity
(a) (No change.)
(b) The minimum square feet for each instructional space shall be determined by the net and gross square feet values shown below together with the definitions of net and gross square feet presented in (c) below. The capacity of a school building shall be calculated according to definitions in (a) above.

Area	Minimum Required Floor Area in Square Feet per Occupant
. . .	
Library/Media Center	—
. . .	

(c)-(e) (No change.)
(f) Spaces occupied but not previously approved prior to May 7, 1990, in order to be approved for capacity, must meet the following requirements:
1. (No change.)
2. Spaces, other than special education classrooms in private schools for the handicapped and in schools for the handicapped operated by the Department of Human Services, shall be either the square foot amounts previously set forth in the Department of Education's School Capacity Bulletin or meet the standards set forth in N.J.A.C. 6:22-5.5(b).

(c)

STATE BOARD OF EDUCATION
Notice of Administrative Correction
Special Education
N.J.A.C. 6:28-3.6 and 11.5

Take notice that the Department of Education has discovered errors in the text of N.J.A.C. 6:28-3.6 and 11.5. The phrase "the meeting" in N.J.A.C. 6:28-3.6(c) should be changed to "a meeting" due to the use of the indefinite term "meetings" in the referenced N.J.A.C. 6:28-2.3(h). In N.J.A.C. 6:28-11.5(g), the word "age" is missing before the words "three to five." This word was included in this subsection as originally

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proposed and adopted (see 20 N.J.R. 14(a) and 796(a)), but was erroneously deleted in the publication of the 1989 amendments to this subsection (see 21 N.J.R. 239(a) and 1385(a)). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

6:28-3.6 Individualized education program
(a)-(b) (No change.)
(c) The basic plan of the individualized education program shall be developed with the participation of the parent(s) and members of the district board of education child study team who have participated in the evaluation and any additional persons required to attend [the] **a** meeting according to N.J.A.C. 6:28-2.3(h).
(d)-(n) (No change.)

6:28-11.5 Referral
(a)-(f) (No change.)
(g) When a parent identifies a child **age** three to five as potentially handicapped, the district board of education shall use a screening procedure which includes, at a minimum, an observation of the child to determine if the child should be referred directly to the child study team for comprehensive evaluation. Screening shall be completed within 30 calendar days of parental request.
(h)-(j) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Administrative Correction
Discharges of Petroleum and Other Hazardous Substances
Department Address Correction
N.J.A.C. 7:1E-2.2, 4.3 and 4.4

Take notice that the Department of Environmental Protection has requested an administrative correction to N.J.A.C. 7:1E-2.2(d), 4.3(e) and 4.4(h) to correct the address information in those subsections. Since the change requested is technical in nature and necessary for the rules to be factually correct, the Office of Administrative Law has agreed to make the change. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:1E-2.2 Confirmation of notification; report
(a)-(c) (No change.)
(d) Confirmation letters shall be sent to:
[Office of Hazardous Substances Control
Division of Water Resources
P.O. Box 2809
Trenton, New Jersey 08625]
Bureau of Discharge Prevention
Division of Environmental Quality
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-027
Attention: Discharge Confirmation

7:1E-4.3 Information to be filed with the division
(a)-(d) (No change.)
(e) The information required under this section and any other section of this subchapter shall be sent to:
[Office of Hazardous Substances Control
Division of Water Resources
P.O. Box 2809
Trenton, New Jersey 08625]
Bureau of Discharge Prevention
Division of Environmental Quality
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-027
Attention: Spill Prevention

7:1E-4.4 Preparation and submission of plans
(a)-(g) (No change.)
(h) Two copies of a DPCC or DCR plan shall be submitted the division for approval. Copies shall be sent to:
[Department of Environmental Protection
Division of Water Resources
P.O. Box 2809
Trenton, New Jersey 08625]
Bureau of Discharge Prevention
Division of Environmental Quality
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-027
Attention: Spill Prevention
(i) (No change.)

(b)

DIVISION OF COASTAL RESOURCES

Notice of Administrative Correction
Coastal Permit Program Rules
Waterfront Development
N.J.A.C. 7:7-2.3

Take notice that the Office of Administrative Law has discovered error in the text of N.J.A.C. 7:7-2.3 currently appearing in the New Jers Administrative Code. The rule was amended on an emergency basis a concurrently proposed for amendment at 22 N.J.R. 2361(a). The amen ment to subsection (a) included revision of paragraphs (a)2 and 3 a deletion of subparagraphs (a)2i and ii. Upon incorporation of the em gency amendment into the Code through the 8-20-90 update, revis paragraph (a)3 was erroneously deleted from the Code. Since the ado tion of the concurrent proposed amendment to the rule (see 22 N.J. 3222(a)) was without textual change from the proposal, paragraph (a was not reincorporated into the rule through the 10-15-90 Code upda Through this notice of administrative correction, paragraph (a)3, amended by the emergency adoption and adopted concurrent propos is reincorporated into the Code, through the 12-17-90 Code update. T notice of administrative correction is published pursuant to N.J.A. 1:30-2.7.

Full text of the corrected rule follows (addition indicated boldface **thus**):

7:7-2.3 Waterfront development
(a) The waterfront area regulated under this subchapter is divid into three sections, and will vary in width in accordance with t following rules:
1.-2. (No change.)
3. In all other areas of the State (that is in those areas outside the "coastal area" defined by CAFRA and outside of the Hackensa Meadowlands Development District), the regulated waterfront ar shall consist of any tidal waterway and all the lands lying thereund up to the mean high water line and an adjacent upland area extendi landward from the mean high water line to the first paved public roa railroad or surveyable property line existing on September 26, 19 generally parallel to the waterway, provided that the landward bounda of the upland area shall be no less than 100 feet and no more th 500 feet from the mean high water line.
(b)-(f) (No change.)

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(a)

/ISION OF ENVIRONMENTAL QUALITY

tice of Administrative Correction

Pollution Control

ntrol and Prohibition of Smoke from Combustion ıf Fuel

ıoke Emissions from Stationary Indirect Heat :xchangers

I.A.C. 7:27-3.2

ake notice that the Department of Environmental Protection has overed an error in the section heading of N.J.A.C. 7:27-3.2. The term ıitary indirect heat exchangers" is an error; the correct term, as set h in subsection (a) of the rule, is "stationary indirect heat exchangers." ; notice of administrative correction is published pursuant to N.J.A.C. -2.7.

ull text of the corrected rule follows (additions indicated in ıdface **thus**; deletions indicated in brackets [thus]):

'-3.2 Smoke emissions from [sanitary] **stationary** indirect heat exchangers

ı)-(c) (No change.)

HEALTH

(b)

/ISION OF COMMUNITY HEALTH SERVICES

ıbile Intensive Care Programs

ministration of Medications

opted Amendment: N.J.A.C. 8:41-8.1

posed: October 1, 1990 at 22 N.J.R. 3104(a).

ɔpted: December 6, 1990 by Frances J. Dunston, M.D., 1.P.H., Commissioner, State Department of Health.

:d: December 11, 1990 as R.1991 d.12, **without change.**

:hority: N.J.S.A. 26:1A-15 and 26:2K-7 et seq.

:ctive Date: January 7, 1991.

ɔiration Date: February 17, 1992.

nmary of Public Comments and Agency Responses:
ıo comments received.

ull text of the adoption follows.

.-8.1 Approved drug list for mobile intensive care units

ı) The following is an alphabetical list of generic therapeutic nts authorized for administration by mobile intensive care para- lics:

ıdenosine

HUMAN SERVICES

(c)

'FICE OF LEGAL AND REGULATORY LIAISON

·arings

lopted New Rules: N.J.A.C. 10:6

ɔposed: October 1, 1990 at 22 N.J.R. 3115(a).

opted: December 12, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

ɜd: December 12, 1990 as R.1991 d.13, **with substantive changes** ıot requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

thority: N.J.S.A. 30:1-12 and 52:14B-12.

Effective Date: January 7, 1991.
Expiration Date: January 7, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Between Proposal and Adoption:
There is one change in the text upon adoption. Language is being added at N.J.A.C. 10:6-1.5(f) to clarify that at informal conferences, the agency may exclude persons other than the petitioner during portions of the conference in which the information or reports to be disclosed are subject to specific confidentiality provisions of Federal or State law.

Although this chapter sets minimum requirements for division-specific informal conferences and provides procedures for Department level informal conferences which are subject to any superseding Federal or State law, the Department is making this change on its own initiative to clarify that the attendees permitted at conferences are subject to specific confidentiality provisions of Federal or State law. This change does not result in any additional burden being placed upon the participants or attendees of the informal conferences.

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

CHAPTER 6
HEARINGS

SUBCHAPTER 1. GENERAL PROVISIONS

10:6-1.1 Purpose and scope

(a) Formal administrative hearings are conducted after transmittal to the Office of Administrative Law by an administrative law judge in accord with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

(b) Subject to any superseding Federal or State law, this chapter sets minimum requirements for division-specific informal conferences and provides procedures for department level informal conferences. The Department level informal conferences will address non-employee and non-contract-related appeals from agency action or inaction in programs administered directly by the Department and not within the jurisdiction of a specific division or not readily assignable to a particular division or particular program.

10:6-1.2 Definitions

The following terms, when used in this chapter, shall have the meanings set forth below, unless the context clearly indicates otherwise:

"Agency head" means the person or body authorized by law to render final decisions in contested cases. At the division level the agency head is the Division Director; otherwise the agency head is the Commissioner.

"Commissioner" means the Commissioner of the Department of Human Services.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for any agency hearing.

"Department" means the Department of Human Services or any of its organizational components.

"Division" means one of the Department's operating divisions, to wit: the Division of Medical Assistance and Health Services (DMAHS), Division of Economic Assistance (DEA), Division of Developmental Disabilities (DDD), Division of Mental Health and Hospitals (DMH&H), Division of Youth and Family Services (DYFS), Division on the Deaf and the Hard-of-Hearing, The Commission for the Blind and Visually Impaired (CBVI) and the Office of Education (OOE).

"Uncontested case" or "noncontested case" means any hearing offered by an agency for reasons not requiring a contested case

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proceeding under the statutory definition of contest case at N.J.S.A. 52:14B-2.

10:6-1.3 Formal administrative hearings

(a) If any dispute is required by law to be handled formally, or if a party is dissatisfied with an informal determination and the agency head determines the matter a contested case, the matter shall be transmitted to the Office of Administrative Law for hearing before an administrative law judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

(b) A case which is determined by the agency head to be a non-contested case may, at the discretion of the agency head and with the concurrence of the Director of the Office of Administrative Law, also be transmitted to the Office of Administrative Law for hearing before an administrative law judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

10:6-1.4 Division-specific informal conferences

Division-specific informal conferences shall be conducted in accord with division-specific rules and the minimum requirements of the rules for Department level informal conferences as set forth in this chapter.

10:6-1.5 Department level informal conferences

(a) Any person aggrieved by any action or inaction of the Department may request either verbally or in writing an informal conference with Department staff to settle any dispute or seek clarification of the Department's rules or policies. Receipt of the request shall be documented and the Department shall respond in writing to any such request, stating the reasons for its determination and advising, in the case of a denial of a request for a conference, that further appeal shall be to the Appellate Division of the Superior Court.

(b) An informal conference shall include a review of pertinent facts and applicable laws, rules and/or policies, and any relevant documents in an attempt to resolve issues giving rise to the request for informal conference.

(c) Department level informal conferences shall address appeals from agency action or agency inaction in programs administered directly by the Department, and not the review or appeal of final administrative hearing decisions of Division Directors nor the consideration of open matters which are under the jurisdiction of a division.

(d) Notice of the availability of an informal conference shall be as follows:

1. Each notice of adverse agency action where a dispute is not required by law to be handled formally shall include the offer of an informal conference.

2. Each notice of agency action containing an offer of informal conference shall specify in writing a reasonable time frame within which a petitioner may accept the offer.

(e) Participants and attendees at informal conferences shall include and be limited to the following:

1. An employee assigned to conduct the informal conference pursuant to written authorization from the agency head and who shall not have had any direct part in the decision-making regarding the disputed matter in question;

2. Any persons permitted by the employee conducting the conference who are able to provide information relevant to the subject of the conference; and

3. The petitioner may participate in the conference and may be accompanied at the conference by the following person(s):

i. An attorney or other representative;

ii. A family member;

iii. A witness or witnesses able to provide information relevant to the subject of the conference; and/or

iv. An interpreter.

(f) The agency may exclude persons other than the petitioner during portions of the conference in which the information or reports to be disclosed are subject to specific confidentiality provisions of Federal or State law.

[(f)] ***(g)*** The Department shall memorialize the conference a written report to be sent to the petitioner which shall includ statement of the issue, the decision and the basis for the decisi and notice that further appeal shall be to the Appellate Division the New Jersey Superior Court.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Need for a Guardian

Adopted Amendment: N.J.A.C. 10:43-7.1

Proposed: September 4, 1990 at 22 N.J.R. 2671(a).

Adopted: December 4, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: December 5, 1990 as R.1991 d.5, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12, 30:1-15, 30:1-15.1 and 30:4-165.4 e seq.

Effective Date: January 7, 1991.

Expiration Date: August 21, 1994.

Summary of Public Comments and Agency Responses:

The proposed amendment was published on September 4, 1990. Dur the comment period, which closed on October 4, 1990, two comme were submitted.

The Eden Family of Programs

COMMENT: The role of the administrative head of the functio service unit is addressed and clarified. In instances when family memb or interested parties file a complaint in Superior Court the administrat head can provide the Division with valuable information to support not support the pending appointment. This is an added check to ens the rights of the participant are being carefully monitored.

RESPONSE: The Department appreciates the support of the amei ment as proposed.

Spectrum for Living Development, Inc.

COMMENT: Under Economic Impact, it is stated that the family interested party will bear the cost of providing a copy of the compla to the administrative head of the functional service unit. How are tl notified of this cost? Next, are they advised of this requirement at time of filing so that they can provide a copy directly to the administrat head of the functional service unit and thereby avoid additional later co being billed to them?

RESPONSE: The Department appreciates the concern expressed. T notification of the administrative head should be the responsibility of attorney for the family or interested party who is bringing the gua ianship action. Presumably, the costs of copying and mailing would incorporated into the attorney fees for services. Notice to involved part is standard procedure for any legal action.

COMMENT: N.J.A.C. 10:43-7.1, Procedures: Paragraph (b)2 whi begins "The applicant for guardianship . . ." should be revised to re . . . The applicant for guardianship shall be informed within 10 worki days after the administrative head of the functional service unit recei a copy of the complaint that disagreement exists regarding the need guardianship and give opportunity to discuss the guardianship ap cation with appropriate staff of the functional service unit. This meeti will be scheduled within thirty days of the request by the family mem or other interested party at a time convenient to all parties.

RESPONSE: The Department agrees with the request for specific ti lines to be added to N.J.A.C. 10:43-7.1(b)2. Wording has been added require that the administrative head indicate his or her position wit 15 working days of receipt of an affidavit. An opportunity to discuss t position with Division staff shall be scheduled within 30 days.

COMMENT: Paragraph (c) requires a copy of the moving papers provided by the filer to the administrative head of the functional serv unit within 10 days of filing. If it is not already, this requirement sho be made clear through the appropriate court offices and updating varic Division handouts such as the one attached. This will serve to prev procedural errors and costly delays.

RESPONSE: The Division of Developmental Disabilities will upd internal handouts to reflect the amendments in this role. Again, t

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·ponsibility to notify the administrative head of the component should that of the attorney for the family or interested party. The court does t have a role in providing notice to the administrative head.

COMMENT: At N.J.A.C. 10:43-7.1(a), an internal component of the vision commented that the 10-working day requirement that an Adminrative Head of the functional service unit has to provide the affidavit esting to the need for guardian, was not sufficient time. The affidavit ıy contain content addressing whether or not the functional service unit ɔports the appointment of a proposed guardian. Therefore, a 15-work-ɡ day time period was requested for an Administrative Head of the ıctional service unit to either support or refute a need for guardian.

RESPONSE: The Department appreciates the concern. N.J.A.C. :43-7.1(a) has been amended to a 15-working day time period.

Full text of the adoption follows (additions to proposal indicated boldface with asterisks ***thus***; deletions from the proposal in-:ated in brackets with asterisks *[thus]*).

:43-7.1 Procedures

(a) As provided in N.J.S.A. 30:4-165.7, if a family member or ıer interested party initiates legal action for the appointment of guardian, and if the functional service unit agrees that the individ-l is in need of a guardian:

1. The administrative head of the functional service unit shall ovide upon request within *[10]* ***15*** working days an affidavit esting to the individual's need for a guardian. The affidavit may ;o contain content addressing whether or not the functional service it supports appointment of the proposed guardian.

2. (No change.)

(b) If a family member or other interested party initiates legal tion for the appointment of a guardian, and if the functional service it does not agree that the individual is in need of a guardian:

1. No affidavits relative to the issue of guardianship shall be com-:ted by the functional service unit. Instead, the administrative head the functional service unit shall complete and forward to the plicant for guardianship a copy of the statement signed by the ministrative head of the functional service unit that the individual not considered to be in need of a guardian.

2. *[The applicant for guardianship shall be informed of his or r opportunity to discuss the guardianship application with ap-opriate staff of the functional service unit.]* ***Within 15 working ys after the administrative head receives a request for an affidavit, e administrative head shall notify the family or interested party and ve them an opportunity to discuss the guardianship application with propriate staff. This meeting shall be scheduled within 30 days of request by the family or interested party.****

(c) If a complaint has been filed in Superior Court by a family ember or other interested party for a judgment designating a guard-n, a copy of the moving papers shall be provided by the filer to e administrative head of the functional service unit within 10 days filing.

(d) If the administrative head of the functional service unit ascer-ins that a guardianship action is being pursued even though the nctional service unit disagrees that the individual is in need of a ıardian or if the functional service unit does not support the ap-ɔintment of the proposed guardian, he or she shall notify the Chief, ıreau of Guardianship Services. The Chief, Bureau of Guard-nship Services, shall determine whether legal action should be in-ated.

(a)

IVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

otice of Administrative Correction
ransportation Services Manual
.J.A.C. 10:50-1.3, 1.4, 1.5 and 3.2

Take notice that the Department of Human Services has discovered rors in the text of N.J.A.C. 10:50-1.3, 1.4, 1.5 and 3.2 as published in e December 3, 1990 New Jersey Register at 22 N.J.R. 3620(c).

At N.J.A.C. 10:50-1.3(a)4, the obviously erroneous phrase "name of ldress" has been replaced by "name and address."

At N.J.A.C. 10:50-1.4(a)5, the phrase "duties of the staff" has been replaced by "duties of staff," to reflect the actual text submitted for proposal (see PRN 1990-249).

At N.J.A.C. 10:50-1.5(d), the phrase "in the opinion of MDO professional staff person" has been replaced by "in the opinion of a MDO professional staff person" to reflect the actual text submitted for proposal (see PRN 1990-249).

At N.J.A.C. 10:50-3.2, the word "number" in the section heading has been pluralized as "numbers" to reflect the actual text submitted for proposal (see PRN 1990-249).

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

10:50-1.3 General policies for participation

(a) The approval process for becoming a transportation service provider is as follows:

1.-3. (No change.)

4. A potential provider seeking approval to provide livery service shall attach to the Medicaid Provider Application (Form FD-20) the following documents, each of which shall bear the name [of] **and** address of the livery company or the company's principal owner(s), for each vehicle in the provider's fleet:

i.-iii. (No change.)

5.-10. (No change.)

(b) (No change.)

10:50-1.4 Services covered by the New Jersey Medicaid Program

(a) Ambulance service is a covered service under the following conditions:

1.-4. (No change.)

5. The ambulance crew shall comply with the duties of [the] staff as specified in New Jersey Department of Health rule N.J.A.C. 8:40-6.27.

6.-7. (No change.)

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

10:50-1.5 Authorization for transportation services

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

(d) A request for invalid coach authorization may be approved for an extended period of time when, in the opinion of **a** MDO professional staff person, the Medicaid-eligible individual's health condition will not improve to the extent that a lower mode of service would be appropriate during the period under consideration. An extended authorization may range from one month through 12 months in duration.

1. (No change.)

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

10:50-3.2 HCPCS code numbers and maximum fee schedule

(No change in rule text.)

(b)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual
Family Support Act Requirements for Job Opportunities and Basic Skills (JOBS) Training Program and Related Title IV-A (AFDC) Provisions

Adopted New Rules: N.J.A.C. 10:81-14.3A and 14.24
Adopted Amendments: N.J.A.C. 10:81-1.12, 2.2, 2.8, 2.17, 2.18, 3.16, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1 through 14.7, 14.10 through 14.15, 14.17, 14.18 and 14.20 through 14.22
Adopted Repeals: N.J.A.C. 10:81-2.9 and 5.9
Adopted Repeals and New Rules: N.J.A.C. 10:81-3.18, 3.19, 14.8 and 14.19

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Proposed: August 20, 1990 at 22 N.J.R. 2405(b).
Adopted: December 5, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: December 6, 1990 as R.1991 d.8, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 44:10-1 et seq.; and 44:10-3; Family Support Act of 1988 (P.L. 100-485); Section 402(a)(8)(A)(ii) of the Social Security Act; and 54 FR 42146.
Effective Date: January 7, 1991.
Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Policy concerning penalties for AFDC-C and -F segment clients who voluntarily terminate employment prior to application or during receipt of Aid to Families with Dependent Children (AFDC) benefits should be included in both N.J.A.C. 10:81-2.8(c) (new applicants) and N.J.A.C. 10:81-14.8(i), since such policy is stated for AFDC-N segment.

RESPONSE: In response to this comment, N.J.A.C. 10:81-14.8(i) has been revised to clarify policy concerning penalties for AFDC-C and -F segment individuals who voluntarily cease employment without good cause. Situations where individuals are deemed to be in noncompliance with REACH requirements are covered under regulations set forth at N.J.A.C. 10:81-14.8(c) and are applicable to all segments, that is, AFDC-C, -F and -N REACH participants. Text is not modified at N.J.A.C. 10:81-2.8(c), however, to address this concern since, during the eligibility determination for new applicants for AFDC-C and -F, Federal regulations do not specify penalties for cessation of employment. Eligible family members who must satisfy work/training requirements, and who are not exempt, are referred to case management for assessment of job readiness. If at that time it is determined that the participant is "job ready" and refuses to accept a bona fide offer of employment, then appropriate penalties are applied as specified at N.J.A.C. 10:81-14.8(i).

COMMENT: Commenter questions the feasibility of the requirement that AFDC-F or -N principal earners who are exempt from REACH participation, due to remoteness, must still register with the State Employment Service, since in some counties, the REACH program and the Employment Services program are based in the same town and remoteness would also be a problem.

RESPONSE: If an individual is determined to be exempt from participation in the REACH program for the reason of remoteness, Federal regulations require registration with the State Employment Service (see N.J.A.C. 10:81-2.18(a)).

COMMENT: The referral period for REACH participation of AFDC-F principal earners who are new case applicants should be extended up to 90 days to coincide with the case validation time period.

RESPONSE: Section 202 of the Family Support Act concerning technical and conforming amendments, mandates that, for AFDC-F segment cases, principal earners participate in JOBS/REACH within 30 days of receipt of assistance (see N.J.A.C. 10:81-3.18(b)4).

COMMENT: The provision at N.J.A.C. 10:81-14.3(o) requiring that the principal earner in an AFDC-F segment case must be involved in either WSP, CWEP or OJT for 16 hours per week, appears to be restrictive and difficult for compliance by the counties.

RESPONSE: No change in text is necessary since this is a Federal JOBS mandate.

COMMENT: A typographical error at N.J.A.C. 10:81-14.3A(a)2 was observed under classification of REACH exemption.

RESPONSE: The age exemption, which is 60 years as indicated in the proposal summary, was an inadvertent error and has been corrected.

COMMENT: It was pointed out that it is not part of the case management function to review cases temporarily exempt in order to determine if there is a change in status; rather, this is an income maintenance function.

RESPONSE: N.J.A.C. 10:81-14.3A(a)4 is revised to indicate that income maintenance shall monitor an exempt case.

COMMENT: It appears to be unnecessary to review the REACH Agreement at the time of redetermination of AFDC eligibility as stated at N.J.A.C. 10:81-14.5(g).

RESPONSE: No change in text is necessary since Federal regulations mandate the requirement that the Agreement must be reviewed no less frequently than at time of redetermination.

COMMENT: Rules at N.J.A.C. 10:82-2.10(a) and N.J.A.C 10:81-14.8(i)8 seem to be in conflict concerning Medicaid eligibility fc adults sanctioned for noncompliance with REACH.

RESPONSE: Language is added at N.J.A.C. 10:82-2.10(a), publish elsewhere in this issue of the Register, and N.J.A.C. 10:81-14.8(i)8 ensure alignment of rules concerning Medicaid eligibility.

COMMENT: Provisions at N.J.A.C. 10:81-14.10 limit Job Search a tivity to eight weeks' participation in a 12-month period to qualify f Federal Financial Participation (FFP). This limit is too restrictive in lig of today's employment situation.

RESPONSE: The eight-week Job Search Federal limit may be su plemented through State funds for those individuals who require mo time in finding employment. Since such individuals have received trainin counties are not expected to retrain or provide further training in su situations.

COMMENT: The provision at N.J.A.C. 10:81-14.12(c)2 relating child care costs for individuals in CWEP activities allows for reimburs ment of costs of child care but not direct payment as indicated for oth activities.

RESPONSE: N.J.A.C. 10:81-14.12(c)2 has been revised to inclu direct payment to the child care provider.

COMMENT: Essex County Department of Citizen Services cor mented on the proposed amendment at N.J.A.C. 10:81-7.20 concerni separation of income maintenance, social services and REACH ca management responsibilities due to the fact that their agency perforn those functions under a generic case management system.

RESPONSE: Although the operational procedures in Essex County a not specifically stated in the rules, the family worker concept has be defined for Federal financial participation purposes under the JOB REACH State Plan and no modifications are necessary.

COMMENT: Comments were received concerning educational fundi issues and participation rates during the time an individual is temporari excused from REACH participation when programs are unavailable.

RESPONSE: Those issues are not regulatory in nature and are n addressed in this adoption.

COMMENT: Child care should be provided based on the individu needs of each family and available for children over age 13 on a cas by-case basis.

RESPONSE: Federal regulations (45 CFR 255.2(a)) limit the guarant of child care to those families with dependent children under 13, and tho children over 13 who are either physically or mentally incapable of carir for themselves as determined by a physician or certified psychologist. T proposed rules describe those children eligible for child care in accordan with Federal regulation. Text has been modified, however, at N.J.A.C 10:81-14.18(a)1, (a)1i, and (a)1i(1) in order to clarify the nature of t rule and to clarify that child care is allowable through State funds f children over age 13 where extenuating circumstances exist, in accordan with rules set forth at N.J.A.C. 10:81-14.18(e).

COMMENT: Payments should be permitted through the REAC program for child care provided by parents, legal guardians, or membe of the AFDC unit; teen parents often choose their parents or gran parents to care for their children; payment would reduce their grant

RESPONSE: Federal regulations (45 CFR 255.2(c)) do not perm payment for child care to individuals who are members of the AFD assistance unit or for care provided by the child's own parents or leg guardians. Language at N.J.A.C. 10:81-14.18(a)1ii is revised for clar fication.

COMMENT: The hours provided for child care specifically inclu time for preparation activities, travel, and study time for education activities.

RESPONSE: N.J.A.C. 10:81-14.18(a)2ii has been revised to clarify, i accordance with Federal regulations (45 CFR 255.1(e)4), that the hou provided or claimed for reimbursement are "reasonably related" to t hours of participation or employment. This permits leeway in hours c care provided around the REACH activity/employment itself.

COMMENT: Changes in the manner of child care payments shoul be subject to timely notice requirements. Changes in the manner c payment without timely notice would result in discontinuatio suspension, reduction or termination of child care benefits or care a rangements.

RESPONSE: In accordance with Federal regulations (45 CF 255.2(h)) due process requirements (using the JOBS or IV-A hearin process as appropriate) apply to child care services. Except in situatio where a change in the method of payment affects AFDC benefit level requirements for timely notice do not apply to disputes about the metho

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›ayment of child care benefits. As such, no revisions to the proposed ›ndment are made (see N.J.A.C. 10:81-14.18(a)5i and 5ii).

:OMMENT: The REACH Benefit Letter needs to emphasize that the ticipant must request Post-AFDC benefits through notification to the : manager (see N.J.A.C. 10:81-14.18(a)6ii).

ℓESPONSE: The R-10, REACH Benefit Letter, will be reviewed for opriate modifications; however, no change to the proposed amend- ›t is necessary.

:OMMENT: The present statement at N.J.A.C. 10:81-14.18(g)1 infers t payments will not be made to child care providers until the partici- ›t's attendance in a REACH activity or employment is verified and result in delayed payments.

ℓESPONSE: N.J.A.C. 10:81-14.18(g)1 and 2 are revised to clarify that 'ment is issued upon verification of the voucher information concern- the child's attendance and care provided.

:OMMENT: A recommendation was made that REACH continue to ' child care costs rather than use of the child care disregard for ployed REACH participants who continue to receive AFDC.

ℓESPONSE: The issue of the use of the "disregard" is under review. t is determined that rule changes are warranted, a separate proposal l be submitted (see N.J.A.C. 10:81-14.18(g)4 and 4iv).

:OMMENT: Efforts should be made to consider making advance 'ments to child care providers based on verification of the child's ticipation in care (see N.J.A.C. 10:81-14.18(g)4iii).

ℓESPONSE: At this time, advance payments cannot be considered due ›evere budgetary constraints; however, the Department will continue efforts to ensure timely receipt of payments to providers.

:OMMENT: All REACH participants should be referred to the Lead ›ld Care Agencies (LCCAs).

ℓESPONSE: Text has been modified at N.J.A.C. 10:81-14.18(h) to lude case manager referral to LCCAs.

:OMMENT: When individuals choose their own child care providers ›o are not licensed or approved for payment through REACH, current t infers that the case manager has control over the determination of quality of care received.

ℓESPONSE: Proposed text has been deleted at N.J.A.C. 81-14.11(a)3iii due to expanded language at that subparagraph which ›lains parental choice of child care arrangements.

:OMMENT: The concept of "net loss of cash income" as addressed N.J.A.C. 10:81-14.21 allows for "good cause" for nonacceptance of ›b. Questions were raised concerning responsibility for the calculation, ›en the calculation should be done and whether or not the State con- ›red the Federal option of using supplemental payments to offset the loss of cash income.

ℓESPONSE: The "net loss of cash income" concept as "good cause" ot applicable in those cases in which the State assumes child care costs an individual to accept employment; that child care expenditure is 'act recognized as the State supplement. The calculation is computed the income maintenance worker at the time an offer of employment nade if the participant requests a determination of "good cause" for ›acceptance of a job. N.J.A.C. 10:81-14.6(a)1 and 14.21(e) have been ised to clarify the appropriateness of this calculation process.

:OMMENT: The provisions at N.J.A.C. 10:81-14.24 concerning over- '›ments and underpayments with respect to REACH supportive services ›uld be rescinded until county welfare agency staff is consulted concern- collection process.

ℓESPONSE: The proposed amendments at N.J.A.C. 10:81-14.24 must ›ain unaltered due to Federal requirements. Further review of those ›s can be addressed at a later date and revisions presented as a separate ›posal.

mmary of Agency-Initiated Changes:

N.J.A.C. 10:81-3.18(b)7 has been amended to complete the Federal inition of "quarters of work" which was inadvertently omitted at time proposal.

N.J.A.C. 10:81-8.22(b)2, concerning extended Medicaid benefits, is ng deleted for consistency within the chapter. The same language arding P.L. 1987, c.283, has been deleted at N.J.A.C. 10:81-14.20(c)1i an amendment in this rulemaking.

N.J.A.C. 10:81-14.8 has been expanded to clarify procedures concerned marily with the conciliation process before a sanction is imposed. The e now explains in more detail the Federally required three-month ›ction reminder notice for an individual whose sanction has been in ›ct for at least three months.

N.J.A.C. 10:81-14.10 has been revised to clarify explanations of the › Search component of the REACH program.

N.J.A.C. 10:81-14.18(a)3iii has been expanded to clarify the individual's choice of child care arrangement options available.

An additional State Child Care program option has been added at N.J.A.C. 10:81-14.18(a)4 for informational purposes.

N.J.A.C. 10:81-14.18(d)3ii has been revised to include a definition of "one month."

Deletion of text at N.J.A.C. 10:81-14.18(h)1 restricting the post-AFDC child care period to "one year" is necessary to accommodate possible fluctuations in receipt of those post assistance benefits as delineated at N.J.A.C. 10:81-14.18(e)6.

Text has been added for clarification purposes throughout N.J.A.C. 10:81-14.19. Also, in accordance with Federal State Plan Title IV-F and Title IV-A operational requirements, monetary caps have been placed on REACH participant allowances (PALs), that is, for employment-directed activities (EDAs), expenses required to accept or maintain employment (JOBs), and payments for automobile-related expenses (CARs). These monetary limits were determined subsequent to discussion with county welfare agency staff and based on their recommendations.

The JOBS allowance limit to a cap of $100.00 was determined to be sufficient and reasonable for its usage to enable participants who become employed to obtain necessary equipment, uniforms, tools, etc., which may be essential to entering or maintaining a specific job. EDA and CAR allowances warrant higher allowance limits for extraordinary circumstances, because they cover a broader range of activities and longer time span. Additionally, automobile expenses for such items as transmission repair usually require a need for a higher allowance. Monetary caps placed on applicable participant allowances in extraordinary circumstances ensure standardization and equal treatment of all REACH participants.

Full text of the changes in the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:81-1.12 Other programs

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

1.-4. (No change.)

5. The Realizing Economic Achievement (REACH) program assists AFDC recipients to achieve independence from public assistance through employment and activities leading to employment. The REACH program incorporates the provisions of the Federal Job Opportunities and Basic Skills Training (JOBS) Program and serves as New Jersey's employment and training program for eligible AFDC families. The Division of Economic Assistance, Department of Human Services, supervises the administration of the REACH/JOBS program.

6. (No change.)

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

10:81-2.2 Purpose and scope of first contact

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

1.-7. (No change.)

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

i. (No change.)

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

iii. (No change.)

10:81-2.8 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 REACH (the AFDC work/training program) as a condition of eligibility for AFDC (see N.J.A.C. 10:81-14), unless exempt. The REACH exemptions as described in N.J.A.C. 10:81-14.3A will be explained to each applicant.

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1. If an individual claims exemption due to incapacity, he or she shall be given Form DRS-1, Examining Physician's Report, to be completed by a physician or licensed or certified psychologist of his or her choice and returned to the CWA for payment as authorized by the Division of Medical Assistance and Health Services.

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

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

i. The IM worker shall immediately refer all individuals who wish to volunteer for participation in REACH to case management.

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

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

2. Determine the participant status for REACH;

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

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

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

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

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

10:81-2.9 (Reserved)

10:81-2.17 Verification

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

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

(f) (No change.)

(g) The CWA shall verify school attendance in a school, college, training or vocational program of dependent children ages 16 to 19 at the time of application as an eligibility criterion of AFDC (see N.J.A.C. 10:82-1.5(a) and 1.9).

(h) (No change in text.)

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

(a) AFDC applicants/recipients required to register with the State Employment Service: AFDC-F or -N principal earners exempt from REACH participation due to remoteness shall register with the State Employment Service.

1.-3. (No change.)

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

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

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

1. Forms DRS-1 (or DRS-1A) and DRS-2 (see appendix C) m be completed and forwarded with all pertinent medical and hospi records to the Disability Review Section, Division of Medical A sistance and Health Services. This should be done as quickly possible and must be completed within 30 days.

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

ii. Complete Form DRS-2 (Medical Social Information Repo This requires full and careful discussion with applicant of the releva information and possibly a home visit.

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

1. (No change.)

2. The unsupported opinion of the examining physician that incapacity exists may, in itself, be accepted. However, material pr ented under the heading of Social Evaluation and Plan on Fo DRS-2 (see appendix C) or in other portions of the case record shou also be evaluated in demonstrating that incapacity exists.

3.-4. (No change.)

(f) Parent incapacitated by mental defect, illness or impairme

1.-2. (No change.)

3. Where the report of the examining physician, institutional clinic records are available, and appear to provide current data ac quate to a determination that "incapacity" exists, these shall accepted. Whenever, in the judgment of the Disability Review S tion, special psychiatric, neurological or psychological examinati of testing is necessary or advisable, special consultants or facilit may be used. (See Form DRS-8 in appendix C.)

(g) (No change.)

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

1. In situations where a parent applicant claims to be " capacitated" but refuses to undergo diagnostic evaluations cc sidered by the Disability Review Section as essential to a determir tion of his or her "incapacity", the entire family is ineligible for t AFDC-C segment. However, refusal shall not affect the eligibility his or her spouse and child for AFCD-F or -N.

2.-4. (No change.)

(i) (No change.)

(j) Payment for expenses incurred in medical eligibility determir tions: Payment for medical expenses incurred on behalf of an AFD C (incapacitated) applicant in the determination of initial eligibil shall be the responsibility of the CWA and made from the admin tration account. The CWA shall advise the physician that payme of the fee will be at the applicable rate contained in the schedule fees for professional and diagnostic services as compiled by the D ability Review Section. Transportation for diagnostic evaluations w be available.

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

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

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

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

2. When either parent can qualify as the principal earner becat both parents earned an identical amount of income in such 24-mor

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riod, the principal earner shall be whichever parent earned the eater amount of income in the most recent consecutive six-month riod of such 24-month period.

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

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

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

i. Unemployed is defined as:

(1) Not working at all;

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

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

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

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

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

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

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

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

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

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

7. The principal earner has six or more quarters of work (as escribed in i below), no more than four of which may be quarters f work ***over his or her lifetime*** as defined in i(2) below, within any 3 calendar-quarter period ending within one year prior to the appliation for such aid; or, within such one-year period, received unmployment compensation under an unemployment compensation ıw of a State or of the United States; or was qualified (see (b)6i bove) for such compensation under the State's unemployment comensation law.

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

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

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

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

(4) The individual participated in the Community Work Experience Program or the Job Opportunities and Basic Skills Training Program (JOBS/REACH 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 REACH at N.J.A.C. 10:81-14.8, shall apply in AFDC-N segment cases if financial eligibility is the result of voluntary cessation of employment without good cause.

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

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

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

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

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

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

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

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

10:81-3.19 Employment and training requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10:81-3.31 Release from a State institution

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

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

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

i. (No change.)

ii. Form DRS-8, Report of Findings by Psychiatric Diagnostic Group, where appropriate.

2. (No change.)

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

1.-3. (No change.)

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

i. DRS-8, Report of Findings by Diagnostic Group;

ii. (No change.)

iii. DRS-1, Examining Physician's Report;

iv. DRS-1A, Report of Eye Examination

5. (No change.)

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

10:81-4.7 Temporary payee in an emergency situation

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

1. (No change.)

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

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l.-6. (No change.)
c)-(d) (No change.)

81-4.10 Selection of a protective payee
(a)-(d) (No change.)
(e) The CWA is required to make protective payments when a rent(s) is disqualified from participation in the AFDC program due refusal or failure to cooperate with the REACH program; refusal accept employment, voluntary cessation of employment, or failure cooperate with CSP, unless the following applies:
1. (No change.)

:81-4.16 Appointment of a representative payee
(a)-(b) (No change.)
(c) In order to satisfy the requirements of the law regarding rep-sentative payees the following shall apply:
1. When the recipient has already been determined by the Disabili- Review Section as incompetent, the Record of Action fulfills the quirement for a review by the State Division.
2. In all other situations, the CWA shall forward to the Disability eview Section all relative medical data as required for determining edical eligibility. The Form DRS-2 Medical-Social Information eport, should state that the purpose of submittal is for review as basis for appointment of a representative payee.
3. The Disability Review Section will review the material on the isis of functional incompetency as defined by law, and the resulting ecord of Action shall represent the findings of a review by the State ivision.

):81-4.23 Basis for recovery of overpayments
(a)-(c) (No change.)
(d) Procedures to recover any overpayments of REACH child care nefits, post-AFDC child care benefits and REACH transportionn and related supportive service payments made to a REACH rticipant or service provider are set forth at N.J.A.C.):81-14.24(b) and (c).

):81-5.4 Competency status in AFDC
(a) The IM worker should be alert to the development of medical mental problems which may affect the adequate functioning of e parent. Such evidence shall be submitted to the Disability Review ction for special review.
(b) (No change.)

):81-5.6 Requirements with respect to deprivation of parental support or care in AFDC-C
(a)-(b) (No change.)
(c) Incapacity status for a natural or adoptive parent is listed low:
1. (No change.)
2. The review date will be designated for the CWA by the Disabili- Review Section, Division of Medical Assistance and Health rvices. "Incapacity" shall be considered as continuing until the isability Review Section officially determines that such incapacity longer exists. The IM worker shall prepare Form DRS-2A, Inrim Medical-Social Report, for the redetermination review. The WA shall maintain controls on review dates so that any specific edical information or reports requested by the Disability Review ction may be obtained. In addition, the Disability Review Section all maintain a control file in order to ensure appropriate and timely evaluation by that Section. The Disability Review Section will otify county welfare agencies one month in advance of cases schedled for such review by means of Form DRS-5.
3. In any case in which, subsequent to a finding of "approved", e incapacitated parent becomes a beneficiary of Federal disability enefits or SSI benefits for reasons other than age, this of itself shall considered conclusive proof of continuing incapacity, and the WA shall disregard the "review date" for submittal to the Disability eview Section.
4. It is the responsibility of the IM worker to submit the record the Disability Review Section for special review if available vidence the raises question of continuing incapacity during the interal between redetermination review dates. The special review shall be requested through use of Form DRS-2A, Interim Medical-Social Report, together with all material previously submitted.
(d) (No change.)
(e) When "incapacitated" natural or adoptive parent is in an institution:
1. (No change.)
2. Submittal to Disability Review Section: As soon as the date of discharge is known, or if the CWA learns that the parent has already been discharged to his or her home, the CWA shall submit the required record material to the ***Disability*** Review *[Team]* Section as appropriate to the situation; that is, if official determination of incapacity had already been made, the previous record shall be submitted for review with a completed Form DRS-2A; if the case had not been previously submitted, *[than]* ***then*** a DRS-2 giving current situation and Form DRS-1 (Examining Physician's Report) shall be submitted. Whenever practical, the DRS-1(12-17-90) form should be prepared by a staff physician of the institution.
3. An abstract of the hospital record may be accepted in place of Form DRS-1, when the parent is in the hospital or has been released within the past three months. The client's consent in writing for release of the information shall accompany the request.

10:81-5.9 (Reserved)

10:81-6.11 Representation at hearings
(a)-(b) (No change.)
(c) In hearings involving a determination by any component of the DEA, the matter at issue shall be presented by the appropriate staff representative(s) of the DEA.

10:81-6.14 Hearings involving medical issues
(a) If the hearing involves medical issues, requiring a diagnosis or a report from an examining physician, or concerning a determination by the State Disability Review Section, the ALJ may issue an order requiring a medical assessment by someone other than the person who made the original medical determination. (45 CFR 205.10(a)(10))
(b) (No change.)

10:81-7.1 Notice to client of county welfare agency decision
(a)-(c) (No change.)
(d) Adverse action and exception to timely notice: Timely notice may be dispensed with but adequate notice shall be sent not later than the effective date of action when:
1.-11. (No change.)
12. Changes in the manner of payment (for example, from direct payment of child care costs to disregard of child care payments from the earned income of the individual) of REACH child care benefits are not subject to timely notice requirements unless they result in a discontinuation, suspension, reduction or termination of benefits, or they force a change in child care arrangements (see N.J.A.C. 10:81-14.18).

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

10:81-7.4 Continuation of assistance
(a)-(d) (No change.)
(e) Upon receipt of a timely request for a fair hearing concerning REACH child care and supportive service benefits, benefits shall be received as follows until a written decision is rendered:
1. If the individual had been receiving REACH child care or transportation benefits and is awaiting a hearing because such benefits were reduced, the individual is not entitled to receive REACH child care or transportation benefits at the prior unreduced level. Benefits shall continue at the determined reduced level pending the hearing.
2. If the individual is not receiving a child care benefit or a specific REACH supportive service benefit, as delineated at N.J.A.C. 10:81-14.19, for which he or she believes he or she is eligible and is awaiting a hearing due to non-receipt of that benefit, he or she is not entitled to receive that benefit pending the hearing.
3. If the individual had been receiving REACH child care benefits or transportation benefits and is awaiting a hearing because such

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benefits were discontinued or terminated, he or she is not entitled to receive those benefits pending the hearing.

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

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

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

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

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

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

i.-iii. (No change.)

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

v.-vi. (No change.)

2. (No change.)

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

i.-iii. (No change.)

iv. Follow-ups resulting from recommendations of Disability Review Section;

v.-viii. (No change.)

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

i. REACH exemption status;

ii. REACH target group assignment;

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

iv. Sanctions of individuals for noncooperation in REACH;

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

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

10:81-8.22 Persons eligible for medical assistance

(a) (No change.)

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

1. (No change.)

[2. For any family which became eligible for AFDC prior to the enactment of P.L. 1987, c.283, in order to be eligible for this employment related extension, the family must have been eligible for AFDC or was deemed to be in receipt of AFDC for at least three of the six months preceding the month in which the family lost eligibility for AFDC.]

*[3.]****2.*** (No change.)

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

*[5.]****4.*** Eligibility for the 12-month Medicaid extension is n available for any month to any individual who, exept for incom resources or hours of employment, is not otherwise eligible to recei AFDC. The following individuals shall not be included in the eligib family for Medicaid extension.

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

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

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

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

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

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

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

10:81-8.24 Determination of eligibility; Medicaid Special

(a) All appropriate regulations in the Assistance Standards Han book regarding income shall apply in determining financial eligibilit Requirements related to the REACH program, employment or trai ing, school attendance of a child, and the Child Support and Patern ty program are not applicable.

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

10:81-9.1 Definitions

The following words and terms, when used in this chapter, sha have the following meaning unless the context clearly indicates othe wise.

. . .

"BIC" means Bureau of Integrity Control.

. . .

"Categorical assistance" means Federal programs including Ai to Families with Dependent Children and Refugee Resettleme Program.

. . .

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

. . .

"Medicaid Special" means Medicaid coverage available to tl following individuals on the basis of financial eligibility regardle of other program requirements (for example, REACH, employmen

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aining, CSP, or school attendance): any dependent child under 21 r an independent child under age 21.

. .

"NJSES" means the New Jersey State Employment Service, New ersey Department of Labor.

. .

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

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

. .

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

. .

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

. .

0:81-10.7 Eligibility

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

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

1. An affidavit signed by the applicant(s) of a two-parent family ttesting to past work history shall be considered sufficient official erification for AFDC-F purposes provided the affidavit indicates ie period of time in which the work was performed (see N.J.A.C. 0:81-3.18(b)7).

2. (No change.)

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

0:81-12.1 General provisions and purpose

(a) This subchapter is for use by county welfare agencies (CWAs) articipating in the "TEEN PROGRESS" Demonstration in the ities of Newark and Camden. No application for TEEN PROGRESS participation shall be taken after April 1, 1990. The project s a four-year demonstration project which commenced October 5, 987 and shall continue through October 5, 1991. Individuals who re currently participating may remain eligible for the duration of he demonstration. The objective of TEEN PROGRESS is to provide ducational and work-related activities to 1,800 AFDC participants, ge 19 and under, with at least one child (regardless of the age of he child). The goal is to develop a plan which will lead the individual o self-sufficiency, thereby reducing the individual's dependency on ublic assistance. This subchapter shall at all times be used and nterpreted in conjunction with N.J.A.C. 10:81, N.J.A.C. 10:82, N.J.A.C. 10:87, and N.J.A.C. 10:90, as appropriate.

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

1.-3. (No change.)

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

5.-6. (No change.)

7. (No change in text.)

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

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

10:81-12.3 TEEN PROGRESS participation requirements

(a) AFDC recipients who met the following conditions were required to participate in the demonstration:

1.-4. (No change.)

5. The recipient and her child(ren) were receiving AFDC benefits ogether for the first time.

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

1.-2. (No change.)

(c) (No change.)

(d) Eligibility for participation in the demonstration was determined at the following times:

1. (No change.)

2. When a change in the circumstances of an AFDC recipient occurred and that change was the birth of the first child.

10:81-12.4 Exemptions and deferrals

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

1. (No change.)

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

(b) (No change.)

10:81-12.6 PROGRESS Plan

(a) (No change.)

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

10:81-12.7 Overview of the process

(a) The operation of this demonstration includes the following:

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

2. (No change in text.)

(b) (No change.)

10:81-12.8 Intake and orientation

(a) The intake process for this demonstration followed regular AFDC intake procedures concerning the taking of AFDC applications and obtaining eligibility information, set forth in N.J.A.C. 10:81-2.4 and 10:81-3, including the establishment of paternity (see N.J.A.C. 10:81-11). The intake worker performed initial screening of applicants and referred those applicants age 19 or under who appeared to meet the criteria at N.J.A.C. 10:81-12.3(a) for participation in the demonstration.

(b) Upon referral to the demonstration, the case manager reviewed eligibility and determined whether exemptions under former rule, N.J.A.C. 10:81-3.18(b)2 applied (see current N.J.A.C. 10:81-14.3A) (with the exception of care of youngest child under age 6). For those who were not exempt, the case manager explained the nature of the demonstration, obtained informed consent, and arranged for literacy and aptitude testing and collected other baseline information. After this process was completed, the case manager gave the names of all non-exempt eligibles to the evaluator for random assignment to the experimental and control groups.

1. Experimental group participants received written material explaining the program components and their responsibilities. All other formal intake procedures were followed (see N.J.A.C. 10:81-2). Control group participants received written material explaining their rights and responsibilities in the existing AFDC program.

2. Those placed in the experimental group were given an appointment with the case manager for orientation.

(c) The purpose of the orientation session was to begin to involve the client in a realistic plan leading to self-sufficiency. Orientation included a private interview or group session conducted by the case manager. The participant could bring another person for support and guidance, such as a parent, teacher or the child's father. In the orientation session, the case manager provided an in-depth explanation of the purpose of the demonstration, the kinds of support services available through the demonstration and the program services available to the client. The case manager emphasized completion of high school or an equivalency degree for those who did not

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finish school. For those still in high school, the case manager gave early attention to any support services that could avoid a break in the participant's education or facilitate early return to school.

10:81-12.11 Sanctions

(a) Participants who fail to comply with program requirements set forth in this demonstration, without good cause, will be subject to the sanctioning process. Good cause includes the reasons set forth at N.J.A.C. 10:81-14.8(e). The following actions by a participant constitute failure to comply with program requirements:

1.-5. (No change.)

(b) Sanctions shall be imposed for the sanction periods set forth at N.J.A.C. 10:81-14.8(k).

(c)-(e) (No change.)

(f) If a participant complies with program requirements prior to the effective date of the imposition of the sanction, the sanction may be suspended and the participant's AFDC grant level restored effective for the first of the month following the month in which the participant complied.

1.-2. (No change.)

3. If a sanctioned individual decides to cooperate during the sanction period, the individual will remain ineligible for AFDC for the entire sanction period or until the failure to comply ceases, whichever is longer. Renewed participation requirements in TEEN PROGRESS after the expiration of the sanction period are set forth at N.J.A.C. 10:81-14.8(l).

(g) (No change.)

10:81-14.1 General provisions

(a) This subchapter is for use by the county welfare agencies (CWAs) in the Realizing Economic Achievement (REACH) program as an integral part of N.J.A.C. 10:81, N.J.A.C. 10:82 and N.J.A.C. 10:90, and shall at all times be used and interpreted in conjunction with these documents as appropriate. REACH incorporates the requirements of the Family Support Act of 1988, P.L. 100-485, which established the Job Opportunities and Basic Skills (JOBS) program under Title II of that Act, the Federal work/training program which replaced WIN. The Act also guarantees, through Title III provision, necessary supportive services for participation in work/training components. Therefore, satisfying REACH requirements will ensure compliance for participants with the Federal JOBS work/training mandates for receipt of AFDC benefits.

1. If any regulations herein contradict or conflict with existing regulations or policy established in N.J.A.C. 10:81, N.J.A.C. 10:82 or N.J.A.C. 10:90, with the exception of N.J.A.C. 10:81-12, such material is superseded by this subchapter. Applicants/participants registered for TEEN PROGRESS prior to April 1, 1990 shall comply with TEEN PROGRESS regulations set forth at N.J.A.C. 10:81-12.

2.-3. (No change.)

(b) Principles of the REACH program: REACH is designed to assist participants to gain independence from public assistance through employment and activities leading to employment. At the core of REACH is the principle of mutual obligation under which the agency will make available a variety of employment, training and educational opportunities as well as support services, which will enable the individual to participate in activities that affect his or her own future and which should lead to the individual's attainment of independence from assistance. The emphasis of REACH will be on participation, not penalties, with the program designed to be flexible to support each family's movement to economic self-sufficiency through employment, and to consider the dignity and self-respect of the individual. These principles are to serve as a framework within which the regulations set forth in this subchapter are to be applied.

(c)-(e) (No change.)

10:81-14.2 Definitions

The following definitions shall apply to REACH:

"Basic literacy level" means a literacy level that allows a person to function at the level of an individual who has proficiency at a grade 8.9 level.

. . .

"Compliance" means participation in REACH evaluation an assessment, and in employment or the REACH employment-directe activity as set forth and scheduled in the REACH Agreement.

"County IV-A agency" means the county board of social servic in the respective county.

"EDA" means an employment-directed activity including no educational employment-directed activities (that is, but not limite to: work supplementation programs, community work experien programs, and on-the-job training) and educational employmen directed activities (that is, but not limited to: English as a Secon Language, Adult Basic Eudcation, secondary, technical and pos secondary educational programs).

"Excused participant" means a mandatory REACH participa whose participation is excused for the reasons at N.J.A.(10:81-14.3(e).

. . .

"Limited English proficiency" means the ability to speak, rea write or understand the English language to function in th community.

"Mandatory participant" means an individual applying for c receiving AFDC who is required to participate in REACH, an whose participation is not exempt.

. . .

"Satisfactory progress in an educational component" means th the participant in any educational activity is meeting, on a pe iodically measured basis of less than one year, such as a term c quarter, a consistent standard of progress based upon a written polic that was developed by the educational institution or program i which the participant is enrolled, and approved by the appropriat State and/or local education agency and the county IV-A agenc The standard shall include a qualitative measure of the participant progress, such as a satisfactory grade point average or performanc and quantitative measure, such as a reasonable time limit by whic a student is expected to complete his or her studies. Upon revie and approval by the State or local education agency and the count IV-A agency, the standard shall provide that a student who does nc meet the institution's or program's progress standard is nonethele making satisfactory progress during a probationary period, or sha be deemed to be making satisfactory progress because of mitigatin circumstances. Such circumstances include the death of a relativ injury or illness of the REACH participant or other special circum stance.

"Satisfactory progress in a training component" (that is, on-the job (OJT), Community Work Experience (CWEP) and skills training means that the participant in a training activity is meeting, on a periodically measured basis of less than one year, such as quarterly a consistent standard of progress based upon a written policy tha was developed by the training provider, and approved by the count IV-A agency. The standard shall include both a qualitative measur of the participant's progress, such as competency gains or proficienc level, and a quantitative measure, such as a reasonable time limit fo completion of the training program. Upon review and approval b the county IV-A agency, the standard may provide that a studen who does not meet the training program's progress standard is none theless making satisfactory progress during a probationary period or shall be deemed to be making satisfactory progress because o mitigating circumstance. Such circumstances include the death of a relative, injury or illness of the REACH participant or other specia circumstance.

. . .

10:81-14.3 REACH participation

(a) Participation: All individuals shall, except as otherwis provided in this subchapter, participate in REACH as a conditio of eligibility for AFDC. Individuals in immediate need shall be entitled to a presumptive eligibility determination in accordance with N.J.A.C. 10:81-3.3 prior to REACH participation. Referral fo REACH participation will be made after a final determination o AFDC eligibility is made. However, individuals determined presumptively eligible for AFDC may participate in REACH on a voluntary basis before that final eligibility determination.

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1. AFDC-C: All individuals, including a stepparent included in the igible unit as a person whose presence in the home is essential to ıe well-being of the spouse, are required to participate in REACH, ccept as otherwise provided in this subchapter. Failure or refusal ı participate may result in the imposition of the sanctions specified : N.J.A.C. 10:81-14.8.

2. AFDC-F: All individuals are required to participate in EACH, except as otherwise provided in this subchapter. Criteria lentified at N.J.A.C. 10:81-3.18 shall be used to identify the princi-al earner in the household. Failure or refusal to participate may esult in the imposition of the sanctions specified at N.J.A.C. 0:81-14.8.

3. AFDC-N: All Individuals are required to participate in EACH, except as otherwise provided in this subchapter. Failure r refusal to participate may result in the imposition of the sanctions pecified at N.J.A.C. 10:81-14.8.

(b) Exemption from REACH participation: Individuals classified s exempt, as delineated at N.J.A.C. 10:81-14.3A, are not required ı participate in employment or REACH employment-directed ac-vities. However, they may participate on a voluntary basis (see I.J.A.C. 10:81-3.19(f) and 14.3(s) for "volunteers in REACH"). An ıdividual may claim at any time that he or she is entitled to an xemption. Any exemption which does not have a stated reevaluation eriod shall be reviewed at such time as the condition is expected ı terminate, but no less frequently than at each redetermination of ıFDC eligibility. During the periodic review, if there is a change ı exemption status or the individual decides to volunteer for partici-ation, the IM worker shall take appropriate action on the change ı status and update FAMIS accordingly. The IM worker shall ıromptly notify the recipient of any change in the recipient's exemp-ion status.

1. IM shall notify case management of a change in exemption tatus. Likewise, if during case management contact with the partici-ant it is discovered that circumstances render a change in the exemp-ion status, the case manager shall notify the IM worker concerning he change in circumstances so that appropriate action can be taken nd FAMIS updated.

2. Providers of REACH activities shall be advised of a change in ecipient's exemption status by the case manager.

(c) Full-time employment: Individuals who are working not less han 30 hours per week in unsubsidized employment expected to last minimum of 30 days are exempt from participation in other EACH activities, even if there is a temporary break which is ex-ected to last no longer than 10 working days.

1. The agency will endeavor to provide such supportive services s are available under these rules if they are needed to help the ıarticipant continue employment. However, to receive supportive ervices, the individual shall be referred by IM to case management nd shall cooperate with applicable REACH requirements to be letermined eligible for receipt of any supportive services of the EACH program.

2. The participant may voluntarily participate in other REACH raining or education agreed upon by the agency.

(d) Homelessness: The homeless are ordinarily mandatory partici-ıants in REACH if they do not satisfy any exemption criteria in N.J.A.C. 10:81-14.3A. Such individuals shall be considered for ap-ıropriate REACH activities as determined by the case manager based ın the family's circumstances. Such families may be eligible for emergency assistance benefits (see N.J.A.C. 10:82-5.10) regardless of EACH participation because Title IV-A emergency assistance ligibility does not require compliance with AFDC work/training equirements (REACH participation). Other emergency assistance ırograms may require REACH participation (for example, Rent Subsidy Program). However, based on the circumstances of the fam-ly, homelessness may be considered "good cause" for not partici-ıating in REACH (see N.J.A.C. 10:81-14.8) as determined by the case manager on a case-by-case basis.

(e) Excused participation: REACH participants shall be tempor-ırily excused from participation if the component (including social ervices) for which they are scheduled as set forth in the REACH Agreement is not currently available or if a support service set forth in the REACH Agreement is not available. Excused participation is reviewed once every week up to once every month, depending on the circumstances surrounding the excuse.

1. (No change.)

2. Another REACH activity which is suitable for the participant and for which necessary support services are available may be substituted as an alternative form of participation.

(f) (No change in text.)

(g) REACH participation requirements:

1. An individual who is not exempt or excused from REACH shall participate in REACH activities as follows:

i. Attendance at initial assessment of employability (individual evaluation, assessment), counselling and diagnostic sessions necessary for placement in employment and employment-directed activities;

Recodify iii. and iv. as ii. and iii. (No change in text.)

2. (No change.)

3. "Limited" participation of no more than 20 hours per week in REACH activities by the parent or caretaker relative who personally provides care for a child if the child is at least two years of age but under age six, is allowable unless the custodial parent is under age 20 and has not completed a high school education or its equivalent (see (m)1 and 2 below). Only one parent or other relative in a family is allowed this limited participation level (20 hours) in an activity. Child care shall be guaranteed in accordance with N.J.A.C. 10:81-14.18 to enable the 20-hour participation in REACH.

(h) (No change in text.)

(i) Client-selected activity: Individuals classified as mandatory participants who are scheduled to begin REACH participation but who are enrolled in a client-selected education or training program or activity shall be treated as follows:

1. The individual will complete an initial assessment of employability and develop an employability plan to determine the appropriateness of the client-selected activity to the individual's employment goal. The case manager shall determine if an eligible individual has a reasonable and feasible plan for full-time (as defined by the educational/training institution) vocational/educational training, other than the normal secondary school curriculum, which will lead to gainful employment and which meets the following criteria:

i. The individual has a specific vocational objective and there is a reasonable expectation that employment will be available in the area of the objective in the local job market;

ii. The individual has not left gainful employment solely for the purpose of additional training unless such training is designed to increase his or her earning capacity;

iii. A new applicant who has been self-sustaining has not ceased his or her employment within the past three months for the purpose of going to school and applying for assistance.

2. If the case manager determines that the client-selected activity meets the criteria in (i)1 above and the individual can demonstrate that he or she is enrolled (in good standing) and making satisfactory progress in the school or course sufficient to receive credit for the program, then participation in the activity shall be considered participation in REACH. The activity shall be included in the final REACH Agreement.

i. The case manager in making the decision to approve the client-selected activity for REACH participation shall also consider the length of time for completion of the program, within a reasonable time, as defined by the county agency based on average completion time-frames for REACH participants in the county.

ii. The case manager shall inform the individual at the time the approval of the client-selected activity is granted, that the approval is subject to periodic review at the end of each term and at such other times as the agency deems necessary; and that, if necessary, a change could be made in the approval status. The case manager shall periodically review with the participant, his or her employability plan; revisions to the plan based on changed circumstances (for example, improved job market) may alter the approval status of the client-selected activity. In that instance the individual may be required to accept unsubsidized employment (other than OJT or WSP) with the potential of leading to self-sufficiency.

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iii. The agency shall not permit other REACH activities to interfere with participation in the approved client-selected activity.

iv. The client-selected activity may be approved as REACH participation, however, if REACH funds are not available to pay the tuition for the client-selected activity, the individual assumes responsibility for all tuition costs. If REACH funds are available, the agency may pay for costs incurred from the date of approval. Under no circumstances shall REACH pay for costs incurred by the individual for participation in the activity prior to the date of approval.

v. Participants in approved client-selected activities may be eligible for child care and other supportive services as set forth in N.J.A.C. 10:81-14.17, 14.18 and 14.19. Participants in unapproved client-selected activities are ineligible for REACH supportive services.

3. If the case manager determines that the client-selected activity is not in accordance with (i)1 and 2 above, participation in the activity shall not be considered participation in REACH and the activity shall not be included in the final REACH Agreement. The individual shall be required to participate in other REACH activities unless he or she satisfies the exemption criteria in N.J.A.C. 10:81-14.3A.

4. An individual who disagrees with the denial of his or her selected activity may appeal this determination through the process set forth at N.J.A.C. 10:81-14.7 and 10:81-6.

(j) REACH target group populations: As required by the Federal Family Support Act, the REACH program targets services to certain populations for participation in the program.

1. Those target groups are:

i. Long term recipients: Long term recipients include those individuals receiving AFDC for any 36 of the preceding 60 months;

ii. Long term applicants: Individuals who make application or reapplication for AFDC, and have received AFDC for any 36 of the preceding 60 months immediately preceding the most recent month for which application has been made;

iii. Custodial parents under age 24 needing high school: Individuals who are custodial parents under the age of 24 and who have not completed a high school education, are not enrolled in high school nor in a high school equivalency course of instruction (GED);

iv. Custodial parents under age 24 with no work history: Individuals who are custodial parents under age 24 and who have little or no work experience in the preceding year; and

v. Potentially ineligible families: Families whose youngest child is age 16; that is the youngest child is within two years of being ineligible for AFDC because of age (thereby rendering the entire family ineligible for AFDC).

2. Target group status is established no later than the initial assessment of employability. IM determination of target group status during orientation is permissible. If the individual is identified as belonging to one of the above five target groups, that individual shall remain in the target group for the duration of REACH participation, including the 12-month post-AFDC period.

i. Counties have an ongoing responsibility to assign target group status to new AFDC/REACH cases and to correct an inappropriately assigned target group status. Counties shall ensure coordination between IM and case management so that a participant's target group status is accurate.

ii. If an individual is not assigned to one of the above five target groups at the time of initial assessment of employability (that is, the individual was assigned to the FAMIS target group "O", no target group identified) but during REACH participation can be later categorized into one of the above groups, then the individual shall be assigned to the appropriate target group and will remain in that group for the balance of REACH participation through the 12-month post-AFDC period.

(k) Federal participation requirements: Title II of the Family Support Act, the JOB Opportunities and Basic Skills Training (JOBS) program, requires that individuals with certain educational needs or certain family circumstances participate in prescribed employment-directed activities (EDAs) or participate subject to Federal limitations. These requirements are set forth in (l) through (r) below and include:

1. Activities for dependent children age 16 to 18 not attending school;

2. Educational requirements for custodial parents under age 20 including different requirements for parents under age 18 and parents age 18 or 19;

3. Educational requirements for individuals age 20 and older;

4. Participation requirements for AFDC-F segment principal earner;

5. Limited participation for a caretaker of a child age two and older but under age six;

6. Remedial educational activities for individuals without a high school diploma who have not achieved a basic literacy level; and

7. Limited English proficiency education if necessary to achieve the employment goal.

(l) Dependent children age 16 to 18 not attending school: Dependent children between 16 and 18 years of age, who are not parents and who are not attending high school, are mandatory REACH participants. Such individuals should be encouraged and helped to remain in school or to participate in other educational or training activities.

(m) Custodial parents under age 20—educational requirements: Custodial parents under age 20, regardless of the age of the youngest child, who have not completed a high school education or its equivalent (for example, GED), and who are not exempt from participation in REACH, must participate in REACH preparatory educational activities (see N.J.A.C. 10:81-14.15), subject to the provisions below:

1. A custodial parent under age 18 with no high school diploma, regardless of the age of the youngest child, is required to complete a high school education or its equivalent and shall have the choice to return to high school or to enroll in a high school equivalency program as set forth at N.J.A.C. 10:81-14.15. The agency shall not excuse anyone from high school who is subject to the State's compulsory attendance requirement.

i. Attendance must be full-time (as defined by the educational provider) even though the youngest child may be under six years of age, unless good cause is demonstrated or child care is not available to support full-time attendance. Until child care becomes available, participation may be on a part-time basis or the individual may be temporarily excused.

ii. In exceptional circumstances the custodial parent may be excused from the high school attendance requirement provided he or she participates in another REACH preparatory activity (see N.J.A.C. 10:81-14.15(b)) or in skills training combined with education (for example, Job Corps) and:

(1) The individual is beyond New Jersey's compulsory attendance requirement of age 16; and

(2) The determination of participation in the other preparatory activity is not based solely on grade completion but rather is based upon the results of an assessment and the participant's employment goal which indicate education is inappropriate for the individual; or

(3) The participant's local school district legally refuses to admit or readmit the participant and no alternate, appropriate educational components are available; or

(4) The participant has been determined developmentally disabled or in need of special educational programs for the learning disabled.

2. A custodial parent age 18 or 19 with no high school diploma regardless of the age of the youngest child is required to participate in preparatory educational activities and shall attend the program full-time (as defined by the educational provider) even though the youngest child may be under six years of age, unless good cause is shown or child care is unavailable to support full-time attendance. Until child care becomes available, participation may be on a part-time basis or the individual may be temporarily excused.

i. The custodial parent who is age 18 or 19 may be required to participate in training or work activities (subject to the 20-hour limit addressed at N.J.A.C. 10:81-14.3(g) unless the individual volunteers to participate for more than the 20 hours limited participation) instead of educational activities if one of the following conditions is met:

(1) After placement in the educational activity, the custodial parent failed to make good progress in successfully completing educational activities; or

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(2) Prior to the assignment of the individual to such educational activities it is determined, based on an educational assessment and the employment goal in the individual's Employability Plan, that participation in educational activities is inappropriate for such parent. The participant must strongly indicate that he or she is not interested in participating in the educational component and one of the following conditions is met:

(A) The participant has a documented history of repeatedly failing to make progress in educational components (indicated by, for example, expulsion from high school, violent or disruptive behavior, threats, excessive absenteeism, failure to complete an alternate education component); or

(B) The initial assessment of employability indicates that: the participant's current literacy level is sufficient to achieve the employment goal in the REACH Employability Plan; the participant has the basic literacy level; or the employment goal in the REACH Employability Plan does not require a high school diploma or its equivalent.

(n) Individuals age 20 and over—educational requirements: A mandatory REACH participant who has attained the age of 20 years and has not earned a high school diploma (or its equivalent) is required to participate in preparatory educational activities consistent with his or her employment goals as a component of the individual's REACH Employability Plan. Any other REACH services or activities may not be permitted to interfere with participation in preparatory educational activities.

1. Participation in preparatory educational activities is not required if:

i. The individual demonstrates a basic literacy level needed for his or her employment goal; or

ii. The individual's employment goal, as identified on his or her REACH Employability Plan, does not require a high school diploma (or its equivalent).

(o) Participation requirements for AFDC-F segment principal earner: The principal earner in an AFDC-F segment case shall participate for a total of at least 16 hours per week in a REACH work supplementation program (WSP), in a community work experience program (CWEP), or in an on-the-job training (OJT) program (see N.J.A.C. 10:81-14.11, 14.12, and 14.14(b)).

1. If the principal earner is under 25 years of age and has not completed high school (or its equivalent), he or she may participate in preparatory educational services (see N.J.A.C. 10:81-14.15) in lieu of participation in WSP, CWEP or OJT.

i. The individual shall be considered to be meeting the above participation requirement if he or she is making satisfactory progress.

2. The principal earner participating in CWEP shall be considered to have met the 16 hours per week minimum participation requirement if he or she participates for the maximum number of hours of that program (see N.J.A.C. 10:81-14.12).

(p) Caretaker of child age two and older and under six—limited participation: A parent in an AFDC-C segment case and only one parent in an AFDC-F segment case with a child under six years of age cannot be required to participate for more than 20 hours per week in an employment-directed activity, even if child care is provided. However, the individual may volunteer to participate for greater than 20 hours.

1. Exception: The 20 hour rule does not apply to custodial parents under 20 years of age who must participate in educational programs because they do not have a high school diploma (or equivalent) as addressed in (m) above.

(q) Remedial educational activities for individuals without a high school diploma: Basic and remedial educational activities are mandatory REACH activities to help certain individuals achieve a basic literacy level when those individuals do not have a high school diploma or its equivalent and the participant's long-term employment goal does not require a high school education.

1. Basic literacy level means a literacy level in English that allows a person to function at the level of an individual who has proficiency at a grade 8.9 level.

(r) Limited English proficiency education: A mandatory educational component of an individual's participation in REACH shall be limited English proficiency education if such instruction in English as a second language (ESL) is necessary for the participant to achieve his or her long-term employment goal.

1. Limited English proficiency education means instruction which provides the individual with the ability to speak, read, write or understand the English language to function in his or her community.

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

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

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

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

(t) Participant (for purposes of determining a State's participation rate for Federal Financial Participation): An AFDC recipient who is assigned to a REACH program component (including educational activities, job skills training, job readiness activities, job search, OJT, WSP, CWEP and post-secondary education) for at least the minimum activity level, is a participant. Minimum activity levels include making satisfactory progress in all educational activities, and participating at least 20 hours per week in the other components noted; except for OJT and WSP, the minimum level is the number of hours defined by the employer as full-time work for that position. For participants in CWEP, the minimum level is the lower of either 20 hours per week or the maximum CWEP hours calculated as allowable for that individual. An individual's hours of participation for the week can be a combination of the hours of participation in more than one activity.

1. An individual active only in assessment, employability development planning or case management is not considered a participant for these purposes.

10:81-14.3A REACH exemptions

(a) Individuals classified as exempt are not required to participate in employment or in REACH employment-directed activities (see N.J.A.C. 10:81-14.3(b)). The following categories of individuals are exempt from participation in REACH.

1. Children and students: Children under age 16; or between 16 and 18, enrolled or accepted for enrollment as full-time students for the next school term in an elementary, secondary, or vocational or technical school; or under age 19 and attending full-time, a secondary school or the equivalent level of a vocational or technical school, and expected to complete the program of the school before reaching age 19;

2. Persons who are *[65]* **60* years of age or older;

3. Persons who are incapacitated: When verified that a physical or mental impairment, as determined by a physician or licensed or certified psychologist or by the Disability Review Section, Division of Medical Assistance and Health Services, either by itself or in conjunction with age, prevents the individual from engaging in employment and/or training, and such incapacity is expected to exist for a continuing period of at least three months (see N.J.A.C. 10:81-3.16(g)). Alcohol or drug addiction shall be considered physical impairments if they prevent an individual from engaging in employ-

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ment or training. Incapacity may include a period of recuperation after childbirth if prescribed by the woman's physician.

i. Uncomplicated pregnancy of itself shall not be considered incapacitating; however, any claim to complications shall be verified in writing by a physician or licensed or certified psychologist by use of Form DRS-1, Examining Physician's Report, for an appropriate period of recuperation prescribed by her physician/psychologist.

ii. If the individual could be served or employed if reasonable accommodation(s) for his or her condition were made, then the possibility of participation in REACH shall be encouraged, rather than exemption of the individual.

iii. When an individual claims exemption under incapacity or illness but further verification is necessary (for example, a medical or psychological examination), the individual's needs may be included in the AFDC-C payment, or the needs of the entire eligible family included in the AFDC-F payment, while the exemption is being verified. Verification of the exemption shall be made as expeditiously as possible, but may not take longer than 30 days. If such verification is not provided within 30 days, the individual shall be required to participate unless there is a legitimate delay in obtaining a medical appointment. In such instance, the 30 day limit may be extended to 45 days;

4. Persons who are ill or injured: When determined on the basis of medical evidence or on some other sound basis that the illness or injury is serious enough to temporarily prevent participation in employment or training. Reasons for exemption on a temporary basis include observation of a cast on a broken limb, or information of scheduled surgery, recuperation from surgery, or other instances where the condition will be of limited duration. This exemption normally will not exceed 90 days. As part of the *[case management]* ***income maintenance*** function, the case shall be reviewed every 30 days to determine changes in circumstances that may render the individual able to participate in REACH. Minor ailments and injuries (for example, colds, broken fingers, rashes, and so forth) do not normally exempt the individual under this criterion.

i. Where an individual evidences symptoms of alcohol or substance abuse or behavioral problems, referral for social services will be made. If such referral is not accepted or the individual stops participating in the treatment program, participation in other REACH activities will be required, as provided in N.J.A.C. 10:81-14.16(b)1;

5. Persons who are required in the home: When verification is obtained that a physical or medical impairment, as determined by a physician or licensed or certified psychologist, of another member of the household requires the individual's presence in the home on a substantially continuous basis, and no other appropriate member of the household is available;

6. Pregnancy: With medical verification of the expected date of delivery, a women is exempt after the first trimester of pregnancy, that is, months four through childbirth;

7. Caretaker of young child: The parent or other caretaker relative of a child under two years of age who personally provides care for the child, subject to the following:

i. Exception: Custodial parents under age 20 must participate in REACH (see participation requirements at N.J.A.C. 10:81-14.3(m)) regardless of the age of the youngest child if the individual does not satisfy any of the other exemption criteria and the individual has not finished high school (or its equivalent) and child care is otherwise available.

ii. Only one parent or other relative in the family may be exempt from REACH participation for the reason of personally providing care to a child under two years of age.

(1) Limited participation of 20 hours in any REACH activity is required for one caretaker relative whose child is two years of age or greater, but less than age six (see N.J.A.C. 10:81-14.3(g)3).

8. Remoteness: Despite the provision of support services, when commuting time between home and the site of the employment-directed activity by available public or private transportation is not reasonable. Commuting time of one hour each way, exclusive of the time necessary to transport children to and from a child care facility, is considered reasonable. However, if normal round trip commuting time in the area is more than two hours, then the round trip commuting time considered reasonable shall be the generally accepted community standards for commuting as determined at the county level

i. The principal earner in an AFDC-F or -N segment family, i exempt from participation in REACH due to remoteness, shall register with the State Employment Service;

9. Another adult relative participates: An exemption may be granted to the parent or other caretaker of a child who is deprived o parental support or care by reasons of the death, continued absenc from the home, or physical or mental incapacity of a parent, i another adult relative in the home is a mandatory REACH participant and has not refused to participate in the REACH program o to accept employment without good cause;

10. Another parent is not exempt (AFDC-F): An exemption may be granted to a parent (who is not the principal earner) in the AFDC F segment of a child who is deprived of parental support or car by reason of the unemployment of a parent, if the other parent (whc is the principal earner) is not exempt under one of the other paragraphs of this section;

11. The parent who is not the principal earner in the AFDC-N segment;

12. TEEN PROGRESS participation: Individuals who have become part of the TEEN PROGRESS study are subject to the participation requirements of that program (see N.J.A.C. 10:81-12);

13. If the individual is a full-time volunteer serving under the Volunteers in Service to America (VISTA) program pursuant to Title I of the Domestic Volunteer Service Act of 1973, he or she shall be exempt from REACH participation; and

14. A person who is working 30 or more hours a week shall be exempt from REACH participation (see N.J.A.C. 10:81-14.3(c) above).

10:81-14.4 REACH case management

(a) General: Case management is a structured approach to the delivery of multiple and interrelated services to assure that the goals and objectives of REACH are met. It is essential to maintain an ongoing and accurate exchange of information between case management and income maintenance to ensure that timely and correct action is taken for each participant so that necessary services are provided and participation requirements fulfilled. Case management functions will ensure that the principles of REACH set forth at N.J.A.C. 10:81-14.1 are applied in the development of the REACH Employability Plan, the REACH Agreement, in evaluation and monitoring, and during an individual's participation in REACH. Staff included in the case management function are the REACH case manager, supervisory staff, clerical staff, and other support staff. Case management functions include but are not limited to:

1. Reviewing basic concepts of the REACH program: concept of mutual obligation; participation requirements; commitment to removing barriers to employment; emphasis on self-sufficiency; options available for training, education, and employment opportunities; client's rights;

2.-4. (No change.)

5. Developing with the participant a REACH Employability Plan and REACH Agreement which will outline steps toward self-sufficiency;

6.-11. (No change.)

12. Monitoring continued eligibility and provision of services to post-AFDC participants who receive REACH services of child care and/or Medicaid.

(b) Case manager: A REACH case manager will be assigned to coordinate the activities of the REACH program participants. For a participant, the case manager is the integral link among the different service subsystems of income maintenance, employment, training, child support enforcement and support services. Case managers or interpreters fluent in a participant's primary language will be provided when a participant is not fluent in English.

1. Responsibilities of case manager: The case manager is responsible for contact with the participant. Specific responsibilities of the case manager include:

i. (No change.)

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ii. Making appropriate referrals (for example, social services, lead hild care entity);

iii. Developing and signing the REACH Employability Plan and EACH Agreement;

iv. (No change.)

v. Notifying income maintenance that a sanction should be imosed for noncompliance with REACH participation requirements;

(1) The case manager shall also notify income maintenance not o impose a sanction when an individual complies with REACH articipation requirements before the sanction period begins.

vi. Maintaining responsibility for the case record during sanction. After a participant is referred for the imposition of a sanction as set orth in N.J.A.C. 10:81-14.8, the case manager shall retain the orignal REACH case file and shall have responsibility for making deisions about exemption, excused participation, placements and nodifications to the REACH Agreement, communications with the participant (other than those directly involved with the imposition of the sanction), and overall handling of the REACH case;

vii. Maintaining an assigned caseload of participants and coordiating services and activities to ensure a participant's progress, and eevaluating needs and services necessary for continued participation; and

viii. Arranging and monitoring procedures necessary to ensure payment of post-AFDC child care fees.

(c)-(e) (No change.)

(f) Case management functions within REACH program client low: Upon application or redetermination of AFDC eligibility, AFDC clients will proceed through the REACH program client flow. The REACH program client flow begins with an orientation to REACH by the income maintenance worker and proceeds through case management as set forth below.

1. AFDC eligibility determination: The income maintenance worker at intake or in the active case unit will determine eligibility/continued eligibility for AFDC. The worker will also provide an orientation to the REACH program and determine whether the individuals are exempt from participation, in accordance with N.J.A.C. 10:81-14.3A.

i. (No change.)

ii. All volunteers and individuals who are not exempt will be referred for REACH evaluation. This referral will initiate assignment of the individual to REACH case management.

2. Initial assessment of employability: As part of REACH participation, all potential REACH participants shall receive an initial assessment of employability.

i. The initial assessment of employability is based on:

(1) The individual's educational, child care, and other supportive service needs;

(2) The individual's proficiencies, skills deficiencies, and prior work experience;

(3) A review of the family circumstances, which may include the need of any child of the individual; and

(4) Other factors relevant in developing the employability plan set forth in N.J.A.C. 10:81-14.5.

ii. The initial assessment of employability shall consist of the following:

(1) An individual evaluation by the REACH case manager;

(2) A determination of the participant's literacy level if the participant has not completed high school or equivalent; and, as appropriate,

(3) An assessment by a county-selected assessment entity.

3. Individual evaluation: Individual evaluation involves an initial assessment of a REACH participant's existing employment-related skill levels, education level, and similar characteristics related to employability and the job market, and of support service needs. The case manager will meet individually with each participant and conduct an initial evaluation of barriers to job readiness and of the need for social services, such as mental health services, vocational rehabilitation, drug and alcohol treatment programs, and health care.

i. If the participant has not completed high school or its equivalent, the case manager shall determine the participant's literacy level based on information provided by the client and, when necessary through further assessment testing by the appropriate county entity.

(1) If the participant's literacy level cannot be determined at this time, the case manager shall refer the participant to the entity chosen by the county to assess, by use of standardized test, the participant's educational aptitudes.

ii. REACH Agreement: As part of the individual evaluation, the case manager and participant will jointly develop the initial REACH Agreement. The initial REACH Agreement will indicate whether the participant has been referred to social services, REACH job search, or assessment. The initial Agreement will also contain the support services necessary to enable the individual to participate in social sevices, job search or assessment.

(1) If the individual has been referred to REACH job search, the initial Agreement will be the final REACH Agreement. Individuals referred for social services will have signed only an initial Agreement.

(2) The case manager and participant will also develop the REACH Employability Plan.

(3) If the individual has been referred for assessment, the initial Agreement will be followed by the REACH Employability Plan and final REACH Agreement after assessment (see (f)5 below).

4. Assessment: Participants will be referred to the entity chosen by the county to assess the participant's educational and vocational aptitudes (including literacy level as necessary) and interests, or for social services assessment not done by the case manager. The entity will recommend to the case manager whether participants are job ready, in need of preparatory educational services, post-secondary educational services, job skills training, CWEP, or similar services, and will identify potential deliverers of these services where possible.

5. REACH Employability Plan and REACH Agreement: The case manager and participant will review the assessments and the initial REACH Agreement and jointly develop the REACH Employability Plan and final REACH Agreement (see N.J.A.C. 10:81-14.5).

6. (No change.)

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

(j) Child care during preliminary sessions: A participant will be provided necessary child care, in a manner agreeable to the participant, for all sessions involving evaluation, counselling, assessment, testing, social services and development of the REACH Employability Plan and REACH Agreement.

(k) (No change.)

(l) Waiver for the reassignment of case management functions: It is recognized that the phase-in of AFDC families into REACH may result in a high workload for the case management agency, with the possibility that REACH participants may not be served timely. To alleviate this temporary workload and to ensure that all participants receive REACH services timely, the case management agency may request that certain case management functions set forth in the REACH program client flow in (f) above, be temporarily reassigned to another work unit in that agency. To request a waiver of reassignment of case management functions, the case management agency must write to the Director, Division of Economic Assistance, including the following:

1.-5. (No change.)

10:81-14.5 REACH Employability Plan and REACH Agreement

(a) REACH Employability Plan: On the basis of the initial assessment of employability, the case manager shall develop a REACH Employability Plan (Form R-14) in consultation with the participant, including a participant in a client-selected activity. The Employability Plan shall take into account available REACH program resources; the participant's supportive services needs, skills level and aptitudes; local employment opportunities; and, to the maximum extent possible, the preferences of the participant.

1. A REACH Employability Plan shall be completed for each REACH participant. The Employability Plan shall be signed by the case manager and the participant and a copy retained in the participant's case record. The participant shall also receive a copy of the Plan.

2. The REACH Employability Plan is an outline of the REACH activities and services needed by the participant to achieve an employ-

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ment goal. The REACH Employability Plan shall not be considered a contract.

3. The REACH Employability Plan shall be used in conjunction with the REACH Agreement which provides detailed information concerning the specific REACH activities and support services to be undertaken to achieve the employment goal.

4. Contents of the REACH Employability Plan: The REACH Employability Plan shall contain the following:

i. General case information;

ii. An employment goal for the participant developed in consultation with the client which should reflect availability of jobs in the local and/or relevant market;

iii. A list of the REACH activities that will be undertaken by the participant to achieve the employment goal; the specific details of the REACH activity, such as dates and hours of participation, shall be identified in the REACH Agreement;

iv. The supportive services to be provided to enable REACH participation such as child care, transportation and other supportive services; the specific details concerning services to be provided, such as the name of the provider, dates, time, and so forth, shall be identified in the REACH Agreement;

v. Any other needs of the family, identified during assessment, that might be met by REACH, such as participation by a child in drug education or life skills planning;

vi. The participant's literacy level, including date assessed, and the name of the specific test used to assess the literacy level; and

vii. The participant's education level, that is, highest grade completed.

5. Final approval of the REACH Employability Plan rests with the REACH case manager.

6. Changes to the REACH Employability Plan: The case manager shall make changes to the REACH Employability Plan as follows:

i. Update the literacy level when the participant completes a preparatory educational employment-directed activity, such as GED, ABE or ESL, as appropriate;

ii. Record satisfactory progress in a noneducational employment-directed activity at the time of completion of the activity or every three months, whichever occurs first;

iii. Record satisfactory progress in an educational component on a periodic basis of less than one year, such as a term or quarter, which is consistent with the progress report policies set by the educational institution, program, or the training provider; and

iv. Complete a new REACH Employability Plan when there is a change in the participant's employment goal or to reflect new activities.

(b) Purpose and scope: The REACH Agreement will set forth provisions for both the REACH participant and the agency to comply with under the principle of mutual obligation. Each REACH participant will sign an initial REACH Agreement with the case manager affirming participation, provision of support services (such as child care and transportation) and commitment to self-sufficiency. The final REACH Agreement places the participant in employment or an employment-directed activity, and will be adapted to each participant's skills and necessary employment activities. A Spanish language version of the REACH Agreement is available for any participant whose primary language is Spanish.

1.-2. (No change.)

3. Post-AFDC REACH participants: All REACH participants no longer receiving AFDC will be required to complete and sign a REACH Agreement as a condition of receiving post-AFDC child care. All REACH participants receiving post-AFDC Medicaid (see N.J.A.C. 10:81-14.20) should complete and sign a REACH Agreement. If the participant would be penalized by the employer for taking time off from work, the REACH Agreement may be mailed to the participant with the approval of the case management supervisor. Absence of a REACH Agreement will not relieve the participant of complying with eligibility requirements for extended Medicaid benefits (see N.J.A.C. 10:81-14.20).

(c) Contents of REACH Agreement: The REACH Agreement will set forth:

1. Participation required by the REACH participant in employment and REACH employment-directed activities, including the weekly hours of participation in the activity (see N.J.A.C. 10:81-14.3(t)).

2.-8. (No change.)

(d) (No change in text.)

(e) Specifications: The REACH Agreement shall conform to the following specifications:

1. Effective date: The REACH Agreement and amendments to the REACH Agreement shall be effective upon signing by the participant and the case manager, subject to (d)2 above.

2. (No change.)

(f) Amendments: The REACH Agreement may be amended or updated at any time. Amendments may reflect changes in skills, education levels of the participant and changes in assignment to employment-directed activities, as well as any other agreed changes in terms. Whenever the Agreement is amended or updated the case manager shall review the support services to ensure that they will continue to support REACH participation. Amendments shall be effective in accordance with (e) above.

(g) REACH Agreement review: A review of the REACH Agreement shall be completed at time of the redetermination of AFDC eligibility. At a minimum, the case manager and the participant shall review compliance with the existing Agreement, discuss changes that may be needed, and make the necessary amendments. The effective date and duration of the amendments to the REACH Agreement shall conform to (e) above.

10:81-14.6 Income maintenance functions

(a) General: The functions and tasks of income maintenance (IM) staff concerning the REACH program are set forth in this section. It is essential to maintain an open and accurate exchange of information between income maintenance and case management to ensure that timely and appropriate action is taken for each participant so that necessary services are provided and participation requirements fulfilled. The functions include but are not limited to:

1. Determination of eligibility for AFDC *[and computing]* ***computation of*** the AFDC grant amount ***, and determination of net loss of cash income at the time of an offer of employment, when necessary***;

2. Providing an orientation of the REACH program to all AFDC applicants and recipients (see (b) below);

3. Determining exempt or mandatory status for REACH participation and identifying participant target group (see N.J.A.C. 10:81-14.3);

Recodify 3. through 9. as 4. through 10. (No change in text.)

(b) REACH orientation: The county welfare agency (CWA) shall, at time of application or redetermination, provide an orientation to REACH. That is, IM shall inform all AFDC applicants and recipients, in writing or orally as appropriate, of the availability of REACH program activities, the supportive services for which they are eligible, the participation requirements under the principle of mutual obligation, the REACH Employability Plan and the REACH Agreement.

1. The content of information provided in orientation shall include, but not be limited to, the following:

i. Educational, employment and training opportunities available in REACH;

ii. Supportive services, including but not limited to child care, post-AFDC child care, Medicaid Extension, payments for transportation, work-related expenses, car maintenance;

iii. Agency obligations, including provision of program and support services;

iv. Rights, responsibilities, and obligations of participants, including grounds for exemption, consequences of failing or refusing to participate, mandatory and voluntary participation;

v. Information about child care services are as follows:

(1) Availability: Types and locations of child care services reasonably accessible to REACH participants;

(2) Selection: Type of assistance available to help participants select appropriate child care services; and

(3) Obtaining child care: Type of assistance available, on request, to help participants obtain child care services; and

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vi. Child support: Responsibility of participant to cooperate in tablishing paternity and enforcing child support; responsibility of e CWA to assist individuals in obtaining paternity establishment ıd child support services for which they may be eligible.

2. Orientation may be conducted in a group setting or at an dividual interview, based on county operational procedures.

3. During the orientation process, voluntary participants may de-de whether to continue in REACH. All mandatory participants and ɔluntary participants continuing in REACH will be referred for case ıanagement.

4. REACH Orientation for post-AFDC participants: AFDC re-pients who have not participated in REACH but who become ıeligible for AFDC due to excess income from employment are igible for post-AFDC REACH benefits. For these individuals, the M worker should attach to Form R-10, REACH Benefit Letter, a 'ritten description of the REACH program that includes at a mini-ıum all items at (b)1 above. For these individuals, Form R-10 and ttached written orientation will serve as REACH orientation. If the articipant subsequently contacts the case manager for extended hild care benefits, an individual evaluation interview must be held t which time the participant may receive a more in-depth orien-ation.

5. The date of orientation shall be as follows:

i. Applicants and reapplicants: The date of application or reap-lication will be the date of REACH orientation.

ii. Redeterminations: The date of redetermination of AFDC ligibility will be the date of orientation.

iii. Post-AFDC participants: The date of Form R-10 will be con-idered the date of orientation.

6. REACH Addendum: To ensure that Quality Control errors are ıot incurred, every AFDC applicant and every AFDC recipient at ime of redetermination must sign the REACH Addendum to Form ³A-1J, indicating enrollment in the REACH program.

Recodify (b) through (d) as (c) through (e) (No change in text.)

0:81-14.7 Hearings and notices

(a) Hearings: The provisions governing fair hearings at N.J.A.C. 0:81-6 shall apply to the REACH program. The hearing process is naintained by the Office of Administrative Law and is applicable o all REACH participants concerning REACH program require-nents which are unrelated to wage and hour statutes. These decisions nust be reviewed for final decision by the Director, DEA. It is the ıight of every REACH participant adversely affected by the agency :o request a fair hearing if the individual is dissatisfied with compo-nents of REACH participation including, but not limited to:

1. The determination of the individual's participation require-ments (for example, computation of hours of CWEP and WSP par-ticipation);

2. The determination of the individual's exempt or excused partici-pation status;

3. The supportive services being offered the individual;

4. The sanction or adverse actions being imposed upon the individ-ual; and

5. The determination of all issues concerning the reasonableness of the elements of the REACH Agreement and the participant's cooperation and noncooperation with the Agreement in accordance with N.J.A.C. 10:81-14.8.

(b) Notices: Adverse actions taken by the agency are subject to timely and adequate notice provisions. Notices of action taken by the CWA concerning REACH participants are subject to the provisions of N.J.A.C. 10:81-7.1 and N.J.A.C. 10:90-2.5, as ap-propriate, and shall be provided in a Spanish language version for any participant whose primary language is Spanish.

1. Changes in the manner of payment of supportive services do not require timely notice unless they result in a discontinuation, suspension, reduction or termination of supportive service benefits or they force a change in child care arrangements.

(c) Provisions concerning continuation of REACH child care and supportive service benefits (see N.J.A.C. 10:81-14.18 and 19), pending a hearing, are as follows:

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

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

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

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

(d) Violations of New Jersey wage and hour statutes are appealed through the New Jersey Department of Labor's Division of Workers' Compensation and Workplace Standards. Employees' complaints concerning issues such as work assignments, working conditions, and wage rates of individuals who are employed are handled by those Divisions through existing procedures. (The term "employees" as used in this context refers to OJT/WSP participants as well as other workers hired by the employer (not under REACH contract)).

(AGENCY NOTE: Current text of N.J.A.C. 10:81-14.8 is being repealed and replaced with the following new text:)

10:81-14.8 Noncompliance; good cause; conciliation; sanctions

(a) The REACH principles of self-sufficiency through employ-ment, mutual agency/participant obligation, dignity and self-respect of the individual, and flexible program design, are all directed to encourage participation by the individual. However, it is recognized that situations may occur in which the individual may not comply with the REACH participation requirements. In instances where noncompliance by a mandatory participant is indicated, the case manager may begin a series of procedures called the conciliation process (see (f) below), to resolve disputes involving an individual's participation in REACH. Conciliation is designed to assist the par-ticipant in complying with the requirements of REACH and the REACH Agreement in most instances, before a decision is made to impose a sanction for noncompliance. Either the recipient or the case manager can request that the conciliation process be initiated.

1. Voluntary participants: If an individual classified as a voluntary participant (see N.J.A.C. 10:81-14.3(s)) discontinues participation in the REACH program, the individual and the individual's family are not subject to the procedures and sanctions set forth in this section. However, under the principles of the REACH program, the case manager may wish to discuss with the individual the circumstances surrounding the decision not to participate and the benefit of partici-pation.

(b) Situations not considered noncompliance: The following situ-ations are not considered to be noncompliance with REACH pro-gram requirements:

1. Supportive services set forth in the REACH Agreement are guaranteed to those in need of such services; however, if resources necessary to provide supportive services to a participant are un-available to meet that individual's needs, then the individual is tem-porarily excused from participation in REACH (see N.J.A.C. 10:81-14.3(f)).

2. Volunteers as defined at N.J.A.C. 10:81-3.19(f) and 14.3(s) are not subject to sanctioning due to nonparticipation or noncompliance.

3. If the individual is scheduled to participate in more than one REACH activity and a "conflict in scheduling" of those activities results in the participant not being able to participate in the activity, then, noncompliance does not exist in that circumstance. The individ-

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ual shall be excused from participation in the other activity or an alternative activity shall be considered in its place for the individual.

(c) Noncompliance: A participant is deemed to be in noncompliance when he or she refuses a specific referral for initial assessment of employability; a definite offer of training, education or employment; or ceases participation in an assigned REACH activity without good cause. Indications of noncompliance may be reported to the case manager or may become apparent to the case manager during client participation. Indications of noncompliance with REACH program requirements include, but are not limited to, situations in which the participant:

1. Did not attend a REACH evaluation session after one notice has been mailed to the participant and the participant failed to respond without good cause;

2. Did not attend a REACH assessment session after one notice has been mailed to the participant and the participant failed to respond without good cause;

3. Did not cooperate in the development of the REACH Agreement or Employability Plan;

4. Did not sign the REACH Agreement, for circumstances other than those in N.J.A.C. 10:81-14.5(d);

5. Did not make a bona fide application for employment;

6. Did not accept the type of employment agreed upon and specified in the REACH Agreement without good cause;

7. Terminated employment or reduced earnings without good cause;

8. Was discharged from employment for cause; for example, gross misconduct connected with such employment, or failing to meet reasonable job requirements;

9. Did not participate or ceased participation without good cause, in any REACH employment-directed activities;

10. Refused necessary and appropriate supportive services, without good cause, as determined by the agency, which permit participation in REACH activities or employment, without providing alternative arrangements or showing that such refusal will not prevent or interfere with participation;

11. Disrupted a REACH activity or behaved in a manner that constituted a threat or hazard to agency staff or fellow participants; or

12. Failed to appear for a scheduled conciliation conference without good cause, after non-cooperation for any of the above reasons.

(d) Notification to participant for indicated noncompliance: When participant noncompliance for evaluation, assessment or other REACH requirements is indicated, the case manager shall proceed as in (d)1 and 2 below to notify the participant of the indicated noncompliance, the beginning of the conciliation process, and attempt to schedule a conciliation conference in accordance with (f)2.

1. Initial ***evaluation/***assessment of employability: After failure to appear at a scheduled appointment for any step in the initial assessment of employability, the case manager will send Form R-8 ***A***, Conference Letter, ***(Form R-8 or Form R-8s, the OMEGA generated Second Referral Notice in those counties receiving such notice)*** notifying the participant of noncompliance and of the penalty for refusal to comply with the requirements of REACH and the REACH Agreement, and asking the participant to come to the agency for a conciliation conference. In addition, the case manager shall attempt to contact the participant by telephone. If the participant does not contact the case manager within 10 days of the date of the Conference Letter concerning the conciliation conference, then the case manager shall refer the individual for sanctioning.

2. *[Other]* ***REACH*** activities ***beyond initial evaluation assessment***: In instances of noncompliance set forth in (c)1 through 11 above, the case manager will send Form R-8***A***, Conference Letter, notifying the participant of noncompliance and of the penalty for refusal to comply with the requirements of REACH and the REACH Agreement, and asking the participant to come to the agency for a conciliation conference. In addition, the case manager shall attempt to contact the participant by telephone. If the participant does not contact the agency within 10 days of the date of this letter, the case manager will send a second Conference Letter ***(R-8A)***. In addition, the case manager shall attempt to contact the participa by telephone. If after the above attempts to notify the individual f noncompliance, no response is received within 10 days of the da of the second Conference Letter concerning the conciliation co ference, then the case manager shall refer the individual for san tioning.

(e) Good cause for noncompliance: If in any single instance participant is unable to comply, but good cause exists, he or she sh not be deemed to be willfully refusing to comply with the requir ments of REACH or of the REACH Agreement. The participant responsible for providing the necessary information so that a goc cause determination can be made. ***The case manager shall indica in writing in the case record the good cause reason for nonparticipati in REACH by the individual.*** Good cause for failure to participa in the REACH program, or refusal to accept employment, shall t found if:

1. The individual is the parent or other relative personally provi ing care for a child under age six and the employment would requi such individual to work more than 20 hours per week;

2. The acceptance of the job would result in the family of th participant experiencing a net loss of cash income. Net loss of cas income results if the family's gross income, less necessary actu work-related expenses, is less than the AFDC cash benefit the famil would receive at the time the offer of employment is made. Gro income includes, but is not limited to, earnings, unearned income an the AFDC cash benefit as determined in the calculation proce delineated at N.J.A.C. 10:81-14.21(e). If payment for the family child care costs is met by direct payments through REACH to th provider of care, or if child care costs are met through the child ca disregard procedure and the agency supplements the cost of care ov the disregard limits, then good cause does not exist;

3. The mandatory participant is physically or mentally unable t engage in such education, training or employment;

4. The mandatory participant is unable to get to and from th particular educational facility, training or employment by availabl transportation;

5. The conditions of education, training or employment are a ris to the individual's health and safety;

6. Conditions violate the rights of the participant or applicabl law;

7. Homelessness of the individual's family; or

8. The totality of circumstances surrounding the participant' ability and willingness to comply with the participation requirement prevent or seriously impair participation. Such circumstances beyon the participant's control are often short-term situations such as, bu not limited to, inclement weather, breakdown of transportation and or child care arrangements, short-term illness requiring a doctor' care, a family emergency, temporary loss of driver's license or in surance only when no other transportation is available. These circum stances shall be reviewed on a case by case basis.

(f) Conciliation: In most circumstances, before a decision is mad to impose a sanction for noncompliance, a series of remedia procedures, the conciliation process (see N.J.A.C. 10:81-14.5(d)4 fo REACH Agreement conciliation) shall be initiated to resolve mis understandings or disagreements concerning noncompliance situ ations delineated at (c)1 through 11 above. *[Either the participan or the case manager can request that conciliation be initiated.]* ***Th purpose of this process is to assist the participant in complying wit the requirements of REACH and the REACH Agreement before an decision is made to impose a sanction for noncompliance. The concilia tion process is time-limited (not to exceed 30 days to allow for receip of and response to Conference Letter(s) as delineated above) and ma be initiated by the participant or in most circumstances by the cas manager. Usually, the conciliation process begins with the case manage notifying the participant by telephone and by mailing the Conferenc Letter (Form R-8A or R-8) as described above, identifying the non compliance and explaining to the individual the consequences of continued failure to participate. If the individual does not respond to th Conference Letter(s) within the timeframes specified in the notificatio procedures above, then the case manager shall refer the individual t income maintenance for sanctioning. Otherwise, the case manager, onc contacted by the individual, proceeds with the conciliation process.***

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1. Noncompliance is not by itself sufficient reason to impose sanctions but is sufficient for the case manager to initiate the conciliation procedures set forth below:

i. Notifying the participant of the details of the indicated noncompliance in writing ***(Conference Letter—Form R-8 and Form 8A)*** and attempting to contact him or her by telephone (see (d) above);

ii. Conducting one or more face-to-face conferences between the individual and the case manager (see (f)2 below);

iii. Reviewing with the individual his or her rights and responsibilities under REACH and informing him or her of the consequences of continued failure to participate;

iv. Deciding whether the participation requirements in the REACH Agreement should be amended, whether a change in the participant's status is warranted, and/or whether changes in support services or participant referral should be made;

v. Making a determination of whether "good cause" for noncompliance exists;

vi. Determining, based upon all available information, whether the individual has "willfully refused" to comply with REACH requirements without good cause, or is likely to do so in the future. The case manager may infer willful refusal and a likelihood that the willful refusal will be repeated in the future from the participant's past conduct and the other facts and circumstances of a case, provided that there is substantial and reasonable basis for such an inference; and

vii. Documenting conciliation efforts in the individual's case record, including copies of all notices.

2. Conciliation conference: Prior to initiating a sanction, the case manager shall attempt to conduct a conference with the REACH participant to discuss the participation requirements and circumstances surrounding nonparticipation. ***Conferences are scheduled as stated in the Conference Letter (R-8, R8s or R-8A). The individual shall contact the case manager if the scheduled date in the notice is not convenient.*** If the individual, who has agreed to a conciliation conference after noncooperation for any of the reasons set forth at (c)1 through 11 above, fails to appear for the scheduled conference without good cause, then the individual shall have *[ten]* ***10*** calendar days beyond that previously scheduled date to meet with the case manager or the case manager shall refer the individual for sanctioning.

i. During the conference, the case manager shall make an assessment of the circumstances surrounding the individual's noncompliance, including possible personal problems. Where personal problems, such as substance abuse or behavioral problems are indicated, the case manager shall refer the individual for social services (see N.J.A.C. 10:81-14.4(h) and 14.16).

ii. The case manager shall be alert to possible discontinuities in support services that have led to noncompliance, and shall attempt to remedy the situation and arrange for the needed services. If a needed support service is not available and the participant otherwise indicates willingness to participate, the case manager may excuse the individual from participation in REACH (see N.J.A.C. 10:81-14.3(e)).

iii. The case manager shall review the REACH Agreement and participation requirements with the individual to clarify and reinforce REACH program expectations. The participant shall be given a final opportunity to comply. Compliance is defined as participation in employment or the REACH employment-directed activity as set forth and scheduled in the REACH Agreement, or alternatively, participation in another employment-directed activity specified by the case manager or with other REACH participation requirements (for example, participating in evaluation or assessment).

(g) Decision whether to impose sanction: No participant shall be subjected to a sanction if it appears, through the conciliation process, that he or she is willing to comply with participation requirements. ***However, if the case manager receives no response to Conference Letter(s) mailed, or telephone attempts made to contact the individual within the time requirements specified above, then the case manager shall take action to have the sanction imposed; but, it is important to note that the reason for the sanction in such cases is not based merely on the failure of the individual to respond, but rather, on the indicated noncompliance (for example, did not attend REACH assessment session).*** Sanctions shall be imposed only in cases where the case manager finds that there has been *[a]* ***an inference of*** willful refusal without good cause to comply with REACH program requirements or the REACH Agreement.

1. Inference of willful refusal: The case manager may infer willful refusal from the participant's past conduct and the other facts and circumstances of a case, provided that there is substantial and reasonable basis for such an inference.

2. Inability to comply: If in any single instance a participant is unable to comply but good cause exists, he or she shall not be deemed to be willfully refusing to comply with the requirements of REACH or the REACH Agreement.

(h) Imposition of the sanction: Sanctions will be imposed if a mandatory REACH participant has willfully refused to comply with the requirements of REACH or the REACH Agreement. The case manager shall advise the participant at the time of referral for imposition of a sanction, orally if possible, and in writing, as delineated in (d) above that the participant can voluntarily remove the sanction by coming into compliance with requirements of the REACH program and Agreement before the sanction period begins. If a mandatory participant complies with REACH program or Agreement requirements before the sanction period begins (see (h)2i below), any sanction proceedings which had been initiated shall cease.

1. If, after reasonable efforts by the case manager to notify the participant of noncompliance and request for conciliation conference (see (d) above), the individual still does not comply with REACH participation requirements, or if the participant has not contacted the agency within 10 calendar days of the date of the last Conference Letter ***(R-8, R-8s, R-8A)***, and the individual has not been reached by telephone, the case manager may infer this action as willful refusal to comply and shall end the conciliation process. The case manager shall notify the income maintenance worker of noncompliance via Form R-3, REACH Referral *[Form]* ***to IM***, or an alternative agency form to initiate sanctioning proceedings. The income maintenance worker shall take immediate action regarding AFDC eligibility and grant amount, subject to timely and adequate notice, and shall inform the case manager of the actions taken*[.]* ***on manual Form R-3, REACH Referral Form. The IM worker shall include the reason for action indicated on the FAMIS 105 document and the effective date of the sanction in the comments section of the Form R-3.***

2. Effective date of sanctions: The sanction periods in (k) below shall become effective on the first day of the first payment month after the month the decision is made to impose the sanction, subject to timely and adequate notice.

i. If a mandatory participant complies with REACH program or Agreement requirements before the sanction period begins, the case manager shall notify the income maintenance unit supervisor via Form R-3***A***, REACH Referral *[Form]* ***to IM***, or an alternative agency form, that the individual shall not be sanctioned. IM shall take appropriate action and ensure restoration of correct grant amount, if necessary.

3. Appeals: Any appeals resulting from sanctioning for noncompliance with REACH program requirements will be handled according to established procedures for fair hearings (see N.J.A.C. 10:81-6). Eligibility for continued ***AFDC*** benefits at an unreduced level shall be determined in accordance with N.J.A.C. 10:81-6.9. Provisions at N.J.A.C. 10:81-14.5(d) and 14.7(a) will also apply. Agency records of all conciliation efforts ***(including Form R-7, Record of Application of Sanction Procedures),*** shall be made available to the Administrative Law Judge should a fair hearing be requested by the participant.

4. A participant who has been sanctioned has the right to review personally, or through a representative, his or her entire file at any time during regular business hours.

(i) Sanctions: The following sanctions shall apply for failure or refusal to comply with REACH requirements (see (k) below for duration of sanction periods):

1. AFDC-C: If the mandatory participant is a caretaker relative receiving AFDC benefits, including a stepparent designated as an

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essential person, his or her needs shall not be taken into account in determining the family's eligibility or amount of assistance. The AFDC grant shall be provided in the form of protective or vendor payments (see N.J.A.C. 10:81-4.5), except that, if after making all reasonable efforts, the CWA is unable to locate an appropriate individual to whom protective payments can be made, the CWA may continue to make payments on behalf of the remaining members of the eligible family to the sanctioned caretaker relative.

i. Sanction for voluntary cessationof a job or non-acceptance of a bona fide offer of employment, AFDC-C: If the parent or other caretaker relative who is required to participate in REACH (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 REACH 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 in accordance with the work/training sanction periods below. The penalty for failure or refusal without good cause shall continue until such time as the individual demonstrates willingness to cooperate as described below.

2. AFDC-F: If the mandatory participant is the principal earner (see N.J.A.C. 10:81-3.18(a)), that individual's needs shall not be taken into account in determining the family's eligibility for AFDC and the amount of the assistance payment. The needs of the second parent also shall not be taken into account in determining the family's eligibility for AFDC and the amount of the assistance payment, whether or not he or she would otherwise be exempt, unless that second parent is participating ***or agrees to participate*** in REACH. This penalty reflects the mutual obligation of both parents to support their dependent children; therefore, if one parent is not participating, the other is obliged to do so. The penalty is not imposed on the dependent children.

i. Employment Criteria for AFDC-F: 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 REACH 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 reduce 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 REACH) shall be deleted in the determination of eligibility and in the calculation of the AFDC-F assistance payment in accordance with the work/training sanction periods below. 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.

3. AFDC-N: Noncompliance with the mandatory participation requirements of REACH by the principal earner will result in both parents being deleted from the eligible family.

4. If the mandatory participant is the only dependent child in the AFDC-C or -F segment, only the needs of the dependent child are removed in the determination of the family's eligibility for AFDC and the amount of the assistance payment; the caretaker relative(s) may continue to receive AFDC-C or -F benefits if otherwise eligible. If the mandatory participant is the only dependent child in the AFDC-N segment, the family becomes ineligible for assistance.

5. If the mandatory participant is one of several dependent children in the AFDC-C, -F, or -N segment, that child's needs shall not be taken into account in determining the AFDC grant of the eligible family.

6. If a sanctioned individual reapplies for AFDC but the sanction period has not expired, the individual will remain ineligible for AFDC for the entire sanction period or until the failure to comply ceases, whichever is longer. In determining entitlement of the remaining eligible family members to assistance, (i)1 through 5 above shall apply.

i. Example: A mandatory participant is sanctioned for six payme months, effective January 1 through June 30. Effective February the remaining AFDC family members become ineligible for a sistance due to excess resources. The family spends the excess r sources and on April 1 reapplies for AFDC. The sanctioned indivi ual will remain ineligible for AFDC through at least June 30. AFD entitlement of the remaining family members for April 1 will b determined in accordance with (i)1 through 5 above.

7. If a sanctioned individual satisfies exemption criteria after th sanction period has begun, the individual shall remain in sanctio status for the full length of the imposed sanction period. Eligibili for assistance may be reestablished at the end of the sanction perio based on the individual's circumstances and willingness to participa with REACH program requirements.

8. Eligibility of sanctioned individuals for Medicaid: An adu individual sanctioned for noncompliance with REACH loses cate orical eligibility for Medicaid under Federal JOBS requirement: However, in New Jersey, the individual remains eligible for Medica ***so long as other Medicaid eligibility criteria are met***. Children 1 to 18 years old who are sanctioned for noncompliance with REAC will continue to be eligible for Medicaid so long as there are othe children in the family eligible for AFDC (all segments).

(j) Sanctions for voluntary cessation of employment, AFDC-N The following additional sanctions shall apply in AFDC-N segme cases. If financial eligibility is the result of voluntary cessation c employment within 90 days prior to the date of application or at an time during receipt of assistance, the following shall apply:

1. Applicants: If financial eligibility is the result of voluntary cessa tion of employment (including cessation of employment due to inap propriate work habits) by either of the applicant parents, regardles of reason, within 90 days prior to the date of application, neithe of the parents shall be included in the eligible family. This penalt shall extend for a period of 90 days beginning with the date of th termination of employment. However, eligibility shall be considere for the children.

i. At the end of the penalty period, the parents may be grante assistance so long as eligibility continues to exist.

2. Recipients: If an employed principal wage earner voluntaril ceases employment for whatever reason without good cause, bot parents' needs shall be deleted in the determination of eligibility an in the calculation of the assistance payment under AFDC-N. Refusa of an unemployed principal wage earner to accept a job or training without good cause, will likewise result in both parents being delete from the eligible family in accordance with the work/training sanc tion periods at (k) below.

3. The parent, determined to be the principal wage earner for th family as delineated in N.J.A.C. 10:81-3.18(a), shall be promptl referred to the State Employment Service, New Jersey Departmen of Labor.

(k) Sanction periods: The following sanction periods shall appl for noncompliance with the REACH program requirements or th REACH Agreement (or TEEN PROGRESS, if applicable) withou good cause:

1. For the first instance of willful refusal to comply with REACH program requirements, the sanction period shall continue for on payment month or until the failure to comply ceases, whichever i longer.

2. For the second instance of willful refusal to comply wit REACH program requirements, the sanction period shall continu for three payment months or until the failure to comply ceases. whichever is longer.

3. For the third and subsequent instances of willful refusal t comply with REACH program requirements, the sanction period shall continue for six payment months or until the failure to comply ceases, whichever is longer.

4. Continued noncompliance with REACH program requirements or the REACH Agreement after expiration of the sanction period will result in continued sanction.

(l) Renewed participation after the sanction period: Individuals who are sanctioned may again participate in REACH (or TEEN PROGRESS) after the expiration of the sanction period, upon appli-

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ıtion and indication to the REACH case manager of willingness participate.

1. For the first occurrence, such individuals may again participate 'ter one payment month has elapsed since the effective date of the .nction.

2. For the second occurrence, such individuals may again partici- ıte after three payment months have elapsed since the effective date f the sanction.

3. For the third and subsequent occurrences, such individuals shall ɜ reaccepted into the REACH program when satisfactory evidence f willingness to participate is given, and six payment months have apsed since the effective date of the latest sanction.

(m) Determining when failure to comply ceases: The individual ıay again participate after completion of the respective sanction eriod in accordance with (1) above. The case manager shall de- ɜrmine the date that failure to comply ceases, based on a demon- :rated willingness by the individual to participate in the REACH rogram after the applicable sanction period has ended. The date that ıilure to comply ceases is determined as follows:

1. The individual shall agree to comply with either the activity in 'hich he or she previously was engaged or another activity which ; determined appropriate for the individual. In order to demonstrate 'illingness to comply, the individual shall participate for a period f up to two weeks as determined by the case manager, based on he particular requirement to be satisfied and individual case circum- tances.

i. If the individual successfully participates in the activity for the eriod of time required to satisfy the REACH requirement, the ınction shall cease as of the day the individual agrees to participate.

(1) Example: If a sanctioned individual ***whose sanction was sched- led to end on January 31,*** agrees on February 3 to participate by ttending a scheduled REACH evaluation session and successfully ompletes the activity by attending that session, the individual's anction will end as of February 3, the date the individual agrees o participate, and therefore the date the noncompliance ceased.

(2) Example: A sanctioned individual ***whose sanction was sched- ıled to end on March 31,*** agrees on April 6 to participate by attend- ng group job search. During that week and the following week, the ndividual attends the group on the required days of participation. Since the participant demonstrates a willingness to comply, the sanc- ion shall end as of April 6, the date the individual agrees to partici- ɔate and therefore the date the noncompliance ceased.

ii. If no activity is available for the individual, the sanction shall :ease on the day he or she agrees to participate.

iii. If the individual fails to participate during the trial period, the ;anction will continue until such time as he or she successfully dem- ɔnstrates a willingness to participate with REACH requirements and :eases the noncompliance.

2. *[The portion of]* ***At such time that the case manager de- :ermines that the failure to comply ceases, case management shall notify ncome maintenance via Form R-3A to lift the sanction and to calcu- ıate*** the assistance payment for the individual *[shall be calculated]* 'or the month of reinstatement back to the date the individual agrees to participate and therefore the date the noncompliance ceased based ɔn the procedures set forth at N.J.A.C. 10:82-2.2(a)1. ***Income main- tenance shall likewise inform the case manager via Form R-3 that the individual was reinstated.***

3. During the trial period of participation, the individual shall be eligible for child care and supportive services which the case manager determines are necessary for participation.

(n) The agency will remind, in writing, any individual whose fail- ure or refusal to participate in REACH has continued for three months of the individual's option to end the sanction. *[The notice shall advise that:]* ***Form R-15 REACH Sanction Reminder Notice, shall be used to inform the 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 the R-15 are the same as those recorded on the PA-15, Notice of Adverse Action, at the time the individual was sanctioned for noncompliance with REACH requirements. For those individuals in a six-month sanction period, the date to be entered on Form R-15 shall be the first day of the month following the last day of the sanction period. For example, if the sanction period time frame is June 1 through November 30, then the date entered on Form R-15 is December 1. Income maintenance shall inform case management of the action by sending Form R-3 with a copy of the notice attached (Form R-15).***

1. Any individual wishing to end the sanction must contact the case manager (indicated on the R-15). At such time that the case manager determines that the failure to comply ceases, case management shall notify income maintenance to lift the sanction and to calculate the 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 the three respective sanction periods, one month, three months and six months. In situations where individuals in the one-month or three-month sanction periods neglect to contact the agency concerning their eligibility re- instatement for AFDC benefits at the end of the sanction period, and the sanction has continued for at least three months, those individuals shall be notified via Form R-15.

3. The R-15 advises that:*

*[1.]****i.*** The individual may immediately terminate the first or second sanction by participating in the program or accepting employ- ment; and

*[2.]****ii.*** The individual may terminate any subsequent sanction after six months have elapsed by participating in the program or accepting employment.

(o) The IM worker shall advise the IV-D unit when a REACH sanction is imposed or lifted to avoid communicating the wrong case status information to the family, to ensure that no conflict exists with a possible concurrent IV-D sanction concerning family members. ***Likewise, case management shall be advised by IM of action taken to impose sanctions (both IV-A, and IV-D) on individuals in REACH.****

1. If a family member is sanctioned for IV-A or IV-D related reasons, then that individual cannot participate in REACH activities for the duration of the sanction period.

10:81-14.10 REACH job search ***component***

(a) Purpose and scope: The purpose of REACH job search ***com- ponent*** is to reduce welfare dependency by assisting individuals in obtaining regular unsubsidized full-time employment of not less than 30 hours per week. The REACH job search *[program]* ***component*** may include different job search activities or impose different participation requirements based on an individual's characteristics and local job availability conditions.

1. The Department of Human Services, Division of Economic Assistance, the agency designated in the State Plan for Title IV-A to supervise the AFDC program, shall supervise the REACH job search program.

2. Job search is an employment-directed activity (EDA) in which mandatory and voluntary participants engage in activities with the immediate goal of obtaining full-time employment. It is geared to the individual participant's needs and local job market conditions and may serve participants in either group or individual job-seeking activities, or in a combination of both methods. Group job search shall be used as much as possible over individual job-seeking/job search activities.

3. Job search activities include referrals to potential employers, the provision of employment counseling, information dissemination and moral support. Group job search is a group setting where participants are taught job-seeking skills, and which may include a phone bank from which participants contact potential employers.

(b) Eligibility: All REACH participants may participate in REACH job search. Participation in REACH job search may be postponed while an individual is participating in another REACH employment-directed activity, including a social service component (see N.J.A.C. 10:81-14.4) or educational component of REACH.

1. Job search is an appropriate activity for job ready individuals who have basic workplace skills and experience applicable to the labor market. Job search for those who are skills deficient shall be coupled with other educational and training activities based on the needs of the individual.

(c) Job search participation: Participation in ***the*** job search ***component*** is subject to the following requirements and limitations:

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1. Job search requires that an individual participate for an equivalent of at least 20 hours per week for Federal participation purposes.

2. The individual may participate in job search ***for Federal participation purposes*** as a component of REACH for participation purposes, for a period of eight weeks in any period of 12 consecutive months.

3. Participation in job search beyond the eight week participation period is permissible. However, participation in job search beyond this compulsory ***eight-week*** timeframe is an unmatchable REACH activity for FFP purposes. In order to claim FFP, the individual must participate in another REACH component (such as education or training) and the job search activity becomes part of that other REACH component. FFP is available for administrative and supportive service costs of the job search-related portion of the other approved REACH component. ***Participation in the Job Search component beyond the Federal eight-week limit, as a REACH activity component, is State funded only.***

4. Should an individual leave AFDC, upon filing a new application (re-opened case), he or she becomes eligible for a new eight week job search participation period.

(d) Assignment to job search activities and the duration of the activities will be based on individual employability potential and geographic location. The minimum requirement for participation in REACH job search is at least 20 hours per week.

(e) Additional job search requirements: The following additional requirements apply to participation in REACH job search activities.

1. Job contacts: A job contact is defined as a contact with a prospective employer. The county selected entity may assist the participant by providing a list of employers. The following apply to job contacts:

i.-iv. (No change.)

v. Reporting job contacts: The participant will be required to report the result of all job contacts to the county selected entity at a prescheduled time. The time may vary with the job search participation requirements set forth in the REACH Agreement.

(1) (No change.)

vi. County selected entity review of job contacts: The county selected entity 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 REACH Agreement.

vii. (No change.)

2. (No change in text.)

3. Review of job search: The county selected entity shall review the individual's participation in job search, and determine if participation in job search should continue or if assignment to another REACH employment-directed activity is appropriate. If reassignment is appropriate, the county selected entity must notify the case manager so that the REACH Agreement may be updated.

(f) (No change.)

10:81-14.11 REACH Work Supplementation Program

(a) Purpose and scope: Under the REACH Work Supplementation Program (WSP), AFDC funds are used to develop and subsidize employment for REACH participants as an alternative to aid provided to AFDC recipients.

1. Under WSP, REACH participants may choose, on a voluntary basis, to accept an offer to work to the extent such jobs are made available through the REACH program.

(b) (No change.)

(c) Eligibility: Mandatory and voluntary REACH participants are eligible to participate in the WSP if they are eligible for AFDC. Placement in WSP is defined as the date on which the agency and the employer agree on the terms of the placement and on the specific individual to participate.

1. (No change.)

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

(f) Conditions of employment: The following provisions apply to conditions of employment under REACH WSP:

1. (No change.)

2. The county selected entity is not required to ensure that eligible individuals filling job positions provided by other entities under WSP be granted employee status by such entity during the first 13 we during which they fill such position. Employee status confers on individual the benefits available to regular employees of that e ployer (for example, insurance coverage and vacation leave).

3. (No change.)

4. No WSP participant can be assigned to fill any establish unfilled position vacancies at the site of employment.

(g) Application of AFDC earned income disregards under WS The application of earned income disregards as set forth at N.J.A 10:82-4.4 pertains to WSP participants. (See N.J.A.C. 10:81-14.21 for calculation of AFDC grant under WSP.) A WSP case with earn income is computed the same as any other AFDC case with earnin

1. The $90.00 work expense disregard shall apply to earned inco of WSP participants.

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

4. The child care disregard is not applied to WSP earned incor Payment for child care will be made directly to the provider as vendor payment as set forth at N.J.A.C. 10:81-14.18.

(h) Explanation of WSP: Individuals may remain in REACH WS for up to a lifetime participation limit of nine cumulative montl While in WSP status, the participant is in a subsidized job as alternative to AFDC. During WSP participation the calculated gra received by the individual, if any, is termed a residual grant. T residual grant is determined at the time of placement in the su plemented job. The residual grant (AFDC) grant monies for t family size minus earnings and other countable income) is r calculated on a monthly basis based on information supplied by t individual on the monthly status report.

1. If the individual becomes otherwise ineligible for AFDC be efits (such as youngest dependent child reaching the AFDC a limits), the individual shall continue in the WSP job until the WS contract expires. All monies from the AFDC grant for those indivi uals are diverted to the WSP wage pool. Becuase of contractu arrangements with the employer, changes which render an individu ineligible for AFDC, such as a change in family composition, do n render them ineligible to continue in WSP.

2. If more than one individual in the family unit is participatir in WSP, the amount of the Federal reimbursement to the State wi not exceed the AFDC standard allowance for that family (s N.J.A.C. 10:82-1).

3. A REACH participant shall not simultaneously participate i WSP and in OJT. No one is allowed to be in both components the same time.

4. A WSP participant is eligible for supportive services as a partic pant in REACH. Since the participant is working, he or she is treate as any AFDC individual who finds employment. The individual ma be eligible for the JOB and CAR allowances as set forth at N.J.A.C 10:81-14.19. Transportation costs are covered through the $90.0 work expense disregard. Child care payments for necessary child car services will be made directly to the child care provider as set fort at N.J.A.C. 10:81-14.18.

5. Medicaid coverage is provided for the duration of the WS contract to the participant and family members so long as the famil remains eligible for AFDC. If the family loses eligibility for AFDC the family may be eligible for extended Medicaid benefits as set fort at N.J.A.C. 10:81-14.20.

6. If the family loses AFDC eligibility during the WSP contrac the individual would continue participating in REACH; howeve child care payments after loss of AFDC eligibility shall be treate as post-AFDC child care benefits if the individual meets those re quirements set forth in N.J.A.C. 10:81-14.18. After fulfilling the WS contract, the individual shall be eligible for post-AFDC child car benefits for the number of months remaining in the 12-month post AFDC period.

(i) (No change in text.)

10:81-14.12 REACH Community Work Experience Program

(a) Purpose and scope: The purpose of the REACH Community Work Experience Program (CWEP) is to provide work experience for AFDC recipients when and to the extent that such experience is necessary to enable them to adjust to and learn how to function in an employment setting. A participant shall not be placed in a

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WEP position simply to give him or her employment when the rticipant is fully qualified and able to engage in unsubsidized ployment but is unable to do so because of the absence of available bs. The REACH CWEP will operate community work experience ograms which serve a useful public purpose.

1.-2. (No change.)

3. Allowable costs to operate REACH CWEP are matched by the deral government.

(b) (No change.)

(c) Participation services and reimbursement: The services of child re and transportation that are necessary to CWEP participation ill be provided as part of the REACH Agreement. In cases where e county selected entity is unable to provide these necessary ser-ces, the county selected entity must provide reimbursement for cessary transportation and child care costs that are incurred by the cipient and directly related to participation in CWEP.

1. (No change.)

2. Child care costs: Participants shall be reimbursed for child care sts in such amounts as are determined by the CWA to be reason-ble, necessary, and cost-effective***, or by direct payment to the child are provder***. Rates are determined on a Statewide basis through alysis of costs incurred for special needs care, full day care, before nd after school care and summer rates for programs for school-age ildren as set forth at N.J.A.C. 10:81-14.18. However, in no event all the reimbursement using CWEP funds exceed the earned income ild care disregard limits set forth at N.J.A.C. 10:82-4.4 for full-nd part-time participation in CWEP.

3.-4. (No change.)

(d) (No change.)

(e) Participation requirements: The following additional partici-ation requirements shall apply to CWEP:

1. (No change.)

2. Maximum monthly participation: No eligible family may be quired to participate in CWEP (as employment or training or both) ore than the number of hours which would result from dividing e family's monthly grant amount by the Federal minimum wage. he child support collection assigned to the CWA minus the $50.00 ass-through, which represents a portion of the recipient's assistance ayment, is deducted from the standard allowance (see N.J.A.C. 0:82-1) before computation of the maximum number of hours that he individual is required to participate in CWEP.

3. Coordination of CWEP with other activities: The county must ave procedures under which there is coordination among CWEP, he job search program and other REACH employment-directed ctivities, to ensure that job placement will have top priority over articipation in CWEP, and that individuals eligible to participate n more than one program under REACH are not denied AFDC on he grounds of failure to participate in one such program if they are ctively and satisfactorily participating in another.

4. Nothing in this section shall be construed as authorizing the ayment of AFDC as compensation for work performed nor shall participant be entitled to a salary or to any work or training xpenses provided under any other provision of law by reason of the ndividual's participation in a CWEP program.

5.-6. (No change.)

7. Reevaluation of CWEP participation: Participation in CWEP hall be reevaluated at least once every three months and at the onclusion of each CWEP assignment by the case manager to de-ermine if CWEP and the specific worksite are still appropriate for that individual. The agency shall provide a reassessment and revision, as appropriate, of the individual's employability plan.

(f) (No change.)

(g) Project requirements: REACH CWEP projects must satisfy all of the following requirements:

1. Serve a useful public purpose in fields such as health and social services, environmental protection, education, urban and rural de-velopment and redevelopment, welfare, recreation, public facilities, public safety and day care;

2.-5. (No change.)

(h) Project assignment criteria: Assignment of participants to REACH CWEP projects must conform to the following:

1. Assignments to REACH CWEP projects will take into consider-ation to the extent possible the prior training, proficiency, experience and skills of a participant;

2. Participants will not be assigned without their consent to pro-jects which require that they travel unreasonable distances from their homes or remain away from their homes overnight; and

3. After an individual has been assigned to a CWEP position for a total of nine months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the Federal minimum wage, or the rate of pay for individuals employed in the same or similar occupations by the same employer at the same site, whichever is higher.

i. The portion of a recipient's aid for which the State is reimbursed by child support collection (minus the $50.00 pass-through) shall be excluded in determining the number of hours that such individual may be required to work.

10:81-14.13 Vocational assessment and counselling

(a) (No change.)

(b) Parent with a child under age two: A special vocational assessment and counselling component may be required for any parent who is exempt from participation in REACH due to care of his or her child under age two. The REACH orientation may be used to satisfy this requirement.

1. Exempt REACH participants will be encouraged to participate in employment and/or employment-directed activities and to develop individual plans for economic self-sufficiency. REACH Agreements developed under this component will conform to N.J.A.C. 10:81-14.4.

2. (No change.)

10:81-14.14 REACH employment and training services

(a) (No change.)

(b) On-the-job training: REACH on-the-job training (OJT) is an employment opportunity which includes training. Under this compo-nent, a REACH participant is hired by a private or public employer and provided training which is subsidized under agreement between the employer and the county-designated provider agency. At the end of the OJT as established in contracts between the IV-A agency and the employer, the participant shall be retained by the employer as a regular employee if the individual has made satisfactory progress during the OJT contract period.

1. Employers will provide increased supervision and training through agreements with the provider agency, pursuant to which the provider agency will reimburse the employer for the extraordinary costs of such training and supervision. The agency shall monitor the satisfactory progress of the individual in the OJT assignment for an increase in a participant's skills and competencies.

i. Payments to an employer for on-the-job training shall not exceed 50 percent of the wages paid by the employer to the participant during the period of such training.

2. (No change.)

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

4. Wages paid to participants in OJT are considered to be earned income for purposes of these provisions.

5. If a participant in OJT becomes ineligible for AFDC pursuant to the rules applicable to earned income or pursuant to the 100-hour rule in the case of a principal earner in an AFDC-F case, he or she shall remain a REACH participant for the duration of the OJT contract.

i. If the family loses AFDC eligibility, they may be eligible for appropriate supportive services available to individuals with earned income (including the JOB and CAR allowances). Transportation costs shall be paid from the $90.00 work expense disregard.

ii. Child care benefits may continue to the end of the OJT contract period. If the family loses AFDC eligibility while participating in OJT; the individual would continue participating in the OJT, how-ever, child care payments after loss of AFDC eligibility shall be

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treated as post-AFDC child care benefits if the individual meets those requirements set forth in N.J.A.C. 10:81-14.18. After fulfilling the OJT contract, the family shall be eligible for post-AFDC child care benefits for the number of months remaining in the 12-month post-AFDC child care period.

iii. When the family loses eligibility for AFDC, they may be eligible for extended Medicaid. Post-AFDC Medicaid coverage shall begin with the first month subsequent to the loss of AFDC eligibility subject to timely and adequate notice requirements. Individuals participating in OJT are eligible for Medicaid so long as the individual remains eligible for AFDC.

6. (No change in text.)

(c) (No change.)

10:81-14.15 REACH educational services

(a) (No change.)

(b) The following educational services are available through the REACH program:

1. Preparatory educational services: Preparatory educational services are those designed to remedy educational deficiencies and to provide a REACH participant with the basic skills for entry to the labor market. A high school diploma, ability to speak and understand the English language, literacy, and miniumum competency in basic mathematics and writing skills are desirable for increasing employability potential. Preparatory educational services include the following:

i.-ii. (No change.)

iii. Adult Basic Education (ABE) programs for individuals who lack basic competency in reading, writing and mathematics necessary for achieving the basic literacy level or obtaining employment.

(c) (No change.)

10:81-14.17 REACH supportive services: general provisions

(a) Purpose and scope: The agency shall pay for or reimburse the costs of transportation and other work/training-related supportive services through REACH, if the case manager determines that such services are not provided through existing resources and those services are necessary for an individual to participate in REACH. REACH supportive services are intended to supplement, not supplant, existing programs and resources available to the REACH participant. The services set forth at N.J.A.C. 10:81-14.18 through 14.20 are available to support REACH participation in employment and employment-directed activities (including the initial assessment of employability) under the principle of mutual obligation.

(b)-(d) (No change.)

10:81-14.18 REACH 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 particpate in a REACH employment-directed activity (including job search by an AFDC applicant) or to complete the initial assessment of employability, REACH child care is available***, 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) 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 county welfare agency based on a determination by a physician or a licensed or certified psychologist; and who would be a dependent child, if needy; *[and]*

(2) A child 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

*[(2)]***(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.

ii. Payments through the REACH program for child care shall n be made for care provided by ***the child's own*** parents, legal guar ians, or members of the ***participant's*** AFDC family unit (includi essential persons) ***whose needs are met through AFDC benefits the basis of their responsibility of caring for the child(ren)***.

2. Child care arrangements: The case manager, the participar and the lead child care entity will mutually arrange for child ca for the REACH participant's child(ren) while the individual is er ployed or participating in an employment-directed activity, as s forth in the REACH Agreement. Additional responsibilities of tl case manager and lead child care entity are set forth in (h) and below.

i. Child care arrangements shall be in the best interests of the chi and shall consider the individual needs of the child, including tl reasonable accessibility of the care to the child's home and schoc and the appropriateness of the care to the age and special needs the child.

ii. Child care arrangements shall be ***agreeable to the participa and*** located within reasonable commuting distance from the partic pant's home, place of employment or site of employment-directe activity. The hours provided ***or claimed for reimbursement a reasonably related to the hours of participation or employment and** shall be sufficient to accommodate the hours required by the en ployer or employment-directed activity. *[The arrangements, inclu ing the site, must be agreeable to the participant.]*

iii. The entity providing child care shall allow parental access

iv. Child care arrangements shall meet applicable standards State and local law.

3. County responsibilities: Each county, as delegated to the ca manager or lead child care entity, shall:

i. Inform families requesting REACH child care benefits of the rights and responsibilities;

ii. Respond to a request for REACH child care benefits withi a reasonable period of time; and

iii. *[Provide the caretaker relative the opportunity to choose th type of child care arrangement from among all those]* ***Assist th caretaker relative to explore all types of child care*** arrangement authorized for payment through the REACH program*[,]* ***(that is licensed child care centers, registered family day care homes, in-hom care, school-age child care programs, and summer camps) and provid the caretaker relative the opportunity to choose his or her child car arrangement from those available options***, including those other pro grams for which the caretaker relative or child may be eligible unde (a)4 below.

4. Required coordination: Each county shall coordinate REACH child care activities and post-AFDC child care with existing child car resource and referral agencies; with early childhood education pro grams in the county, including Head Start programs, preschool pro grams funded under Chapter 1 of the Education Consolidation an Improvement Act of 1981 (P.L. 97-35), school and nonprofit chil care programs (including community-based organizations receivin funds designated for preschool programs for handicapped children) and with Federal and/or State demonstration programs, such as th Urban Prekindergarten Pilot program, ***the REACH Capital Ex pansion Program,*** the Child Care Plus Demonstration program, an the Mini Child Care Center program.

5. Hearings and notices: AFDC applicants and recipients are enti tled to hearings and notices under the provisions at N.J.A.C. 10:81-6 10:81-7, 10:81-14.7 and 10:90-2.5 on issues concerning the ap propriateness of, denial of, prompt issuance of, or intended action to discontinue, terminate, suspend or reduce REACH child car benefits.

i. Changes in the manner of payment are not subject to timel notice requirements unless they result in a discontinuation suspension, reduction or termination of benefits, or they force change in child care arrangements.

ii. The provisions of N.J.A.C. 10:81-6.9 regarding aid paid pend ing a hearing do not apply. Therefore, if the individual had beer receiving REACH child care benefits and is awaiting a hearing con cerning those benefits because such benefits were reduced, he or sh is not entitled to receive REACH child care benefits at the prio

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reduced level. Benefits shall continue at the determined reduced 'el pending the hearing. If the individual had not been receiving y child care benefits and is awaiting a hearing due to nonreceipt child care benefits, he or she is not entitled to receive any REACH ild care benefits pending the hearing.

6. Refusal of REACH child care and post AFDC child care ben- ts: A mandatory REACH participant may refuse available ap- opriate REACH child care or post-AFDC child care benefits, if ; participant can arrange other child care or can show that such 'usal will not prevent or interfere with participation in REACH employment.

i. Inference of refusal of REACH child care benefits: Refusal of EACH child care benefits may be inferred if the participant does ›t select a child care provider within one month of the date the .rticipant and the case manager or lead child care entity, as ap- opriate, evaluate the participant's child care needs and preference providers and made referral(s) to appropriate child care 'ovider(s).

ii. Inference of refusal of post-AFDC child care: Refusal of post- FDC child care may be inferred if the participant does not request ›st-AFDC child care benefits, that is, fails to respond to Form R-10, EACH Benefit Letter; does not provide the information necessary r determining eligibility and fee amount, including verification of .rnings; does not sign a REACH Agreement for the period of post- FDC child care; or, does not report participation in post-AFDC EACH activities.

iii. Documentation: Refusal of REACH child care benefits and ›st-AFDC child care benefits shall be documented in the case re- ›rd.

iv. In instances where refusal of child care is disputed, it is the sponsibility of the lead child care entity or case manager, as ap- 'opriate, to show that referrals for appropriate care were made, and is the responsibility of the participant to show that he or she ›mplied with the referrals timely and in good faith (see N.J.A.C.):81-14.18A and 18B).

7. The county shall take reasonable precautions to guard against aud and abuse in the funding and provision of REACH child care ;nefits, including following the provisions of N.J.A.C. 10:81-7.40.

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

(d) Duration of payment: REACH child care benefits are routinely vailable to participants for participation in a REACH employment- irected activity for a limited time to bridge the period between articipation in REACH employment-directed activities or between REACH employment-directed activity and employment; for the ost-employment period after commencement of employment that oes not result in ineligibility for AFDC, that is, while a participant employed and receiving AFDC, to supplement as necessary, child are paid by the participant as required by the Social Security Act see (g)4 below); and, after the commencement of employment that esults in ineligibility for AFDC, one year post-AFDC child care, ubject to payment of a post-AFDC child care fee.

Recodify 2. and 3. as 1. and 2. (No change in text.)

3. Bridge child care payments: For a participant who is waiting › enter a REACH employment-directed activity or to start employ- ıent, REACH child care benefits are available to bridge the period etween REACH activities:

i. For a period not to exceed two weeks; or

ii. For a period not to exceed one month ***(defined as five weeks › accommodate calendar months of up to 31 days for operational urposes)*** where child care arrangements would otherwise be lost nd the subsequent activity is scheduled to begin within that period.

4. (No change.)

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

(g) Payment methods: The two methods in the REACH program or issuing payments for child care are vendor payments to the ›rovider and direct payments to the participant.

1. Vendor payments: Vendor payments to providers are the pri- nary method for issuing child care payments in REACH. Under this nethod, a voucher is issued to the child care provider. The provider :ompletes the voucher, lists the hours of care and payment required, ınd returns it to the agency responsible for issuing payment. Upon verification of the ***voucher*** information, the agency issues a REACH child care payment to the provider.

2. Direct payment to participant: 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. (No change.)

4. Employed participants receiving AFDC: For an employed REACH participant receiving AFDC, the actual cost of child care up to and including $175.00 per month per child age two or older and $200.00 per month per child under age two shall be disregarded from the participant's earnings, before that income is used to compute the monthly AFDC grant. Therefore, an employed participant shall pay the first $175.00 or $200.00 ***for each child*** in child care directly to the provider. The amount in excess of $175.00 or $200.00 shall be considered a REACH post-employment child care payment to be issued as a vendor payment to the provider, in accordance with (g) above.

i.-ii. (No change).

iii. The income maintenance worker shall inform the case manager verbally and in writing via Form R-3 REACH Referral Form, or a similar agency developed form, of the participant's eligibility status. The worker shall file a copy of the R-3 (or agency form) in the AFDC case record and forward two copies to REACH case management for filing in the REACH case record and distribution to the lead child care entity. The income maintenance worker, case manager, and lead child care entity must work together to ensure timely receipt by the provider, of the REACH post-employment child care payment.

iv. If the family is prospectively ineligible for AFDC due to the earnings from employment, the AFDC case will be closed and the participant referred for post-AFDC child care benefits in accordance with (e) above.

(1) The period of eligibility for post-AFDC child care is set forth in (e)4, 5 and 6 above.

(2) The income maintenance worker shall notify orally, as appropriate, and in writing, all families whose AFDC eligibility has been or will be terminated for the above reason, of their potential eligibility for post-AFDC child care benefits via Form R-10, REACH Benefit Letter, or a similar locally-developed letter (subject to DEA approval). A copy of the R-10 or similar letter shall be sent to case management as verification that the potential participant has been notified of the post-AFDC benefits and for the possible initiation of the post-AFDC REACH benefits (see (e)2 above for procedures to be followed in such instances).

(3) The IM worker shall code FAMIS with the correct reason code for case closing due to earnings.

(4) Voluntary case closings at the request of the participant shall be explored by the IM worker for the true reason of closing to determine if employment is a possible reason for the voluntary termination of assistance benefits. The IM worker shall contact the participant by phone (if possible) and by sending Form R-10 or a similar locally-developed letter. A copy of the letter shall be sent to case management for possible initiation of the post-AFDC REACH benefits.

(5) As soon as case management receives the Form R-10, the case manager shall contact the participant to advise of available post-AFDC REACH benefits and to ascertain whether the participant needs child care. The case manager shall advise the participant of the need to sign a REACH agreement and provide verification of earnings for extended child care benefits.

v. If an employed participant receiving AFDC pays for child care not approved by the REACH program, the actual expenditures for unauthorized child care shall not exceed the child care disregard limits set forth at N.J.A.C. 10:82-4.4 in the determination of eligibility and in the calculation of benefits. In such circumstances, no supplemental payments for child care are provided through REACH in excess of the disregards.

5. Payments for employed participants receiving AFDC-N: Payments of REACH child care benefits for AFDC-N participants shall be by vendor payment to the provider of service from State REACH funds for actual costs of care up to the maximum rates established by DHS.

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(h) Case manager responsibilities: 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 REACH child care payments. *[The welfare of the children and the quality of their care shall be considered.]*

1. Before the *[one year]* 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 REACH 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 REACH.

(i)-(j) (No change.)

10:81-14.19 *[Reach]* ***REACH*** supportive services: participant allowances (PALs) for transportation and work/training-related expenses

(a) REACH participant allowances (PALs) shall be paid or reimbursed to the participant for costs of transportation and other work/training-related supportive services if the case manager determines that such services are not provided through existing resources and those services are necessary for an individual to participate in REACH. The PALs are allowances to cover expenses incidental to REACH participation or employment. Transportation-related expenses (TREs), allowances for employment-directed activities (EDAs), expenses required to accept or maintain employment (JOBs), REACH cumulative payments for automobile-related expenses (CARs) and the CWEP allowance are the various types of participant allowances, and are detailed as follows.

(b) Transportation-related expenses (TREs): The agency shall provide payment or reimbursement for transportation costs (which includes meals) for participation in training as approved by the case manager, when determined necessary to enable participation in REACH, under conditions specified below. The participant shall be encouraged to make use of his or her available transportation resources.

1. Transportation costs shall be provided for the following:

i. REACH preparation activities: REACH applicants and recipients, in preparation activities such as evaluation, assessment, and REACH Agreement conferences, for the duration of participation in such activities, for costs of transportation that are reasonably necessary for attendance;

ii. Employment-directed activities (EDAs): EDAs include educational and non-educational activities;

(1) Educational activities—training programs or education services: Participants in approved education and training courses preparatory to employment, such as General Education Development (GED), English as a Second Language (ESL), and Adult Basic Education (ABE), job skills training and job readiness activities, for the duration of their participation in such educational programs/services;

(2) Non-educational employment-directed activities: Approved REACH non-educational employment-directed activities, including but not limited to, Job Search and Community Work Experience Programs (CWEP) (see N.J.A.C. 10:81-14.10 and 14.12);

(A) Transportation costs for participation in Work Supplementation (WSP) and REACH On-the-Job Training (OJT) are not covered under this section as those costs are accounted for through the $90.00 work expense disregard of earnings (see N.J.A.C. 10:81-14.11(g) and 14.14(b));

iii. Employment: Payments for transportation for employed individuals are issued only in instances when a participant is starting employment. For such participants, transportation payments may be issued until the first paycheck is received to ease the transition into employment. Those payments shall not exceed one month.

(1) Transportation costs for regularly employed individuals shall not be covered under this section as those costs are accounted for through the $90.00 work expense disregard of earnings (see N.J.A.C. 10:82-2.3(a)2, 2.8(a), and 4.4).

2. Transportation allowances are utilized when such costs are not available from or paid by any other existing funding source and it is determined that a need to help defray such costs exists. REACH remains the payor of last resort, outside of any REACH contracti agreements.

i. In determining necessary transportation expenses, the case ma ager shall consider the most available and economical means transportation based on the accessibility of private and public tra portation from the individual's home to the site of the activity

ii. Transportation allowances shall be provided to the REAC participant during the period of need which may begin with parti pation in the first REACH activity following orientation by inco maintenance, and may end with the receipt of the first paycheck fr employment. However, payment for transportation is based on t actual length of the participation period for the specific activit

3. Transportation allowance: An allowance of up to $6.00 per d ($30.00 per week) may be paid for transportation needs (includi meals as determined necessary for attendance in training). Howev payment shall be the actual cost of transportation/meals incurred the participant. ***The $6.00 per day allowance ($15.00 in special stances) shall not be apportioned between meals and transportation. T allowance is the maximum flat fee amount for those combined expen and as such, the TRE payment is inclusive of both costs (meals a transportation), transportation only or meals only, as applicable to t individual's needs for the REACH activity.*** If actual transportati costs exceed the above limit, a higher amount to cover actual co may be provided up to a maximum of $15.00 per day (up to maximum of $60.00 per week) with the approval of the case manag ment supervisor provided that:

i. The actual cost of the transportation exceeds $6.00 per da

ii. The transportation to be used is the lowest priced transp tation reasonably available and accessible to the participant;

iii. The activity or service needed by the participant is not availat in the vicinity of the participant's home or at a location accessit to the participant by less expensive means of transportation; ar

iv. The county has documented the circumstances, including co of transportation, surrounding the need for the higher TRE in t REACH case record and approval has been given by the supervis of the case manager.

4. Increased transportation allowance for extraordinary situatio Allowances in excess of $15.00 per day (capped, up to a maximu of $60.00 per week) may be provided in extraordinary situatio determined on a case-by-case basis by the case manager. Before county issues allowances in excess of the $15.00 maximum standa ***or $60.00 per week maximum***, the county must have obtain written approval from DEA.

5. Method of payment: Transportation costs are usually dire reimbursement payments made retrospectively to participants. Tran portation costs, however, shall be paid prospectively for sessio involving evaluation and assessment, development of the REAC Agreement, or for the initial two weeks of an activity if the individu is unable to participate without the payment, or requires the payme to cover the expense of New Jersey Transit vouchers for the purcha of discounted monthly passes on bus and rail routes. However, a county has arranged for transportation for participants by mea other than established transportation (through the contracting pr cess) then the participant may request to use that source of transpo tation and direct that his or her transportation allowance be pa directly to the county or the provider of the transportation as vendor payment.

i. Example: A rural county with minimum public transportatio has contracted with a vendor to provide transportation in a specif geographic area for REACH participants from their homes to trai ing and job search sites. To offset the cost of this transportation an to ensure availability of transportation, the participant would reque that the $6.00 per day transportation allowance would be paid direc ly to this vendor. Once the participant completed the activity in th geographic area served by this vendor, he or she would discontin the arrangement ***of payment to the vendor***.

6. Amounts paid to REACH participants for transportation r lated expenses incident to participation in REACH activities a excluded as income for purposes of the Food Stamp Program.

7. Transportation-related expenses (TREs) shall be paid throug OMEGA.

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c) Transportation costs for transporting children to child care ;ilities (TCCs)—Non-REACH, Title IV-A funds: In addition to the ndard transportation allowances for participation in REACH as lineated in (b) above, a Title IV-A transportation allowance may made for actual costs up to the rate of $10.00 per week maximum r child, for the cost of transportation of a REACH participant's ild(ren) to and from a licensed child care center or day camp (see J.A.C. 10:82-5.2(e)1). The payment for the cost of transporting a ɔecial needs" child of a REACH participant to and from the child re site may be authorized through Title IV-A funds for actual costs **p to a maximum of $10.00 per week per child*** as set forth at J.A.C. 10:82-5.2(e)2. Amounts paid for such transportation costs : excluded as income for purposes of the Food Stamp Program. ch payments are made through FAMIS.

(d) $100.00 cumulative allowance for participation in REACH ıployment-directed activities (EDAs): Allowance payments based need up to a maximum cumulative total of $100.00 per eligibility rticipation period (see (g) below) are provided for necessary expen- .ures to permit participation in approved REACH employment- ected activities (EDAs) during the participation period, including ining programs*,* *[and]* educational services ***and non-educa- nal employment-directed activities***. Such payments shall be made preparation of and during participation in the specific activity.)A allowances are not an entitlement and are issued based on need ly.

1. Employment-directed activities: Approved ***non-educational*** EACH employment-directed activities, include, but are not limited , Job Search and CWEP (see N.J.A.C. 10:81-14.10 and 14.12). Other]* ***Non-educational*** employment directed activities not gible for $100.00 cumulative EDA allowance payments are WSP d OJT programs ***as those activities are classified as subsidized ployment activities per Federal requirements. Participants in those tivities may be considered for the JOB allowance described in*** (e) ***low**** (see N.J.A.C. 10:81-14.11 and 14.14(b)).

2. Allowable expenditures include, but are not limited to, the llowing: books; supplies; equipment; uniforms; tools for a particu- r training or employment-directed activity; licensing fees; testing es; clothing (that is, special shoes or boots, protective devices such safety glasses, gloves and helmets or other clothing necessary or ithin reason for a participant to attend training); and other ma- rials required for participation in REACH EDA activities. Payment r regular clothing items is not permitted. Items purchased become e property of the participant.

3. The case manager shall determine that the costs of participation e not available or paid by any other funding source (for example, PA). REACH remains the payor of last resort, outside of any EACH contractual agreements.

4. Each eligibility participation period covered by the cumulative 100.00 EDA fund begins with enrollment in the first REACH em- loyment-directed activity (the effective date of the activity as in- icated on the OMEGA System) and ends with the last day of articipation in the final employment-directed activity in the eligibili- participation period (see (g) below for further clarification of igibility periods).

5. The $100.00 cumulative total EDA fund shall cover needed ayments made for expenditures for combined participation in all EACH activities during the eligibility participation period.

6. In extraordinary circumstances, determined on a case-by-case asis by the case manager, EDA payments exceeding the $100.00 aximum in the eligibility participation period may be made. Written pproval from the DEA shall be obtained before the payment can e issued. The case manager shall document the particular circum- ances surrounding the payment in the case record.

i. Additional monies for this purpose shall be capped at $50.00 over e $100.00 EDA allowance per eligibility participation period (that is, e $100.00 EDA allowance value plus the ability to approve additional ayment(s) of up to $50.00 more, when warranted, or $150.00 maximum r the EDA allowance). Under no circumstances shall DEA approval e granted for amounts which exceed the $150.00 EDA allowance aximum.

7. EDA payments are excluded as income for purposes of the Food Stamp Program.

(e) $100.00 cumulative allowance to accept or maintain employment (JOB): Allowance payments (JOBs) based on need, up to a maximum cumulative total of $100.00 per eligibility participation period (see (g) below), are provided for actual expenses necessary to permit an individual to accept or maintain employment. Such payments shall be issued in preparation for and during the course of employment. JOB payments are not an entitlement and are issued based on need only for actual expenses incurred.

1. Participants in WSP and OJT programs (see N.J.A.C. 10:81-14.11 and 14.14(b)) are eligible for the $100.00 cumulative JOB allowance payments ***as those programs are categorized as subsidized employment under Federal provision****.

2. Allowable expenditures include, but are not limited to, the following: clothing (that is, special shoes or boots, protective devices such as safety glasses, gloves and helmets, waterproof garments, uniforms or other clothing necessary or within reason for a participant to attend work); tools and equipment for a particular type of employment (for example, welder's torch and supplies); union dues (see (e)2i below); books; and other items needed for employment that are not available from an employer or other funding source (for example, JTPA). As in (d) above, payment for regular clothing items is not permitted. If other sources of funding are available to pay such costs, then JOBs payments are not available to the individual.

i. Union dues are paid on an initial, one-time basis where such membership is a prerequisite to employment including initiation fees. Documentation from the employer concerning the fact that union membership is mandatory is required before the JOB payment can be issued. If initial union dues are automatically deducted from the participant's paycheck, the participant may be reimbursed for those costs.

3. The case manager shall determine that JOB expenditures are necessary and not available from, or paid by, any other funding source. REACH remains the payor of last resort, outside of any REACH contractual agreements.

4. AFDC-C, -F, and -N recipients, who become ineligible for assistance due to income from employment and who were not participating in REACH, may be eligible for JOB allowance payments provided the individual complies with REACH requirements for such payments, including signing a REACH Agreement. In those circumstances, the JOB allowance may be an incentive for the individual to remain employed. The county shall advise the individual that he or she may only be eligible for the remaining balance of the JOB cumulative total of $100.00 should the individual return to AFDC within a two-year period from the date of termination of AFDC (see (g) below for further clarification of eligibility participation periods).

5. Each eligibility participation period covered by the cumulative $100.00 JOB fund begins with the first day the participant receives a firm job offer and accepts the position (the effective date of employment indicated on the OMEGA System) and ends with the date of termination of all extended REACH benefits (transitional child care and extended Medicaid benefits for one year post-assistance). The eligibility participation period for WSP and OJT participants begins with the effective date of the activity, as indicated on the OMEGA System, and ends with the date of termination of all extended REACH benefits.

6. *[In extraordinary circumstances, determined on a case-by-case basis by the case manager, JOB payments may exceed the $100.00 maximum limit in the eligibility participation period. Payments over the $100.00 limit may be made with the written approval of DEA. That approval shall be obtained before the payment can be issued.]* ***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.****

7. Amounts paid as JOB allowances are excluded as income for purposes of the Food Stamp Program.

(f) REACH $500.00 cumulative motor vehicle related (CAR) expense allowance: Allowance payments based on need, up to a maximum cumulative total of $500.00 per eligibility participation period (see (g) below), are available for REACH participants who own

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motor vehicles to make those vehicles operational to transport the REACH participant to REACH activities or employment. CAR allowances are not an entitlement and are issued based on need, only for actual expenses incurred. CAR allowance payments are available beginning with participation in the first REACH activity (the effective date of the activity as indicated on the OMEGA System) and ending with the termination date of all extended REACH benefits.

1. Allowable expenditures include: motor vehicle servicing and repairs, including necessary tune-ups and tires if needed to make the vehicle operable, roadworthy or as required in order to pass the State safety inspection; payment of motor vehicle insurance (including mandatory surcharges by the insurer due to the participant's past driving record) or other costs clearly related to the participant's use of his or her own automobile. CAR allowance payments shall not be used to purchase or rebuild a motor vehicle, pay for its licensing or registration, for routine maintenance, or for radio and air conditioning repairs.

2. Payments from the $500.00 cumulative CAR allowance may be issued provided that the following circumstances are considered first:

i. No less expensive alternative means of transportation is available to the participant;

ii. The motor vehicle under consideration for a CAR expenditure is owned by the participant or a member of his or her immediate family living in the same home who is eligible for AFDC as a member of the same filing unit or as an essential person, and the vehicle will be at the participant's disposal for traveling to and from REACH activities or a job**. 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***;

iii. The actual repair or service expenditure cannot be met through the regular transportation cost (TRE) process even at maximum funding (of up to $15.00/day but no more than $60.00/week);

iv. The participant has documented the need for necessary motor vehicle repairs or service with a written estimate from a bona fide auto mechanic;

v. The general overall condition of the vehicle justifies the cost of repairs (as determined by a bona fide auto mechanic);

vi. The repairs (including towing and road service) or part replacements are necessary to make the vehicle operable, roadworthy or are required for it to pass the State safety inspection;

vii. The REACH activity or service needed by the participant is not available in the vicinity of the participant's home or at a location accessible to the participant by less costly means of transportation; and

viii. The county has provided all REACH activities or services needed by the participant (especially individual evaluation and assessment) thus far through its resources through a site visit either to the participant's home or to a location in the vicinity of the participant's home and the participant is in need of activities/services beyond the scope of those activities already provided.

3. The county welfare agency may develop a list of "REACH-approved mechanics" to perform CAR repairs; however, any mechanic whose rates and services meet the requirements of this section and are otherwise competitive for repair/service costs shall not be excluded when his or her service can be rendered in these situations.

4. CAR allowance payments for insurance purposes are limited to the quarterly premium for the ***minimum insurance required under New Jersey State law for a*** private vehicle. Payment may include mandatory surcharges by the insurer due to the participant's past driving record.

i. The participant shall be financially able to continue to pay insurance costs after the quarterly premium is paid.

ii. If the participant cancels the insurance policy after the quarterly premium has been paid via a CAR allowance payment and receives reimbursement of the premium, that reimbursement is an overpayment subject to recovery (see N.J.A.C. 10:81-14.24).

5. The $500.00 cumulative total CAR fund may not exceed the $500.00 limit for a participant except in extraordinary circumstances, determined on a case-by-case basis by the case manager. Payments in excess of the $500.00 limit may be issued only after obtaining the written approval by DEA. ***The case manager must document the particular circumstances surrounding the payment(s) in the case cord.***

i. Additional monies for this purpose shall be capped at $50(over the $500.00 CAR allowance per eligibility participation pe (that is, the $500.00 CAR allowance plus the ability to authorize, DEA approval, additional payment(s) of up to $500.00 more, w warranted, or $1,000 maximum for the CAR allowance). Under circumstances shall DEA approval be granted for amounts which ex(the $1,000 CAR allowance maximum.

6. CAR allowance payments are excluded as income for purp(of the Food Stamp Program.

(g) Determining the eligibility participation period for full EI JOB and CAR allowances: An eligibility participation period is period of time during which expenditures from the EDA, JOB CAR funds up to their respective maximum cumulative to ($100.00, $100.00 and $500.00) are made. A participant shall h been off assistance (including post-AFDC extended benefits) fo least one full year (12 consecutive months) to be once again enti to a new eligibility participation period with full maximum EI JOB and CAR allowances upon resumption of AFDC/REA(Interrupted participation in AFDC shall result in the following EI JOB, and CAR allowance amounts:

1. If a REACH participant receiving AFDC leaves AFDC, d not receive post-AFDC benefits for one year or more and t returns to AFDC and REACH:

i. The participant begins *[an]* ***a new*** eligibility participat period and will be allowed the full EDA, JOB, and CAR allowan

2. If a REACH participant leaves AFDC and remains off AF for less than one year and then returns to AFDC and REAC

i. The participant will be eligible for the balance remaining in or her EDA, JOB, and CAR allowances ($100.00, $100.00 $500.00 less expenditures made) for the resumed period of part pation; therefore, the previous eligibility period continues.

3. If a post-AFDC REACH participant receives such post-AF benefits, stops REACH participation by stopping REACH p(AFDC benefits, remains off AFDC for one year or more, and t returns to AFDC and REACH:

i. The participant will begin another eligibility participation per and will be allowed the full EDA, JOB, and CAR allowance ($100. $100.00 and $500.00 respectively) for this new period of participati

4. If a post-AFDC REACH participant stops extended REA benefits, remains off AFDC for less than one year and then retu to AFDC and REACH:

i. The participant will be allowed only the balance remaining his or her EDA, JOB and CAR allowance ($100.00, $100.00 $500.00 respectively less expenditures already made) for the resun period of participation.

(h) Payment procedures for allowance: EDA, JOB and CAR lowances are to be issued as follows:

1. Allowances are on a cumulative account basis. The particip is eligible to receive up to the maximum amount of the allowa during the relevant participation period (see (g) above).

2. Payments are to be issued to cover actual expenses, either a one-time lump sum payment, or in a number of smaller payme during the course of the eligibility period.

3. Payments may be issued retrospectively as reimbursements prospectively if needed, on or after the OMEGA effective date the REACH activities.

i. Payments are to be issued as vendor payments when possit

ii. Payments may be issued directly to the REACH participant a reimbursement of expenditures already made.

iii. Payments shall be issued as "lump sum" payments.

4. Costs currently paid through REACH contracted serv providers (for example, contracted through JTPA) or other provid servicing REACH participants shall not be transferred to the REA(TRE, EDA, JOB, or CAR allowances.

(i) Administration of TRE, EDA, JOB, CAR, TCC, and CW funds: The county shall be responsible, to the greatest extent possit for ensuring the prudent administration of the TRE, EDA, JC CAR, TCC, and CWEP funds by:

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Providing REACH activities or services on site, when possible, articipants' homes or at locations which are accessible to partici- ts by less expensive means of transportation. This may be appli- le to groups of participants living in the same general area and omeless participants living in the same shelter accommodations;

Scheduling participants to complete more than one REACH vity on the same day when possible; and

Enrolling participants in equivalent non-REACH contracted vities or services provided in the vicinity of their homes (for mple, GED programs are offered at most local high schools).

) Additional $10.00 CWEP reimbursement: The CWA shall vide reimbursement for costs which are determined necessary and directly related to participation in CWEP. Such costs incurred the CWEP participant include clothing and personal care items, erials and supplies and similar expenses related to applying for accepting employment through CWEP. This amount shall not eed $10.00 per month per participant.

1-14.20 REACH support services: medical assistance

) Post-assistance Medicaid coverage: When an AFDC-C, -F or family becomes ineligible for AFDC (including families deemed e recipients of AFDC) for any of the reasons listed in (b) below, members of the family shall continue to receive Medicaid for a od of 12 months.

) (No change.)

) Additional requirements: The following additional require- its apply to the 12-month Medicaid extension:

The family must have received AFDC in the month preceding month in which the family became ineligible for AFDC.

-4. (No change.)

l) (No change.)

) Any family prior to April 1, 1990 formerly receiving AFDC- r -F qualifying for this 12-month extension because of the loss he $30.00 or one-third disregards (see (b)1 above) shall receive dditional three months of Medicaid extension if, at the expiration he 12-month extension, the family would be eligible for AFDC e $30.00 and one-third disregards still applied. To receive this itional three months of Medicaid extension, the family must onstrate to the satisfaction of the CWA that, had the $30.00 and -third disregard of earned income not been time-limited, the fam- would have been continuously eligible for AFDC from the time ecame ineligible for AFDC.

1-14.21 Need and amount of assistance in REACH

) (No change.)

) Income earned by AFDC parents serving as child care viders (600 Child Care Provider Slots): Income earned by AFDC nts from providing child care for children of REACH partici- ts and other AFDC recipients shall be considered income from employment, and shall be treated in accordance with 1 through elow.

Maximum income eligibility: In determining gross earned in- e for purposes of the maximum income level at N.J.A.C. 2-1.2(d), an amount equal to one-half (50 percent) of the total me earned from providing child care shall be disregarded. The aining income is compared to the maximum income limits table N.J.A.C. 10:82-1.2(d) based on the eligible family size.

Prospective needs test: In determining prospective need an unt equal to one-half (50 percent) of the total income earned n providing child care shall be disregarded. The remaining income en compared to the allowance standard at N.J.A.C. 10:82-1.2(c) the eligible family size to determine if the family is prospectively ible.

Determination of calculated earned income—AFDC-C and -F: determining the calculated earned income for the AFDC-C and egments, from the total gross earnings from providing child care, uct an amount equal to one-half (50 percent). The remaining me shall be counted in computing the AFDC grant. No ad- onal deductions shall be made for expenses of producing self- loyment income set forth at N.J.A.C. 10:82-4.3, for the $90.00 k expense deduction at N.J.A.C. 10:82-2.8(a)1, or for the first .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).

4. (No change.)

(c) (No change.)

(d) Disregard of earned income in REACH Work Supplementation Program: In determining the calculated earned income for a WSP participant, from the total gross earnings deduct the WSP disregards as set forth at N.J.A.C. 10:81-14.11.

1. The CWA shall disregard from the earned income of the WSP participant the first $90.00 of such earnings.

2.-3. (No change.)

(e) Calculation of net loss of cash income through employment as good cause for nonacceptance of the job (-C and -F segments): Individuals shall have good cause for refusing a specific employment opportunity, as set forth at N.J.A.C. 10:81-14.8(e)2, if accepting that job would result in a net loss of disposable cash income for the family of the participant. This calculation shall ensure that the family of a participant is not penalized by having less disposable income after employment than would be available to the family while receiving assistance. The calculation is a manual process which is done on a case-by-case basis ***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 (see N.J.A.C. 10:82-5.3(g)) or makes a supplemental payment for child care costs over the disregard limits, then good cause for net loss of cash income does not exist. Any child care supplemental payment shall be computed monthly on a case-by-case basis.

1. Net loss of cash income means that actual work-related expenses which would otherwise not be incurred shall be subtracted from the family's gross income to determine whether the resulting disposable income is at least equal to the AFDC cash assistance benefit which would be received at the time employment is offered. The cash assistance payment is equal to the flat grant amount (Needs Allowance Standard) less any unearned income.

i. Gross income includes, but is not limited to, earnings from the offered job, any unearned income the family receives, and the adjusted grant determined based on the income at the time the employment is offered, including the application of the appropriate earned income disregards.

ii. The determination of net loss of cash income is a comparison of actual expenses incurred from the job versus the applicable earned income disregards.

iii. The net loss of cash income is a manual calculation which shall be computed on a case-by-case basis at the time the participant gains employment.

iv. The value of the family's food stamp allotment is not included in the calculation.

v. Actual work-related expenses due to that specific job shall be used in the computation. ***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.***

vi. The calculation is a simultaneous, two-step process: Step I is the determination of the adjusted grant through the application of applicable earned income disregards; Step II is the determination of the net loss of income determined by subtracting the actual work expenses incurred from the gross income (including the adjusted grant from Step I when the grant is $10.00 or more) and then making a comparison to the cash assistance payment that would be received by the family if they did not accept the offer of employment.

2. In Step I, subtract from the gross earned income, the $90.00 work expense disregard; the $30.00 and one-third disregards (if applicable) and the disregard of child care/incapacitated care (if applicable). Next, add any unearned income. The resulting available income is subtracted from the needs allowance standard for the family size; the resulting adjusted grant shall be used in Step II if the grant is $10.00 or greater. If the resulting adjusted grant is less than $10.00, then there is no adjusted grant to be carried over for the computation in Step II.

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3. In Step II, subtract from the gross earned income, the actual work expenses and actual child care costs; add the adjusted grant from Step I (if greater than $10.00).

4. Determine the difference between the resulting income figure from Step II and the cash assistance payment (that is, the flat gr less any unearned income) for the family.

5. The resulting difference is the net loss of cash income.

6. The following examples (Examples I and II) illustrate the cal lation process.

EXAMPLE I: Calculating Net Cash Loss

Case demographics: Client + 2 children (AFDC-C); flat grant amount of $424.00; unearned income of $112.00; secures employment at $5.50/hr., 40-hour week; 1 child needs child care at a cost of $75.00/wk; $176.00 actual work expenses (FICA, taxes, etc.) per month.

Step I
Calculation of Adjusted Grant

$880.00	Gross monthly earned income
-90.00	Work expense disregard
$790.00	
-30.00	Disregard
$760.00	
-253.33	1/3 disregard
506.67	
-200.00	Child care disregard
306.67	Calculated earned income (CEI)
+112.00	Unearned income
$418.67	Available income
$424.00	Flat grant
-418.67	Available income
$ 5.33	Adjusted grant

No grant is used for Step II since it is under $10.00

STEP II
Determination of Net Loss of Cash Income

$880.00	
-176.00	Actual work expenses
$704.00	
-300.00	Actual child care costs
$404.00	Income
+ 0.00	Adjusted grant from Step I (deficit)
	Step I (deficit)
$404.00	Total income from job
$424.00	Flat grant
-112.00	Unearned income
$312.00	*Cash assistance payment
$404.00	Available income from job

**No net loss of cash income exists

**No net loss of cash income exists as the income available from the job is greater than the cash assistance payment.

*Cash assistance payment is equal to the flat grant amount less any unearned income.

EXAMPLE II: Calculating Net Cash Loss

Case demographics: Client + 2 children (AFDC-C); flat grant amount of $424.00; secures employment at $5.50/hr., 40-hour week; 1 child needs child care at a cost of $390.00/month; $200.00 actual work expenses (FICA, taxes, union initiation fees) for month.

Step I
Calculation of Adjusted Grant

$880.00	Gross monthly earned income
-90.00	Work expense disregard
$790.00	
-30.00	Disregard
$760.00	
-253.33	1/3 disregard
$506.67	
-200.00	Child care disregard
306.67	Calculated earned income (CEI)
+ 0.00	Unearned income
$306.67	Available income
$424.00	Flat grant
-306.67	Available income
$117.33	Adjusted grant
$117.00	Adjusted grant

STEP II
Determination of Net Loss of Cash Income

$880.00	
-200.00	Actual work expenses
$680.00	
-390.00	Actual child care costs
$290.00	
$290.00	Income
+117.00	Adjusted grant from Step I (deficit)
$407.00	Total income from job
$424.00	Flat grant
- 0.00	Unearned income
$424.00	Cash assistance payment
-407.00	Available income from job
$ 17.00	Net cash loss

10:81-14.22 Child support enforcement

(a) General: In addition to the activities set forth in N.J.A.C. 10:81-11, the following activities related to child support *[endorsement]* ***enforcement*** shall be conducted by the State and CWAs on behalf of REACH program participants:

1.-3. (No change.)

4. REACH participants who have signed the Final REACH Agreement should be referred to the CWA's IV-D unit by case management for prioritization and upward modification of support orders. The referral shall be made via Form R-3, REACH Referral, or a locally developed form, on the day the REACH participant enters the identified case activity type. The referral shall include: t AFDC case number; the participant's name, the departmental clie number (DCN) or date of birth or Social Security Number (SSN and the date entering the case activity type.

10:81-14.24 Overpayments and underpayments of supportive services: child care and transportation

(a) This section applies to overpayments and underpayments supportive services, including REACH child care benefits and po AFDC child care benefits at N.J.A.C. 10:81-14.18, and payments f transportation and related costs at N.J.A.C. 10:81-14.19.

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. Definition of overpayment: An overpayment is a payment ich exceeds the amount of REACH child care benefits, post-'DC child care benefits or REACH transportation and related /ments for which the participant or service provider was eligible.
:. Amount of overpayment: The amount of the overpayment sub-t to recovery is the difference between the amount actually paid the REACH participant or service provider and the amount for ich the participant or service provider was eligible.
. If the participant was ineligible for the benefits for the period which the service was provided, the entire amount paid is an :rpayment.
i. If the service provider was not approved by the REACH pro-m, the entire amount paid is an overpayment.
b) Requirement to recover overpayments: The county shall take reasonable steps necessary to promptly correct any overpayment REACH child care benefits, post-AFDC child care benefits and :ACH transportation and related payments made to a REACH ·ticipant or service provider. Recovery shall be attempted in the lowing circumstances:
. In all cases of fraud;
:. In all cases involving current recipients; and
:. In all cases where the overpayment amount would equal or :eed the costs of recovery.
c) Method of recovery: An overpayment to a family or provider ·rently receiving child care or supportive service benefits shall be overed through repayment (in part or in full) by the family or)vider responsible for the overpayment, or by recovering the over-ymment through a benefit reduction in the amount payable to the nily or provider.
. In recovering overpayments from an AFDC family, the family ıll be permitted to retain, for any month, a reasonable amount funds.
:. Overpayments to individuals may be recovered as follows:
. From the family unit which was overpaid;
i. From individuals who were members of the family when it was :rpaid; or
ii. From families which include members of a previously overpaid nily.
:. In cases of former recipients or recipients who refuse to repay, :overy shall be made by appropriate action under State law against : income and resources of the overpaid individual or family.
:. Recovery from benefits: Recovery of child care benefits may be ıde only from child care benefits, and recovery of transportation d related payments may only be made from those REACH ben-ts.
:. Recovery from AFDC grant: Any recoveries of overpayments child care or transportation and related benefits may be made from : AFDC grant only upon a voluntary request of the recipient nily.
(d) Offset: Underpayments and overpayments may be offset ainst each other in correcting incorrect payments.
(e) Recovery not required: The Department of Human Services ıy provide that a county need not attempt recovery of over-yments from providers if obligated to make the full payment under : contract. However, Federal financial participation may not be imed for such overpayments.
(f) Recordkeeping requirements: Counties shall collect and main-n information on the collection of overpayments.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook

Family Support Act Requirements for Job Opportunities and Basic Skills (JOBS) Training Program and Related IV-A (AFDC) Provisions

Adopted Amendments: N.J.A.C. 10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4., 4.8, 4.14, 5.1, 5.2, and 5.3

Adopted Repeals: N.J.A.C. 10:82-5.6, 5.8 and 5.9

Adopted Repeal and New Rule: N.J.A.C. 10:82-5.7

Proposed: August 20, 1990 at 22 N.J.R. 2445(a).

Adopted: December 5, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: December 6, 1990 as R.1991 d.7, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: January 7, 1991.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The proposed amendments at N.J.A.C. 10:82-2.10(a) and N.J.A.C. 10:81-14.8(i)8 seem to be in conflict with text about Medicaid eligibility for adults sanctioned for noncompliance with REACH.

RESPONSE: Clarifying language has been added at N.J.A.C. 10:82-2.10(a) to ensure alignment of rules concerning Medicaid eligibility.

COMMENT: When transportation to and from a child care arrangement, paid through REACH, is not available from any other source, payment should be made up to a maximum of $15.00 per week for such transportation as a special circumstance payment through the OMEGA system.

RESPONSE: The proposed amendment refers to "special circumstance" child care payments provided through Title IV-A, as defined at N.J.A.C. 10:82-5.2(c). It is concerned with transporting a "special needs" child to and from the child care site or transportation to and from a licensed child care center which includes transportation costs in its fee. Such costs must be handled through the FAMIS system at this time. However, the Department will review this process. The Department's budget does not allow the Division of Economic Assistance to broaden payments beyond those stated in the proposed rule.

COMMENT: Client participation may dictate the need for more than one provider, and thus require payments to exceed the maximum weekly REACH rate (see N.J.A.C. 10:82-5.3(a) and 5.3(g)5).

RESPONSE: The adopted text at both N.J.A.C. 10:82-5.3(a) and 5.3(g)5 has been revised to accommodate those situations that warrant payment for hours of care exceeding six hours per day, when necessary, which may involve more than one provider per day.

COMMENT: Payments should be permitted through the REACH program for child care provided by parents, legal guardians, or members of the AFDC unit; teen parents often choose their parents or grandparents to care for their children; payment would reduce their grant.

RESPONSE: Federal regulations (45 CFR 255.2(c)) do not permit payment for child care to individuals who are members of the AFDC assistance unit or for care provided by the child's own parents or legal guardians. Language at N.J.A.C. 10:81-14.18(a)1ii (see adoption published elsewhere in this issue of the New Jersey Register) and N.J.A.C. 10:82-5.3(e)3 is revised for clarification.

COMMENT: The definition of full-time child care should be consistent with those described in Tables I and II.

RESPONSE: The definition of full-time child care has been redefined for clarification purposes at N.J.A.C. 10:82-5.3(g)2.

COMMENT: It was suggested that the name of the inspection standards used be changed to the CCFP/DYFS "Checklist of Standards for School-Age Child Care Program" (see N.J.A.C. 10:82-5.3(c)).

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RESPONSE: The correct name of the inspection checklist is the "DHS REACH School-Age Child Care Interim Guidelines". Text has been revised to reflect the correct name.

Summary of Agency-Initiated Changes:

The proposed earnings disregard which was being increased from $75.00 to $90.00 in the deeming calculation procedures (N.J.A.C. 10:82-2.9 and 3.14) is not being adopted at this time. Federal clarification has been received concerning the Family Support Act provision amending Sections 402(a)(8)(A)(ii) of the Social Security Act advising that those provisions which increase the standard work disregard from $75.00 to $90.00 for the Aid to Families with Dependent Children applicant/recipient family do not apply to the deeming provisions at Section 402(a)(31) of the Social Security Act.

An example of "special circumstance" has been added to N.J.A.C. 10:82-5.2(e)1.

The proposed amendment at N.J.A.C. 10:82-5.2(e)2 has been revised to clarify the weekly maximum limit for the cost of transporting a special needs child to and from child care arrangements.

The term "after school care" at N.J.A.C. 10:82-5.3(a) has been changed to "school-age child care" to more appropriately describe that category of care.

The word "licensed" has been added to Child Care Center definition, at N.J.A.C. 10:82-5.3(c), for clarification purposes.

The proposed amendment at N.J.A.C. 10:82-5.3(d) is being revised to clarify family-based care payments. The term "family-based" is used to refer to family day care providers who are not registered under the Family Day Care Provider Registration Act.

The proposed amendment at N.J.A.C. 10:82-5.3(e)4 has been revised to make the distinction that payments at the full DHS maximum rate may be made if the in-home care provider is registered pursuant to the Family Day Care Provider Registration Act.

At N.J.A.C. 10:82-5.3(g), Table 1, the daily rate for "Special Circumstance Infants/Toddlers" for "Three-Quarter Time," which was erroneously listed at "$17/day," is corrected to reflect actual payment of $16.00 per day.

Additionally, publication errors are being corrected where appropriate.

Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:82-1.6 Eligible person temporarily in an institution

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

10:82-1.7 Eligible AFDC child regularly attending school or in vocational training at a Residential Job Corps Center

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

(c) During any period for which a child receives a grant, scholarship or student loan under a Federal, State or other public or private program, he or she shall not be entitled to any allowances for expenses incident to training which are otherwise provided for through student financial aid. In other situations, allowances shall be provided in accordance with the provisions of N.J.A.C. 10:81-14.19.

(d) When a child receives vocational training at a Residential Job Corps Center which permits him or her to return home for weekends, the child shall be considered temporarily absent and regarded as an eligible member of the family unit. (A child receiving training at one of the three National Job Corps Centers located in Kentucky, Indiana, and Utah is to be considered permanently absent and shall not be considered a member of the eligible family for AFDC eligibility.)

(e) (No change in text.)

10:82-1.8 Parent regularly attending school (all segments)

(a) When a parent of an eligible child is a student regularly attending school as defined in N.J.A.C. 10:82-1.9, the provisions of N.J.A.C. 10:82-1.7(b) and (c) shall apply. The parent shall be considered a REACH participant subject to the rules set forth at N.J.A.C. 10:81-14.

1. Payment for child care shall be provided where necessary to enable a parent to attend school so long as the parent can demonstrate that his or her scholarship(s), grant(s), student loan or other financial aid does not provide moneys which are to be utilized for such care, and child care is not provided from or through the educational institution or through any other source (see N.J.A.C. 10:82-5 and 10:81-1.10 and 14.18).

10:82-2.1 Form PA-3A or Form 105

(a) (No change.)

(b) Form PA-3A shall be completed in the following order:

1.-3. (No change.)

4. Part II: The amount of the regular monthly grant is determin in Part II, Amount of Allowance. Make the appropriate entr according to key numbers indicated on the form as follows:

i. Key numbers:

(1)-(2) (No change.)

(3) Enter any other income actually available to the eligible ur identifying the source in the space provided, such as contributio from LRRs, pensions other than Social Security, and so forth (s N.J.A.C. 10:82-4.10 through 4.12 on unearned income), and adju ment for eligible member temporarily out of the home (N.J.A. 10:82-1.6(b) and 1.7(e));

(4-(8) (No change.)

ii. (No change.)

5.-6. (No change.)

10:82-2.3 Income from eligible and noneligible individuals in the household

(a) Family groups living together: For purposes of AFDC, family groups living together, income of the spouse is consider available for the other spouse and income of a parent (natural adoptive) is considered available for children under 18. If the spou or parent is living with his or her spouse or children, respective income is considered available regardless of whether the spouse natural or adoptive parent is noneligible or sanctioned. However a spouse or parent is receiving SSI benefits, including mandatory optional State supplementary payments, then for the period for whi such benefits are received, his or her income and resources shall r be counted as income and resources available to the eligible fami

1. (No change.)

2. For earned income, the net amount to be considered availa to the eligible family shall be determined by deducting only the fi $90.00 of such income for each employed individual in the AFD C and -F segments to cover work-related expenses, including, b not limited to, transportation and mandatory payroll deductions a the actual expenses of child care or care for an incapacitated indiv ual in the household (when applicable as set forth in N.J.A 10:82-2.8 and 4.4) that do not exceed the following rates:

i. $175.00 per month, per child age two or older, or incapacita adult, for full-time employment;

ii. $200.00 per month, per child under age two, for full-time e ployment;

iii. $135.00 per month, per child age two or older, or incapacita adult, for part-time employment;

iv. $150.00 per month, per child under age two, for part-ti employment.

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

10:82-2.8 Determination of calculated earned income; AFDC-C and -F procedures

(a) From the total gross earnings of each person in the AFD C and -F segments, deduct the cost of producing income if s employed (see N.J.A.C. 10:82-4.3) and proceed as follows:

1. From gross earnings deduct the first $90.00 of such earnir for each employed individual in the eligible family, to cover wo related expenses, including, but not limited to, transportation a mandatory payroll deductions.

Recodify existing 3 and 4 as 2 and 3 (No change in text.)

4. Deduct an amount equal to the actual expenditures for ch care or for care of an incapacitated individual living in the same ho as the AFDC-C or -F eligible family. In no event shall this deducti exceed the limits as follows:

i. $175.00 per month, per child age two or older, or incapacita adult, for full-time employment;

ii. $200.00 per month, per child under age two, for full-time e ployment;

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iii. $135.00 per month, per child age two or older, or incapacitated ult, for part-time employment;
iv. $150.00 per month, per child under age two, for part-time ıployment.
5. (No change.)

:82-2.9 Stepparents; AFDC-C procedures
(a)-(c) (No change.)
(d) When a stepparent of eligible AFDC-C children lives in the me home as the children and is not included as a member of the gible family, his or her income shall be considered available to the gible family in accordance with the following procedures:
1. Reduce the stepparent's gross earned income (and net income ›m self-employment) by *[$90.00]* ***$75.00***.
2.-6. (No change.)

:82-2.10 Medicaid eligibility; AFDC-C and -F procedures
(a) AFDC-C and -F parents (including parent-minors) who refuse participate or accept employment under the REACH or TEEN ROGRESS programs are not entitled to categorically-related Medi-id. ***However, in New Jersey, the individual remains eligible for edicaid so long as other Medicaid eligibility criteria are met.***
(b) Children 16 to 18 years old who would be eligible for AFDC- or -F except that they are not attending school and are not exempt ›m REACH, but who refuse to participate or accept employment ıder the REACH program, will continue to be eligible for Medicaid long as there are other children in the family eligible for AFDC- or -F (see (d) below).
(c)-(e) (No change.)

:82-2.19 Overpayments and underpayments
(a)-(d) (No change.)
(e) Overpayment and underpayment procedures in supportive rvices are delineated at N.J.A.C. 10:81-14.24.

:82-3.2 Exempt resources
(a) (No change.)
(b) The exempt resources are as follows:
1.-5. (No change.)
6. Resources designated for special purposes as follows:
.-iii. (No change.)
v. In AFDC, payments for participation in the REACH program, :luding payments for transportation and related expenses set forth N.J.A.C. 10:81-14.19 and payments for child care at N.J.A.C. :81-14.18.
(1) (No change in text.)
v. Child care payments for "special circumstance" children (see J.A.C. 10:82-5.2) and transportation or the cost of transportation, ıich is not available from any other source, to transport the "special cumstance" child to and from the child care site when it is essential · the child's physical health and safety. The payment for the cost transporting a "special circumstance" child to and from the child re site may be authorized under Title IV-A funds through FAMIS.
Recodify v. through vii. as vi. through viii. (No change in text.)
7.-11. (No change.)

: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 r own parent(s) or legal guardian(s), the income of such parent(s) legal guardian(s) shall be considered available to the eligible family accordance with the following procedures. These rules do not ply if the parent(s) or guardian(s) receive(s) SSI or AFDC or if ; adolescent parent is categorically eligible for the -N segment only. ›r the purposes of this section, the term parent shall include legal ardian.
1. Reduce the gross earned income (and net income from self-ıployment) of each employed parent by *[$90.00]* ***$75.00***.
2.-6. (No change.)
(c) (No change.)

:82-4.1 General provisions
(a)-(b) (No change.)
(c) Earned income shall not include the amount of Earned Income Credit payment which an individual receives.

10:82-4.4 Disregard of earned income in AFDC-C and -F segments
(a) The CWA shall disregard from the earned income of each employed individual, the first $90.00 of such earnings.
(b) The CWA shall disregard from the total earned income not already disregarded, the first $30.00 and one-third of the remainder for each employed individual.
1. This disregard shall apply to the earned income of a person for a period of four consecutive months. Once this disregard has applied for a four consecutive month period, it shall not again be applied on behalf of that individual as long as he or she continues to receive AFDC-C or -F. If after receiving this disregard for a four consecutive month period, the individual becomes ineligible for AFDC-C or -F, this disregard shall not be applied to his or her income unless the individual has remained ineligible for AFDC for a period of 12 consecutive months.
2. The $30.00 and one-third disregard is to be applied only when an amount of earned income remains, after application of the disregards in (a) above, to permit application of this disregard.
i. (No change.)
3. (No change.)
(c) (No change in text.)
(d) The CWA shall disregard from the remaining earned income, the actual costs paid for child care or for care of an incapacitated individual in the same home as an AFDC-C or -F eligible family. The amount of the disregard shall not exceed the limits as follows:
1. $175.00 per month, per child age two or older, or incapacitated adult, for full-time employment;
2. $200.00 per month, per child under age two, for full-time employment;
3. $135.00 per month, per child age two or older, or incapacitated adult, for part-time employment;
4. $150.00 per month, per child under age two, for part-time employment.
(e) (No change.)

10:82-4.8 Income from family day care
(a) Payments by individuals or agencies for children placed in an eligible family's home for Family Day Care shall be considered as gross earned income from self-employment. Earned income procedures for self-employment are discussed at N.J.A.C. 10:82-4.3.
1. (No change.)
2. The exception to this procedure concerns the State registered family day care providers participating in the special REACH initiative which has designated 600 child care provider slots Statewide as a REACH activity for REACH participants. The self-employment income earned by those REACH clients (AFDC-C and -F segment cases only) participating in that initiative is budgeted according to procedures set forth at N.J.A.C. 10:81-14.21(b). Those budgeting procedures are limited to the 600 cases allocated among the counties and the allocation is based on the county's proportionate share of the AFDC population.

10:82-4.14 Exempt income
(a) (No change.)
(b) Exempt income is as follows:
1. (No change.)
2. Income tax refunds, including earned income credit (EIC) refunds; however, any portion of the actual refund remaining in the month following the month of receipt shall be considered as a resource in that following month.
i. The EIC is not considered a countable income source in the calculation of AFDC benefits (for all segments -C, -F, -N).
ii. Any lump sum refund of income for EIC made to a family receiving AFDC after October 1, 1989 is not counted as earned income in the calculation of the assistance payment. Any remaining monies from such refund shall be considered a resource in the month subsequent to receipt.

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10:82-5.1 General provisions

Payments for the specific classes of services identified in N.J.A.C. 10:82-5.2 and 5.4, and for emergency assistance as defined in N.J.A.C. 10:82-5.10 are not part of the public assistance allowance and shall not be included in the regular monthly grant.

10:82-5.2 Payment for child care and other services in special circumstances through social services

(a) Definitions, standards and regulations for payment of child care and other services as "special circumstance" payments are promulgated by the Department of Human Services. "Special circumstance" payments are authorized by social service workers through the county welfare agencies. Payments for special circumstances are authorized from Title IV-A, and are payable from the administrative assistance account through the FAMIS system.

(b) (No change.)

(c) "Special circumstance" child care payments may be provided through Title IV-A when payment for such care is not available through other resources (see N.J.A.C. 10:81-1.10) and the county welfare agency determines that such care is essential because of any one or more of the following:

1. Serious physical, emotional, mental or cognitive conditions, requiring child care as part of the treatment plan;

2. When illness, death and/or other disruption in family living has created problems, and on the basis of social and/or medical diagnosis, child care is necessary; or

3. The parent, parent-person or parent-minor who normally cares for the child, is in a program of vocational rehabilitation that is not considered REACH participation.

(d) Payment for child care ***for*** special circumstances shall not exceed the maximum rates established by the Department of Human Services in N.J.A.C. 10:82-5.3(g). Authorizations for payment of "special circumstance" child care costs are limited to providers of child care who satisfy the criteria in N.J.A.C. 10:82-5.3(c) through (f).

(e) Transportation costs for special circumstance child care services may be provided as follows:

1. When transportation to and from ***a*** licensed child care center or day camp, approved by the Department of Health, is not available from any other source, payment for such transportation as a special circumstance ***(for example, when the caretaker relative is ill)*** may be made for actual cost up to a maximum of $10.00 per week per child.

2. When transportation or the cost of transportation of children with special needs (that is, serious physical, emotional, mental or cognitive conditions as defined at N.J.A.C. 10:81-14.18(c)1) to and from child care arrangements is not available from any other source, payment for such transportation may be made for actual cost as a special circumstance payment ***up to a maximum of $10.00 per week per child***.

(f) Payment policies that govern child care in the REACH program shall be applied to child care for special circumstances to the extent practicable (see N.J.A.C. 10:81-14.18(c)). Payment for child care for REACH participation is set forth at N.J.A.C. 10:81-14.18.

10:82-5.3 Payment for child care

(a) "Child care" for the purposes of this section means arrangements for care of a child in a child care center, with family day care providers (including registered family day care homes and approved homes), with providers of in-home care, *[after school]* ***school-age child*** care or in day camps. For individuals participating in the REACH program, including individuals eligible for post-AFDC REACH benefits, the provisions of N.J.A.C. 10:81-14.18 shall apply. With the exception of (h) below concerning care in approved maternity homes, no child care payment shall be authorized which exceeds the maximum rates established by the Department of Human Services (see (g) below). Actual costs per child per week *[cannot exceed those rates]* ***shall be reasonably related to the hours of child care needed to accommodate the special circumstance situation on a case-by-case basis***. If a child is placed in the care of more than one child care provider in any single week, the total cost of care distributed among providers shall *[not exceed the weekly full-time established rates per child]* ***be*** based on the child care arrang ments, *[and]* the age or special circumstance *[status]* ***situatio** of the child ***and the hours of care provided***.

(b) Further provisions related to child care expenses are:

1. Expenses of child care may be paid when the parent, parei person or parent minor who normally cares for the child, is parti pating in employment-directed activities through REACH or eligible for post employment child care, including post-assistan benefits (through REACH).

2. Child care expenses for employed AFDC-C and -F segme families shall be met by the eligible family through the child ca disregard process set forth at N.J.A.C. 10:82-2.8(a)4 and 4.4(d). the parent, parent-person or parent-minor is a REACH participai REACH funds may be used to supplement the cost of post-emplo ment child care up to the maximum rates established by the Depa ment of Human Services (see (g) below), in any month in which t cost of such child care exceeds the child care disregard limits. At t time a participant gains employment, during the transition of REACH participant to work, child care may be paid by the agen as a bridge payment through REACH up to the receipt of the fi pay check or for a period not to exceed one month (see N.J.A. 10:81-14.18(d)4). Those costs paid through a bridge payment sh not be disregarded in the calculation of the family's assistance pa ment. The child care disregard is applied to that budget month which the participant begins payment for child care costs. No pa ments are authorized for child care expenses incident to the emplo ment of a non-needy caretaker relative.

3. Expenses of child care incident to employment in the AFD N segment shall be provided, when necessary, as a vendor payme of actual costs of care to the provider of care in accordance wi N.J.A.C. 10:81-14.18. No child care payment shall be authoriz which exceeds the maximum rates established by the Department Human Services.

4. Child care as an expense incident to training for employme or incident to a program of vocational rehabilitation may be provid as an additional payment if not available through a special traini program or agency. Such payment can be made directly to the clie or as a vendor payment from the Title IV-A administrative accou

5. Authorizations for payment of child care costs are limited providers of child care who satisfy the criteria delineated in through (f) below.

(c) *[Child]* ***Licensed child*** care center rules are:

1. "*[Child]* ***Licensed child*** care center" means group care f children, *[usually two to five years old,]* which includes supervis educational work and play experiences under the direction of trained teacher, including Head Start programs. *[Child]* ***Licens child*** care centers, which provide care, for a fee, to more than fi children up to and including age five, are required by law to licensed and approved by the Division of Youth and Family Servic Bureau of Licensing; or must have a letter of exemption from t Bureau of Licensing; or must be operated under the auspices of t public school system. No payments are authorized to or for any chi care center which is subject to the Division of Youth and Fami Services license but lacks such a license (see N.J.A. 10:81-14.18(e)1).

2. The maximum allowable rate for care in a licensed child ca center, regardless of the source or sources of payment, shall be t maximum rates established by the Department of Human Servic (see (g) below).

3. In addition to (c)2 above, when transportation or the cost transportation to and from the licensed child care center is n available from any other source, the CWA may allow the actual cc up to $10.00 per week maximum, per child. Actual costs of trar porting a special needs child, if transportation is not availat through any other source, may be authorized through Title IV- funds (see N.J.A.C. 10:82-5.2(e)2).

4. Child care programs for school-age children shall meet loc occupancy, building and fire codes, and have *[satisfactory]* ***sat factorily*** completed an inspection using the *[DYFS "Checklist Standards for School-Age Child Care Programs"]* ***DHS REAC School-Age Child Care Interim Guidelines*** (see N.J.A.C. 10:81, A

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ıdix A); or be operated under the auspices of the public school tem.

d) Family day care provider rules are:

. "Family day care provider" means care for any age child, by ay care provider in his or her own home; family day care may ɔ be a home for after school care. The suitability of any family ne for use as a family day care provider home shall be evaluated l approved as delineated in (d)2 and 3 below.

. Family day care providers who serve three or more non-sibling ldren shall be registered pursuant to the Family Day Care Provider gistration Act (N.J.S.A. 30:5B-16 et seq.—Public Law 1987, apter 27) to qualify for up to the full maximum payment rates forth in (g) below. Such family day care providers are registered ne providers. Family *[day]* ***based*** care providers of one or two ldren ***or sibling children*** may choose to register under the above t ***and receive maximum payment*** or to provide family day care an approved home (see ***(d)***3 below).

Payment is made to registered home providers who secure a istration certificate or a temporary registration certificate as de-ɜd in the above Act. Certificates are obtained from sponsoring anizations in the counties approved and regulated by DYFS, reau of Licensing. A family day care provider will receive a regis-tion certificate after the home has been inspected and approved the sponsoring agency on the "Family Day Care Registration me Inspection Checklist" (see N.J.A.C. 10:81, Appendix A).

ı. REACH participants serving as family day care providers and ɜrred for registration by the county lead child ***care*** agency or county welfare agency to provide day care for child(ren) of other ACH participants may have the Certificate of Registration fee d through REACH funds.

. Family *[day]* ***based*** care providers who are not registered ler the Family Day Care Provider Registration Act and who ıvide care to one or two children or to the sibling children of an ividual, are approved for payment following the completion of standard evaluation process developed by DHS/DEA, the EACH Home Approval Checklist" (see N.J.A.C. 10:81, Appendix Approved homes are reimbursed for services up to a rate which 0 percent of the State maximum rate set for centers and registered nes (see (g) below) if the home has received approval since Septem-5, 1988. Homes approved prior to September 5, 1988 are paid prior approved rates.

. When it is essential for physical health and safety, the cost of nsporting a handicapped child to and from the family day care ne may be authorized (see N.J.A.C. 10:82-5.2(e)2).

e) In-home care rules are:

. "In-home care" means care for a child in the child's usual home l may be used when this is the child care preferred by the partici-ıt.

. The "REACH Home Approval Checklist" (see N.J.A.C. 10:81, pendix A) shall be used to evaluate the in-home care for payment ough REACH funds for REACH participants utilizing in-home e arrangements.

. The authorized rate for in-home care shall be deemed to be for services and *[superivsion]* ***supervision*** pertaining to the care the children and is not for the performance of household tasks ·elated to child care. Payment shall not be authorized for services ıvided by a non-needy caretaker relative who resides in the same home as the child when that relative is legally responsible for any member of the eligible family or ***an individual who*** is a member of the AFDC assistance unit.

4. Payment for in-home care shall be the actual cost, but shall not exceed the 60 percent rates established by the Department of Human Services as set forth in Table II of (g) below for each child in the home requiring this care ***unless the in-home care provider is registered pursuant to N.J.S.A. 30:5B-16 et seq.—Public Law 1987 c.27***. 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.

(f) Day camp rules are:

1. "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.

2. (No change.)

3. The maximum allowable rate for care in a day camp, regardless of the source or sources of such payment, shall not exceed the maximum rates established by the Department of Human Services (see (g) below).

4. Payment for child care in a camp program may be authorized if the camp has been inspected and is in good standing with the New Jersey Department of Health (DOH) and appears on the DOH certified listing obtainable from the DOH, Environmental Services; or possesses a valid provisional or certified certificate from DOH.

(g) Statewide maximum child care payment rates are based upon either the age or special circumstance status of the child and on the number of hours of care provided in the various types of child care arrangements. Included in the types of arrangements are registered homes, approved homes, in-home care, child care centers and day camps, and the hours of care provided (that is, full and part-time day care and care before and after school ***and during school recesses***).

1. "Special circumstances" or "special needs" children as defined in N.J.A.C. 10:82-5.2 shall be eligible for the appropriate "special circumstance" child care rate (see Table I below). Appropriate authorization shall be obtained from DEA before placement of the child in care and issuance of payment.

2. Full-time care is defined as care of a child for 30 hours per week or more ***or six hours or more per day***. *[Full-time care for school-age children, age five and older, means care for that child during school breaks and summer vacation.]*

3. Before and after school care for school-age children, age five and older, shall be actual costs up to the maximum rate set forth in Tables I and II below.

4. Authorization of provider payments for child care is limited to such providers satisfying requirements set forth in (c) through (f) above when child care expenses are not otherwise provided through other resources (see N.J.A.C. 10:81-1.10).

5. The maximum authorized rates for child care are set forth in Tables I and II below, as determined by the type of child care arrangements, and based upon either the age or special circumstance status of the child and the hours of care provided. *[Actual costs per child cannot exceed the maximum weekly full-time care rate per child based on the child care arrangements and the age or special circumstance status of that child. If more than one provider is involved, the actual expenditures of IV-A funds cannot exceed that full-time care rate per child.]*

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Table I

These rates shall be utilized for licensed child care centers, school-age programs, registered family day care homes and day camps.

MAXIMUM CHILD CARE PAYMENT RATES

HOURS OF CARE PROVIDED

CHILD(REN) SERVICED	FULL-TIME (30 hrs/week or more; 6 hrs or more per day)	THREE-QUARTER TIME (16 to 29 hrs/wk; less than 6 hrs/day but more than 3 hrs/day)	ONE-HALF TIME (7 to 15 hrs/wk)	ONE-QUARTER TIME (6 hrs/wk or less)
Infants/Toddlers (0 up to 2.5 yrs)	$89/wk based on rate $18/day	$67/wk based on rate $13/day	$45/wk based on rate $9/day	$22/wk based on rate $4/day
Pre-schoolers (2.5 up to 5 yrs)	$68/wk based on rate $14/day	$51/wk based on rate $10/day	$34/wk based on rate $7/day	$17/wk based on rate $3/day
School-agers (5 yrs-13 yrs)	$68/wk based on rate $14/day	$51/wk based on rate $10/day	$34/wk based on rate $7/day	$17/wk based on rate $3/day
*Special Circumstance Infants/Toddlers (0 up to 2.5 yrs)	$110/wk based on rate $22/day	$83/wk based on rate *[$17/day]* ***$16/day***	$56/wk based on rate $11/day	$27/wk based on rate $5/day
*Special Circumstance Child(ren) (2.5 yrs and up)	$89/wk based on rate $18/day	$67/wk based on rate $13/day	$45/wk based on rate $9/day	$22/wk based on rate $4/day

Table II

These rates shall be utilized for Approved Home and in-home care providers. Reimbursement for services shall be at a rate of 60 percer of the Statewide maximum rates set forth in Table I.

60 PERCENT MAXIMUM CHILD CARE PAYMENT RATES—
APPROVED HOMES/IN-HOME CARE PROVIDERS

HOURS OF CARE PROVIDED

CHILD(REN) SERVICED	FULL-TIME (30 hrs/week or more; 6 hrs or more per day)	THREE-QUARTER TIME (16 to 29 hrs/wk; less than 6 hrs/day but more than 3 hrs/day)	ONE-HALF TIME (7 to 15 hrs/wk)	ONE-QUARTER TIME (6 hrs/wk or less)
Infants/Toddlers (0 up to 2.5 yrs)	$53/wk based on rate $11/day	$40/wk based on rate $8/day	$27/wk based on rate $5/day	$13/wk based on rate $3/day
Pre-schoolers (2.5 up to 5 yrs)	$41/wk based on rate $8/day	$31/wk based on rate $6/day	$20/wk based on rate $4/day	$10/wk based on rate $2/day
School-agers (5 yrs-13 yrs)	$41/wk based on rate $8/day	$31/wk based on rate $6/day	$20/wk based on rate $4/day	$10/wk based on rate $2/day

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)ecial ircumstance :fants/Toddlers up to 2.5 yrs)	$66/wk based on rate $13/day	$50/wk based on rate $10/day	$34/wk based on rate $7/day	$16/wk based on rate $3/day
)ecial ircumstance hild(ren) .5 yrs and up)	$53/wk based on rate $11/day	$40/wk based on rate $8/day	$27/wk based on rate $5/day	$13/wk based on rate $3/day

1) Homes for unwed mothers: When an eligible child who is an ectant mother is receiving care in an approved maternity home, maximum rate for such care shall be the applicable rate for that lity as determined by the Division of Youth and Family Services. : CWA may obtain current rate information by communicating h the Division of Ecomonic Assistance, Office of County and nicipal Operation. Such rate shall include all maintenance and e except medical services and shall be made as a vendor payment m the assistant account.

. (No change.)

82-5.6 (Reserved)

82-5.7 Work/training allowances through REACH

Vork/training allowances for expenses incident to REACH parpation in work/training activities are set forth at N.J.A.C. 81-14.19. No other work/training allowances may be authorized. ɔse allowances shall be for expenses not otherwise provided ɔugh other resources (see N.J.A.C. 10:81-1.10.). The work/train- allowance shall be paid by separate check to the assistance payee authorized vendor. Payment shall be from the administrative ount, Title IV-F.

82-5.8 (Reserved)

82-5.9 (Reserved)

(a)

:W JERSEY COMMISSION FOR THE BLIND AND /ISUALLY IMPAIRED

ıtice of Administrative Correction

ganization and General Policy Provisions

ldditional Services Available

e Schedule

J.A.C. 10:91-4.4 and 7.1

'ake notice that the Commission for the Blind and Visually Impaired discovered errors in the text of N.J.A.C. 10:91-4.4 and 7.1. The word pe" in the phrase "pre-vocational type activities" at N.J.A.C. 91-4.4(d)10iii was deleted upon adoption of the rule (see R.1990 d.432 l the twelfth Comment-Response at 22 N.J.R. 2718), but erroneously ıined in the published adopted text. In the medical fee schedule set :h at N.J.A.C. 10:91-7.1(h), the following errors exist:

. In the category "Specialized eye procedures: Eyelids:" the word ınctual" in the last two items is a misspelling of the word "punctal," ch correctly appears in the original Commission rulemaking docuıts (see PRN 1989-450 and R.1990 d.432).

. In the category "Eyeglasses mounted bioptics or clip-on low vision s or custom made eyeglasses," the first word "eyeglasses" is incorrectly ral. The word was added upon adoption (replacing "spectacle") as eglass" (See R.1990 d.432) but misprinted in the plural form.

. In the categories "Gas permeable lenses (shall be initially approved an Administrative Medical Consultant)" and "Therapeutic lenses ıll be initially approved by an Administrative Medical Consultant)," article "an" was not included in the text adopted by the Commission : R.1990 d.432), and was erroneously inserted in the printing process. 'his notice of administrative correction is published pursuant to .A.C. 1:30-2.7.

'ull text of the corrected rules follows (additions indicated in dface **thus**; deletions indicated in brackets [thus]):

10:91-4.4 Additional services available to applicants and/or eligible clients

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

(d) Vocational rehabilitation (VR) services as follows:

1.-9. (No change.)

10. Tuition payment:

i.-ii. (No change.)

iii. Adjustment training, that is, pre-vocational [type] activities which promote and awareness of and healthy adjustment to the work environment and which provides clients with direct experiences of various types of work; and

iv. (No change.)

11.-15. (No change.)

(e)-(i) (No change.)

10:91-7.1 Fee schedule

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

(h) The Commission's medical fee schedule follows:

. . .

Specialized eye procedures:

Eyelids:

. . .

[Punctual] **Punctal** occlusion

[Punctual] **Punctal** occlusion, other eye

. . .

[Eyeglasses] **Eyeglass** mounted bioptics or clip-on low vision aids or custom made eyeglasses:

. . .

Gas permeable lenses (shall be initially approved by [an] Administrative Medical Consultant);

. . .

Therapeutic lenses (shall be initially approved by [an] Administrative Medical Consultant);

. . .

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Standards for Adoption Agencies

Adoption Complaint Investigation; Out-of-State Field Visits

Adopted Amendments: N.J.A.C. 10:121A-1.3, 1.5, 2.2, and 5.8

Proposed: September 4, 1990 at 22 N.J.R. 2674(b).

Adopted: December 4, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: December 5, 1990 as R.1991 d.6, **without change.**

Authority: N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq. and 30:4c-4(b).

Effective Date: January 7, 1991.

Expiration Date: December 7, 1992.

Summary of Public Comments and Agency Responses:

The Division of Youth and Family Services received one comment from an adoption agency.

COMMENT: The adoption agency stated that the proposed amendments were satisfactory as written.

RESPONSE: The Division of Youth and Family Services acknowledges this comment and appreciates the agency's expression of support.

Full text of the adoption follows:

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10:121A-1.3 Implementation and enforcement responsibility; information

The Bureau of Licensing of the New Jersey Division of Youth and Family Services (DYFS), Department of Human Services, shall be responsible for implementing and enforcing this chapter. For further information or technical assistance in understanding and/or complying with this chapter, please contact:

Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625
(609) 292-8255

10:121A-1.5 Definitions

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

. . .

"Adoption Complaint Investigation" means an investigation ordered by the court to determine the circumstances of a non-agency placement and to assess the suitability of the prospective adoptive parents. The investigation is conducted by a court appointed State-approved adoption agency in response to the filing of an adoption petition on behalf of the prospective adoptive parents.

. . .

10:121A-2.2 Issuance of a certificate of approval

(a) The Bureau shall review the application for a certificate and shall conduct one or more field visits to in-State agencies and, at its discretion, conduct one or more field visits to out-of-State agencies to ensure that the agency is in compliance with all requirements of the State Adoption Law, N.J.S.A. 9:3-37 et seq., and of this chapter.

(b)-(g) (No change.)

10:121A-5.8 Post-placement services

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

(c) In providing services as part of an Adoption Complaint Investigation:

1. The agency shall schedule a home visit no later than two weeks after receiving written notification from the court.

i. If the agency is unsuccessful in contacting the adoptive family in order to schedule a home visit within 14 days of receipt of the court's notification, the agency shall implement the following actions to schedule the home visit during the next 14-day period:

(1) Repeated telephone calls to the family's home and to the adult family members' place(s) of employment; and

(2) Transmittal of a certified letter to the family's home or to the adult family members' place(s) of employment.

ii. If the agency is unsuccessful in contacting the family during the second 14-day period, the agency shall send a letter or other written transmittal to the court that had directed the home study, explaining the agency's repeated attempts to contact the family to schedule the home visit and asking the court for direction on how to proceed.

iii. The agency shall document and maintain on file in the child's record each attempt that it made to contact the family, as specified in i and ii above.

2. The agency shall conduct a home visit no later than 14 days after scheduling it with the adoptive parents; if the visit cannot take place within 14 days of being scheduled, the agency shall document the reason for not meeting this time frame.

3. The agency shall include in the court-requested preliminary report documentation of the agency's efforts in contacting the adoptive parents and birth parents in order to assure a complete understanding regarding the circumstances of the placement of the child in the adoptive parent's home.

4. The agency's responsibility for the preliminary hearing is completed when the court receives the written report from such agency. The agency may elect to provide additional services to the adoptive family, if specified in the report.

5. The agency shall provide the adoptive parents with a copy of any report that contains material or recommendations adverse to the adoption.

6. After the agency is appointed by the court to oversee the well of the child prior to the final hearing to recommend whether or the adoption should be finalized, the agency shall:

i. Schedule and conduct a home visit as specified in (c)1 an above; and

ii. Submit its final written report to the court.

7. The agency shall conduct bi-monthly visits thereafter until adoption is finalized.

8. As an exception to (c)7 above, the agency may discontinue tl bi-monthly visits after the final report has been submitted to court, when:

i. The adoption is delayed due to a custody dispute; or

ii. The court has a backlog of cases resulting in a delay in adoption being finalized.

(d)-(i) (No change.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Temporary Certificate of Authority

Adopted New Rules: N.J.A.C. 11:1-29

Proposed: August 20, 1990 at 22 N.J.R. 2453(a).

Adopted: December 12, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: December 12, 1990 as R.1991 d.15, **without change**.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:33B-29.

Effective Date: January 7, 1991.

Expiration Date: February 3, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: One commenter stated that it is inequitable and c tradictory to provide for the admission of an insurer to write pri passenger automobile insurance in New Jersey on an accelerated ad basis. The commenter stated that the Department of Insurance (Dep ment) strives to inhibit the withdrawal of insurers to minimize ma disruptions. The commenter further believes that market disruptions occur if an insurer were admitted pursuant to the proposed rules. T in the commenter's opinion, would be unfair to insurers currently wri private passenger automobile insurance in this State. Further, the mission process is in part as lengthy and demanding as it is to help en that stable and financially responsible companies are admitted to tran insurance in this State. The commenter believes that it would be un and improper to allow less than requirements imposed upon insu currently admitted to transact insurance in this State.

Finally, the commenter stated that the proposed rules may hav negative impact on policyholders and the Property-Liability Insura Guaranty Fund, which is funded by licensed insurers, in the event an insurer admitted pursuant to these rules becomes insolvent.

The commenter thus suggested that the Department withdraw tl proposed rules.

RESPONSE: N.J.S.A. 17:33B-29 provides that the Commissione Insurance (Commissioner) may issue a temporary certificate of autho which authorizes an insurer to transact private passenger automo insurance in this State to any insurer which: (a) is organized as a st or mutual company; (b) is currently authorized and licensed to i private passenger automobile insurance policies or make contract private passenger automobile insurance in one or more states of United States; (c) meets the current capital or asset requirement N.J.S.A. 17:17-1 et seq. for stock or mutual companies; and (d) complied with the deposit requirements pursuant to N.J.S.A. 17:20- seq. N.J.S.A. 17:33B-29 further provides that "any application fc temporary certificate of authority . . . shall be deemed approved if disapproved by the Commissioner within 30 days of the application fi date." The statute thus creates a framework by which an insurer be issued a temporary certificate of authority.

The Department accordingly believes that these rules are necessar set forth the information to be submitted in an application for a tem ary certificate of authority to enable the Commissioner to ascer whether the applicant meets the requirements set forth in N.J.

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3B-29. The rules also provide restrictions and requirements to reduce extent of any market disruptions that may occur from an insurer's ation of transacting private passenger automobile insurance in this e due to the expiration of its temporary certificate and its failure to formal admission. An insurer must apply for or be in the process pplying for formal admission pursuant to N.J.A.C. 11:1-10; and an rer which has not gained formal admission prior to the expiration :s temporary certificate of authority must submit a plan of orderly drawal pursuant to N.J.S.A. 17:33B-30.

OMMENT: One commenter noted that N.J.A.C. 11:1-29.4(b)13 re- es that applicants file a list of all administrative, civil or criminal ons or orders, etc., to which the applicant or affiliates have been ect due to an alleged violation of any law governing insurance oper- ns during the preceding 10 years. The commenter suggested that this rmation be limited to actions, orders and proceedings which have brought by an insurance regulator. The commenter stated that some s permit private rights of action for damages resulting from violations nsurance statutes. The commenter concluded that the Department not need a listing of all third party liability lawsuit allegations. ner, the Department should focus its attention on final actions by rance regulators in other states.

ESPONSE: The Department disagrees. The information required in A.C. 11:1-29.4(b)13 is identical to that required of a foreign or alien rer seeking formal admission pursuant to N.J.A.C. 11:1-10. The rmation required in N.J.A.C. 11:1-10 regarding actions, orders, eedings, etc. is not limited only to actions or proceedings brought n insurance regulator. The Department believes that in the interest onsistency and uniformity, no such limitation should exist for appli- ons for temporary certificates of authority. The Department notes that required information relates only to alleged violations of laws govern- nsurance operations. Disclosure of any such actions or proceedings, ther brought by an insurance regulator or other party, enables the missioner to evaluate the applicant's methods of operations and thus re that such methods would not render its operations hazardous to public or policyholders in this State.

OMMENT: One commenter stated that certain requirements im- d by the rules contradict N.J.S.A. 17:33B-29.

rst, the commenter stated that requiring an applicant for a temporary ficate of authority to be in the process of applying for or intend to y for a "formal" certificate of authority is in contradiction to S.A. 17:33B-29. The commenter further stated that the rules nullify ossibility of additional competition and thereby contradict N.J.S.A. 3B-29.

econdly, the commenter stated that requiring the holder of a tempor- certificate who has not been issued a formal certificate at the end e renewal period to submit a plan of orderly withdrawal contradicts S.A. 17:33B-29. A withdrawal plan would require that the temporary ficate holder write private passenger automobile business for a longer od of time than the statutory maximum of two years. The commenter ested that a temporary certificate holder be subject to notice require- ts whereby the Department is notified whether a renewal of the orary certificate or application for a formal certificate of authority be pursued. If there is no application for renewal or a formal ficate, the commenter suggested that the insurer be required to begin enewing business rather than undergo formal withdrawal.

ESPONSE: The Department disagrees. The Department believes that rules are consistent with N.J.S.A. 17:33B-29 and thus implement intent of the Legislature.

pplication for a temporary certificate of authority pursuant to S.A. 17:33B-29 is not intended to be a means by which an insurer circumvent formal admission requirements. In other words, an in- r may not become authorized in this State for one or two years to the waters" and then, if it so inclines, cease transacting business is State with no additional requirements imposed. A temporary ficate of authority is a means by which the private passenger auto- ile insurance market in this State may be expanded through the orization of an insurer to transact private passenger automobile rance while its application for formal admission is pending, or upon fication by the insurer that it intends to apply for formal admission in 180 days.

milarly, the Department believes that requiring an insurer who has gained formal admission prior to the expiration of a temporary ficate of authority to submit a plan of orderly withdrawal does not radict N.J.S.A. 17:33B-29. The Department believes that this require- t is necessary to evaluate and minimize any market disruptions that may occur from an insurer's cessation of transacting private passenger automobile insurance in this State due to the expiration of its temporary certificate of authority and its failure to obtain a formal certificate of authority.

Regarding the comment that a withdrawal plan would require the temporary certificate holder to transact private passenger automobile insurance for a longer period of time than the statutory maximum of two years, this provision is intended to provide the Commissioner with sufficient flexibility to act under specified circumstances to prevent market disruptions in view of all relevant considerations, including the statutory duration of a temporary certificate of authority.

Finally, the Department believes that requiring a temporary certificate holder only to provide notice whether it intends to seek renewal or formal admission and, if not, to nonrenew policies rather than submit a plan of orderly withdrawal, would be inappropirate and ineffectual. As was stated above, a temporary certificate holder must apply for formal admission. Nonrenewal of business is only one part of the actions to be taken in the furtherance of a plan of orderly withdrawal. The Department believes that the approach suggested by the commenter would not provide sufficient protection against market disruptions to the extent provided by these rules. Accordingly, the Department believes that no change is warranted.

Full text of the adoption follows.

SUBCHAPTER 29. TEMPORARY CERTIFICATE OF AUTHORITY

11:1-29.1 Purpose

This subchapter sets forth the filing requirements for an insurer to obtain a temporary certificate of authority which authorizes an insurer to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:33B-29 while its application for a formal certificate of authority pursuant to N.J.A.C. 11:1-10 is pending or upon certification by the insurer that it intends to file such an application within 180 days of the date of its application for a temporary certificate of authority.

11:1-29.2 Scope

This subchapter applies to all insurers seeking to obtain a temporary certificate of authority to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:33B-29.

11:1-29.3 Definitions

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

"Actuary" means a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Annual Statement" means the form of statement that is described in N.J.S.A. 17:23-1.

"Applicant" means an insurer, presently authorized to transact private passenger automobile insurance in another state, which is applying for a temporary certificate of authority to transact private passenger automobile insurance in this State while its application for a "formal" certificate of authority pursuant to N.J.A.C. 11:1-10 is pending or upon certification that it intends to file such an application within 180 days of the date of its application for a temporary certificate of authority.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Formal certificate of authority" means a certificate of authority issued pursuant to N.J.S.A. 17:32-1 et seq. and N.J.A.C. 11:1-10.

"NAIC" means the National Association of Insurance Commissioners.

"Private passenger automobile insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2.

"Temporary certificate of authority" means a certificate issued by the Commissioner pursuant to N.J.S.A. 17:33B-29 and this subchapter which authorizes an insurer to transact the business of private passenger automobile insurance in this State.

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11:1-29.4 Temporary certificate of authority; issuance

(a) The Commissioner may issue a temporary certificate of authority which authorizes an insurer to transact the business of private passenger automobile insurance in this State to any insurer which:

1. Is organized as a stock or mutual company;

2. Is currently authorized and licensed to issue private passenger automobile insurance policies or make contracts of private passenger automobile insurance in one or more states of the United States;

3. Meets the current capital or asset requirements of N.J.S.A. 17:17-1 et seq. for capital stock or mutual companies which insure private passenger automobiles. The Department shall make an adjustment of surplus regarding all applicants as follows:

i. There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

ii. All applicants shall include in their Annual Statement a provision for unauthorized reinsurance pursuant to the calculation required in page 3 of the Annual Statement blank for Liabilities, Surplus and Other Funds in connection with the reinsurance in all companies not authorized to transact business in New Jersey. Where the liability is based on the calculation for some other state, the Commissioner may accept an amount of these items slightly larger than that required for New Jersey. This penalty may be adjusted for subsequent legal action regarding the license status of reinsurers in the State of New Jersey or in other jurisdictions; and

4. Has complied with the deposit requirements pursuant to N.J.S.A. 17:20-1 et seq.

(b) Any insurer applying for a temporary certificate of authority shall submit the following to the Commissioner:

1. A completed admission application form on a form provided by the Commissioner;

2. A certified copy of the applicant's certificate of incorporation;

3. Certified copies of the applicant's certificate of authority and certificate of good standing from the applicant's state of domicile;

4. A certified copy of the applicant's most recent Annual Statement;

5. A statement of opinion, by a qualified actuary, relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by such applicant, containing the information required by N.J.A.C. 11:1-21 or a certified copy of the applicant's most recent loss reserve opinion statement required by the applicant's state of domicile;

6. An annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by the applicant's state of domicile which is substantially similar to the report required by N.J.A.C. 11:2-26;

7. A certified copy of the applicant's certificate of deposit which shall show that such applicant has complied with the deposit requirements in N.J.S.A. 17:20-1 et seq.;

8. A certified copy of a report of the most recent examination of the applicant's affairs by the department of insurance or its equivalent, of the applicant's state of domicile;

9. An appointment, by the applicant, of the Commissioner as attorney for service of process on a form provided by the Commissioner;

10. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as the Commissioner may require;

11. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the applicant's state of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

12. Modified NAIC biographical affidavits to be completed by all directors and senior officers of the applicant on a form prescribed and provided by the Department;

13. A listing of all administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates or any of its directors or principal officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Wh the alleged violation is a felony or its equivalent in a jurisdicti which does not use this designation of a crime, such actions, orde proceedings and determinations shall include violations not rela to insurance operations. If a license has been refused, suspended revoked by any jurisdiction, the applicant shall furnish an exp nation and a copy of any orders, proceedings and determinatic related thereto;

14. A corporate plan of operation, including, but not limited a summary of the applicant's reinsurance program on assumed a ceded business, indicating the names of the reinsurers, retentio maximum risks, types of contracts (such as pro rata), excess of l and any other information which may be relevant to this part of applicant's operation. Additional information may be requested the Department in order to supplement or clarify information alre provided by the applicant; and

15. A statement certified by an officer of the applicant that:

i. The applicant has filed, or intends to file within 180 days of date of its application for a temporary certificate of authority, application for formal admission pursuant to N.J.A.C. 11:1-10; a

ii. The applicant is familiar with the requirements for formal mission set forth in N.J.A.C. 11:1-10 and believes that it meets will meet these requirements. The statement shall also indicate a waiver the applicant intends to request pursuant to N.J.A 11:1-10.4(a)5iii.

(c) Any application for a temporary certificate of authority sl be deemed approved if not disapproved by the Commissioner wit 30 days from the receipt of an application which, in the opinion the Commissioner, contains all of the information required by above.

11:1-29.5 Temporary certificate of authority; renewal

(a) A temporary certificate of authority shall be effective fo period of one year and may be renewed for only one additional ye No temporary certificate of authority shall be issued or renewed or after January 1, 1993.

(b) If the temporary certificate of authority will expire prior to issuance of a formal certificate of authority, the insurer shall ap for renewal of its temporary certificate of authority by filing application containing the information specified in N.J.A 11:1-29.4(b)3, 4, 5, 6, 7, 8 and 10, and any changes or amendme to the other information submitted for the initial application. Ap cations for renewal must be submitted not earlier than 60 days later than 30 days prior to the expiration of the temporary certific of authority.

(c) If the Commissioner finds that the insurer has failed to ap for a formal certificate of authority, has failed to actively pur gaining formal admission or has been denied a formal certificate authority, prior to the expiration of its temporary certificate authority, such insurer may apply to renew its temporary certific of authority as provided in (b) above.

1. The insurer shall also submit a detailed statement explain why it has failed to apply for a formal certificate of authority, failed to actively pursue gaining formal admission or, if denie formal certificate of authority, what actions it has taken and is tak to cure the deficiencies that resulted in denial.

2. Pending a determination of such insurer's application for newal, the Commissioner may permit the insurer to continue service existing business pursuant to terms and conditions he or may impose.

3. Any temporary certificate of authority renewed pursuant to subsection may be subject to terms and conditions to be met wit specified periods of time as determined by the Commissioner. Fail to meet any term or condition within the time prescribed may re in the revocation of the insurer's temporary certificate of author

(d) If an insurer has not been issued a formal certificate authority, the insurer shall submit a plan of orderly withdra pursuant to N.J.S.A. 17:33B-30 containing information that Commissioner may prescribe not later than 90 days prior to expiration of the renewed temporary certificate of authority or expiration of a temporary certificate of authority issued on or a January 1, 1992. Upon review and approval of the plan of ord

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ithdrawal, the Commissioner may extend the duration of the temporary certificate of authority for the time deemed necessary to effectuate the approved plan.

11:1-29.6 Applicability of insurance laws

All insurers authorized to transact business pursuant to a temporary certificate of authority are subject to all applicable laws in Subtitle 3 of Title 17 of the Revised Statutes and all applicable regulations in Title 11 of the New Jersey Administrative Code.

11:1-29.7 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

11:1-29.8 Severability

If any section of this subchapter is held to be invalid, the remaining parts of this subchapter are not to be affected.

(a)

OFFICE OF THE COMMISSIONER

Insurance Group

Readoption with Amendments: N.J.A.C. 11:2

Adopted Repeal: N.J.A.C. 11:2-8

Proposed: June 4, 1990 at 22 N.J.R. 1673(a).

Adopted: November 30, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: November 30, 1990 as R.1991 d.4, **with 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).

Effective Date: November 30, 1990, Readoption; January 7, 1991, Amendments and Repeal.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: (Professional Insurance Agents of New Jersey) The Department of Insurance should retain jurisdiction and regulation over midterm substitutions of insurance policies by mortgagors since such arena is unregulated by the Banking Department.

RESPONSE: The Department disagrees. The Department of Banking regulates this subject at N.J.A.C. 3:10-5.1 and 3:26-2.1. Given such facts, the jurisdiction and regulation by the Department of Insurance would be at best unnecessary and at worse confusing.

COMMENT: (MCA Insurance Companies) The proposal should be effective on January 1, 1991, as provided in the Fair Automobile Insurance Reform Act of 1990.

RESPONSE: The commenter is assured that the effective date of the amendments (which is the publication date of the New Jersey Register) will be on or after January 1, 1991.

The Department has corrected its mailing address in the rules proposed for amendment, upon adoption.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:2.

Full text of the amendments to the rules readopted (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

11:2-4.1 Cost of equipment as admitted asset

In determining the financial condition of a domestic or foreign insurance company or the United States branch of an alien insurance company, there shall be allowed as admitted assets the cost of electronic data processing equipment (hardware) purchased by the company, provided that such cost shall be amortized in full over a period not to exceed five calendar years, and provided further that where software is necessary to operate the system, such software shall be included as an asset.

SUBCHAPTER 8. (RESERVED)

11:2-9.24 Form A

For copies of Form A, write to the Department of Insurance, *[20 West State Street,]* CN 325, Trenton, New Jersey 08625***-0325***.

11:2-9.25 Instructions to Form B

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

(c) One signed copy of each statement shall be filed with the Commissioner of Insurance, *[20 West State Street,]* CN 325, Trenton, New Jersey 08625***-0325***.

(d)-(m) (No change.)

11:2-9.26 Form B

For copies of Form B, write to the Department of Insurance, *[20 West State Street,]* CN 325, Trenton, New Jersey 08625***-0325***.

11:2-12.7 Producers

No person shall act as an insurance agent or an insurance broker in connection with a mass marketing plan for any kind of insurance unless such person is duly licensed, under N.J.S.A. 17:22A-1 et seq., as an insurance agent or broker for such kind of insurance in such insurance plan.

11:2-16.1 General provisions

(a) Whenever a domestic or foreign surety company which has qualified to transact surety business in this State, in any year, becomes surety in an amount not to exceed $500.00 with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association by filing with the Commissioner of Insurance an undertaking thus to become surety, such undertaking shall state:

1. (No change.)

2. The unqualified obligation of the surety company to pay the fine or forfeiture in an amount to exceed $500.00 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, failed to make the appearance for which the guaranteed arrest bond certificate was posted.

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

11:2-17.6 Rules for replying to pertinent communications

(a) All claims must be reported to the designated insurer by a broker no later than three working days following receipt of notification of claim by the broker. For the purposes of this subsection, "broker" shall include a producer of record with respect to any residual market mechanism created by statute.

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

11:2-18.1 Purpose

The Plain Language Law (N.J.S.A. 56:12-1 et seq., as amended) requires certain insurance policies to be written in a "simple, clear, understandable and easily readable way." N.J.S.A. 39:6A-23 requires that each buyer's guide and coverage selection form required by that section to be issued to insureds and prospective insureds for automobile insurance be written in plain language. This subchapter provides rules for the implementation of these provisions.

11:2-18.3 Definitions

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

"Buyer's Guide" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A-23, which provides a brief description of all available policy coverages and benefit limits, identifies which coverages are optional and mandatory, and identifies all options offered by the insurer.

. . .

"Coverage Selection Form" means part of a written notice required to be given to insureds and prospective insureds for automobile insurance, pursuant to N.J.S.A. 39:6A-23, which provides information required by the Commissioner pursuant to N.J.A.C. 11:3-15.7.

. . .

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"Text" means all printed matter in a policy, except the name and address of the insurer; the name, number and title of the policy; the table of contents or index, captions or subcaptions; applications; specification or declarations pages; and schedules or tables. "Text" does not include the Coverage Selection Form or specific language required, permitted or approved by a law, regulation, rule or published interpretation of a State or Federal agency.

11:2-18.4 Minimum readability standards

(a) (No change.)

(b) A policy, Buyer's Guide and Coverage Selection Form shall be printed in legible type style with adequate contract between paper and ink. Captions, headings and spacing shall be used to increase overall readability.

(c) A policy and Buyer's Guide shall be printed in not less than 10 point type, one point leading. This rule shall not apply to schedules and tables; specification or declaration pages; or applications.

(d) (No change.)

(e) Policies and Buyer's Guides with 3,000 or more words, or with four or more pages, shall contain a table of contents or alphabetical index.

(f) (No change.)

(g) Each section of a policy, Buyer's Guide and Coverage Selection Form shall be self-contained and independent. However, general provisions applicable to more than one section may be included in a common section.

(h) (No change.)

(i) Policies, the Buyer's Guide and the Coverage Selection Form shall be written in everyday, conversational language with a personal style, and technical terms or words with a special meaning shall be avoided wherever possible.

(j) The text of a policy and Buyer's Guide shall achieve a score of at least 40 on the Flesch reading ease test or an equivalent score on a comparable test authorized for use by the Commissioner.

1. For the purpose of this subsection, a Flesch reading ease test score shall be measured by the following method:

i. For policy forms and Buyer's Guides containing 10,000 words or less of text, the entire form shall be analyzed. For policy forms and Buyer's Guides containing more than 10,000 words, the readability of two 200 word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least 20 printed lines.

ii.-iii. (No change.)

iv. The sum of the figures computed under ii and iii above subtracted from 206.835 equals the Flesch reading ease score for the policy form or Buyer's Guide.

v. (No change.)

2.-3. (No change.)

11:2-18.5 Procedures for requesting an opinion of compliance with the Plain Language Law

(a) An insurer may request an opinion from the Commissioner as to whether an insurance policy and related "writings required to complete the consumer transaction", a Buyer's Guide and a Coverage Selection Form are in compliance with the Plain Language Law. The Commissioner shall consider the Law's provisions and the implementing provisions of this subchapter in responding to such requests.

(b) For each policy form and related writings, Buyer's Guide and Coverage Selection Form for which an opinion is desired, an insurer shall prepare the Request for Opinion shown in Exhibit A of the Appendix to this subchapter. For related writings (including riders and endorsements) submitted separately from a basic contract to which they will apply, one Request for Opinion Form shall be prepared for each writing or group of writings applicable to one policy form. The insurer shall also provide two copies (where possible, "specimen" or "proof" copies) of the policy and related writings, Buyer's Guide and Coverage Selection Form to be reviewed.

(c) An officer of the insurer shall complete and submit the Affidavit of Compliance shown in Exhibit B of the Appendix to this subchapter for each policy and related writings, or for each separately submitted writing or group of writings applicable to one policy form. An officer of a rating organization which requests an opinion as to compliance may complete and sign the affidavit on behalf of the member companies of the rating organizations.

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

(f) Any insurance policy, Buyer's Guide and Coverage Selection Form whose language is revised for any reason, including compliance with the Plain Language Law, must be approved by the Commissioner pursuant to insurance laws and regulations before it can be issued:

1. The Commissioner's opinion as to compliance with the Plain Language Law is distinct from his or her approval of a policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations.

2. Filings for review and approval of policies, Buyer's Guides and Coverage Selection Forms pursuant to insurance laws and regulations should be prepared in accordance with existing filing procedures.

3. Ordinarily, a request for an opinion as to a policy's, Buyer's Guide's or Coverage Selection Form's compliance with the Plain Language Law and a filing for approval pursuant to insurance laws and regulations should be submitted to the Commissioner at the same time and in the same package.

4. If an insurer has already received approval of a policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations, and believes that the policy, Buyer's Guide and Coverage Selection Form complies with the Plain Language Law without further revision, it may resubmit it for the sole purpose of requesting an opinion as to compliance with the Plain Language Law. In completing the Request for Opinion Form (Exhibit A), an insurer should provide information necessary to confirm the previous approval of the policy, Buyer's Guide and Coverage Selection Form pursuant to insurance laws and regulations.

APPENDIX
EXHIBIT A
REQUEST FOR OPINION AS TO COMPLIANCE WITH PLAIN LANGUAGE LAW
(N.J.S.A. 56:12-1 et seq., as amended)

NAME OF INSURER: _____ FORM NUMBER: _____

ADDRESS: _____ DATE OF SUBMITTAL: _____

TELEPHONE: _____

I. PURPOSE OF SUBMISSION

1. Is an opinion as to whether the form, Buyer's Guide or Coverage Selection Form complies with the Plain Language Law being requested pursuant to N.J.S.A. 56:12-8?

YES NO

2. Is filing and approval pursuant to insurance laws and regulations by the Department of Insurance also being requested?

YES NO

Note: Filings for approval of policies pursuant to insurance laws and regulations should be prepared in accordance with the Department's existing procedures. Requests for readability certification should include Exhibits A and B; two copies of the policy (including related writings), Buyer's Guide or Coverage Selection Form to be reviewed; and any appropriate attachments.

3. If the form, Buyer's Guide or Coverage Selection Form you are submitting has already been approved by the Department of Insurance pursuant to insurance laws and regulations, please indicate the following information:

DEPARTMENT FILE NUMBER: _____

DATE OF DEPARTMENT OF INSURANCE APPROVAL: _____

II. REFERENCE TO OTHER FORMS

Pursuant to N.J.S.A. 56:12-5, an insurer need not request an opinion as to compliance with the Plain Language Law for policy forms identical to those which have already been certified for some other insurers or rating organization or if, in the case of a Buyer's Guide and Coverage

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election Form, the language does not differ from N.J.A.C. 11:3-15.6 or I J.A.C. 11:3-15.7.

1. If a policy, Buyer's Guide or Coverage Selection Form, is similar ut not identical to a previously certified policy, Buyer's Guide or Coverage Selection Form, please identify the previously certified policy, uyer's Guide or Coverage Selection Form, as specifically as possible. nclude the following information if available.

'ILER: _____

'ORM NUMBER: _____

)EPARTMENT FILING NUMBER: _____

)ATE OF CERTIFICATION: _____

2. Indicate how the material now submitted for review differs from ne previously certified materials by the use of brackets for deleted material and underlining for new material.

II. FLESCH READING EASE TEST

1. Identify any language not considered "text" as defined in N.J.A.C. 1:2-18.3 of the regulation on policy readability. This language may be dentified by reference to the policy section numbers.

2. If any of the language identified in item 1 is required, permitted r approved by a law, regulation, rule or published interpretation of a tate or Federal agency, identifying both the language and the law, rule r interpretation.

3. If the text of the policy or Buyer's Guide does not score at least 0 on the Flesch reading ease test, provide an explanation to enable the Commissioner to determine whether the lower score is warranted by the ature of the policy form (N.J.A.C. 11:2-18.4(i)3 of the regulation). A ower score will be accepted only in exceptional circumstances.

_____
Name and Title of Person Completing Form

_____
Signature

EXHIBIT B
AFFIDAVIT OF COMPLIANCE

JAME OF INSURER: _____ FORM NUMBER: _____

I certify that this contract and related writings comply with the Plain Language Law (N.J.S.A. 56:12-1 et seq.) and with N.J.A.C. 11:2-18.

I certify that the score of the text of the form on the Flesch reading ase test is ____ and that the test score has been accurately calculated s required by N.J.A.C. 11:2-18.

I also certify that the form(s) or Buyer's Guide is printed in not less han 10 point type, one point leading and/or the application is not less han 8 point type, one point leading as required by N.J.A.C. 11:2-18.4 nd N.J.A.C. 11:3-15.6.

I also certify that any Coverage Selection Form submitted is not less han 12 point type, as required by N.J.A.C. 11:3-15.7.

)ate: _____ _____
Name and Title of Insurer's Officer

_____
Signature

1:2-26.3 Definitions

The following words and terms, when used in this subchapter, shall ıave the following meanings, unless the context clearly indicates ›therwise:

. .

"Insurer" means any person, association, partnership or corporıtion licensed, authorized or eligible to transact the business of inurance in this State pursuant to Subtitle 3 of Title 17 or Subtitle 1 of Title 17B of the Revised Statutes of the State of New Jersey ncluding, but not limited to, eligible surplus lines insurers, intersnsurance exchanges and all risk retention groups as defined in 15 J.S.C. section 3901 doing business in New Jersey. Insurer does not include any statutory mechanism for providing insurance coverage in this State, including, but not limited to municipal joint insurance funds formed pursuant to N.J.S.A. 40A:10-36 et seq.

. . .

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Custodial Deposits

Adopted New Rules: N.J.A.C. 11:2-32

Proposed: September 4, 1990 at 22 N.J.R. 2640(a).

Adopted: December 12, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: December 12, 1990 as R.1991 d.14, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:16A-1 et seq., 17:20-1 et seq., 17B:18-37 et seq., 17B:18-39.1, 17:46B-1 et seq. and 17:50-1 et seq.

Effective Date: January 7, 1991.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

In N.J.A.C. 11:2-32.4(a), the actual effective date of this subchapter has been inserted.

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 32. CUSTODIAL DEPOSITS

11:2-32.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures for the holding by the Commissioner of any required deposits and to establish the fees to be charged the depositor for the services of the custodian of such deposits pursuant to P.L. 1989, c.264.

(b) This subchapter applies to all insurers required by the laws of this State to make a security deposit to be held for the benefit and security of all the policyholders of the company making such deposit. This subchapter also applies to any other entity required to make a deposit with the Commissioner in order to transact business in this State. This subchapter does not apply to any insurer under liquidation pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq., as applicable.

11:2-32.2 Definitions

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

"Bank" means a State or Federally chartered bank, savings bank, or savings and loan association which has trust powers and which has its principal office in New Jersey.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Custodian" means a bank which performs fiduciary functions in the maintenance of deposits.

"Deposit" means those deposits of securities required to be made by insurance companies prior to their authorization to transact business within any jurisdiction or required to be made by any other entity prior to being authorized by the Commissioner to transact business in this State.

"Federal Reserve book-entry system" means the computerized system sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities, respectively, in Federal Reserve Banks through banks which are members of the Federal Reserve System or which otherwise have access to this computerized system.

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11:2-32.3 Deposits with custodian; establishment of fees

(a) Whenever the Commissioner is required or authorized by a law of this or any other State or country to receive and hold a deposit, such deposit shall be made with the custodian on behalf of the Commissioner. The custodian is appointed by the Commissioner on the basis of bids submitted by banks to perform such fiduciary functions as the Commissioner deems necessary in the maintenance of deposits, pursuant to N.J.S.A. 17:20-1b and 17B:18-37b.

(b) If securities are deposited, such securities must be:

1. Bills, bonds and notes issued by the United States Treasury;

2. Debt obligations of the State of New Jersey, its authorities, counties and municipalities; or

3. Certificates of deposit of a State or Federally chartered bank, savings bank or savings and loan association with its principal office in New Jersey.

(c) All securities deposited shall be held by the custodian in physical form or, in the case of bills, bonds and notes issued by the United States Treasury, purchased for the depositor's account in the Federal Reserve book-entry system.

(d) The fees to be charged the depositor for the services of the custodian shall be established by the contract between the Commissioner and the custodian.

(e) All depositors shall pay the applicable fee to the custodian when due. All depositors shall also pay any applicable fees or penalties charged by the custodian for nonpayment in addition to any penalties which may be imposed by the Commissioner pursuant to law for violation of this subchapter.

11:2-32.4 Compliance dates

(a) All deposits made on or after *[the effective date of this subchapter]* ***January 7, 1991*** shall conform to the requirements contained in this subchapter.

(b) To the extent a depositor has on deposit securities that do not conform with the types of securities specified herein, such depositor shall, by June 30, 1991 or upon the maturity of such non-conforming securities, whichever is sooner, make any substitution of securities necessary so that the securities deposited conform with the types of securities specified in this subchapter.

11:2-32.5 Penalties

Failure to comply with this subchapter may result in the imposition of penalties as provided by law.

(a)

DIVISION OF ACTUARIAL SERVICES

Reporting Financial Disclosure and Excess Profits

Adopted Amendments: N.J.A.C. 11:3-20.3, 20.6, 20.8, 20.11, 20.12 and Appendix

Proposed: July 16, 1990 at 22 N.J.R. 2082(b).

Adopted: December 12, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: December 12, 1990 as R.1991 d.17, **with a substantive change** not requring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:29A-5.6 et seq.

Effective Date: January 7, 1991.

Expiration Date: January 6, 1991. (OAL Note: The proposed readoption of N.J.A.C. 11:3 is pending (see 22 N.J.R. 1678(a)) and can be effectuated prior to the chapter expiration date.)

Summary of Public Comments and Agency Responses:

COMMENT: Several commenters reiterated comments previously submitted regarding the initial proposal of N.J.A.C. 11:3-20 and 11:3-20A (see 21 N.J.R. 667(b) and 21 N.J.R. 842(a)).

RESPONSE: The Department of Insurance (Department) previously addressed these comments in the adoption of N.J.A.C. 11:3-20 and 11:3-20A (see 21 N.J.R. 1335(a) and 21 N.J.R. 1517(c)). These comments are irrelevant to the current proposed amendments and accordingly will not be addressed here.

COMMENT: Several commenters stated that while the proposed "e. cessive subsidization" standard better reflects the size of a member (an insurance holding company system, it is too small and fails to provic for the random variation in operating results which may occur. This especially true for smaller companies given the relatively short three-ye: period from which data for the excess profits calculation is based. Tl commenters believe that a more appropriate standard is available.

One of the commenters specifically stated that since the results (insurers are measured on a total limit basis, the presence or absence (a single claim could affect whether "excessive subsidization" exist Further, the size of the claim required to cause "excessive subsidizatior decreases as the insurer's premium volume declines. The comment indicated that the limits offered and written by its companies on indivi ual policies routinely exceed the level of excessive subsidization estal lished by the proposed amendments.

The commenter additionally stated that territorial rate relativities this State do not reach actuarially derived levels due to the mandate parameters between the highest and lowest rated territories. Because th system includes forced subsidies, one member of a holding compar system may be found to have excessively subsidized other members that system solely due to territorial distribution.

This commenter concluded that the rationalization for the propose "excessive subsidization" standard fails to consider these factors and th represents a circumvention of the legislative intent of determining exce profits on a group basis.

Another of the commenters stated that credibility studies indicate th: the volume of claim experience necessary to achieve a 90 percent prol ability that actual losses will be within five percent of the expected loss is between 2,000 and 5,000 claims. The margin of three percent (premium permitted for each member of an insurance holding compar system provided by the proposed "excessive subsidization" standa translates into a loss variation of slightly less than five percent. Th commenter further stated that the statutory minimum cutoff for filir an excess profits report of 150 earned car-years would most likely produ less than 50 claims for all coverages combined. This commenter accor ingly suggested that an alternative excess subsidization standard (eith a higher percentage of premium or an additional fixed dollar amoun apply to relatively small member insurers of an insurance holding con pany system.

Another of the commenters suggested that the standard incorpora a credibility procedure to ensure that the data of insurers with a lo number of car-years is meaningful.

RESPONSE: The Department disagrees. The excess profits statu (N.J.S.A. 17:29A-5.6 et seq.) permits a private passenger automobi insurer to earn 2.5 percent of earned premiums above the "Cliffo formula" rate of return before it is required to refund excess profits. Tl "excessive subsidization" standard reflects an additional amount (premium that a member of an insurance holding company system m retain before it is required to refund excess profits. This, in effect, i creases the "excess profits threshold" for insurers which are members (an insurance holding company system. Since the excess profits thresho does not vary based upon insurer size, the Department believes that tl excessive subsidization standard should not vary upon insurer size.

Regarding the comment that due to mandated parameters betwe highest and lowest rated territories, one member of an insurance holdir company system may be found to have excessively subsidized other men bers in that system, the Department believes that this situation coul result regardless of the "excessive subsidization" standard utilized. Tl situation suggested by the commenter results from the flattening of terr torial base rates required by N.J.S.A. 17:29A-36.

Finally, the Department disagrees that it failed to consider the issu raised by the commenters and thus circumvents the Legislature's inte of determining excess profits on a group basis. The Department co sidered all relevant factors and issues in its proposed revisions to tl "excessive subsidization" standard. Further, the proposed standard do not circumvent the intent of the Legislature. N.J.S.A. 17:29A-5.7 requir that the excess profits calculation for an insurance holding compar system be performed on its combined profits report. The statute furth provides for the adjustment of the combined profits report if the Con missioner finds that excessive subsidization between insurers in a holdir company system exists. The Department thus believes that the propose standard is consistent with the intent of the Legislature.

Finally, while the commenters state that a more appropriate excessi subsidization standard exists, they fail to suggest an alternative standa

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a manner by which an alternative standard may be developed. The :partment believes that the proposed standard is appropriate and there-'e no change is required.

COMMENT: One commenter stated that there are possible incon-ities in the application of the proposed "excessive subsidization" stan-rd. The standard as proposed could be interpreted to allow an insurer lose money in the aggregate (based on the combined profits reports · members of a holding company system) but nevertheless be required refund excess profits (based on the Commissioner's adjustment of the mbined profits report). The commenter suggested that the proposed ndard be clarified to avoid such an occurrence.

RESPONSE: The Department disagrees. The excess profits statute ecifically permits the situation discussed in the comment. N.J.S.A. :29A-5.7 provides that the Commissioner may examine the excess ofits report of each member insurer of an insurance holding company stem to determine whether excessive subsidization exists. Thus, while insurance holding company system may not be required to refund cess profits based on its combined profits report, a member of that stem may nevertheless be required to refund excess profits if the Com-ssioner determines that excessive subsidization exists between member surers.

COMMENT: One commenter stated that the Department developed 0.5 percent "excessive subsidization" standard to correspond to a pre-rate of return of 26 percent of surplus. The commenter believes, wever, that rate of return should be calculated on an after-tax basis properly judge the adequacy or effectiveness of such return.

The commenter thus suggested that the after-tax rate of return be amined, perhaps compared to those of other industries, to determine ether a member of an insurance holding company system has realized excessive return.

RESPONSE: The Department disagrees. Pursuant to N.J.S.A. :29A-5.6 et seq. the excess profits calculation excludes the effects of deral Income Taxes. As discussed in a response to a previous comment, "excessive subsidization" standard, in effect, increases the "excess ofits threshold". Therefore, in the interest of consistency the Depart-ent believes that the calculations on which the "excessive subsidization" ndard is based should similarly exclude the effects of Federal Income xes.

COMMENT: One commenter suggested that the Commissioner of surance (Commissioner) eliminate the "excessive subsidization" limi-tion and evaluate excess profits on a group basis only. The commenter ted that under the Fair Automobile Insurance Reform Act of 1990, holding company system may not be able to control the member mpany to which policyholders are assigned. For example, a member riting only "standard" risks could be unable to refuse "substandard" ks because the "substandard" company and/or the "assigned risk" mpany is full. The addition of "substandard" policyholders would sult in significant losses to the member writing only "standard" risks. e "substandard" or "assigned risk" company, however, could have cess profits due to random fluctuations. The commenter believes that is unfair to prohibit unlimited subsidization under such circumstances. e commenter concluded that eliminating the "excessive subsidization" nitation would allow holding company systems to file one excess profits port rather than several, thus reducing expenses to member insurers d the Department.

RESPONSE: The Department disagrees. N.J.S.A. 17:29A-5.7 provides at the Commissioner may adjust the combined profits report filed by insurance holding company system if he or she determines that one more member insurers are excessively subsidizing other members in at system. The Department believes that it is appropriate and consistent ith the intent of the legislature to examine each member's excess profits port to determine whether excessive subsidization exists. Further, the epartment believes that it is premature to address the effects, if any, the assigned risk plan on the "excessive subsidization" calculation since has not yet been developed. Finally, elimination of "excessive subsidiza-on limitation" would not permit holding company systems to file one cess profits report since N.J.S.A. 17:29A-5.7 requires each insurer in holding company system to file a separate excess profits report.

COMMENT: One commenter stated that the proposed "excessive bsidization" standard is based upon the premise that the excess profits vel of an insurance holding company system is 25 percent and sets the cess profits level of members of a holding company system at 26 rcent. The commenter believes that this is unfair since it is virtually possible for a holding company system to make a profit of 25 percent no member is permitted to make a profit in excess of 26 percent. Each ember of the holding company system must make a profit of exactly 25 percent to avoid the excess profits threshold. The commenter further stated that the effect of the proposed excessive subsidization standard is to reduce the excess profits level of an insurance holding company system below 25 percent by limiting each member's excess profit level to 26 percent rather than to determine whether "excessive subsidization" exists. The commenter thus suggested that the Department reconsider the proposed standard in consideration of its negative impact upon members of a holding company system.

RESPONSE: The proposed standard is not intended to ensure that a holding company system receive a rate of return of 25 percent of surplus. Rather, a rate of return of 25 percent of surplus is the maximum an insurance holding company system or an insurer which is not a member of a holding company system is allowed to retain before it is required to refund excess profits pursuant to N.J.S.A. 17:29A-5.6 et seq. The excessive subsidization standard was developed so as not to increase what is already a very high rate of return by very much. The standard permits a member insurer to retain an additional 0.5 percent of premiums, which in turn, increases the rate of return to 26 percent of surplus. This is the maximum amount that a member of insurance holding company system is allowed to retain before it is required to refund excess profits. The Department believes that the proposed standard is appropriate and thus no change is required.

COMMENT: Two commenters stated that the "non-excessive subsidization" allowance of up to 0.5 percent of the three-year earned premium for a member of a holding company system is arbitrary and not supported by statistical information to justify its use.

RESPONSE: The Department disagrees. The proposal summary at 21 N.J.R. 2083 sets forth in detail the manner by which the "excessive subsidization" standard (and therefore the "non-excessive subsidization" standard) were determined.

COMMENT: One commenter stated that the proposed "excess subsidization" standard is inappropriate. The commenter believes that insurers may not earn the 3.5 percent rate of return of premiums allowed by the "Clifford formula" because insurer results fluctuate over time. Accordingly, the most profitable periods will be limited. The commenter concluded that the proposed standard does not sufficiently consider periods of low profits or losses and will cause insurers to earn less over time than the amount allowed by the "Clifford formula."

RESPONSE: The Department disagrees. While insurer results fluctuate over time, the calculation of excess profits is based on an insurer's results for the previous three calendar-accident years. The Department believes that this reduces the effects of any fluctuations. Further, no excessive subsidization standard can sufficiently consider periods of low profits or losses. The entire excess profits calculation is designed to provide for refunds to policyholders if an insurer earns more than a justified rate of return. If an insurer is consistently receiving a low rate of return, it may apply for a rate increase pursuant to N.J.A.C. 11:3-16. Finally, while the commenter stated that the proposed standard is inappropriate, it provided no alternative standard or specific method by which such a standard could be determined.

COMMENT: One commenter stated that the calculations in the proposal Summary on which the proposed "excessive subsidization" is based are inappropriate.

First, the commenter stated that the corporate tax rate stated in the proposal Summary is 33 percent while the actual calculations utilize a rate of 34 percent. The commenter further stated that these figures are arbitrary since specific tax rates can vary.

Secondly, the commenter stated that the rate of return of nearly 25 percent of surplus stated in the proposal Summary is inappropriate since it is a pre-tax rate of return. Using a corporate tax rate of 34 percent, a 24.6 percent return becomes 16.2 percent of surplus after taxes. Stated as a percentage of net equity under Generally Accepted Accounting Principles (GAAP), an insurer's maximum rate of return is approximately 13.5 percent after taxes. The commenter further stated that it is inappropriate to assume that insurers earn a nine percent return on investments, as noted in the summary.

Finally, the commenter stated that under New Jersey's prior approval rating system, an insurer is not able to earn the 3.5 percent of premiums allowed by the "Clifford formula" or the 24.6 percent of surplus indicated in the proposal Summary. The commenter indicated that the "Clifford formula" only allows a return of 10.8 percent of GAAP equity. The commenter concluded that most investors would not consider this a fair and reasonable rate of return for the risk of underwriting private passenger automobile insurance in this State.

RESPONSE: The Department disagrees. The Department believes that the utilization of a 33 percent or 34 percent corporate tax rate does

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not materially affect the calculations utilized in determining the excessive subsidization standard. Further, while an insurer's effective tax rate may vary, the corporate tax rate utilized for the determination of the standard is the standard corporate tax rate. As was stated in a response to a previous comment, the excess profits statute does not provide for the adjustment of the excess profits calculation (and, accordingly, the "excessive subsidization" standard) based upon an insurer's effective corporate tax rate. Adjustment of the excessive subsidization standard based upon a member insurer's effective corporate tax rate could provide an advantage to members of an insurance holding company system which would not exist for insurers which are not members of a holding company system. The Department thus believes that the corporate tax rate utilized for the determination of the standard is appropriate and not arbitrary as utilized for development of the proposed standard.

The Department also disagrees that the rate of return of 25 percent of surplus as stated in the proposal Summary is inappropriate since it is a pre-tax rate of return. As was stated in a response to previous comment, the excess profits calculation excludes the effects of Federal Income Taxes. Since the excessive subsidization standard effectively increases the excess profits threshold, the Department believes it appropriate that the calculations on which the standard is based also exclude the effects of Federal Income Taxes.

The Department further disagrees that it is inappropriate to assume that insurers earn a nine percent return on investments. N.J.A.C. 11:3-20A, promulgated pursuant to N.J.S.A. 17:29A-5.8, establishes the standard on the investment of policyholder-supplied funds at nine percent. Thus, for the purposes of the excess profits calculation, an insurer is assumed to have received at least a nine percent return on its investment of policyholder-supplied funds, notwithstanding the rate of return it actually received. The standard contained in N.J.A.C. 11:3-20A is conservative and reflects the minimum rate of return that an insurer should be able to receive on its investments if it invests prudently.

Finally, the comments regarding the ability of insurers to earn the 3.5 percent of premiums allowed by the Clifford formula system are not relevant to the calculations on which the determination of the excessive subsidization standard is based. The concerns expressed by the commenter would exist with any excessive subsidization standard. Further, as was stated in a response to previous comment, the approximate rate of return of 25 percent of surplus stated in the proposal summary is not intended to reflect a guaranteed rate of return that all insurers will receive. Rather, it is the maximum amount an insurance holding company system or an insurer which is not a member of a holding company is statutorially allowed to retain before it is required to refund excess profits.

COMMENT: One commenter stated that the standard corporate tax rate is 34 percent rather than 33 percent as stated in the proposal summary and accordingly affects the computation of the 5.3 percent pre-tax rate of return described therein.

RESPONSE: The Department disagrees. Utilizing the calculations set forth in the proposal summary, a corporate tax rate of 33 percent results in a rate of return of 24.4 percent of surplus; a corporate tax rate of 34 percent results in a rate of return of 24.6 percent of surplus. Both numbers are approximately 25. Accordingly, the Department does not believe that the use of a 33 percent or 34 percent corporate tax rate materially affects the calculations on which the determination of the excessive subsidization standard is based.

COMMENT: One commenter stated that approximating the premiums-to-surplus ratio at 2 to 1 rather than utilizing 1.8 to 1 overstates an insurer's rate of return as 26 percent, rather than 24 percent, which would result without the approximation.

RESPONSE: The Department does not believe that the approximation of 1.8 to 1 as 2 to 1 materially affects the calculations on which the excessive subsidization standard is based. The calculations on which the determination of the excessive subsidization standard is based are illustrative of the approximate rate of return an insurer may retain before it is required to refund excess profits. The calculations are utilized to show the basis and the reasonableness of the proposed excessive subsidization standard.

COMMENT: One commenter stated that the utilization of an insurer's entire surplus to arrive at the rate of return of 24.6 percent of surplus is contrary to view of the Supreme Court of New Jersey as expressed in *Application of the Insurance Rating Board*, 55 N.J. 19, 258 A.2d 892 (1969).

RESPONSE: The rate of return and the standard for excessive subsidization are based solely on the underwriting result and the benefit to the insurer from investing policyholder supplied funds. The calculation is based on the rate of return to premiums, which are supplied by the policyholder. This calculation is therefore consistent with the *Insurai Rating Board* case. The 2 to 1 ratio of premiums to surplus is used convert the rate of return to premiums into a rate of return to surpl Stating the result as a rate of return to surplus provides a commonly us comparison among the various lines of insurance.

COMMENT: One commenter suggested that the Commissioner empt reciprocal insurance exchanges formed pursuant to N.J.S.A. 17:5(et seq. from the excess profits filing requirements contained in N.J.S. 17:29A-5.6 et seq. and N.J.A.C. 11:3-20. The commenter stated tha reciprocal insurance exchange is a not-for-profit association of persc who agree to share insurance costs. The commenter further stated tl all unused premiums or earnings are set aside on a proportional ba in separate accounts for the benefit of each subscriber in each particu year. For these reasons, the commenter believes that it is inappropria unnecessary, and would prove costly, to subject a reciprocal insurar exchange to excess profits report filing requirements.

RESPONSE: The Department disagrees. N.J.S.A. 17:29A-5.7 requi each insurer to annually file an excess profits report on or before Ju 1 of each year, unless exempt pursuant to N.J.S.A. 17:29A-5.11. N.J.S. 17:29A-5.6j. defines "insurer" as "an entity authorized or admitted transact private passenger automobile insurance business in New Jers but does not include the New Jersey Automobile Full Insurance Und writing Association created pursuant to N.J.S.A. 17:30E-1 et seq." T Department believes that a reciprocal insurance exchange is an "insure under this definition; and is thus statutorily required to file an exc profits report each year, unless exempt pursuant to N.J.S.A. 17:29A-5.

COMMENT: One commenter stated that the proposed amendme to N.J.A.C. 11:3-20.8 and proposed new rule N.J.A.C. 11:3-20.11 fail provide due process to insurers who believe that they have been roneously assessed excess profits. The commenter also stated that t proposed amendment and new rule grants powers to the Commissior with no guidelines to make final decisions regarding excess profits terminations; and whether an insurer may submit a supplemental filir

The commenter further believes that any insurer wishing to contes determination of excess profits should be entitled to a hearing which, the commenter's opinion, is necessary to achieve the purpose of develc ing a complete administrative record.

The commenter additionally stated that based upon the proposal Su mary, the amendments and new rule do not permit an insurer to challen excess profits determinations or submit supplemental filings based up objections to the Department's standard methods of calculation. T commenter believes that an insurer should be permitted to challenge t Department's methodology and should be entitled to a hearing befc any adverse decision is made by the Commissioner.

RESPONSE: The Department disagrees. N.J.S.A. 17:29A-5.6 et se does not provide that an insurer is entitled to a hearing on the Co missioner's determination that the insurer is required to refund exc profits. Further, the Department does not believe that a hearing is nec sary to achieve the purpose of developing a complete administrati record. The insurer's excess profits report filing and the Commissione notification that the insurer is required to refund excess profits, contai ing a written explanation of the basis on which such determination w made, provides a complete administrative record.

The Department also disagrees that an insurer should be permitted challenge a determination of excess profits or to submit supplemen filings based upon objections to the Department's standard methods calculation. Such challenges do not raise any issues of fact. Thus it inappropriate for the Commissioner to reevaluate a determination th an insurer is required to refund excess profits on such a basis.

Further, regarding supplemental filings, an insurer is required to f a complete and accurate excess profits report on or before July 1 of ea year. Any inaccuracies in its filing should be remedied prior to the fili due date. The Department recognizes however the need to provi procedures by which an insurer may request permission to suppleme its excess profits filing in appropriate circumstances.

Finally, any final agency decision is subject to appeal to the Superi Court, Appellate Division. The Department therefore believes that t proposed procedures are appropriate and do provide due process insurers.

COMMENT: One commenter stated that the proposed amendmer permit a supplemental filing for the purpose of correcting "good fai error" or "excusable mistake" but do not permit such filings "to reme simple carelessness." The commenter believes that these terms are vag and thus the classification of errors into one of these categories may arbitrary. The commenter thus suggested that an insurer not be requir to obtain the Commissioner's permission prior to submitting a su

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:mental filing. Rather, the commenter believes that the Commissioner ɔuld accept and review all revisions to the original filing based on its :rits.

RESPONSE: The Department disagrees. An insurer is required to file :omplete and accurate excess profits report by July 1 of each year. cordingly, any errors or inaccuracies should be identified and corrected or to the filing due date. However, numerous insurers have attempted supplement their initial filings after the date the excess profits reports : due. The Department thus determined that a threshold procedure is :essary by which the Commissioner may evaluate an insurer's request · permission to supplement its initial filing. The Commissioner is not quired to accept any supplemental filings. The procedure provides a afety valve" by which the Commissioner may allow an insurer to ɔplement its initial filing in appropriate circumstances. Further, accep- ıce of all revisions to the insurer's initial filing could result in a situation ıere an insurer continually submits revisions to its initial filing months er the July 1 deadline. This would allow insurers to effectively avoid : statutory due date, which the Commissioner is bound to enforce. The Department thus believes that the procedures by which an insurer ıy request permission to supplement its initial filing are appropriate d that no change is warranted.

COMMENT: One commenter stated that the proposed amendments N.J.A.C. 11:3-20.8 create uncertainty. The commenter believes that insurer requesting a reevaluation of a determination that it is required refund excess profits could be denied an opportunity to submit a ɔplemental filing even when the purpose of such filing is to correct a ood faith error" or "excusable mistake". The commenter concluded ıt the fact that the Commissioner may approve or disapprove the quest to make a supplemental filing should not be relevant to the roduction of relevant information regarding a request for a reevalua- n of a determination of excess profits.

RESPONSE: The Department disagrees. As was stated in the response the previous comment, an insurer must file a complete and accurate :ess profits report on or before July 1 of each year. Any errors or ıccuracies should be identified and corrected before the filing due date. ıe Department thus believes it appropriate that the supplemental filing ɔcedures apply any time an insurer wishes to supplement its initial ng. Further, in most instances an insurer has undertaken to supplement initial filing only after the determination that it is required to refund :ess profits.

COMMENT: One commenter stated N.J.A.C. 11:3-20.6 provides that : Commissioner may order an adjustment in the combined excess ofits report filed by an insurance holding company system if, upon amining each member insurer's profits report, one or more insurers in : holding company system are excessively subsidizing other insurers in ıt system. The commenter stated that it appears inappropriate to allow : Commissioner discretion to order a refund of excess profits since the les define when "excessive subsidization" exists. The commenter sug- sted that the rules describe the circumstances under which an insurer not required to refund excess profits where "excessive subsidization" ists.

RESPONSE: The Department agrees. The Commissioner will order adjustment in the combined excess profits report if he or she finds ıt excessive subsidization exists. The rules are changed upon adoption reflect this clarification.

COMMENT: One commenter noted that the proposed "excessive bsidization" standard is based upon a percentage of earned premiums r the three calendar-accident years preceding the filing of the excess ofits report. The commenter thus suggested that the effective date of : proposed standard be three years from the date of adoption since is will provide insurers with the opportunity to formulate business plans response to the changes imposed by the revised "excessive subsidiza- ɔn" standard.

RESPONSE: The Department disagrees. The Commissioner ordered June 8, 1990 in Order No. A90-132 that specific standards and ocedures apply in the filing of the Excess Profits Reports due July 1, 90. The proposed amendments codify the requirements set forth in the ɔmmissioner's Order. These requirements are thus currently effective. ı effective date of three years from the date of adoption of these ıendments would negate the purpose for which Order No. A90-132 was ued. Further, changes to the excess profits calculation contained in the actment of a new excess profits statute (effective September 5, 1988) :re effective for the Excess Profits Report due July 1 immediately llowing. The Department thus believes that it is appropriate that these proposed amendments be effective for the Report due July 1, 1991 and thereafter.

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

11:3-20.3 Definitions

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

. . .

"Combined profits report" means the Excess Profits Report consisting of the aggregated profits results of all members within an insurance holding company system and the individual profits results for each individual member within that holding company system.

. . .

"Non-excessive subsidization" means the number of dollars of excess profit, as calculated pursuant to this subchapter, for an individual insurer within an insurance holding company system, that is less than or equal to .5 percent (one half of one percent) of its earned premiums for the three calendar-accident years immediately preceding the year in which the Excess Profits Report is due to the extent that this excess profit has not been refunded or credited to policyholders.

. . .

"Subsidization" means the number of dollars of excess profit as calculated pursuant to this subchapter, for a member of an insurance holding company system, which has not been refunded or credited to policyholders.

11:3-20.6 Reporting requirements for insurance holding companies

(a) (No change.)

(b) For each insurance holding company system, a combined profits report for all insurers in its system shall be filed with the Commissioner. The excess profits computation for an insurance holding company system shall be performed on its combined profits report, except the Commissioner *[may]* ***shall*** order an adjustment in the combined profits report if, upon examining each insurer's profits report in the insurance holding company system, one or more of the insurers in that system is excessively subsidizing other insurers in that system.

(c) Excessive subsidization shall exist if the number of dollars of excess profit, as calculated pursuant to this subchapter, for an individual insurer within an insurance holding company system, exceeds .5 percent (one half of one per cent) of its earned premiums for the three calendar-accident years immediately preceding the year in which the Excess Profits Report is due to the extent that this excess profit has not been refunded or credited to policyholders.

11:3-20.8 Refund or credit of excess profits

(a) If the Commissioner determines that an insurer is required to refund excess profits, the Commissioner shall issue written notice to the insurer of his or her determination. The notice shall contain a written explanation of the basis on which such a determination was made and shall advise the insurer that it may request a reevaluation of the determination as set forth at (b) below.

(b) An insurer may request a reevaluation of the determination that it is required to refund excess profits by submitting a written request to the Department within 30 days of the receipt of the notice in (a) above.

1. The written request shall set forth the legal or factual basis for the requested reevaluation.

2. If the basis for the requested reevaluation is good faith error or excusable mistake, the request shall be accompanied by a written request to make a supplemental filing pursuant to N.J.A.C. 11:3-20.11.

3. The Commissioner shall notify the insurer in writing of his or her determination within 60 days, which shall constitute a final agency decision. If no written request for a reevaluation is made as set forth in (b)1 and 2 above, the original notice of determination shall constitute a final agency decision.

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(c) The insurer shall submit to the Commissioner a fair, practicable and nondiscriminatory plan to refund or credit to policyholders the excess profits within 30 days after the written notice in (a) or (b) above, as applicable, has been given to the insurer by the Commissioner.

1.-2. (No change.)

Recodify existing (c)-(e) as (d)-(f) (No change in text.)

11:3-20.11 Supplemental filings

(a) An insurer may request permission to supplement its Excess Profits Report filing due to good faith error or excusable mistake by submitting a written request to the Department containing the following:

1. The reasons why the insurer believes that a supplemental filing is necessary;

2. A brief but complete description of the nature of the information to be contained in the supplemental filing (Note: The actual supplemental filing should not be submitted until the insurer is notified that the request has been approved); and

3. The reasons why the insurer failed to provide this information in its initial Excess Profits Report filing.

(b) The Commissioner shall either approve or disapprove the request, in writing, within 30 days after the request is received by the Department. If the insurer is notified that its request is approved, the insurer shall submit the supplemental filing to the Department within 10 days after the receipt of such notification.

Recodify existing 11:3-20.11 and 20.12 as 11:3-20.12 and 20.13 (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 1988 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 pri years' or later years' data, and which contain all information, includi dates, adjusted accordingly.

. . .

Exhibit Ten uses the data developed in Exhibits One through Nine calculate excess profits.

The sources of data for Exhibit Ten follow.

Item 1: Direct Calendar Year Written Premium, Exhibit One, Item 1

Item 2: Direct Calendar Year Earned Premium, Exhibit One, Item 1

Item 2A: Exhibit Nine—Part Three, Col. (3).

Item 2B: AIRE Charges are the amounts the filer is assessed, accordi to N.J.S.A. 39:6A-22. The calendar/accident year in which an AIF charge is assigned is the calendar year in which the filer is informed the AIRE charge and not the calendar year in which the filer pays t AIRE charge, if different.

Item 3: For BI Liability and PIP, "Ultimate Incurred", per Exhil Five—Part Three, Col. (3). For Other Liability and Physical Damag "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 cc tingencies in the filer's approved rate filing, expressed as a ratio, a 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 a PIP; Exhibit Six—Part Seven, Col. (3), for Other Liability and Physic Damage.

Item 21 = Item 19–Item 20.

Item 22: Exhibit Eight—Part Two, Item 5.

Item 24 = Item 21 + Item 22–Item 23.

Item 26 is Item 24 minus Item 25.

. . .

Exhibit Ten
Excess Profit Calculation

Check One: _____

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

		1986	1987	1988	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	____	____	____	____

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:m 8:	Item 7 as a Ratio to Item 1	____	____	____	____
:m 9:	Direct General Expenses Incurred	____	____	____	____
:m 10:	Item 9 as a Ratio to Item 2	____	____	____	____
:m 11:	Direct Taxes, Licenses and Fees Incurred	____	____	____	____
:m 12:	Item 11 as a Ratio to Item 1	____	____	____	____
:m 13:	Direct Policyholder Dividends Other Than Excess Profits. Refunds or Credits Incurred	____	____	____	____
:m 14:	Credit or Refund of Excess Profits	____	____	____	____
:m 15:	Subtotal Item 13 + Item 14	____	____	____	____
:m 16:	Item 15 as a Ratio to Item 2	____	____	____	____
:m 17:	Underwriting Income = Item 2 + Item 2A - Item 2B - Item 3 - Item 5 - Item 7 - Item 9 - Item 11 - Item 15	____	____	____	____
:m 18:	Allowance for Profit and Contingencies	____	____	____	____
:m 19:	Actuarial Gain	____	____	____	____
:m 20:	Total Development Adjustment	X	X	X	____
:m 21:	Total Actuarial Gain	X	X	X	____
:m 22:	Excess Investment Income	____	____	____	____
:m 23:	Item Two times .025	____	____	____	____
:m 24:	Excess Profit	X	X	X	____
:m 25:	Non-excessive Subsidization (.005 times Item 2)	X	X	X	____
:m 26:	Excessive Subsidization	X	X	X	____

(a)

HE COMMISSIONER

ctuarial Services

eadoption with Amendments: N.J.A.C. 11:4

dopted Repeal: N.J.A.C. 11:4-1

roposed: June 4, 1990 at 22 N.J.R. 1689(a).
dopted: November 30, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.
iled: November 30, 1990 as R.1991 d.3, **without change.**
uthority: N.J.S.A. 17:1C-6e.
ffective Date: November 30, 1990, Readoption;
January 7, 1991, Amendments and Repeal.
xpiration Date: November 30, 1995.

ummary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:4.

Full text of the adopted amendments follows.

1:4-7.1 Filing requirements

(a) Every application must be filed with the Commissioner of nsurance within 20 working days after the insured has signed it or ithin 20 working days of the inception of the policy, whichever is arlier.

(b) Each application shall show the following information:

1.-8. (No change.)

9. Underwriting information in support of the additional premium nder (a)8ii above. In the case of automobile insurance, liability and hysical damage, a copy of the abstract of driving record from the Division of Motor Vehicles shall be submitted. Such abstract is not equired if the coverage applied for is excess coverage over the coverages and limits available under any residual market mechanism providing automobile insurance pursuant to statute. In the case of fire insurance, an inspection report, based upon an inspection performed by a qualified person, shall be submitted.

10.-11. (No change.)

11:4-7.2 Premium charges

(a) Premium charges in excess of those produced by the rating system approved for the submitting company shall be reasonable and adequate and not unfairly discriminatory, and shall be proportionate to the additional hazard, subject to the following provisions on business for which coverage is available under any residual market mechanism created by statute, including, but not limited to, the New Jersey Underwriting Association under the Fair Plan and the Crime Indemnity Plan:

1. Insurance available from these plans shall be rated in accordance with the rating systems approved for these facilities and the procedures applicable to such business shall be followed, if written under the Consent to Higher Rate provision. Any surcharges to be applied to such business must be documented by any required inspection report.

2.-3. (No change.)

11:4-7.3 Approval of applications

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

(f) Nothing in this regulation shall prevent a company from filing a rate that produces a premium lower that that produced by the approved rating system, including the rating systems applicable under any residual market mechanism created by statute, including, but not limited to, the Fair Plan and the Crime Indemnity Plan.

11:4-17.3 Definitions

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

. . .

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"Licensee" means any person licensed as an insurance agent, broker or consultant pursuant to N.J.S.A. 17:22A-1 et seq.

. . .

11:4-17.7 Penalties

(a) Any person who, after notice and hearing, is determined by the Commissioner to be in violation of this regulation shall be liable to a penalty not exceeding $2,000 for each violation. In addition to, or in lieu thereof, the Commissioner may revoke or suspend the license or certificate of authority of any such agent, broker, consultant, or insurer.

(b) (No change.)

11:4-27.4 Schedule and procedures for reporting liquor law liability loss experience statistics

(a) (No change.)

(b) Each insurer authorized to do business in New Jersey, which issues policies covering liquor law liability for insureds in New Jersey, shall segregate, for each calendar-accident year, the data required in (a) above for those insureds which have an alcohol breath analyzer machine on their premises from those insureds which do not.

1. The data required by this subchapter shall be indicated on Forms A and B, appended to this subchapter, and shall be submitted to:

Department of Insurance
Property/Liability
20 West State Street
CN 325
Trenton, New Jersey 08625

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Hospital Workers' Compensation Group Self-Insurance

Joint Insurance Funds for Local Governmental Units

Adopted Amendments: N.J.A.C. 11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10 and 2.23

Proposed: January 2, 1990 at 22 N.J.R. 16(a).

Adopted: December 12, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: December 12, 1990 as R.1991 d.16, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 34:15-77 et seq. and 40A:10-36 et seq.

Effective Date: January 7, 1991.

Expiration Date: October 26, 1994.

Summary of Public Comments and Agency Responses:

Several commenters stated that they approve of the changes and clarifications provided in the proposed amendments and acknowledged the Department's strong interest in assessing the financial integrity of these funds.

COMMENT: Several commenters stated that the rules should not automatically incorporate present joint insurance fund informational filing practices. Rather, careful determination should be made regarding whether these practices should be continued, modified or streamlined.

RESPONSE: The Department believes that it is appropriate to reflect those informational filing practices common among joint insurance funds in these rules to ensure consistency and uniformity regarding these funds' operations.

COMMENT: Several commenters stated that these changes may be premature in that none of the joint insurance funds have yet been audited by the Department.

RESPONSE: The Department disagrees. These proposed changes are independent of the audit conducted by the Department. Any additional changes to the rules which are deemed to be necessary after an evaluation of the audits would be proposed in the future accordingly.

COMMENT: Several commenters stated that the requirement in tl proposed amendment to N.J.A.C. 11:15-2.3 that municipalities and cou ties which operate pursuant to the Optional County Charter La (N.J.S.A. 40:41A-13 et seq.) pass an ordinance to join a joint insuran fund is unnecessary and impractical.

One of the commenters stated that all of the municipalities that ha insured through the various joint insurance funds it administers ha entered the fund(s) through the adoption of resolutions rather than ord nances.

The commenters additionally stated that in many cases, the communi wishing to join the fund has insurance policies that are expiring and th must be accommodated in a timely manner. It would be virtually impo sible to accommodate membership in a timely manner and woul seriously impede the growth of joint insurance funds if an ordinance required. For example, one of the commenters stated that a meaningf ordinance could not be adopted until the joint insurance fund had pr cessed the application, examined all underwriting data and arrived at tentative assessment. Having done this, requiring a municipality to the adopt an ordinance, a process which takes one to two months, is u workable since it would require the fund to make a decision about municipality in mid-September for an application that was filed th previous June. With the addition of at least another 30 days to recei the resolution accepting the assessment, which is required by this con menter, the process is extended to almost six months. Because polici are ordinarily purchased on an annual basis and because of budgeta concerns, the commenter stated that an expedient admission procedu avoids expense or inefficiencies for the municipality.

Another of the commenters stated that most commercial carriers wi not provide a renewal quotation much more than 30 days prior to th expiration of a policy. Since joint insurance funds meet only monthly an a majority of the public entity business expires on December 31, a poter tial member would be required to make its decision in September to effe its membership on January 1. This would be long before it received i renewal quotation from the commercial carrier. If the potential membe wanted to receive its renewal price, it would be faced with short ra cancellation penalties from the added time it takes to go through th processes of passing an ordinance.

One of the commenters additionally stated that N.J.S.A. 40A:10-3 permits but does not require potential members to make its decision b ordinance. There is no reason for the Department of Insurance (Depar ment) to require a potential member to utilize one method of decisio making (ordinance) over another (resolution) since the potential membe is accountable to its constituency.

Finally, the commenters stated that since few contractual arrangement that municipalities enter must go through the ordinance process, includ ing the purchase of insurance through a commercial carrier, no increase benefit is derived by requiring the passage of an ordinance to join a join insurance fund.

RESPONSE: N.J.S.A. 40A:10-36 states: "The governing body of an local unit may by resolution or ordinance, as appropriate, agree to joi together with any local unit or units to establish a joint insurance fun . . .". The Department interpreted the phrase "as appropriate" to mea as required by law for a municipality to enter into similar types o agreements. Since municipalities are required to enter a joint agreemen providing for the purchase of work, materials and supplies for use b their respective jurisdictions by ordinance pursuant to N.J.S.A 40A:11-10, the Department believed it was appropriate to require tha municipalities pass an ordinance to join a joint insurance fund.

However, upon review of the comments received, the Departmen agrees that it may be burdensome to require a potential member to pas an ordinance to join a joint insurance fund. The Department also agree that such a requirement may reduce the ability of the joint insurance fun to compete with commercial insurance coverage for the reasons state by the commenters.

The rules are thus changed upon adoption to reflect the previou language in N.J.A.C. 11:15-2.3 regarding the passage of an ordinance o resolution to join a joint insurance fund. N.J.A.C. 11:15-2.3 will thu provide that the governing body of any local unit of government ma by resolution **or** ordinance, as appropriate, agree to join together t establish a joint insurance fund.

COMMENT: Several commenters stated that the amendment t N.J.A.C. 11:15-2.3 which requires that the member affirm the new mem bership agreement by resolution if the membership ordinance or resol ution did not specify the duration for fund membership is unnecessary

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The commenters additionally stated that this requirement is inconsis-nt with N.J.A.C. 11:15-2.10(b), which requires a member to give 90 days otice of its intent to withdraw from a fund.

Finally, the commenters requested clarification regarding the renewal atus of a member if it does not adopt the required resolution or notify ie fund of its intent to withdraw.

RESPONSE: The Department disagrees. The agreement to join a joint isurance fund is valid for a maximum three-year period, pursuant to I.J.S.A. 40A:11-15(6) regardless of whether the agreement specified a :rmination date. The Department believes that it is appropriate to re-uire the adoption of a new resolution to affirm the new membership greement. No undue burden is imposed on members in that a munici-ality similarly adopts a resolution to award a contract in the purchase f insurance. In addition, current membership of the governing body of ie municipality may be different from the membership of three years go. The succeeding governing body should not be bound by the previous overning body's action. The current governing body may wish to insure s risks in a different manner from that which was done previously.

The Department thus believes that it is appropriate to require members o affirm the new membership agreement by resolution if the existing rdinance or resolution did not specify the duration of fund membership. 'herefore, no change is warranted.

Regarding the commenters' question as to the renewal status of a iember that does not adopt the required resolution nor provides 90 days otice of its intent to withdraw, it is the Department's position that the iember is no longer a member of the joint insurance fund and has also ailed to comply with the notice requirements in N.J.A.C. 11:15-2.10(b). 'he Department believes that no undue hardship is created by the appli-ation of the rules in this instance since a member could introduce and dopt the resolution at the same meeting, which could take place the last lay of fund membership.

Finally, while the Department believes that a fund member should provide the fund with adequate notice of its intentions regarding renewal f its membership, the fund administrators should also ascertain a mem-er's intentions regarding its continued participation in the fund prior o the termination of the membership period.

COMMENT: Several commenters objected to the amendment to N.J.A.C. 11:15-2.4(i) which specifies the contents of the quarterly reports equired by this subsection and requires the submission of these reports o the Department.

One of the commenters stated that the present regulations do not equire that minutes be provided to member municipalities, which is the eason that the current rules require that a quarterly report be provided o the members. However, the commenter sends minutes to all members n lieu of a quarterly report. This keeps the members well informed on a monthly basis. Quarterly reports are therefore redundant. The com-menter therefore suggested that the rules require distribution of minutes or a semi-annual report to fund members.

Another of the commenters stated that all of its participants receive monthly reports whether or not they are in attendance at the fund meet-ings. In addition, they receive monthly financial reports, investment re-ports and claims summaries which include complete detail for each indi-vidual member.

Additionally, the commenters stated that requiring the submission of these quarterly reports which include the minutes will prove costly in time, material and postage and overwhelming in terms of the time consumed by Department personnel to review them. The commenters further stated that it is unreasonable and unnecessary to require the submission of these minutes and reports to the Department since these minutes and reports were designed to keep members informed of fund activity and possible changes in the program. These reports are thus a management tool rather than a regulatory tool. Joint insurance funds are currently required to file with the Department annual reports certified by an actuary and an independent certified public accountant or registered municipal accoun-tant and unaudited interim six-month reports. Since the Department is kept well informed by these requirements, the filing of these quarterly reports is unnecessary.

Finally, the commenters stated that the minutes of closed sessions contain confidential claims data which should not be spread about and thus should not be required by the Department.

RESPONSE: Prior to amendment, N.J.A.C. 11:15-2.4(i) required a joint insurance fund to provide its members with periodic reports covering fund activities **at least quarterly**. The amendment clarifies that this report should contain the minutes, the executive director's report and a summa-tion of fund activity, including comments on previously reported claims and newly reported claims. The Department thus believes that the quar-terly report requirement is appropriate and that submission of minutes to fund members should be part of, rather than in lieu of, this report.

The Department additionally does not believe that the minutes by themselves adequately inform the fund commissioners of the status and activities of the fund. This is especially true for those fund commissioners who were not in attendance at these meetings. The Department thus believes that the quarterly report should include, in addition to the minutes, a narrative summation of fund activity to ensure that the fund commissioners are adequately informed about the fund's activities and status.

To address the remarks of the commenter that sends monthly minutes, financial reports, investment reports and claims summaries, the Depart-ment believes that these submissions, in all likelihood, fulfill the reporting requirements of N.J.A.C. 11:15-2.4(i) as amended. Thus, no additional burden is imposed on this commenter.

The Department, however, agrees that it may be burdensome to require the funds to file these quarterly reports with the Department. The rules are therefore changed upon adoption to provide that these quarterly reports shall be made available for Department review during any exam-ination of the joint insurance fund. The rules are further changed to provide that the Department **may** require the fund to file copies of these reports if the Department deems it necessary to ensure compliance with the reporting requirements in N.J.A.C. 11:15-2.4(i). In addition, the financial report form completed and filed by joint insurance funds pursuant to N.J.A.C. 11:15-2.24 will be revised to require a certification by the fund chairman or, in his or her absence, the fund secretary, that the periodic reports were made to fund members in the form and manner prescribed by N.J.A.C. 11:15-2.4(i) and are available for review by the Department upon request.

Finally, regarding the confidential data contained in the minutes of closed sessions, it should be noted that the Department cannot require the filing of such closed session minutes as part of the periodic reports. The Commissioner may nevertheless review all books and records of the fund, including closed session minutes, as part of examinations conducted pursuant to N.J.S.A. 40A:10-47.

COMMENT: Several commenters suggested that N.J.A.C. 11:15-2.6(a) be amended to provide that no local member acting as the lead agency may be assigned duties relative to assessment computation for member municipalities as this would present a conflict of interest.

RESPONSE: The Department disagrees. The Department believes that no change to the rules is necessary. If the assessment is developed by an actuary, the assessment computation should be appropriate and non-discriminatory. Furthermore, the designation of a lead agency and its assigned duties are at the discretion of the fund commissioners pursuant to N.J.A.C. 11:15-2.4(k) and 2.6(c)1. If a fund does not desire that a lead agency be assigned assessment computation duties, the fund com-missioners will not assign the lead agency such duties. Further, pursuant to N.J.A.C. 11:15-2.27(a), it is the fund commissioners' responsibility to determine if any beneficial interest constitutes a conflict of interest. The Department thus believes that the current provision is appropriate and no change to the rules is warranted.

COMMENT: One commenter stated that the amendment to N.J.A.C. 11:15-2.6(b)11 appears to require the establishment of an expense reserve. Effective January 1, 1988, the commenter included in its joint insurance fund budgets an item called "Reserve for Future Services" which was designed to establish an expense reserve. This item was included in the budget for two years, after which the Department of Insurance and Department of Community Affairs requested that its use be discontinued. The commenter thus eliminated this item from the 1990 budget.

The commenter stated that while it still supports an expense reserve, the requirements of this item should be clarified prior to amending the regulations since it appears to conflict with both Departments' present position.

RESPONSE: The Department intended this item to refer to "loss expense reserves." This does not refer to reserves for future services. The rules are changed upon adoption to reflect this clarification.

COMMENT: Several commenters stated that submitting a list of fund commissioners to the Department, as required by the amendment to N.J.A.C. 11:15-2.6(c)7, provides no additional security for these funds. The commenters further stated that their time is better spent on ascertain-ing that the fund commissioners are qualified as employees or elected officials. Finally, one of the commenters stated that it currently submits a fund commissioner's identity in filing new membership applications with the Department.

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RESPONSE: The Department disagrees. Fund commissioners change on a regular basis. The Department thus believes it is appropriate to require that a list of fund commissioners, updated annually, be filed with the Department to ensure that the Department's information is current. The Department believes that no burden is imposed on these funds in that this information is readily available. Therefore, no change is warranted.

COMMENT: Several commenters requested clarification regarding the requirement in N.J.A.C. 11:15-2.6(c)8 that the fund submit biographical data for the individuals within the administrator and servicing organizations who are responsible for providing services to the fund. The commenter asked whether this requirement applies to the principals and senior management only or to middle management and clerical employees (which, in their opinion, would be appropriate).

The commenters also expressed concern about the misuse of this information.

RESPONSE: The biographical data requirement applies to all directors and senior officers within the administrator and servicing organizations only. The rules are changed upon adoption to reflect this clarification.

Regarding the use of this information, it will be appropriately utilized to evaluate whether these individuals possess a minimum level of knowledge, credentials and expertise to provide the contracted services to the fund.

COMMENT: Several commenters addressed the amendments to N.J.A.C. 11:15-2.9 regarding the approval of non-member local units.

The commenters stated that it is appropriate for the Department of Insurance and Department of Community Affairs to ensure that a new member has passed its resolution to join and has executed the required indemnity and trust agreement. However, the balance of the requirements in N.J.A.C. 11:15-2.9 could be eliminated for the following reasons:

1. A change in the bylaws is not required for the enrollment of a new member.

2. The only modification in the plan of risk management required for the enrollment of a new member is an update on the number of members and total fund payroll. These minor changes could be filed annually rather than delay a municipality's membership for the 30-day approval period required by N.J.A.C. 11:15-2.9(c) when it may have an immediate need for insurance coverage.

3. Filing a revised budget every time a member is admitted as required by the amendment to N.J.A.C. 11:15-2.9(b) is unnecessary. The commenter suggested as an alternative that revised budgets be filed by the auditor on a semi-annual basis and his report expanded to include a new member section.

4. While the rules should require the loss projections portion of an assessment be done by an actuary, this could be certified by the actuary when the semi-annual audit is made rather than prior to admitting a new member. Additionally, at the excess level, the actuary promulgates "per capita" rates on an annual basis. It is therefore unnecessary to repeat certification of the adequacy of the same rates for each new member.

5. Since no change in the bylaws and only minor changes to the plan of risk management are required for the enrollment of new members, the requirement in N.J.A.C. 11:15-2.9(c) that the Department of Insurance and Department of Community Affairs approve the application could be eliminated since it serves no legitimate purpose. As a minimum, the commenter stated that new applicants are now screened by the commenter as executive director/administrator; the underwriting manager; the safety director; and approved by either a majority of the fund commissioners or two-thirds of the seven-member executive committee. Some funds require an additional review by their coverage committees. In view of these safeguards, the commenter stated that membership procedures could be streamlined by modifying requirements as suggested.

RESPONSE: These procedures have been in effect since the rules first became effective on December 3, 1984. The Department believes that these procedures are appropriate and therefore no change is warranted at this time. However, the Department will consider these comments for possible future amendment.

The Department disagrees with the comment that the requirement that the fund file a revised budget with assessment detail every time a new member is submitted should be eliminated. This requirement enables the Department to ensure that the new member is properly assessed for its projected losses. It also enables the Department to ensure that the assessments are not discriminatory to a new member. The Department also disagrees that the revised budgets could be filed by the auditor on a semi-annual basis because this information is necessary to ensure that the assessment of the new member is adequate and not discriminatory before the Department approves the application. Receiving this info mation up to six months after the Department has approved an appl cation, as the commenter suggested, would render this information usele for the purpose for which it is required.

Similarly, the Department disagrees that the loss projections portic of an assessment could be certified by the actuary when the semi-annu audit is made rather than prior to admitting a new member. The Depar ment believes that it is appropriate to review this information prior approving the application of a new member because the projected loss of the member are the basis for determining the member's assessmen In order to ensure that the assessments are adequate, the Departme requires this information prior to admitting a new member. The fur administrators receive this information prior to admitting a new membe Requiring that the actuarial certification be filed at this time thus impos no undue burden for joint insurance funds since this information is readi available.

The Department agrees, however, that at the excess level, if an actua has determined a "per capita" rate which has been previously filed wi the Department, it is not necessary to repeat certification of the adequac of the same rates for each new member, unless the Commissioner d termines that the new member will impose an extraordinary impact c the fund. The rules are changed upon adoption to reflect this clarificatio

COMMENT: One commenter stated that it does not self-insure b purchases commercial insurance for all members only. Accordingly does not require or use the services of an actuary. It would therefore b inappropriate to apply the actuarial statement requirement in N.J.A.(11:15-2.9(b) to this commenter. The commenter further suggested th the amendment be clarified to reflect this.

RESPONSE: If a joint insurance fund purchases insurance only an does not self-insure, the Department does not require an actuarial stat ment with the application of new members. The rules are changed upo adoption to reflect this clarification.

COMMENT: One commenter stated that the amendment to N.J.A.(11:15-2.9(b), requiring an actuarial statement on the adequacy of a ne member's assessment, is burdensome and unnecessary. The commente stated that it currently requires, unless there are unusual circumstance that a new member's assessment be double the average amount of losse over a five-year period.

RESPONSE: The Department disagrees. The Department believes th the actuarial statement is necessary to ensure the adequacy of the ne member's assessment and to ensure that the assessment is arrived at i an actuarially sound manner. The Department further disagrees that is appropriate for the new member's assessment to be double the averag amount of losses over a five-year period in that changes to the member exposure base may occur which could result in the assessment bein inadequate or inappropriate.

COMMENT: One commenter requested clarification regarding th amendment to N.J.A.C. 11:15-2.23. This subsection as amended provide that each fund providing coverage on a self-insured or commerciall insured basis shall secure excess insurance or reinsurance. The commente stated that it provides only excess insurance from commercial source The commenter further stated that the rule appears to require it to obtai **additional** excess insurance or seek a waiver from the Commissioner whic would be burdensome and unnecessary.

RESPONSE: The Department agrees. The Department did not inten this requirement to apply to joint insurance funds which provide onl excess insurance from commercial sources. The rules are thus change upon adoption to provide that the excess insurance/reinsurance require ment applies to the joint insurance funds that provide primary or under lying coverage.

COMMENT: One commenter agreed with the change to N.J.A.C 11:15-2.6(a)1 which provides for alternates for the executive committe and fund commissioners. The commenter however inquired whether i will be required to amend its bylaws to effectuate these changes o whether adoption of the amendment will automatically amend the bylaw without the need for going through the approval process by the members

RESPONSE: Formal amendment of the bylaws pursuant to N.J.S.A 40A:10-43 is not required since the bylaws will be changed only to reflec current statutory language.

COMMENT: Two commenters requested clarification regarding th amendment to N.J.A.C. 11:15-2.10(a). This amendment provides ad ditional grounds for the termination of a fund member by the join insurance fund. The rules currently provide that non-payment o assessments is the only basis for termination. The commenters inquire

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whether a fund would be required to obtain the Department's permission to terminate a member for other than non-payment of assessments.

RESPONSE: A joint insurance fund is **not** required to obtain the Department's permission to terminate a fund member for any of the reasons specified in N.J.A.C. 11:15-2.10(a) as amended. A joint insurance fund, however, is required to obtain the Department's permission to terminate a member for reasons other than those specified in N.J.A.C. 11:15-2.10(a). The rules are revised upon adoption to clarify this position.

COMMENT: Several commenters stated generally that the submission of the reports, minutes, contracts, biographical information and other information required by the amendments is unnecessary, time consuming and expensive.

One of the commenters specifically inquired whether the Department, in requiring the submission of copies of prospective and executed contracts, intends to have its legal counsel review these contracts or intends to utilize them only to determine who has a financial interest. In the case of the attorney where a fund uses a large firm there could be dozens of people who have an interest. The commenter concluded that since the award of all contracts is published and copies are available at the fund's offices for inspection, the additional requirements imposed by the amendments are unnecessary.

Another of the commenters stated that while joint insurance funds are somewhat different from commercial insurers, they are not so dissimilar as to require the amount of submissions set forth in the proposed amendments. The commenters concluded that this is not required of insurance companies, customers of insurance companies, insurance agents and brokers or individual self-insureds and the firms with which they contract for service.

RESPONSE: Regarding the filing of quarterly reports and minutes, as was stated in a response to a previous comment, the Department agrees that the filing of this information with the Department each quarter may be burdensome. The rules are thus changed upon adoption as described previously.

However, as was also stated previously, the Department believes that it is appropriate to specify the required contents of the quarterly report submitted to fund members to ensure that the fund members are adequately informed of the activities and status of the fund as required by N.J.A.C. 11:15-2.4(i) prior to amendment.

Regarding the submission of biographical information, as was stated in a response to a previous comment, the rules are clarified to reflect that this information is required for the senior officers and directors of the administrator and servicing organization only. The Department believes, however, that this information is necessary to evaluate whether these individuals possess a minimum level of knowledge, credentials and expertise to provide the contracted services to the fund.

The Department also believes that the submission of prospective and executed contracts is appropriate. The rules currently require that a joint insurance fund submit copies of its prospective contracts with any administrators or servicing organization. The amendments expand this requirement to include copies of executed contracts and any prospective or executed contract with an attorney, auditor, treasurer or actuary. The Department may require that the fund file copies of these contracts pursuant to N.J.S.A. 40A:10-45. These contracts are utilized to inform the Department regarding the individuals with whom the fund contracts and to ensure that such contracts are properly executed and awarded and that the fees for such services are not excessive. The Department also reviews these contracts to ensure that the "support services" with whom the fund contracts are accountable to the executive director of the fund.

Finally, the Department believes that the nature of joint insurance fund operations are sufficiently distinct from those of insurance companies to warrant the submission of information that is not necessarily required of commercial insurance companies. In the case of commercial insurance companies, public monies are not involved to the extent they are in the case of joint insurance funds. Furthermore, the New Jersey Property/Liability Insurance Guaranty Association does not cover the claims of joint insurance funds. If a fund should become insolvent, claimants would not be protected. The Department thus requires information to enable it to adequately evaluate the operations of the joint insurance fund to reduce the likelihood that such insolvencies will occur.

Summary of Agency-Initiated Changes:

1. The word "chapter" is changed to "subchapter" in N.J.A.C. 11:15-1.2 as a matter of form.

2. The definition of "local unit of government" or "local unit" in N.J.A.C. 11:15-2.2 is amended to include any contracting unit as defined in N.J.S.A. 40A:11-2 to be consistent with recent amendments to N.J.S.A. 40A:10-36.

Full Text of the adoption follows (additions to proposal indicated in bold with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

11:15-1.2 Definitions

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

. . .

"Actuary" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

. . .

11:15-2.2 Definitions

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

"Actuary" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

. . .

"Automobile and equipment liability" means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the local unit or owned by or under the control of any subdivisions thereof including its departments, boards, agencies, commissions or other entities which the local unit may provide coverage for under N.J.S.A. 40A:10-2.

. . .

"Indemnity and trust agreement" means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the fund.

1. The agreement shall also create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.

2. Where the fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in i through iv below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each such risk or liability:

i. Workers' compensation and employers' liability;

ii. Liability, other than motor vehicle;

iii. Property damage, including automobile physical damage;

iv. Automobile liability.

. . .

"Local unit of government" or "local unit" means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50) *[or]* ***,*** county college (pursuant to N.J.S.A. 18A:64A-25.40 and 40A:10-51) ***or any contracting unit as defined in N.J.S.A. 40A:11-2****.

"Property damage" means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the local unit or owned by or under the control of any of its departments, boards, agencies, commissions, or other entities which the local unit may provide coverage for under N.J.S.A. 40A:10-2.

. . .

11:15-2.3 Agreement to join joint insurance fund; duration

Pursuant to Section 1 of P.L. 1983, c.372, the governing body of any local unit of government may ***by resolution or ordinance, as appropriate,*** agree to join together with any other local unit or units to establish a joint insurance fund as defined herein. *[Counties which operate pursuant to the Optional County Charter Law (N.J.S.A. 40:41A-13 et seq.) and all municipalities shall first adopt an ordinance to authorize the creation and/or participation in a joint

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insurance fund; all other counties or participating local units shall first adopt a resolution to authorize the creation and/or participation in a joint insurance fund.]* The resolution or ordinance shall provide for execution of a written agreement specifically providing for acceptance of the fund's bylaws as approved and adopted pursuant to section 4 of the Act. The agreement shall specify the extent of the local unit's participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6). The agreement shall also specify that the fund members have never defaulted on claims if self-insured and have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application. Members may renew their participation by the execution of a new agreement to join the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement.

11:15-2.4 General requirements

(a)-(f) (No change.)

(g) Except as provided at N.J.A.C. 11:15-2.22(e), all books, records, files and other documents of the joint insurance fund shall be retained by the secretary of the fund or fund administrator as designated by the fund commissioners or executive committee.

(h) (No change.)

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the joint insurance fund commissioners and shall include, but not be limited to, the minutes, the executive director's report and a summation of fund activity, including comments on previously reported claims and newly reported claims. *[Such reports shall be submitted to the Department within 30 days following the close of the quarter.]* ***The Department may require that such reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. Such reports shall also be made available to the Department for review during any examination of the joint insurance fund.***

(j)-(k) (No change.)

11:15-2.6 Bylaws and plan of risk management; contents

(a) The commissioners of a joint insurance fund shall prepare and, after the approval, by resolution, of the governing body of each participating local governmental unit, shall adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund commission and alternates and, if appropriate, the executive committee of the fund and alternates. The procedures may include the designation of one member local unit to serve as the lead agency to be responsible for the custody and maintenance of the assets of the fund and such other duties as may be assigned by the commissioners of the fund;

2.-10. (No change.)

(b) In addition, the bylaws shall:

1.-4. (No change.)

5. Where self-insured, provide a plan for specific and aggregate excess insurance or reinsurance and/or for retention in accordance with sound actuarial principles and the plan of risk management;

6.-8. (No change.)

9. Be accompanied by a sample copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-2.3. Within 30 days of approval, the fund shall send certified copies of the resolution or ordinance and written agreement from each participant to the Commissioner and the Department of Community Affairs;

10. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-2.2, and in a form satisfactory to the Commissioner. Within 30 days of approval, the fund shall sen certified copies of the indemnity and trust agreement from eac participant to the Commissioner and the Department of Communi Affairs;

11. Provide a plan satisfactory to the Department for the establisl ment and maintenance of reserves for unearned assessments, lo reserves and ***loss*** expense reserves and for the determination an distribution of assessment and/or investment refunds which sha include a statement from an actuary that the fund's proposed pla is actuarially sound;

12. (No change.)

(c) The bylaws shall be accompanied by the following informatio and documentation:

1. (No change.)

2. Copies of the fund's prospective and executed agreements c contracts with any administrator, servicing organization, attorne auditor, treasurer or actuary. Copies of the above shall be accom panied by a list of all parties having or deriving any interest, rigl or benefit in the servicing organization or administrator;

3.-6. (No change.)

7. A list of commissioners, officers and executive committee mem bers, updated annually;

8. Biographical data forms for the *[individuals within]* ***senio officers and directors of*** the administrator and servicing organiza tions *[who are responsible for]* providing services to the fund; an

9. Copies of each commercial insurance policy purchased by th fund.

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

11:15-2.9 Approval of non-member local units

(a) (No change.)

(b) The application approved by the fund shall be concurrentl filed with the Department and the Department of Community Affair and shall be accompanied by a revised budget with assessment detail the name of the new member's insurance fund commissioner, a actuarial statement regarding the adequacy of the member' assessment to cover anticipated losses and such amendments to th fund's bylaws and plan of risk management as may be necessary ***Where a fund purchases commercial insurance, or where an actuar has determined a "per capita" rate for the member's assessment t cover anticipated losses which has been previously filed with the Depart ment, actuarial certification of the adequacy of these same rates fo each new member is not required. The Commissioner may nevertheles require actuarial certification of a per capita rate for the new member' assessment to cover anticipated losses if, in his or her opinion, the nev member will impose an extraordinary impact on the exposure of th fund.***

(c) (No change.)

11:15-2.10 Termination and/or withdrawal of fund members

(a) A member of the fund must remain a member for the full term of membership, as provided in the fund's bylaws, unless earlier terminated by the fund for nonpayment of assessments, noncompliance with risk management or underwriting standards or other reasons *[acceptable]* ***subject*** to the ***prior approval by the*** Commissione of Insurance as causes for expulsion. However, such member shal not be deemed terminated for any reason until:

1.-3. (No change.)

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

11:15-2.23 Excess insurance and/or reinsurance

(a) Each fund providing ***primary or underlying*** coverage on a self-insured or commercially insured basis shall secure excess insurance or reinsurance in a form, in an amount and by an insurance company acceptable to the Commissioner, if commercially available and not unreasonably priced, as determined by the fund's executive committee, and as approved by the Department of Insurance and the Department of Community Affairs.

(b)-(d) (No change.)

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF MORTUARY SCIENCE

Notice of Correction and Withdrawal
Continuing Education
Adopted New Rules: N.J.A.C. 13:36-10

Take notice that the Notice of Adoption of N.J.A.C. 13:36-10 as published in the December 17, 1990 New Jersey Register as 22 N.J.R. 756(b), filed by the Board of Mortuary Science, is hereby withdrawn. The Board has been advised by the Attorney General that such action should be taken for failure to vote for adoption on the proposal at a public meeting within one year following the proposal's publication in the New Jersey Register.

At its meeting of January 8, 1991, the Board will consider whether to repropose the regulation.

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Patient Records
Retirement or Death of Veterinarian in charge
Adopted Amendment: N.J.A.C. 13:44-2.12

Proposed: June 18, 1990 at 22 N.J.R. 1868(a).

Adopted: October 31, 1990, by the State Board of Veterinary Medical Examiners, George Cameron, D.V.M., President.

Filed: December 10, 1990 as R.1991 d.11, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:16-9.9.

Effective Date: January 7, 1991.

Expiration Date: August 7, 1994.

The Board of Veterinary Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment, N.J.A.C. 13:44-2.12, relating to patient records in the event of the retirement or death of a veterinarian in charge of a veterinary practice. The official comment period ended on July 18, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on June 18, 1990 at 22 N.J.R. 1868(a). Announcements were also forwarded to the American Veterinary Medical Association, the New Jersey State Veterinary Medical Association, the Star Ledger and the Trenton Times.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Veterinary Medical Examiners, Room 513, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Board received one letter from the New Jersey Veterinary Medical Association regarding the proposed amendment. The Association's comments and the Board's responses follow.

COMMENT: The phrase "veterinary facility" should be replaced by the phrase "veterinary practice," which more accurately describes the medical activities of a licensee.

RESPONSE: The Board agrees with this comment and has amended the rule accordingly.

COMMENT: If a deceased licensee's estate were contested, immediate notice of the impending closure of the practice might not be possible. The Association suggested that a reasonable time frame for Board notification of the closure of the practice would be one year after the death of a licensee and the decision to close a practice.

RESPONSE: The Board disagrees with this comment. In order to assist the Board in its effort to maintain current information regarding its licensees, the regulation requires immediate notification of the *impending* closing of a practice, not the actual closing of the practice. Even in the event of a contested estate, the executor or administrator would not be prevented from immediately notifying the Board that the licensee had died and that the practice will be closed once the estate is settled.

COMMENT: The time period stated in the regulation for publication of notice of closing of the practice in the event medical records are not to be transferred to another practice; that is, "within a reasonable period of time," is vague.

RESPONSE: The Board does not believe it is necessary to state a specific time limit for publication of a notice of closing, since it trusts its licensees or their executors and administrators will act expeditiously under the circumstances.

COMMENT: The proposal should include a reasonable fee for transfer of records to cover staffing an office to provide public access to the records. This is consistent with N.J.A.C. 13:44-2.12(b) (which states that a reasonable charge may be made to cover the licensee's costs in obtaining copies of a licensee's record or in preparing a summary report).

RESPONSE: The regulation does not contemplate the need to keep an office open to provide public access to records; it merely requires that the public be advised of the address and telephone number of the person to contact to obtain the medical records, which may be kept off-site for this purpose. In any event, the Board does not set professional fees and believes this type of fee is not within its province.

Summary of Changes Made Upon Adoption:

1. Based upon a comment received from the New Jersey Veterinary Medical Association, the Board has substituted the phrase "veterinary practice" for the phrase "veterinary facility," since "veterinary practice" more accurately describes the medical activities of a licensee.

2. In N.J.A.C. 13:44-2.12(d)1, the words "in writing," which were inadvertently left out of the proposal, were added to clarify the Board's intent that notice to the Board of an impending closure of a veterinary practice must be in writing.

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

13:44-2.12 Patient records

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

(d) Whenever a veterinary *[facility]* ***practice*** is to be closed due to the retirement or death of the veterinarian in charge, the following shall apply:

1. The retiring licensee or the executor or administrator of the licensee's estate shall immediately notify the Board***, in writing,*** of the impending closure.

2. If the medical records are not to be transferred to another veterinary *[facility]* ***practice***, the retiring licensee or the executor or administrator of the licensee's estate shall, prior to disposing of any records and within a reasonable period of time, publicize notice of closing of the veterinary *[facility]* ***practice***. The notice of closing shall be published in a daily newspaper with circulation in the county in which the veterinary *[facility]* ***practice*** is located, on two occasions, 15 days apart. The notice shall advise the public of the licensee's retirement or death; shall indicate that the medical records will be available to the consumer for a period of 60 days subsequent to the second publication; and shall include the name, address and telephone number of the person to contact to obtain the medical records.

3. If the medical records are to be transferred to another veterinary *[facility]* ***practice***, the retiring licensee or the executor or administrator of the licensee's estate may immediately transfer the medical records provided that he or she shall, within a reasonable period of time after the transfer, publicize notice of closing of the veterinary *[facility]* ***practice***. Such notice shall be published in a daily newspaper with circulation in the county in which the veterinary *[facility]* ***practice*** is located, on two occasions, 15 days apart. The notice shall advise the public of the licensee's retirement or death and indicate the name, address and telephone number of the *[facility]* ***veterinary practice*** to which the records have been transferred.

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TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Routes N.J. 77 in Cumberland, Salem and Gloucester Counties and N.J. 181 in Morris and Sussex Counties.
Adopted Repeals and New Rules: N.J.A.C. 16:28-1.97 and 1.167

Proposed: October 1, 1990 at 22 N.J.R. 3113(a).
Adopted: November 1, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: November 28, 1990 as R. 1991 d.1, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
Effective Date: January 7, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
The Department received a comment from one individual concerning the establishment of the "speed limit" zone along Route N.J. 77 in the City of Bridgeton, Cumberland County. There were no comments received regarding Route N.J. 181. While no changes have been made to the rule on adoption, the Department wishes to thank the commenter for the input. A summary of the comment and the agency response follows:

COMMENT: The proposed speed limit changes being established along Route 77 are favorable. The current proposal has the 35 miles per hour speed limit set at the intersection of Logan Lane. However, the 35 miles per hour should be extended to the northerly line of the City of Bridgeton on Route N.J. 77.

RESPONSE: The Department has based the proposed and adopted changes on the evaluations conducted by staff and consultation with the local government, all of which considered the current conditions along this route. There is no current justification for further speed limit modifications.

Full text of the adoption follows:

16:28-1.97 Route 77

(a) The rate of speed designated for State highway Route 77 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Cumberland County:

(1) City of Bridgeton:

(A) Zone 1: 30 miles per hour between Route N.J. 49 and American Avenue, except for 25 miles per hour when passing through the Immaculate Conception Regional School zone, (mileposts 0.76 to 1.02) while "25 MPH WHEN FLASHING" signs are operating, during recess or when children are going to or leaving school during opening or closing hours (approximate mileposts 0.00 to 1.30); thence

(B) Zone 2: 35 miles per hour between American Avenue and Logan Street (approximate mileposts 1.30 to 2.19); thence

(C) Zone 3: 45 miles per hour between Logan Street and Upper Deerfield Township southerly line (approximate mileposts 2.19 to 2.33); thence

(2) Upper Deerfield Township:

(A) Zone 1: 45 miles per hour between the City of Bridgeton northerly line and Northwest Avenue (approximate mileposts 2.33 to 3.07); thence

(B) Zone 2: 50 miles per hour between Northwest Avenue and 1,690 feet south of Deerfield Husted Station Road (County Road 540), except for 35 miles per hour when passing through the Elizabeth F. Moore School, Charles F. Seabrook School and Woodruff School zones, (mileposts 5.65 to 5.98), while "35 MPH WHEN FLASHING" signs are operating, during recess or when children are going to or leaving school, during opening or closing hours (approximate mileposts 3.07 to 7.18); thence

(C) Zone 3: 40 miles per hour between 1,690 feet south of Deerfield Husted Station Road (County Road 540) and Friesburg Road (County Road 640) and Alloway Township (Salem County) southerly line (approximate mileposts 8.05 to 9.81); thence

ii. In Salem County:

(1) Alloway Township:

(A) 50 miles per hour between the Upper Deerfield Township (Cumberland County) northerly line and the Upper Pittsgrove Township southerly line (approximate mileposts 9.81 to 9.93); thence

(2) Upper Pittsgrove Township:

(A) 50 miles per hour between the Alloway Township northerly line and the Elk Township southerly line (approximate mileposts 9.93 to 17.52); thence

iii. In Gloucester County:

(1) Elk Township:

(A) 50 miles per hour between the Upper Pittsgrove Township (Salem County) northerly line and the Harrison Township southerly line (approximate mileposts 17.52 to 20.74); thence

(2) Harrison Township:

(A) Zone 1: 50 miles per hour between the Elk Township northerly line and center of the driveway to Walnut Glen Condominiums (approximate mileposts 20.74 to 22.18); thence

(B) Zone 2: 35 miles per hour between the center of the driveway to Walnut Glen Condominiums and Route N.J. 45 (approximate mileposts 22.18 to 22.55).

16:28-1.167 Route 181

(a) The rate of speed designated for State highway Route 181 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Morris County:

(1) Jefferson Township:

(A) Zone 1: 40 miles per hour between Espanong Road-Weldon Road and Prospect Point Road (approximate mileposts 0.00 to 1.45); thence

(B) Zone 2: 45 miles per hour between Prospect Point Road and Sparta Township (Sussex County) southerly line (approximate mileposts 1.45 to 1.65); thence

ii. In Sussex County:

(1) Sparta Township:

(A) Zone 1: 45 miles per hour between Jefferson Township (Morris County) northerly line and Blue Heron Road (Ramp to Route N.J. 15) (approximate mileposts 1.65 to 3.40); thence

(B) Zone 2: 40 miles per hour between Blue Heron Road and Pine Cone Lane (approximate mileposts 3.40 to 4.40); thence

(C) Zone 3: 30 miles per hour between Pine Cone Lane and Sparta Avenue (County Road 517) (approximate mileposts 4.40 to 5.89); thence

(D) Zone 4: 45 miles per hour between Sparta Avenue (County Road 517) and the driveway to Hilltop Country Day School (approximate mileposts 5.89 to 5.98); thence

(E) Zone 5: 50 miles per hour between the driveway to Hilltop Country Day School and Route N.J. 15 (approximate mileposts 5.98 to 7.43).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Routes U.S. 9 in Monmouth County and N.J. 23 in Morris County
Adopted Amendments: N.J.A.C. 16:28A-1.7 and 1.15

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Proposed: November 5, 1990 at 22 N.J.R. 3319(a).
Adopted: December 6, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: December 6, 1990 as R.1991 d.9, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Effective Date: January 7, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.
Codification errors in N.J.A.C. 16:28A-1.15 are corrected upon adoption.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposals indicated in brackets with asterisks *[thus]*):

16:28A-1.7 Route U.S. 9
(a) (No change.)
(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
1.-3. (No change.)
4. Along the southbound (westerly) side in Freehold Township, Monmouth County:
i. Mid-block bus stops:
(1) (No change.)
(2) Schanck Road:
(A) Beginning at a point 2,555 feet south of the southerly curb line of Schanck Road and extending 135 feet southerly therefrom;
(B) Beginning 300 feet south of the southerly curb line of Schanck Road and extending 135 feet southerly therefrom;
ii.-iii. (No change.)
5.-39. (No change.)
(c) (No change.)

16:28A-1.15 Route 23 and Route 23 (Temporary)
(a) The certain parts of State highway Route 23 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
1. No stopping or standing***:***
i. Along both sides:
(1) In Sussex County:
(A) Franklin Borough:
*[1.]****I.*** From the northerly curb line of Washington Avenue to the southerly curb line of Mitchell Avenue-Rutherford Avenue.
*[2.]****II.*** From the Hardyston Township-Franklin Borough Corporate line to the Franklin Borough-Hamburg Corporate line.
(B) Hamburg Borough:
*[1.]****I.*** Within the corporate limits of the Borough of Hamburg including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
(C) Wantage Township:
*[1.]****I.*** From the Hardyston Township-Wantage Township corporate line to the Borough of Sussex-Wantage Township corporate line.
(2) In Passaic County:
(A) Wayne Township:
*[1.]****I.*** For the entire length within the corporate limits of Wayne Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
(3) In Morris County:
(A) Pequannock Township:
*[1.]****I.*** For the entire length within the corporate limits of Pequannock Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
(B) Jefferson Township:
*[1.]****I.*** For the entire length within the corporate limits of Jefferson Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation only in areas where signs are posted except in approved Bus Stops and Time Limit parking areas.
ii. Along the westerly (southbound side):
(1) In Sussex County:
(A) Hardyston Township:
*[1.]****I.*** For the entire length within the corporate limits of Hardyston Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
(b)-(c) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turns Prohibitions

Routes U.S. 40 in Atlantic County and U.S. 9 in Ocean County

Adopted Amendment: N.J.A.C. 16:31-1.5

Adopted Rule: N.J.A.C. 16:31-1.29

Proposed: November 5, 1990 at 22 N.J.R. 3320(a).
Adopted: December 6, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: December 6, 1990 as R. 1991 d.10, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.
Effective Date: January 7, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:31-1.5 Route U.S. 40
(a) Turning movements of traffic on certain parts of State highway Route U.S. 40 described in this subsection are regulated as follows:
1. In Atlantic County:
i. Atlantic City:
(1) No left turn west on Route U.S. 40 to south on Boulevard Avenue.
ii. Hamilton Township:
(1) No left turn easterly on Route U.S. 40 to northerly into the westerlymost driveway of the Festival Mall.

16:31-1.29 Route U.S. 9
(a) Turning movements of traffic on certain parts of State highway Route U.S. 9 described in this subsection are regulated as follows:
1. In Ocean County:
i. Dover Township:
(1) No left turn north on Route U.S. 9 onto the driveway located along the westerly side of Route U.S. 9 approximately 730 feet south of the southerly curb line of Indian Head Road.

(b)

NEW JERSEY TRANSIT CORPORATION

Procurement Policies and Procedures

Adopted Amendments: N.J.A.C. 16:72

Proposed: August 20, 1990 at 22 N.J.R. 2460(a).
Adopted: October 5, 1990 by the New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
Filed: October 12, 1990 as R.1990 d.539, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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Authority: N.J.S.A. 27:25-5(e).

Effective Date: January 7, 1991.
Expiration Date: March 31, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
In proposed N.J.A.C. 16:72-1.5(d)(13), the word "is" has been deleted as unnecessary. In N.J.A.C. 16:72-2.3, subsections (b) and (d) have been clarified.

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

16:72-1.1 Source for public information
The public may receive information concerning NJ TRANSIT's procurement program by contacting the Department, NJ TRANSIT, McCarter Highway and Market Street, P.O. Box 10009, Newark, New Jersey 07101.

16:72-1.2 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Bid security" means a guarantee, in the form of a bond that the bidder, if selected, will accept the contact as bid; otherwise, the bidder or his guarantor will be liable for the amount of the loss suffered by NJ TRANSIT, which loss may be partially or completely recovered by NJ TRANSIT in exercising its rights against the bond.

. . .

"NJ TRANSIT means the New Jersey Transit Corporation which was established by N.J.S.A. 27:25-1 et seq. and its subsidiaries.

"Payment bond" means a guarantee in the form of a bond or other security that the vendor will pay all of its obligations to its subcontractors and suppliers and that NJ TRANSIT subcontractors and suppliers will be protected from loss in the event that the vendor fails to make payment as agreed.

"Performance security" means a guarantee, provided prior to execution of a contract in the form of a bond or other security that the successful bidder will complete the contract as agreed and that NJ TRANSIT will be protected from loss in the event the vendor fails to complete the contract as agreed. . . .

"Procurement" means the awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to NJ TRANSIT.

. . .

"Vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for NJ TRANSIT.

16:72-1.3 Competition
(No change in text.)

16:72-1.4 Responsible contractors
(a) Procurements shall be made from, and contracts shall be awarded to, responsible contractors only. A responsible contractor is one who meets the following standards:
1.-4. (No change.)
5. Is otherwise qualified and eligible to receive an award under applicable laws and regulations;
6.-7. (No change.)
(b) NJ TRANSIT shall establish procedures for determining whether a prospective contractor has met the standards of a responsible contractor.
(c) (No change.)
Recodify (e)-(f) as (d)-(e) (No change in text.)

16:72-1.5 Methods of procurement
(a) (No change.)
(b) Quotation: Except as provided in (c) and (d) below, purchase for an amount greater than $2,000 but not in excess of $7,500 sha be made after quotes have been obtained from at least two qualifie and responsible prospective contractors. Written quotations shall b submitted for purchases in excess of $5,000.
(c) Request for proposals/negotiations: The procurement of pro fessional and technical services in excess of $7,500 shall be ac complished through the issuance of a request for proposal to minimum of three vendors and subsequent negotiation, except wher determined by the Executive Director or his designee, in writing, tha an alternative method of procurement is in NJ TRANSIT's bes interest.
(d) Procurement-by-exception: The requirements of (a), (b) and (c above may be waived under the following circumstances:
1.-4. (No change.)
5. The procurement of supplies or services for which the bid price after advertising therefor are not reasonable or have not been independently arrived at in open competition, provided that no negotiated purchase, contract, or agreement may be entered into under this paragraph after the rejection of all bids received unless:
i. Notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by NJ TRANSIT to each responsible bidder,
ii. The negotiated price is lower than the lowest rejected bid price of a responsible bidder; and
iii. Such negotiated price is the lowest negotiated price offered by any responsible supplier.
6.-11. (No change.)
12. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest; and
13. The procurement of services *[is]* to be performed by the contractor personally under the supervision of the Executive Director, or his or her designee, and paid for on a time basis.
(e) Authority for procurement-by-exception: The authority for procurement under the circumstances listed above rests with the Executive Director for procurement transactions not in excess of $7,500. Transactions in excess of $7,500 will require approval as may be set forth in the By-Laws of NJ TRANSIT.
(f) Fragmentation of requirements: NJ TRANSIT's purchase requirements shall not be split into parts for the purpose of avoiding the provisions of (a), (b), or (c).
Recodify 16:72-1.7 and 1.8 as 16:72-1.6 and 1.7 (No change in text.)

16:72-1.8 Specifications
Plans, drawings, or specifications shall state only the actual minimum needs of NJ TRANSIT and describe the work to be performed in a manner which encourages maximum competition and eliminates, insofar as possible, any restrictive features which might limit acceptable offers to a relatively few bidders. Specifications, plans and drawings without reference to brand names or items manufactured by a single company shall be used to the maximum extent possible.

16:72-1.9 Purchase descriptions
(No change in text.)

16:72-1.10 Out-of-State vendors
All out-of-State corporations that wish to do business with NJ TRANSIT shall be afforded seven days to register with the Secretary of State of New Jersey, after notification by NJ TRANSIT of the intent to award that out-of-State firm a contract. Failure to provide either certification or notification of filing with the Secretary of State within the seven-day period may constitute cause for rejection of that firm's bid or proposal.

SUBCHAPTER 2. BIDDING PROCEDURES

16:72-2.1 Advertising of bids
The advertisement for bids shall be placed in such newspaper or newspapers selected by NJ TRANSIT that will give best notice thereof to bidders. Advertisements shall be made a minimum of 20 calendar days in advance of the bid opening. The advertisement shall

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:signate the time and place, when and where sealed bids shall be :ceived and publicly opened and read, and such other terms as NJ RANSIT may deem proper.

5:72-2.2 Bid bonds

A bid (proposal) bond equal to 50 percent of the bid shall accom- any all bids to serve as a guarantee that the bidder will, upon :ceptance of his bid, execute such contractual documents as may e required within 10 working days after issuance of a notice of intent) award. Such bonds must be executed by surety companies licensed) do business in the State of New Jersey.

5:72-2.3 Performance and payment bonds

(a) In accordance with N.J.S.A. 2A:44-143 et seq., performance ond equal to 100 percent of the contract price shall be required of ıe successful bidder when a contract for public buildings, or other ublic works or improvements is awarded to secure fulfillment of the ontractor's obligations specified in the contract.

(b) A performance bond of less than 100 percent of the contract r some other form of security ***as set forth in the bid specifications rior to bid opening*** may be required*,* at NJ TRANSIT's sole iscretion, of the successful bidder when a contract for other procure- ıents is awarded to secure fulfillment of the contractor's obligation pecified in the contract.

(c) In accordance with N.J.S.A. 2A:44-143 et seq., payment bond qual to 100 percent of the contract price shall be required of the uccessful bidder when a contract for public buildings, or other public vorks or improvements is awarded to protect firms or persons sup- ılying labor materials to the contractor/subcontractor for the per- ormance of work provided for in the contract.

(d) A payment bond of less than 100 percent of the contract or ome other form of security ***as set forth in the bid specifications prior o bid opening*** may be required, at NJ TRANSIT's sole discretion, ɔf the successful bidder when a contract for other procurements is ıwarded to protect firms or persons supplying labor or materials to he contractor/subcontractor for the performance of work provided 'or in the contract.

(e) Performance and payment bonds must be executed by surety :ompanies licensed to do business in the State of New Jersey.

16:72-2.4 Pre-qualification of firms for capital projects

(a) Prospective contractors, prior to bidding on improvements to :apital facilities and equipment, must be pre-qualified as to the :haracter and amount of work for which they are permitted to submit ɔids. Such pre-qualification shall be based on all factors relating to :ontractor responsibility as set forth in N.J.A.C. 16:72-1.6, and any ɔertinent information relating to the qualifications of contractors.

(b) Such pre-qualification, as noted in (a) above, shall be assigned :ontractors based on information submitted by them in response to a questionnaire provided by NJ TRANSIT. A prospective contractor dissatisfied with its pre-qualification classification may request an informal hearing before the Pre-Qualification Committee to present additional information to justify a different classification. After hearing the additional evidence, the Pre-Qualification Committee may, in its discretion, change or modify the bidder's classification.

16:72-2.5 Amendment of Invitation for Bids

(a) If, after issuance of an Invitation for Bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous Invitation, such changes shall be accomplished by issuance of an amendment to the Invitation for Bids.

1. The amendment shall be sent to everyone to whom Invitations have been furnished.

2. The amendment shall be issued a reasonable time before the scheduled bid opening. If necessary the bid opening will be rescheduled at the discretion of the Director.

(b) Any information given to a prospective bidder concerning an Invitation for Bids shall be furnished promptly to all other prospective bidders, as an amendment to the Invitation, if such information is necessary to the bidders in submitting bids on the Invitation or if the lack of such information would be prejudicial to uninformed bidders.

16:72-2.6 Cancellation of Invitations before opening

(a) Invitations for Bids should not be cancelled unless cancellation is in NJ TRANSIT's interest, such as where there is no longer a requirement for the supplies or services or where amendments to the Invitation would be of such magnitude that a new Invitation is desirable.

(b) Where an Invitation is cancelled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom Invitations for Bids were issued.

16:72-2.8 Receipt and safeguarding of bids.

(a) (No change.)

(b) Unidentified bids may be opened solely for the purpose of identification and then immediately resealed. A record of this event shall be kept in the bid file.

16:72-2.11 Responsive bids

(No change in text of rule.)

16:72-2.12 Rejection of all bids

(a) Invitations for Bids may be cancelled after opening but prior to award and all bids rejected, where NJ TRANSIT determines that:

1.-7. (No change.)

(b) A record of the cancellation of Invitations for Bids shall be kept in the bid file.

16:72-2.13 Rejection of individual bids

(a) (No change.)

Recodify (c)-(d) as (b)-(c) (No change in text.)

(d) Where a bidder fails to furnish a bid bond in accordance with the material requirements of the Invitation for Bids, the bid shall be rejected.

(e) Where a bid fails to comply with all material EEO/DBE requirements expressed in an Invitation for Bids, the bid shall be rejected.

16:72-2.14 By-pass of low bidders

If the low bidder is by-passed, a memorandum stating the justification shall be prepared for the file and a letter explaining the decision shall be forwarded to the bidder.

16:72-2.15 Mathematical calculations

(a) (No change.)

(b) In the event of a discrepancy between the unit price bid for any contract line item and the extension shown for that item under the column of the bid designated "Amount," the unit price shall govern.

1. Where a unit price is bid for a contract line item, but no extension is provided, NJ TRANSIT shall provide the extension based on the unit price bid and the estimated quantity for that contract item.

2. Where an extension is provided by the bidder in the "Amount" column, but no unit price appears in the "Unit Price" column of the bid, NJ TRANSIT shall provide the unit price by dividing the "Amount" figure provided by the bidder by the estimated quantity.

3. Where no figure is provided by the bidder in both the "Unit Price" and "Amount" columns for one or more contract line items or where no figure is provided in the "Amount" column for one or more "Lump Sum" contract line items, the bid shall be considered to be non-responsive and shall be rejected.

16:72-2.16 Initialing of price changes

Price changes in bids shall be initialed by the vendor in the bid submitted to NJ TRANSIT.

16:72-2.17 Waiver of minor informalities or irregularities in bids

(a) NJ TRANSIT reserves the right to waive any minor informalities or irregularities in a bid not in compliance with the specifications, terms and conditions of the Invitation for Bids.

1. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the Invitation for Bids, having no effect on quality, quantity or delivery of the supplies or performance of work being

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procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, other bidders.

2. (No change.)

16:72-2.18 Tie bids

(a) In the event that the correct total contract prices submitted by two or more vendors are identical, NJ TRANSIT shall award the contract based on a relative comparison of the following factors:

1. (No change.)

2. History of vendors' performance.

(b) When none of the distinguishable characteristics in (a) above are available, NJ TRANSIT shall, if practicable, provide for contract award by splitting the award. If splitting the award is not practicable, award will be made by a single toss of a coin.

SUBCHAPTER 3. REQUESTS FOR PROPOSALS

16:72-3.1 Solicitation of proposals

Proposals for professional and technical services shall be solicited in a manner which maximizes the opportunity for competition unless otherwise provided in N.J.A.C. 16:72-1.6(c).

16:72-3.2 Form of proposal

Proposals shall consist of separately bound technical and cost proposals to be sealed and delivered to NJ TRANSIT no later than the deadline specified in the Request for Proposal (RFP).

16:72-3.3 Amendment of request for proposals

(a) If after issuance of a request for proposal, but before the time of opening, it becomes necessary to make changes in scope, delivery deadline, closing dates, or any other part of the proposal or to correct a defective or ambiguous RFP, such changes shall be accomplished by issuance of an amendment of the RFP. The amendment shall be sent to everyone to whom RFPs have been furnished.

(b) Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP if such information is necessary to the proposers in submitting proposals on the RFP or if the lack of such information would be prejudicial to uninformed proposers.

16:72-3.4 Cancellation of Requests before opening

(a) Requests for Proposals should not be cancelled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the services or where amendments to the RFP would be of such magnitude that a new RFP is desirable.

1. Where an RFP is cancelled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued. The notice of cancellation shall identify the RFP and briefly explain the reason the RFP is being cancelled.

16:72-3.5 Receipt and safeguarding of proposals

(a) All proposals received prior to the time of opening shall be kept secure, and except as provided in (b) below, unopened. If an RFP is cancelled, or if a proposer effectively withdraws its proposal, all proposals, or the withdrawn proposal, as the case may be, shall be returned to the proposers.

(b) Unidentified proposals may be opened solely for the purpose of identification and then immediately resealed. A record of this event shall be kept in the RFP file.

16:72-3.7 Evaluation of proposals

Sealed technical proposals shall be opened, evaluated and ranked prior to the opening of the separate cost proposals consistent with State and federal law. General evaluation criteria shall be outlined in the RFP.

16:72-3.8 Negotiations

Negotiations may be conducted with proposers whose proposals are considered to be competitive in accordance with State and federal law.

16:72-3.9 Rejection of all proposals

(a) Requests for proposals may be cancelled after opening b prior to award and all proposals rejected, where NJ TRANSI determines in writing that:

1. Inadequate or ambiguous specifications were given in the RF

2. (No change.)

3. The RFP did not provide for consideration of all factors of co to NJ TRANSIT.

4.-6. (No change.)

16:72-3.10 Rejection of individual proposals

(a) Any proposal which materially fails to conform to the requir ments of the RFP's shall be rejected.

(b) (No change.)

Recodify 16:72-3.12 through 3.14 as 3.11 through 3.13 (No chang in text.)

SUBCHAPTER 4. DEBARMENT, SUSPENSION AND DISQUALIFICAITON OF PERSONS

16:72-4.1 Causes for debarment of a person(s)

(a) In the public interest, NJ TRANSIT shall debar a person fo any of the following causes:

1.-13. (No change.)

14. Any offer or agreement by a vendor to pay or to make paymen of, either directly or indirectly, any fee, commission, compensatior gift, gratuity, or other thing of value of any kind to any State offic or employee or special State officer or employee as defined b N.J.S.A. 52:13D-13b and e, in the Department of the Treasury o any other agency with which such vendor transacts or offers o proposes to transact business, or to any member of the immediat family, as defined by N.J.S.A. 52:13D-13i, of any such officer o employee, or any partnership, firm, or corporation with which the are employed or associated, or in which such officer or employee ha an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to report to the Attorney General and t the Executive Commission on Ethical Standards in writing forthwitl the solicitation of any fee, commission, compensation, gift, gratuit or other thing of value by any State officer or employee or specia State officer or employee;

16. The undertaking, directly or indirectly, of any private business commercial or entrepreneurial relationship with, whether or no pursuant to employment, contract or other agreement, express o implied, or sale, directly or indirectly of any interest in such vendo to, any State officer or employee or special State officer or employe or special State officer or employee having any duties o responsibilities in connection with the purchase, acquisition or sal of any property or services by or to any State agency or any in strumentality thereof, or with any person, firm or entity with whic he is employed or associated or in which he has an interest withir the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to thi provision shall be reported in writing forthwith to the executive Commission on Ethical Standards, which may grant a waiver of thi restriction upon application of the State officer or employee o special State officer or employee upon a finding that the present o proposed relationship does not present the potential, actuality, o appearance of a conflict of interest;

17. Influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Cause or influence or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

(b) The provisions set forth in N.J.A.C. 16:72-4.1(a) 14 through 18 above shall be included in all Invitations for Bids and RFPs issued by or on behalf of NJ TRANSIT.

16:72-4.2 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1.-4. (No change.)

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5. The existence of a cause set forth in N.J.A.C. 16:72-4.1(a)9 hrough 18 shall be established by evidence which NJ TRANSIT etermines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 16:72-4.1(a)13 hall be proper, provided that one of the causes set forth in N.J.A.C. 6:72-4(a)1 through 18 was the basis for debarment by the original lebarring agency. Such debarment may be based entirely on the ecord of facts obtained by the original debarring agency, or upon combination of such facts and additional facts.

6:72-4.6 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of uspension and scope of suspension shall be adhered to by NJ TRANSIT.

1. NJ TRANSIT may suspend a person or his affiliates, provided hat within ten days after the effective date of the suspension, NJ TRANSIT provides such party with a written notice stating that a suspension has been imposed and its effective date; setting forth the easons for the suspension to the extent that the Attorney General letermines that such reasons may be properly disclosed; stating that he suspension is for a temporary period pending the completion of n investigation and such legal proceedings as may ensue; and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for an informal hearing if he so requests, or a statement declining to give such reasons and setting forth NJ TRANSIT's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by NJ TRANSIT, the latter shall note that fact as a reason for its suspension.

2.-3. (No change.)

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

State Police Retirement System

Readoption: N.J.A.C. 17:5

Proposed: October 15, 1990, at 22 N.J.R. 3200(a).

Adopted: November 30, 1990, by the Board of Trustees, State Police Retirement System, Michael Weik, Secretary.

Filed: November 30, 1990 as R.1991 d.2, **without change.**

Authority: N.J.S.A. 53:5A-30h.

Effective Date: November 30, 1990.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 17:5.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Temporary Amendment and Adoption of Rules Pursuant to Blackjack Experiment

Wagers

Five Cards Totalling 21 Rule

Temporary Amendment: N.J.A.C. 19:47-2.3

Temporary New Rule: N.J.A.C. 19:47-2.16

Petitioner: Resorts International Hotel, Inc.

Authority: N.J.S.A. 5:12-69(e) (P.L. 1987 c.354), 5:12-70(f) and 5:12-100(e).

Take notice that beginning January 14, 1991, the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for a period of 90 days (until April 14, 1991) for the purpose of determining if new rules should be adopted at the game of Blackjack which would permit casino licensees to offer a patron to be paid at odds of 2 to 1 if the patron achieves a score of 21 in five cards and the dealer does not have Blackjack or a score of 21.

Specifically, the experiment would permit patrons to be paid at odds of 2 to 1 if they achieved a score of 21 in five cards and the dealer does not have Blackjack or a score of 21. If the dealer has Blackjack the patrons will lose their wager and if the dealer has a score of 21 in three or more cards the patron's wager will be void. The test will be conducted on a limited number of Blackjack tables at Resorts International Hotel, Inc. Signage will be posted at the major casino entrances and at the tables involved in the testing of the Five Cards Totalling 21 Rule.

A petition for rulemaking on this subject was filed with the Commission on September 13, 1990. Should the experiment prove successful, the Commission shall consider permanent adoption of the amendment and the new rule in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

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EMERGENCY ADOPTIONS

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Community-Based Care Dedicated for Use by Patients with AIDS/HIV Infection

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 8:33H-3.3 and 8:33L-2.4

Adopted Emergency Amendments Adopted and Concurrent Proposed Amendments Authorized: December 13, 1990, by Frances J. Dunston, M.D., M.P.H., State Commissioner of Health.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): December 13, 1990.

Emergency Amendment Filed: December 13, 1990 as R.1991 d.22.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Concurrent Proposal Number: PRN 1991-36.

Emergency Amendment Effective Date: December 13, 1990.

Emergency Amendment Expiration Date: February 11, 1991.

Submit comments by February 6, 1991 to:
John Gontarski, Chief
Health Systems Services
New Jersey State Department of Health
CN 360
Trenton, N.J. 08625

The agency proposal follows:

Summary and Statement of Imminent Peril

The Department of Health hereby sets forth an emergency adoption and concurrently proposes to amend N.J.A.C. 8:33L, the Certificate of Need Home Health Agency Policy Manual, and N.J.A.C. 8:33H, the Policy Manual for Planning and Certificate of Need Reviews of Long-Term Care Facilities and Services Within the State of New Jersey. These amendments will allow the submission of certificate of need applications which propose home health services and long-term care beds dedicated for the care of patients with AIDS or HIV infection, without regard to the usual batching cycle requirements stated in N.J.A.C. 8:33-1.5. Other community-based health services that are needed by persons with AIDS, such as medical day care and residential health care, are not subject to a batching requirement.

"Batching" is the process by which certificate of need applications for the establishment of certain types of health care facilities and services are accepted by the State Department of Health at specified times of the year, so that they may be reviewed competitively. N.J.A.C. 8:33-1.5(d) contains a listing of the dates which certificate of need applications for various batched services are accepted for processing and reviewed by the Department. All batched health care services are scheduled for two review cycles per year, at six month intervals. Applications for new home health services may only be submitted on June 1 and December 1 each year, and applications for long-term care beds may only be submitted on February 1 and August 1 each year, in accordance with N.J.A.C. 8:33-1.5.

Emergency amendment is necessary due to the fact that the standing policy of batching applications for home health services and long-term care beds to be dedicated for exclusive use by HIV-infected patients may interfere with the goal of developing such community-based services in an expeditious manner. The AIDS epidemic continues to grow, and the disease is increasingly recognized as a chronic illness requiring community-based care as well as acute hospital care. However, the number of agencies and facilities providing necessary "sub-acute" or chronic care to HIV-infected patients remains seriously limited in New Jersey. HIV-infected patients who are too ill to live independently or who cannot adequately be cared for at home by family members and/or significant others must frequently occupy an acute care hospital bed due solely to the unavailability of more appropriate and less costly community-based alternatives. This situation deprives AIDS patients of a homelike living environment and, at the same time, places a significant drain on acute care hospital resources.

The Commissioner of Health perceives imminent peril to the public welfare if the batching cycle requirement is not eliminated for application proposing dedicated AIDS home health services and long-term care beds. With respect to nursing home care, there is only one operating facility in New Jersey at the present time which offers dedicated long-term care beds for patients with AIDS or HIV infection. Unfortunately, the latter facility is located in an area that is not readily geographically accessible to the majority of the State's AIDS patients and their families.

Improved access to community-based health services such as long-term care and home health care is needed, particularly in communities with a high incidence of HIV infection. Because of the difficulties and complexities inherent in successfully developing needed non-acute care services for patients with AIDS or HIV infection, the time that applicants must wait to submit certificate of need applications for these services must be minimized. While the emergency adopted and concurrently proposed amendments will not of themselves increase the number of proposals for dedicated AIDS long-term care facilities in New Jersey, they will nonetheless eliminate one barrier to the development of needed services.

Social Impact

It is expected that the proposed amendments to N.J.A.C. 8:33L-2.4 and N.J.A.C. 8:33H-3.3 will have a beneficial social impact. By eliminating the batching requirement for certificate of need applications proposing dedicated home health services or long-term care beds for AIDS and HIV-infected patients, applicants interested in developing such services will be able to proceed with their projects in a more timely fashion. They will not be delayed by the requirement to submit the certificate of need application only on two filing dates per year.

Under the proposed amendments, applications for dedicated AIDS beds or services will receive a full review in accordance with existing planning rules. This review process offers the benefit of opportunities for public input regarding whether the certificate of need should be approved. The proposed amendment of the Long-Term Care Policy Manual includes conditions which would be part of the approval, in order to provide assurance that the facility will make the approved beds available for exclusive occupancy by patients with HIV infection or AIDS. N.J.A.C. 8:33L-2.4(h) already contains provisions to provide similar assurances in the event that a home health agency is approved to provide services exclusively to patients with AIDS/HIV infection.

Economic Impact

It is not anticipated that the proposed amendments will have a substantial economic impact on any State agency or department. Certificate of need applicants who wish to propose dedicated home health services or long-term care beds for AIDS patients may be able to reduce their expenses for such projects, because they will not have to hold a site option for the extended period which might be necessary if the application could be submitted only on two filing dates per year.

With the development of additional community-based alternative services for patients with AIDS or HIV infection, it should be possible to transfer patients from acute care hospitals to their homes or to dedicated long-term care facilities as soon as it is medically appropriate. At the present time, some New Jersey acute care hospitals indicate that approximately one-third of their inpatients with AIDS could be effectively cared for in a "sub-acute" or long-term care bed, if a facility equipped to meet the special needs of AIDS patients were available. The per diem cost of enhanced long-term care provided in a facility with dedicated AIDS beds is approximately $350.00 per day. This is well below the cost of caring for an AIDS patient in an acute care hospital. Thus, with the development of additional dedicated AIDS long-term care beds, there should be a reduction in the unnecessary expenditure of acute care resources for patients who could be better treated in facilities dedicated to meeting their long-term care needs.

Similarly, the limited availability of home health agencies serving certain communities with a high incidence of HIV infection could compromise the care of patients with AIDS. In most areas of the State, existing home health agencies have done an exemplary job of serving patients who are HIV infected. However, the practice on the part of some

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home health agencies of targeting services to a geriatric patient population may result in access problems for younger patients with AIDS. Such agencies may not be adequately equipped or staffed to address the specialized problems of patients with AIDS. The approval of home health agencies dedicated to the care of HIV-infected patients would improve access for this patient population.

Regulatory Flexibility Analysis

Certificate of need applicants that will be affected by these amendments may include some small businesses that employ fewer than 100 persons, such as home health agencies and—in the case of long-term care applicants—real estate development companies. However, the proposed amendments do not impose any additional recordkeeping, reporting, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments merely remove the current requirement for the batching of home health and long-term care certificate of need applications, in the case when the applicant proposes dedicated services or beds for AIDS or HIV-infected patients. As such, these amendments will not require small businesses to utilize any additional professional services in order to comply with their specific terms.

Full text of the emergency adoption and concurrent proposals follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

8:33H-3.3 Expansion and new construction

(a) Standards are as follows:

1.-7. (No change.)

8. Dedicated beds for patients with AIDS or HIV infection: Certificate of need applications for long-term care beds, including "subacute" beds, to be dedicated for use by patients with AIDS or HIV-infection shall be exempted from the batching cycle requirements for long-term care, as they are stated in N.J.A.C. 8:33-1.5. Applications for dedicated AIDS beds may be submitted during any month when applications are accepted. In accordance with N.J.A.C. 8:33-1.5(c), this shall be any month except May and September.

i. If a certificate of need application proposing dedicated beds for exclusive occupancy by AIDS and HIV-infected patients is approved, the beds shall not be counted as part of the inventory of general long-term care beds which are available to the public at large.

ii. Certificate of need applications for dedicated AIDS beds shall be subject to all applicable conditions stated in this chapter and the following:

(1) Admission to the approved beds shall be available exclusively to persons with AIDS or HIV infection. The applicant is prohibited from marketing services or occupying the approved beds with patients who are not HIV-infected, unless the Commissioner determines that the dedicated beds are chronically underutilized and gives approval for the placement of non-HIV infected patients in the beds pending submission, review, and approval of a certificate of need, as referenced in (a)8ii(2) below; and

(2) Should the applicant choose to market the approved beds to patients who do not have AIDS or HIV infection, or to admit patients who do not have AIDS or HIV infection, the applicant shall submit a certificate of need application and receive approval to do so, satisfying all pertinent requirements in this chapter prior to marketing to or serving patients who do not have AIDS or HIV infection.

(b) (No change.)

8:33L-2.4 Certificate of Need requirements

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

(h) To promote the availability of care for special sub-populations (for example, pediatric patients or patients who are HIV-infected) that may have difficulty accessing needed home health services, the Commissioner of Health shall give consideration to approving a new or expanding agency, even if the proposed service area does not demonstrate an access problem in accordance with the criteria identified in (a)4 above.

1.-2. (No change.)

3. Certificate of need applications proposing home health agencies dedicated to the care of patients with AIDS or HIV infection shall be exempted from the batching cycle requirements for home health, as they are stated in N.J.A.C. 8:33-1.5. Applications for dedicated AIDS home health services may be submitted during any month when applications are accepted. In accordance with N.J.A.C. 8:33-1.5(c), this shall be any month except May and September.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Notice of Administrative Correction
Medical Fee Schedules: Automobile Insurance Personal Injury Protection Coverage
Emergency Adopted New Rule and Concurrent Reproposed New Rule: N.J.A.C. 11:3-29.6

Take notice that the Office of Administrative Law has discovered an error in the text of emergency adopted and concurrently reproposed new rules N.J.A.C. 11:3-29.6(f), containing the Medical Fee Schedule for durable medical equipment and prosthetic devices. One of the schedule items contained in the emergency adoption and notice of concurrent reproposal as filed with the Office of Administrative Law (see R.1990 d.624 and PRN 1990-644, respectively) was erroneously not reproduced in the rule text as published in the December 17, 1990 New Jersey Register at 22 N.J.R. 3809(a). The missing item is set forth in the rule text reproduced below. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**):

11:3-29.6 Medical Fee Schedules

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

(f) The following is the Medical Fee Schedule for durable medical equipment and prosthetic devices:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
DURABLE MEDICAL EQUIPMENT AND PROSTHETIC DEVICES

. . .

CODES BEGINNING WITH 'L'

HCPCS Code	Description	Fee for New Equipment
. . .		
L0515	**LSO, flexible (lumbo-sacral surgical support), elastic type, with rigid posterior panel**	**86.45**
. . .		

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PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session, February 20, 1991

Take notice that the following agenda items are scheduled for Notice of Proposal in the February 19, 1991 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, February 20, 1991 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak, call Celeste Carpiano at (609) 292-0739 by 12:00 noon Friday, February 15, 1991.

Rule Proposals: N.J.A.C. 6:11-11.9, Speech Language Specialist Endorsement; N.J.A.C. 6:29-7, Amendments to School Employee Physical Examinations; and N.J.A.C. 6:39-1.6, Test Administration and Security.

Please note: Publication of the above items is subject to change depending upon the actions taken by the State Board of Education at the January 9, 1991 monthly public meeting.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on November 28, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment will incorporate the Northwest Bergen County Utilities Authority (NBCUA) Wastewater Management Plan (WMP) into the Northeast WQM Plan. The WMP proposes the expansion of the NBCUA Sewage Treatment Plant (STP) to treat a projected wastewater flow of 13.1 million gallons per day and identifies a sewer service area for this expanded STP. The WMP also identifies portions of Franklin Lakes Borough to be served by STPs having a design capacity of less than 20,000 gallons per day with no direct discharge to surface water or onto the land surface.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on November 20, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Caldwell Borough dated February 1990. That document proposes the pumping of a 1.52 million gallons per day of wastewater flow from a portion of the Caldwell Sewage Treatment Plant (STP) sewer service area to the Parsippany-Troy Hills STP. The portion of the Caldwell STP sewer service area to be transferred to the Parsippany-Troy Hills STP sewer service area is delineated in the WMP and includes the major portion of Roseland and small sections of West Orange, West Caldwell, Essex Fells and Livingston.

Comments on this amendment were received during the comment period, and are summarized below with the Department's responses.

COMMENT: There are two areas which border the Township o Fairfield, one located in West Caldwell, the other located in Nort Caldwell, both of which are outside the proposed service area for th Caldwell WMP. Is it the intention of the WMP to allow these fringe area to be serviced by the Two Bridges Sewerage Authority (TBSA) an included in the TBSA WMP?

RESPONSE: The areas mentioned above are not included in th Caldwell WMP since they are not in either the Caldwell STP or Parsip pany-Troy Hills STP existing or proposed sewer service areas as depicte in the WMP mapping. If they are currently served by or will be serve in the future by the TBSA, they should be included in the TBSA WMP

COMMENT: The Caldwell WMP indicates that the existing Nortl Caldwell diversion, with flow treated at the TBSA STP, may be eliminate in the future. This seems to be in direct confict with existing servic agreements among TBSA, Fairfield and North Caldwell which provid for certain payments by North Caldwell, one of which is based on minimum flow of 30,000 gallons per day for a term of 40 years beginnin in 1989.

RESPONSE: The WMP is not in conflict with existing service agree ments since it states that North Caldwell has an agreement with Fairfiel allowing the diversion of a maximum of 100,000 gallons per day and tha North Caldwell may continue this arrangement in the future. The WMI does account for the possibility of the diversion being eliminated wit flow treated at the upgraded Caldwell STP; however, it does not requir that North Caldwell discontinue its arrangement with the TBSA.

COMMENT: Three municipalities, including Roseland, expresse concern over the costs from the proposed projects and the long-rang outlook for the user fees charged by Parsippany. They want to be sur that the rate to their existing user base is not adversely affected by th Parsippany connection, which would primarily benefit new users.

RESPONSE: It is not the intent of the WMP to address issues relate to costs from the proposed projects. Instead, these issues should b addressed at the local level.

COMMENT: The Montville Township Municipal Utilities Authorit objected to the Caldwell WMP and the diversion of 1.52 million gallon per day from the Caldwell service area to the Parsippany-Troy Hills STI since the Parsippany-Troy Hills STP cannot accommodate both the pres ent needs of its service area (including Montville Township) and th proposed service areas specified in the Caldwell WMP.

RESPONSE: The Montville Township Municipal Utilities Authorit has withdrawn its objections and comments to the Caldwell WMP.

COMMENT: On May 7, 1976, the Township of West Orange wa issued a permit by the Department of Environmental Protection to sewe all of the existing homes fronting on Laurel Avenue as well as the on existing home fronting on Eagle Rock Avenue into the Roseland sewe system. Twelve then existing homes and one vacant lot were covered b the permit. Due to difficulties in easement acquisition, only three of the 12 homes were actually connected to the system. In view of the foregoing, it would appear logical that all of the Township of West Orange properties fronting on Laurel Avenue as well as at least the one existing house fronting on Eagle Rock Avenue should be included in the proposed Parsippany-Troy Hills STP sewer service area.

RESPONSE: Based on the above, the mapping of the WMP will be revised to include the houses which are currently served by the Caldwell STP in the existing Caldwell STP sewer service area and the proposed Parsippany-Troy Hills STP sewer service area. An amendment to the Northeast Water Quality Management Plan may be requested in the future regarding the inclusion of additional areas which are not currently served by the Caldwell STP in the proposed Parsippany-Troy Hills STP sewer service area.

The existing and proposed service area maps in the Caldwell WMP will also be revised to include the area in Verona which is currently served by the Caldwell STP.

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(a)

IVISION OF WATER RESOURCES

mendment to the Upper Delaware Water Quality Management Plan

ublic Notice

Take notice that on November 20, 1990, pursuant to the provisions f the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the tatewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), n amendment to the Upper Delaware Water Quality Management Plan as adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Greenwich Township (Township), Warren County. The WMP identifies: the area of the Township to be serviced y the Town of Phillipsburg Sewage Treatment Plant (STP); construction f a Southerly Region STP servicing the industrially zoned areas of the Township in the southern half of the Township; establishment of three n-site groundwater disposal areas; and the remainder of the Township erved by individual subsurface sewage disposal systems.

Comments were received during the public comment period, and are ummarized below with the Department's response.

COMMENT: One party expressed concern over the proposed amendment. Items of concern included the effect of the proposed development n neighboring communities; the exploration of an alternative site for he proposed Southerly STP; underestimation of effluent quantities; and, he effect of the development on endangered species in the area. An xtension of the public comment period was also requested.

RESPONSE: While the Department agrees that the concerns are easonable, the issues identified are issues which are not presently addressed in Water Quality Management Plans. Some of the issues are trictly local issues to be discussed between the two communities, while ome are addressed by other programs and regulations within the Department.

As required by N.J.A.C. 7:15, the Greenwich Township WMP has napped wetlands, floodplains and other environmentally sensitive areas. Future Township development will be governed by applicable local, State and Federal regulations protecting these environmentally sensitive areas.

In addition, N.J.S.A. 7:14A, NJPDES Regulations require a detailed, site specific environmental assessment be conducted in conjunction with the Discharge Allocation Certificate (DAC) application. Additional environmental review is done during the Stage I Treatment Works Approval.

According to Greenwich Township, during preparation of the WMP, the Township received comments from Bloomsbury citizens objecting to the original STP site. As a result of these comments, field investigations were conducted and the STP site was relocated to minimize visual impacts associated with the STP even though this relocation increased the length of the STP outfall. The suitability of this site will be further evaluated during the initial stages of the STP design.

The sewer service area for the Southerly STP includes only Industrially zoned areas. The flow from these sewer service areas was based upon ultimate development in accordance with Township zoning requirements and current NJDEP design criteria for estimating wastewater flow.

There have been no verified sightings of endangered or threatened species on the STP site or within the Industrial Zones adjacent to the STP.

The time extension was found to be unwarranted and was, therefore, disapproved.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on November 1, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. The Sussex County Board of Chosen Freeholders approved this amendment on September 25, 1990. This amendment adopts a Wastewater Management Plan (WMP) for Montague Township dated May, 1989, revised January 30, 1990. That document proposes a wastewater treatment plant, discharging to the Delaware River, to serve the existing and proposed development of the High Point Country Club. The WMP delineates the sewer service area of the proposed High Point Country Club treatment plant. The proposed wastewater flow from this service area is 720,000 gallons per day. The WMP also delineates the on-site groundwater disposal system service areas and the individual subsurface sewage disposal system service areas within the Township.

This amendment was noticed in the New Jersey Register on June 18, 1990 at 22 N.J.R. 1947(d). Comments on this amendment were received during the public comment period and are summarized below with the Department's responses.

COMMENT: The High Point Country Club proposes to discharge 820,000 gallons per day of secondary treated effluent to the Delaware River within the boundaries of the Delaware Water Gap National Recreation Area. Water quality in this segment of the river is uniformly good to excellent, far exceeding the level of protection provided by current standards. Designation under the Federal Wild and Scenic Rivers Act mandates that this exceptional water quality be maintained or enhanced; a discharge of the magnitude proposed for the High Point Country Club treatment plant, with treatment designed to meet minimum standards for the river, is completely incompatible with those mandates.

RESPONSE: The treatment requirements and effluent limitations for the proposed High Point Country Club treatment plant, which will treat a projected wastewater flow of 720,000 gallons per day, are specifically not included in the Montague Township WMP. These issues are permitting rather than planning issues and will be addressed if and when a New Jersey Pollutant Discharge Elimination System (NJPDES) permit is developed for this facility.

COMMENT: The Delaware River Basin Commission (DRBC) and the National Park Service are jointly studying the water quality in the area to determine what additional protection may be needed to protect the Delaware River in and above the Delaware River Gap National Recreation Area. At the conclusion of these studies and other public action by the DRBC, additional treatment requirements may be requested on discharges that can impact these waters.

Further action on this amendment should be delayed until the joint National Park Service/DRBC recommendations have been released, and until the developers for the High Point Country Club can demonstrate either that they can achieve a higher level of treatment or find an alternative means of wastewater disposal that does not threaten water quality in the Middle Delaware.

RESPONSE: The DRBC has indicated that the local on-site alternatives for the High Point Country Club existing and proposed development must be clearly demonstrated as not feasible prior to any consideration, by the DRBC, of discharge to the Delaware River. If on-site groundwater disposal is found by the High Point Country Club to be the viable option, an amendment to the Sussex County Water Quality Management Plan to specify groundwater disposal for this facility would be required.

As mentioned previously, treatment requirements and effluent limitations will be addressed during the permitting process, not as part of the WMP. Therefore, further action on this amendment can not be delayed based on these issues.

In accordance with the Sussex County Board of Chosen Freeholders' resolution of approval of the Montaque Township WMP, Table 1 on page 2 of the WMP has been revised to reflect the designation of NJPDES/Treatment Works Approval permittee/co-permittee in the "On-Site Groundwater Disposal System Service Area" as either the Township or the Sussex County Municipal Utilities Authority.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Lower Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would add a new 4.9 MGD discharge to groundwater from a proposed 300+ acre sand and gravel mining operation to be located on Block 11, Lot 28 in Fairfield Township, Cumberland County.

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This notice is being given to inform the public that a plan amendment has been developed for the Lower Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 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 Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Tewksbury Township, Hunterdon County. The WMP identifies the following actions: construction of a wastewater treatment plant to service the Route 78 Office Service Area; construction of an on-site groundwater disposal facility to service a Mount Laurel II development south of Oldwick; expansion of the service area to the Valley Road Sewerage Company treatment plant in the Pottersville area; abandonment of the A.M. Best Company treatment plant and incorporation of its flow into the Route 78 Office Service Area Treatment Plant; and, the remainder of the Township to be designated as an area for on-site groundwater disposal facilities with design flows of less than 20,000 gallons per day. The Oldwick Village and Hunters Glen wastewater treatment plants and service areas will remain as is.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Monmouth County Wate Quality Management (WQM) Plan has been submitted for approval. Th amendment proposes a seventh and eighth grade school in Manalapa Township. The proposed school will connect to the Western Monmout Utilities Authority's Pinebrook Wastewater Treatment Plant. The schoc population is estimated at 1,494 and will generate an average daily flo of 29,800 gallons per day.

This notice is being given to inform the public that a plan amendmer has been proposed for the Monmouth County WQM Plan. All infoı mation dealing with the aforesaid WQM Plan and the proposed amend ment is located at the Office of NJDEP, Division of Water Resource Bureau of Water Quality Planning, 401 East State Street, Third Floı CN-029, Trenton, New Jersey 08625. It is available for inspection betwee 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment t inspect the documents may be arranged by calling the Bureau of Wate Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendmen to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEI address cited above. All comments must be submitted within 10 workin days of the date of this public notice. All comments submitted b interested persons in response to this notice, within the time limit, shal be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold nonadversarial public hearing on the amendment or extend the publi comment period in this notice up to 30 additional days. These request must state the nature of the issues to be raised at the proposed hearin or state the reasons why the proposed extension is necessary. These requests must be submitted within 10 working days of this public notic to Mr. Frankel at the NJDEP address cited above. If a public hearin is held, the public comment period in this notice shall be extended 1 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the Bordentown Township sewer service area to include a portion of the proposed Clifton Mills (Phase I) Subdivision, which is located in Bordentown Township, Block 93, Lot 1.01.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Also available for review and comment is an Environmental Assessment which has been prepared for the proposed Clifton Mills Subdivision in accordance with N.J.A.C. 7:14A-10.4. This Environmental Assessment is being reviewed by the Division of Water Resources, Bureau of Municipal Discharge Permits at the above cited location.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice by up to 30 additional days. These requests

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ıst state the nature of the issues to be raised at the proposed hearing state the reasons why the proposed extension is necessary. These ıuests must be submitted within 30 days of this public notice to Mr. ankel at the NJDEP address cited above. If a public hearing is held, : public comment period in this notice shall be extended 15 days after : close of the public hearing.

(a)

IVISION OF WATER RESOURCES

otice of Denial of Petition for Rulemaking urface Water Quality Standards dal Portion of Morses Creek

Take notice that the New Jersey Department of Environmental Protec- ›n (Department) has denied the petition submitted by Exxon Company, S.A. (Exxon) to reclassify the tidal portion of Morses Creek for less ;trictive uses. Exxon petitioned the Department for reclassification of lal Morses Creek for less restrictive uses in accordance with N.J.A.C.)-4.10. The tidal portion of Morses Creek is currently classified as SE3 ıters in N.J.A.C. 7:9-4.15(c) Table 3. In a notice published on December 1989 in the New Jersey Register at 21 N.J.R. 3791(c), the Department licited comments from the public regarding Exxon's petition. A public aring on the petition was held at the Linden City Hall on January 30, 90.

The petition submitted by Exxon requested the removal of the follow- g designated uses from the waterway: (1) secondary contact recreation;) maintenance and migration of fish populations; (3) migration of adromous fish; and (4) maintenance of wildlife. The petition also re- ıested the addition of an industrial use category to Morses Creek. In ldition, Exxon challenged the legality of any classification of Morses reek other than TW-4(a) imposed through the New Jersey Surface 'ater Quality Standards (SWQS) (N.J.A.C. 7:9-4), and challenged the epartment's jurisdiction to impose SWQS in the portion of Morses reek covered by a 1927 Grant.

Exxon failed to meet the requirements of N.J.A.C. 7:9-4.10(b), (d), and) which outline the procedures for reclassifying specific waterbody seg- ents for less restrictive uses. These provisions require Exxon to demon- rate, for each use petitioned for removal, that none of the uses being :moved are existing uses and the uses to be removed will not be attained y implementing effluent limits required by the Federal Clean Water Act :WA) (33 U.S.C.A. 1251 et seq.). If these two requirements were met, xxon would also be required to demonstrate at least one of the follow- ıg: (1) the existing designated use is not attainable because of natural ackground; or, (2) the existing designated use is not attainable because f man-induced conditions; or, (3) water level conditions prevent the ttainment of the use; or, (4) physical conditions of the waterbody reclude attainment of aquatic life protection uses; or, (5) controls more ringent than those required by the CWA would result in widespread ɔcial and economic impact.

The Department has determined, after reviewing Exxon's submittal and s records, that the SE3 surface water classification imposed on the tidal ortion of Morses Creek was legally adopted in 1981. The Department as also concluded that it did not vacate its rights with respect to the 'aters in Morses Creek covered by a 1927 Riparian Grant and clearly as the right to regulate the quality of the waters in Morses Creek.

The department's decisions were based on an evaluation of the ocumentation submitted by Exxon in support of their petition, a De- artmental visit to the Exxon Bayway Refinery, examination of case law nd statutory provisions, comments received by the Department as part ıf the public participation on this petition, and the Department's records nd knowledge of the area. The details of the Department's decision, its ıasis, and the Department's responses to the public comments are con- ained in a document prepared by the Department entitled "Statement ıf Decision and Response to Public Comments on the Morses Creek Reclassification Petition" dated August 1990. A copy of this document ıas been sent to Exxon and all individuals and organizations which :ommented on the petition. Others may request a copy, for the cost of naking a copy, from:

Bureau of Water Quality Standards and Analysis
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

(b)

DIVISION OF PARKS AND FORESTRY OFFICE OF NEW JERSEY HERITAGE

Availability of Grant Funds Fiscal Year 1991 Historic Preservation Fund Matching Grants

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Office of New Jersey Heritage announces the following availability of funds.

Name of the grant program that has funds available:
Fiscal Year 1991 Historic Preservation Fund.

Purpose for which the grant program funds shall be used: The Office of New Jersey Heritage has funds available for historic resources survey, preservation planning, and pre-development projects undertaken by Certified Local Governments. A limited amount of historic preservation survey, planning and pre-development funds are available to State agencies, county and municipal governments, academic institutions, private not-for-profit organizations, and individuals. Funding is available on a 50 percent Federal/50 percent local matching share basis.

Amount of money in the grant program: Approximately $50,000 of Federal matching funds is available for projects undertaken by Certified Local Governments. Approximately $25,000 of Federal matching funds is available for projects undertaken by State agencies, county and municipal governments, academic institutions, private and not-for-profit organizations, and individuals.

Groups or entities which may apply for the grant program: State agencies, county and municipal governments, academic institutions, private and not-for-profit organizations, and individuals eligible applicants may apply for grants under the program. Only municipalities participating in the Certified Local Government program may apply for grants under the Certified Local Government grant program.

Qualifications needed by an applicant to be considered for the grant program: The Office of New Jersey Heritage uses a competitive selection process and awards grants to projects which best meet the criteria described in the application packet. The criteria for evaluating grant applications is as follows:

Criteria for Evaluating Grant Applications

1. Project's advancement of the goals and objectives of New Jersey's State-wide Comprehensive Historic Preservation Plan (Appendix C). Applicants must cite specific points from the Plan.
2. The applicant demonstrates that the results of the proposed project will serve as a model for other communities within the state.
3. Project's degree of outreach as demonstrated by applicant's ability to involve and impact new audiences and special constituencies.
4. The degree to which the project will involve minorities, handicapped and/or under-represented communities and interests.
5. Inclusion of a relevant archaeological component within a cultural resource survey.
6. Applicant's assurance that qualified personnel and adequate time will be allocated to administer the project. Contract or in-kind personnel should include:
   - Project Coordinator
   - Chief Financial Officer
   - Financial Officer
   - Support and Clerical Staff
7. Applicant's use of volunteers is not counted as part of the project match.
8. Applicant's ability to demonstrate that within the past two years it has undergone a successful audit of its finance or accounting system.
9. Evidence that the project goals can be reached within the proposed time-frame and that the budget is appropriate to the scope of the project.
10. The applicant has a demonstrated ability to properly manage the grant, for example, acceptable performance on prior subgrant or other historic preservation projects.

Procedure for eligible entities to apply for grant funds: Application forms, guidelines, and information on applicant and project eligibility are available from:

Office of New Jersey Heritage
CN 404
Trenton, New Jersey 08625
(609) 292-2028

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Address of office receiving application:
Office of New Jersey Heritage
CN 404
Trenton, New Jersey 08625

Deadline by which applications must be submitted to the office: The deadline for submission of fiscal year 1991 applications is 5:00 P.M., January 31, 1991.

Date by which applicants shall be notified whether they will receive funds under the grant program: The Office of New Jersey Heritage will notify applicants of approval or disapproval by April 15, 1991.

HEALTH

(a)

DIVISION OF MANAGEMENT AND ADMINISTRATION

Availability of Grants Directory of Department of Health Grant Programs

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, ch.7), the Department of Health hereby publishes notice of grant availability in the Directory of Department of Health Grant Programs. Copies of the Directory can be obtained by contacting the Grant Evaluation and Review Program, Office of Financial and General Services, Department of Health at 609-588-7448.

HUMAN SERVICES

(b)

OFFICE OF THE COMMISSIONER

Notice of Keys Amendment Certification

Take notice that the Keys Amendment to the Federal Social Security Act requires an annual certification by states that there are standards in facilities where significant numbers of Supplemental Social Security Income (SSI) recipients reside. The publication of a summary of standards is also required.

Three State departments have licensing and enforcement authority for facilities housing significant numbers of SSI residents in New Jersey. Each department maintains standards and enforces its own regulations.

Within the Department of Human Services, three divisions license or otherwise regulate facilities housing a significant number of SSI recipients.

The Division of Developmental Disabilities licenses group homes, family care homes, skill development homes and supervised apartment programs for persons with developmental disabilities. Comprehensive standards for each program have been developed and codified. Full text of the standards can be found in N.J.A.C. 10:44A and B, or by contacting the following office:

New Jersey Department of Human Services
Division of Developmental Disabilities
Bureau of Operations
CN 726
Trenton, New Jersey 08625

The Division of Youth and Family Services maintains standards for both large residential and smaller community based facilities for clients under its jurisdiction. Specific programs include: foster care homes, residential child care facilities, group homes for children and victims of domestic violence, and teaching family homes. Full text of the standards can be found in N.J.A.C. 10:127 and 10:128, or by contacting the following office:

New Jersey Department of Human Services
Division of Youth and Family Services
Bureau of Licensing and Inspections
CN 717
Trenton, New Jersey 08625

The Division of Mental Health and Hospitals licenses residential services which include group homes, family care homes and supervised apartment programs for mentally ill adults and children. Comprehensive standards have been developed and codified as N.J.A.C. 10:39. A copy of the standards may be obtained by contacting the following office:

New Jersey Department of Human Services
Division of Mental Health and Hospitals
Bureau of Standards and Inspections
CN 727
Trenton, New Jersey 08625

In all three Divisions, the standards are enforced through site visi conducted at least annually, time-limited corrective-actions plans, ar facility closure in the event of non-compliance.

The Department of Community Affairs licenses Rooming Hous (Class A) and Class B, C, D, and E Boarding Homes. The Bureau Rooming and Boarding House Standards has a legitimate mandate annually evaluate the physical and social conditions of all rooming ar boarding houses as defined under N.J.S.A. 55:13B.1-16, the Rooming ar Boarding House Act of 1979. Full text of the standards can be four in N.J.A.C. 5:27, or by contacting:

New Jersey Department of Community Affairs
Bureau of Rooming and Boarding House Standards
South Broad and Front Streets—CN 800
Trenton, New Jersey 08625

The Department of Health licenses Residential Health Care Faciliti and enforces standards through annual inspections. Full text of the stai dards can be found in N.J.A.C. 8:43. The rules govern the physical plai and operation of such facilities. Full text of the standards can be obtaine by contacting:

New Jersey Department of Health
Division of Health Facilities Evaluation
John Fitch Way—CN 360
Trenton, New Jersey 08625

LAW AND PUBLIC SAFETY

(c)

OFFICE OF THE ATTORNEY GENERAL

Notice of the Availability of the Quarterly Report of Legislative Agents for the Third Quarter of 1990 Ending September 30, 1990.

Take notice that Robert J. Del Tufo, Attorney General of the Stat of New Jersey, in compliance with N.J.S.A. 52:13C-23(h), hereby publish es Notice of the Availability of the Quarterly Report of Legislative Agent for the Third Quarter of 1990, accompanied by a Summary of the Quai terly Report.

At the conclusion of the Third Quarter of 1990, the Notices of Rep resentation filed with this office reflect that 627 individuals are registere as Legislative Agents. Legislative Agents are required by law to subm in writing a Quarterly Report of their activity in attempting to influenc Legislation during each calendar quarter. The aforesaid report shall b filed between the first and tenth days of each calendar quarter for suc activity that occurred during the preceding calendar quarter. (N.J.S.A 52:13C-22(b)).

A complete Quarterly Report of Legislative Agents, consisting of th Summary and copies of all Quarterly Reports filed by Legislative Agent for the Third Calendar Quarter of 1990, has been filed separately fo reference with the following offices: the Office of the Governor, the Offic of the Attorney General, the Office of Legislative Services (Bill Room the Office of Administrative Law, and the State Library. Each is availabl for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered Agents, their registration numbers, thei business addresses and whom they represent.
- A list of Agents who have filed Quarterly Reports by Statutory an Compilation Deadlines for this quarter.
- A list of Agents whose Quarterly Reports were not received by th Compilation Deadline for this quarter.

Following is a listing of all new Legislative Agents who have file Notices of Representation during the Third Calendar Quarter of 199C

No. 2 William C. Murtha, representing Casino Ass'n of NJ
No. 522 Mary M. Dowling, representing Bontempo Associates
No. 566 Sanford Schneider, representing Kraft & McManimon
No. 615 Clark W. Martin, representing Martin: Solo
No. 616 Linda A. Pacotti, representing Schering-Plough Corp.

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ɔ. 617 Charles E. Kinney, representing Dept. of NJ, Veterans of Foreign Wars of the US
ɔ. 618 John J. Fay, Jr., representing Adams Marketing Group
ɔ. 619 Robert G. Williams, representing Transportation Communications Union
ɔ. 620 Marc Marton, representing SJF Associates Inc.
ɔ. 621 George R. Martin, representing Miles Inc.
ɔ. 623 Jeffrey A. Warsh, Esq., representing Independent Lobbyist
ɔ. 624 David W. Muha, representing Morris County Chamber of Commerce
ɔ. 625 Dennis L. Riley, Esq., representing Riley & DiCamillo
ɔ. 626 Paul D. Drobbin, representing Grebow Drobbin Van Deventer & Kramer
ɔ. 627 Jeffrey T. Kaszerman, representing Ass'n of Residential Care Facilities of NJ
o. 628 Wendy L. Hileman, representing BP America, Inc.
o. 629 John D'Amico, Jr., representing Mutual Benefit Life Insurance Co.
o. 630 Donald Kelly, representing Coalition Against Drug & Alcohol Abuse
o. 631 Joseph M. Milanowycz, representing NJ Bell Telephone Co.
o. 632 Anna K. Lustenberg, representing NJ Bell Telephone Co.

Following is a listing of all Legislative Agents who have filed Notices ' Termination during the Third Calendar Quarter of 1990:

Legislative Agent	Registration Number
avid Gardner	2
ɛnni E. Wild	7
ıilip Kirschner	21
ctavius T. Reid, Jr.	21
regg A. Rackin	47
arol Ann Giancarli	53
lizabeth Ann Mahoney	53
dwin W. Tucker	81
'illiam R. Holzapfel	87
eorge McLoughlin	118
tanley VanNess	144
ussell A. Hedden	253
ɔhn J. Turi	317
.aren Kotvas	353
arbara L. Lawrence	373
Jeffrey N. Stoller	406
Donald M. Scarry	429
Randall L. Currier	510
David A. Smith	515
Mike Tortosa	556
Charles J. Hollenbeck	569
Joseph C. Salema	585
Richard J. Feldman	590
Charles E. Kinney	617

For further information contact the Legislative Agents Unit at (609) 984-9371.

TRANSPORTATION

(a)

THE COMMISSIONER

Notice of Transfer of Jurisdiction of Route 444 in Ocean County to New Jersey Highway Authority.

Take notice that under the provisions of N.J.S.A. 27:1A-5 and 27:7-1 et seq., and the jurisdiction agreement between the New Jersey Highway Authority, acting through its chairman, and the State of New Jersey, acting through its Commissioner of Transportation, certain portions of Route 444 in Dover Township, Ocean County, have been transferred to the New Jersey Highway Authority, as shown with single line hatching on a map entitled "NEW JERSEY DEPARTMENT OF TRANSPORTATION, ROUTE 9, JURISDICTIONAL LIMIT MAP, JURISDICTIONAL TRANSFER, OCEAN COUNTY, SCALE: As indicated."

Take further notice that the agreement was signed July 1, 1987, deleting that section of the Parkway from north of Dover Road along the Parkway 3/4 miles south of Interchange at Route N.J. 166—milepost 90.75 to milepost 93.25, consisting of 2.50 center line miles (STATE TOMS RIVER SECTION) from the State highway system. The map delineating this transfer may be viewed in the Department's Office of Jurisdictional Control, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625, Telephone (609) 530-5657.

Copies of the maps have also been filed with Rules and Publications, Office of Administrative Law, Quakerbridge Plaza, Building 9, Quakerbridge Road, Trenton, New Jersey 08525, as part of this notice.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the November 5, 1990 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT OCTOBER 15, 1990

NEXT UPDATE: SUPPLEMENT NOVEMBER 19, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 1291 and 1408	May 7, 1990	22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 1409 and 1648	May 21, 1990	22 N.J.R. 3607 and 3666	December 3, 1990
22 N.J.R. 1649 and 1806	June 4, 1990	22 N.J.R. 3667 and 3896	December 17, 1990
22 N.J.R. 1807 and 1964	June 18, 1990	23 N.J.R. 1 and 144	January 7, 1991
22 N.J.R. 1965 and 2062	July 2, 1990		

J.A.C. TATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
DMINISTRATIVE LAW—TITLE 1				
1-3.2, 14.10	Interlocutory appeal for review of hearing location	22 N.J.R. 3278(a)		
1-3.3, 9.6, 12.1, 14.4, 14.7, 14.14, 18.4, 19.2	Scheduling, processing, and conclusion of contested cases	22 N.J.R. 3278(b)		
1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
6A-18.3	Special Education hearings: administrative correction	_____	_____	22 N.J.R. 3478(a)
10-8.1	Transmission of Economic Assistance cases	22 N.J.R. 2389(a)		
10-18.2	Economic Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)		
10B-18.2	Medical Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)		
11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)	Expired	
13-14.4	Motor Vehicle cases: failure to appear	22 N.J.R. 3278(b)		
13A-14.1	Lemon Law hearings: failure to appear	22 N.J.R. 3278(b)		
:30	Agency rulemaking	22 N.J.R. 3281(a)		
Most recent update to Title 1: TRANSMITTAL 1990-5 (supplement September 17, 1990)				
GRICULTURE—TITLE 2				
:1-2, 3	Department organization and rules of practice	22 N.J.R. 2865(a)	R.1990 d.579	22 N.J.R. 3478(b)
:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
:16	Plant certification	22 N.J.R. 3285(a)		
:48	Dairy industry rules	22 N.J.R. 2625(a)	R.1990 d.572	22 N.J.R. 3619(a)
:53	Retail milk stores	22 N.J.R. 3609(a)		
:76-6.2, 6.5, 6.6, 6.9–6.12, 6.15–6.17	Farmland preservation program	22 N.J.R. 1244(a)	R.1990 d.529	22 N.J.R. 3359(a)
Most recent update to Title 2: TRANSMITTAL 1990-8 (supplement October 15, 1990)				
ANKING—TITLE 3				
:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
:1	General provisions of Department	22 N.J.R. 3425(a)		
:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
:18-10.5	Secondary mortgage licensees	22 N.J.R. 2868(a)	R.1990 d.603	22 N.J.R. 3619(b)
:26	Savings and loan associations	22 N.J.R. 3428(a)		
:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
:38-1.5	Secondary mortgage licensees	22 N.J.R. 2868(a)	R.1990 d.603	22 N.J.R. 3619(b)
:41	Cemetery Board rules	22 N.J.R. 2627(a)	R.1990 d.537	22 N.J.R. 3363(a)
Most recent update to Title 3: TRANSMITTAL 1990-6 (supplement October 15, 1990)				

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
PERSONNEL—TITLE 4A				
4A:3-5.2, 5.5	Overtime compensation	22 N.J.R. 2627(b)	R.1990 d.552	22 N.J.R. 3481(a)
4A:4-2.4	Promotional examinations	22 N.J.R. 2628(a)	R.1990 d.554	22 N.J.R. 3482(a)
4A:4-5.5	Working test period	22 N.J.R. 2629(a)	R.1990 d.553	22 N.J.R. 3482(b)
4A:8-2.2	Employee layoff rights	22 N.J.R. 2629(b)	R.1990 d.555	22 N.J.R. 3482(c)
	Most recent update to Title 4A: TRANSMITTAL 1990-4 (supplement August 20, 1990)			
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)	R.1990 d.544	22 N.J.R. 3363(b)
5:10-22.5	Ceiling heights in multiple dwellings	22 N.J.R. 3430(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)	R.1990 d.604	22 N.J.R. 3734(a)
5:23-1.1, 3.1, 3.11B	Uniform Construction Code: underground storage tank systems	22 N.J.R. 2629(c)	R.1990 d.562	22 N.J.R. 3482(d)
5:23-2.14	Uniform Construction Code: gas utility meters	22 N.J.R. 3609(b)		
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)	R.1990 d.558	22 N.J.R. 3483(a)
5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)	Expired	
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.6	UCC interpretation: casino stools	22 N.J.R. 3610(a)		
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-1.5	Full plan of property conversion documents	22 N.J.R. 3669(a)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:28	State Housing Code	22 N.J.R. 1456(a)	R.1991 d.18	23 N.J.R. 57(a)
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:30-6.1	Local Finance Board: address correction	_____	_____	23 N.J.R. 57(b)
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)	R.1990 d.595	22 N.J.R. 3639(a)
5:34	Local public contracts	22 N.J.R. 724(a)	R.1990 d.595	22 N.J.R. 3639(a)
5:34-4.2	Local public contracts: administrative correction	_____	_____	23 N.J.R. 57(b)
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)	R.1991 d.19	23 N.J.R. 57(c)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91	Council on Affordable Housing: procedural rules	22 N.J.R. 3610(b)		
5:92	Council on Affordable Housing: substantive rules	22 N.J.R. 3671(a)		
5:92-7.1(b)	Council on Affordable Housing: notice of invalidation of 1,000 unit cap	_____	_____	23 N.J.R. 58(a)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)	R.1990 d.540	22 N.J.R. 3364(a)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		
	Most recent update to Title 5: TRANSMITTAL 1990-10 (supplement October 15, 1990)			
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)			
EDUCATION—TITLE 6				
6:3-7	Education of homeless children and youth	22 N.J.R. 2630(a)	R.1990 d.615	22 N.J.R. 3734(b)
6:5-2	Organization of Department	Exempt	R.1990 d.561	22 N.J.R. 3484(a)
6:12	Governor's Teaching Scholars Program	22 N.J.R. 3672(a)		
6:20-1.1, 1.2, 4.1–4.4, 4.7–4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)	R.1990 d.610	22 N.J.R. 3736(a)
6:20-2A.11	Accounting in local districts: administrative correction	_____	_____	23 N.J.R. 59(a)
6:22-2.1, 5.2, 5.3, 5.4, 5.5	School Facility Planning Service: administrative corrections	_____	_____	23 N.J.R. 59(b)
6:24	Controversies and disputes	22 N.J.R. 2841(a)		
6:28-2.3, 3.1	Special education: administrative corrections	_____	_____	22 N.J.R. 3365(a)
6:28-3.6, 11.5	Special education: administrative corrections	_____	_____	23 N.J.R. 59(c)
	Most recent update to Title 6: TRANSMITTAL 1990-7 (supplement October 15, 1990)			

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A.C. ATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
VIRONMENTAL PROTECTION—TITLE 7				
E-2.2, 4.3, 4.4	Bureau of Discharge Prevention: address correction	———	———	23 N.J.R. 60(a)
-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
	State Park Service rules	22 N.J.R. 2652(a)		
	Matching Grants Program for Local Environmental Agencies	22 N.J.R. 2392(a)	R.1990 d.577	22 N.J.R. 3505(a)
2.3	Waterfront development: administrative correction	———	———	23 N.J.R. 60(b)
E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
1.1, 1.2, 1.5, 2.2, .3, 3.1, 3.4, 3.5, .6	Water Pollution Control Act	22 N.J.R. 2870(a)		
	Water pollution control	22 N.J.R. 3297(a)		
1-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)		
1-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)		
1-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)	R.1990 d.629	22 N.J.R. 3741(a)
2-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)	R.1990 d.548	22 N.J.R. 3508(a)
4-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
4A-1.8	NJPDES fee schedule	22 N.J.R. 3679(a)		
7	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)	R.1990 d.548	22 N.J.R. 3508(a)
3-6.6	Certification of laboratories for water analysis: administrative correction	———	———	22 N.J.R. 3365(b)
2A-1.1, 1.2, 1.3, .4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
5-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
5-6	1991-92 Fish Code	22 N.J.R. 2071(a)	R.1990 d.617	22 N.J.R. 3746(a)
5-18.1	Taking of striped bass	22 N.J.R. 3078(a)	R.1990 d.607	22 N.J.R. 3628(b)
5-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)		
5-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
5-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)		
5	Hazardous waste management	22 N.J.R. 2882(a)	R.1990 d.578	22 N.J.R. 3514(a)
6-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
6-4.3, 4.4, 4.6, 5.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
6-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
6-7.2, 7.4, 8.1, 8.5, 7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
6-8.3	Hazardous waste from small quantity generators: administrative correction	———	———	22 N.J.R. 3366(a)
6-8.17, App. I	Delisting of hazardous waste at Beecham Laboratories	22 N.J.R. 3430(b)		
6-8.19	Listing of hazardous wastes	22 N.J.R. 3299(a)		
6-8.21	Hazardous constituents for groundwater monitoring: administrative correction	———	———	22 N.J.R. 3366(b)
6-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
6-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
6A	Solid waste recycling	22 N.J.R. 3088(a)		
7-3.2	Air Pollution Control: administrative correction	———	———	23 N.J.R. 61(a)
7-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
8-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
8-16	Dental radiographic installations	22 N.J.R. 894(a)	R.1990 d.538	22 N.J.R. 3367(a)
8-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)		
8-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)	R.1990 d.559	22 N.J.R. 3516(a)
6-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
6-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

Most recent update to Title 7: TRANSMITTAL 1990-10 (supplement October 15, 1990)

HEALTH—TITLE 8

8:7	Licensure of persons for public health positions	22 N.J.R. 1977(a)	R.1990 d.502	22 N.J.R. 3545(a)
8:9	Handling of human remains	22 N.J.R. 3458(a)		
8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)	R.1990 d.542	22 N.J.R. 3547(a)
8:18-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)	R.1990 d.619	22 N.J.R. 3754(a)
8:21	Food and drugs	22 N.J.R. 2465(a)	R.1990 d.563	22 N.J.R. 3559(a)
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:31A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)		
8:31B	Hospital reimbursement	22 N.J.R. 3724(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)	Expired	
8:31C-1.15, 1.18	Residential alcoholism treatment facilities: reimbursement methodology	22 N.J.R. 3468(a)		
8:33F-1.1, 1.2, 1.6, 1.7	Renal disease services	22 N.J.R. 2494(a)	R.1990 d.566	22 N.J.R. 3578(a)
8:33H-3.3	Long-term care beds for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:33L-2.4	Home health services for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:33Q-1	Organ transplantation services: certificate of need requirements	22 N.J.R. 2496(a)	R.1990 d.567	22 N.J.R. 3579(a)
8:39-19.5, 20.1, 29.1, 29.3, 30.1	Long-term care facilities: Mantoux tuberculin testing of staff; pharmacy organization	22 N.J.R. 3612(a)		
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)	R.1991 d.12	23 N.J.R. 61(b)
8:43	Licensure of residential health care facilities	22 N.J.R. 2499(a)	R.1990 d.568	22 N.J.R. 3581(a)
8:43A-12	Ambulatory care facilities: surgical and anesthesia services	22 N.J.R. 1496(a)	R.1990 d.543	22 N.J.R. 3392(b)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
8:65-10.5	Controlled substances: administrative correction to Schedule V	———	———	22 N.J.R. 3619(c)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a))	22 N.J.R. 1214(b)	R.1990 d.569	22 N.J.R. 3581(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products	22 N.J.R. 2501(a)	R.1990 d.571	22 N.J.R. 3582(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)		

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9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:5	Tuition policies for public institutions	22 N.J.R. 3437(a)		
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)	R.1990 d.546	22 N.J.R. 3370(a)
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)	R.1990 d.545	22 N.J.R. 3371(a)
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)	R.1990 d.547	22 N.J.R. 3371(b)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)	R.1990 d.556	22 N.J.R. 3485(a)
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)	R.1990 d.557	22 N.J.R. 3485(b)
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)		

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HUMAN SERVICES—TITLE 10				
:6	Administrative hearings	22 N.J.R. 3115(a)	R.1991 d.13	23 N.J.R. 61(c)
:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
:37	Community Mental Health Services Act rules	22 N.J.R. 2915(a)	R.1990 d.591	22 N.J.R. 3620(a)
:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
:47	Private licensed facilities for mentally retarded	22 N.J.R. 2915(b)	R.1990 d.593	22 N.J.R. 3620(b)
:48	Developmental Disabilities: appeal procedure; viral hepatitis and legal poisoning control programs	22 N.J.R. 3192(a)		
:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)	R.1990 d.592	22 N.J.R. 3620(c)
:50-1.3, 1.4, 1.5, 3.2	Transportation Services Manual: administrative corrections	———	———	23 N.J.R. 63(a)
:51	Pharmacy Manual	22 N.J.R. 2217(a)	R.1990 d.530	22 N.J.R. 3372(a)
:54	Physician's Services Manual	22 N.J.R. 3711(a)		
:57	Podiatry Services Manual	22 N.J.R. 3439(b)		
:58	Nurse-Midwifery Services Manual	22 N.J.R. 3613(a)		
:59	Medical Supplier Manual	22 N.J.R. 3712(a)		
:60	Home Care Services Manual	22 N.J.R. 3116(a)		
:61	Independent Laboratory Services Manual	22 N.J.R. 3713(a)		
:64	Hearing Aid Services Manual	22 N.J.R. 3614(a)		
:65	Medical Day Care Services Manual	22 N.J.R. 3327(b)		
:65-2.1	Medical day care reimbursement	22 N.J.R. 3253(a)	R.1990 d.609	22 N.J.R. 3755(a)
:67	Psychologist's Services Manual	22 N.J.R. 3615(a)		
:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)	R.1990 d.614	22 N.J.R. 3756(a)
:71	Medicaid Only Manual	22 N.J.R. 3357(a)		
:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
:71-4.7	Medicaid eligibility: transfer of resources	22 N.J.R. 2604(a)	R.1990 d.524	22 N.J.R. 3372(b)
:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1–14.8, 14.10–14.15, 14.17, 14.19–14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)	R.1991 d.8	23 N.J.R. 63(b)
:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11–11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)	R.1990 d.541	22 N.J.R. 3373(a)
:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)	R.1991 d.7	23 N.J.R. 93(a)
:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)	R.1990 d.565	22 N.J.R. 3486(a)
:89-2.2, 2.3	Home Energy Assistance: eligibility criteria	Emergency (expires 12-29-90)	R.1990 d.590	22 N.J.R. 3590(a)
:89-2.2, 2.3	Home Energy Assistance eligibility criteria: administrative correction	———	———	22 N.J.R. 3766(a)
:91-4.4, 7.1	Commission for Blind and Visually Impaired: administrative corrections	———	———	23 N.J.R. 99(a)
:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)	R.1991 d.6	23 N.J.R. 99(b)

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10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)		

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CORRECTIONS—TITLE 10A

10A:3-9.3	Transport of maximum custody inmates	22 N.J.R. 2223(a)	R.1990 d.536	22 N.J.R. 3379(a)
10A:18-2.6	Inspection and identification of incoming correspondence: withdrawal of proposal	22 N.J.R. 3714(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)	R.1990 d.564	22 N.J.R. 3488(a)
10A:18-7.7	Court ordered funeral visits: administrative correction	_____	_____	22 N.J.R. 3625(a)
10A:21-5	Reporting unusual incidents or events within facilities	22 N.J.R. 3304(a)		
10A:21-8	Reporting violations of criminal statutes	22 N.J.R. 3440(a)		
10A:31-3.5, 22.2	Adult county facilities	22 N.J.R. 3714(c)		
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 3714(b)		

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INSURANCE—TITLE 11

11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1	Administration: miscellaneous rules	22 N.J.R. 3686(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)	R.1991 d.15	23 N.J.R. 100(a)
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)	R.1991 d.4	23 N.J.R. 103(a)
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:2-32	Custodial deposits	22 N.J.R. 2640(a)	R.1991 d.14	23 N.J.R. 105(a)
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-7.2, 7.4, 7.5, 14.2, 14.5, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.9	Automobile Coverage Selection Form and Buyer's Guide	22 N.J.R. 1681(a)	R.1990 d.580	22 N.J.R. 3488(b)
11:3-8.2–8.7, App. A and B	Nonrenewal of automobile policies	Emergency (expires 1-25-91)	R.1990 d.626	22 N.J.R. 3766(b)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-14.8, 37	Benefit determination between automobile personal injury protection and health insurance plans	Emergency (expires 1-25-91)	R.1990 d.625	22 N.J.R. 3777(a)
11:3-16	Automobile insurance rate filings	Emergency (expires 1-25-91)	R.1990 d.621	22 N.J.R. 3790(a)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	Emergency (expires 1-25-91)	R.1990 d.628	22 N.J.R. 3804(a)
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App.	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)	R.1991 d.17	23 N.J.R. 106(a)
11:3-24.4	Automobile insurance coverage: policy constants	22 N.J.R. 3441(a)		
11:3-25.4	Automobile insurance coverage: residual market equalization charges	22 N.J.R. 3442(a)		
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	Emergency (expires 1-25-91)	R.1990 d.624	22 N.J.R. 3809(a)
11:3-29.6	Medical fee schedules for PIP coverage: administrative correction	_____	_____	23 N.J.R. 125(a)
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	Emergency (expires 1-25-91)	R.1990 d.620	22 N.J.R. 3847(a)
11:3-35	Private passenger automobile insurance: underwriting rules	Emergency (expires 1-25-91)	R.1990 d.627	22 N.J.R. 3856(a)
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	Emergency (expires 1-25-91)	R.1990 d.622	22 N.J.R. 3861(a)
11:3-38	Automobile towing and storage fee schedule	Emergency (expires 1-25-91)	R.1990 d.623	22 N.J.R 3874(a)
11:4	Actuarial services	22 N.J.R. 1689(a)	R.1991 d.3	23 N.J.R. 111(a)
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	Emergency (expires 1-25-91)	R.1990 d.625	22 N.J.R. 3777(a)
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		

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11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.36	Real Estate Guaranty Fund: special assessment	22 N.J.R. 3688(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)	R.1990 d.594	22 N.J.R. 3625(b)
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)	R.1991 d.16	23 N.J.R. 112(a)
11:16	Fraud prevention: claim from statement of liability; reporting of automobile theft or salvage	22 N.J.R. 3688(b)		
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:17A-1.3	Insurance producers and limited insurance representatives: licensure and registration	22 N.J.R. 3444(a)		

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12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1991 rates	22 N.J.R. 2885(a)	R.1990 d.597	22 N.J.R. 3627(a)
12:17	Unemployment benefit payments	22 N.J.R. 3445(a)		
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:55-1	Payroll deductions for mass transportation: administrative correction	———	———	22 N.J.R. 3499(a)
12:56	Wage and hour	22 N.J.R. 2235(a)	R.1990 d.520	22 N.J.R. 3379(b)
12:57	Wage orders for minors	22 N.J.R. 2240(a)	R.1990 d.521	22 N.J.R. 3382(a)
12:58	Child labor	22 N.J.R. 2241(a)	R.1990 d.522	22 N.J.R. 3383(a)
12:105	Arbitration through State Board of Mediation	22 N.J.R. 3616(a)		
12:196-1.10	Dispensing of retail gasoline: signs	22 N.J.R. 3306(a)		
12:235-1.6	Workers' Compensation: 1991 maximum rates	22 N.J.R. 2886(a)	R.1990 d.596	22 N.J.R. 3628(a)

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13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:4	Division on Civil Rights: practice and procedure	22 N.J.R. 3689(a)		
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:18-4.2–4.6, 4.9, 4.14–4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)		
13:19-1.1, 1.2, 1.3, 1.5, 1.8, 1.13, 12.2–12.9	Motor Vehicles: administrative hearings regarding proposed license suspension or surcharge collection actions	22 N.J.R. 3446(a)		
13:20	Motor Vehicles enforcement service	22 N.J.R. 3307(a)		
13:21	Motor Vehicles licensing service	22 N.J.R. 3311(a)		
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)	Expired	
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:27-5.8	Architectural services: certificate of authorization for general business corporations	22 N.J.R. 3314(a)		
13:29-1.13	Accountancy: sponsors of continuing professional education	22 N.J.R. 3314(b)		
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)	R.1990 d.525	22 N.J.R. 3384(a)
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)		
13:36-9.3	Mortuary practice: administrative correction	———	———	22 N.J.R. 3384(b)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)	R.1990 d.608	22 N.J.R. 3756(b)

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13:36-10	Mortuary science: withdrawal of continuing education adoption	———	———	23 N.J.R. 117(a)
13:39-2.2, 2.8	Board of Pharmacy: application for NABPLEX examination	22 N.J.R. 2395(b)	R.1990 d.551	22 N.J.R. 3499(b)
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)		
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)	R.1991 d.11	23 N.J.R. 117(b)
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:45A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)	R.1990 d.606	22 N.J.R. 3758(a)
13:48	Charities Registration and Investigation Section	22 N.J.R. 3108(b)		
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)	R.1990 d.574	22 N.J.R. 3499(c)
13:70-3.44	Thoroughbred racing: public telephones at tracks	22 N.J.R. 2402(a)	R.1990 d.533	22 N.J.R. 3385(a)
13:70-13.8	Thoroughbred racing: protest by jockey	22 N.J.R. 2402(b)	R.1990 d.532	22 N.J.R. 3385(b)
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)	R.1990 d.576	22 N.J.R. 3499(d)
13:70-14A.11	Thoroughbred racing: licensee violations of drug use prohibition	22 N.J.R. 3451(a)		
13:70-19.23	Thoroughbred racing: declaring race official	22 N.J.R. 2403(a)	R.1990 d.534	22 N.J.R. 3385(c)
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-6.1	Harness racing: employee compensation insurance	22 N.J.R. 1717(a)	R.1990 d.573	22 N.J.R. 3500(a)
13:71-18.2	Harness racing: licensee violations of drug use prohibition	22 N.J.R. 3452(a)		
13:71-22.1	Harness racing: public telephones at tracks	22 N.J.R. 2403(b)	R.1990 d.535	22 N.J.R. 3385(d)
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)	R.1990 d.575	22 N.J.R. 3500(b)
13:75-1.6	Victims of domestic violence: eligibility of claims	22 N.J.R. 3690(a)		
13:75-1.6, 1.7	Victims of drunk driving: payment of compensation	22 N.J.R. 3691(a)		
13:81-2.1, 2.2, 2.4, 3.2	Statewide 9-1-1 emergency telecommunications system	22 N.J.R. 3453(a)		

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14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
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14:3-4.11	Meter tampering	21 N.J.R. 3865(a)	Expired	
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14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)	Expired	
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
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14:18-3.16	Cable television: notice of rate change	22 N.J.R. 2892(a)		
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14:18-5.1	Cable television: location	22 N.J.R. 2894(a)		
14:18-7.5	Cable television: use of PEG channels	22 N.J.R. 2894(b)		
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14:18-12.2	Cable television: pole plant rearrangement verification	22 N.J.R. 2897(a)		

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\:3	Energy conservation	22 N.J.R. 3315(b)		
\:7	Submission and handling of information	22 N.J.R. 2649(a)		
\:20	Repeal (see 14:12)	22 N.J.R. 3699(a)		
\:21	Home Energy Savings Program (HESP)	22 N.J.R. 2956(a)		

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20B-4.3	Right-of-way acquisition (municipal fund): relocation assistance	22 N.J.R. 2901(a)	R.1990 d.581	22 N.J.R. 3630(a)
21B	Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act rules	22 N.J.R. 2901(b)	R.1990 d.589	22 N.J.R. 3630(b)
22	Urban revitalization, special demonstration and emergency projects	22 N.J.R. 3196(a)		
28-1.10, 1.67	Speed limit zones along U.S. 46 in Dover and U.S. 202 in Morristown and Morris Township	22 N.J.R. 3704(a)		
28-1.22, 1.30	Speed limit zones along Route 109 in Cape May and Route 70 in Medford Township	22 N.J.R. 3111(a)	R.1990 d.598	22 N.J.R. 3633(a)
28-1.39, 1.40, 1.41	Speed limit zones along Route 71-35 ramps in Brielle, Route 138 in Wall Township, and U.S. 9 in Cape May	22 N.J.R. 3705(a)		
28-1.41, 1.96	Speed limit zones along U.S. 9 in Ocean County and Route 45 in Salem County	22 N.J.R. 3617(a)		
28-1.72	Speed limit zones along U.S. 206 in Sussex County	22 N.J.R. 3112(a)	R.1990 d.599	22 N.J.R. 3633(b)
28-1.97, 1.167	Speed limit zones along Route 77 in Cumberland, Salem and Gloucester counties, and Route 181 in Morris and Sussex counties	22 N.J.R. 3113(a)	R.1991 d.1	23 N.J.R. 118(a)
28-1.123	Speed limit zones along U.S. 9W in Bergen County	22 N.J.R. 3196(b)	R.1990 d.612	22 N.J.R. 3759(a)
28A-1.1, 1.23	No stopping or standing zones along U.S. 1 in South Brunswick and Route 33 in Hightstown	22 N.J.R. 2904(a)	R.1990 d.587	22 N.J.R. 3634(a)
28A-1.7, 1.15	Restricted parking and stopping along U.S. 9 in Freehold and Route 23 in Jefferson Township	22 N.J.R. 3319(a)	R.1991 d.9	23 N.J.R. 118(b)
28A-1.7, 1.21, .24, 1.105	Restricted parking and stopping along U.S. 9 in Little Egg Harbor, Route 34 in Colts Neck, Route 54 in Hammonton, and U.S. 30 in Berlin	22 N.J.R. 2905(a)	R.1990 d.583	22 N.J.R. 3634(b)
28A-1.8, 1.9, 1.33, .41, 1.104	Restricted parking and stopping along Route 10 in Livingston, Route 47 in Vineland, Route 17 in Upper Saddle River, U.S. 40-322 in Atlantic City, and Route 77 in Bridgeton	22 N.J.R. 2906(a)	R.1990 d.584	22 N.J.R. 3635(a)
28A-1.14, 1.38, .41, 1.46, 1.111	Restricted parking and stopping along U.S. 22 Alternate in Warren County, Route 71 in Monmouth County, Route 77 in Cumberland County, U.S. 130 in Burlington County, and Route 184 in Middlesex County	22 N.J.R. 3197(a)	R.1990 d.611	22 N.J.R. 3759(b)
28A-1.28, 1.100	No stopping or standing zones along U.S. 40 and Route 50 in Atlantic County	22 N.J.R. 3706(a)		
28A-1.39, 1.57	No stopping or standing zones along Route 72 in Ocean County and U.S. 206 in Burlington County	22 N.J.R. 3617(b)		
28A-1.41	No stopping or standing zones along Route 77 in Upper Deerfield Township	22 N.J.R. 2908(a)	R.1990 d.585	22 N.J.R. 3636(a)
28A-1.104	Bus stop zone along U.S. 40 and Route 322 in Egg Harbor	22 N.J.R. 2908(b)	R.1990 d.586	22 N.J.R. 3636(b)
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30-11.2	Traffic control in rest areas along I-80, Roxbury Township	22 N.J.R. 3114(a)	R.1990 d.601	22 N.J.R. 3637(b)
31-1.4, 1.28	Turning restrictions along Route 35 in Monmouth, Middlesex and Ocean counties, and Route 4 in River Edge	22 N.J.R. 2910(a)	R.1990 d.588	22 N.J.R. 3638(a)
31-1.5, 1.29	Restricted turning along U.S. 40 in Hamilton Township and U.S. 9 in Dover Township	22 N.J.R. 3320(a)	R.1991 d.10	23 N.J.R. 119(a)

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16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
16:42	Road equipment rental	22 N.J.R. 3114(b)	R.1990 d.602	22 N.J.R. 3638(b)
16:47	State Highway Access Management Code	22 N.J.R. 1061(b)		
16:47	State Highway Access Management Code: public hearings	22 N.J.R. 1346(b)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1347(a)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1699(a)		
16:49-1.1, 1.3, 1.5, 1.6, 2.1, App.	Transportation of hazardous materials	22 N.J.R. 2676(a)	R.1990 d.550	22 N.J.R. 3500(c)
16:53D-1.3	Autobus operations: zone of rate freedom exemptions	22 N.J.R. 3199(a)	R.1990 d.631	22 N.J.R. 3760(b)
16:72	NJ TRANSIT: procurement policies and procedures	22 N.J.R. 2460(a)	R.1990 d.539	23 N.J.R. 119(b)
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17:1-2.36	Alternate Benefit Program: transferred funds	22 N.J.R. 2405(a)	R.1990 d.517	22 N.J.R. 3386(a)
17:2-1.13	Public Employees' Retirement System: age determination for enrollment or retirement purposes	22 N.J.R. 3707(a)		
17:2-6.6	Public Employees' Retirement System: service credit and back pay awards	22 N.J.R. 3321(a)		
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17:4-1.1	Board meetings, Police and Firemen's Retirement System	22 N.J.R. 909(a)	R.1990 d.527	22 N.J.R. 3386(b)
17:4-6.6	Police and Firemen's Retirement System: service credit and back pay awards	22 N.J.R. 3322(a)		
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