

**CHILDREN AND FAMILIES
OFFICE OF LICENSING**

Adopted Amendments: N.J.A.C. 10:121A-1.3 through 1.7, 2, 3, 4.1, 4.2, 4.4, 5.2 and 5.4 through 5.9

Adopted New Rules: N.J.A.C. 10:121A-4.5 through 4.8

Manual of Requirements for Adoption Agencies

Proposed: September 7, 2010 at 42 N.J.R. 1965(a).

Adopted: August 25, 2011 by Allison Blake, Ph.D., L.S.W., Commissioner, Department of Children and Families.

Filed: September 1, 2011 as R.2011 d.245, **without change**.

Authority: N.J.S.A. 9:3-37 et seq., 30:1A et seq. and 30:4C-4(b).

Effective Date: October 3, 2011.

Expiration Date: November 3, 2015.

Summary of Public Comment and Agency Response:

The Department received written comments regarding this rulemaking action from persons representing New Jersey licensed adoption agencies and the New Jersey Academy of Adoption Attorneys.

1. Adoptions From The Heart, Mary T. Petrone, District Administrator and Jeanne McGee, Social Work Supervisor
2. A Loving Choice Adoption Associates, John A. McNee, Executive Director
3. Adoption Services, Inc., Vincent F. Berger, Executive Director
4. Children's Aid & Family Services, Inc., Marcia Fisher, Administrator of Adoption and Family Services
5. Children's Home Society of New Jersey, Christine Rednor, Supervisor of Adoption, Infant Foster Care, Birth Parent Counseling
6. Gladeny Center for Adoption, Meredith Bailey, Director Domestic Adoption Services
7. Golden Cradle, Jared Rolsky, Executive Director
8. Homestudies & Adoption Placement Services, Lorraine Kolankowski, Executive Director
9. Lutheran Social Ministries of New Jersey, Maryann Sager, Director of Adoption

10. New Jersey Academy of Adoption Attorneys (NJAAA), Robin A. Fleischner, Co-Chair of NJAAA

11. Spence Chapin, Helene Lauffer, Associate Executive Director

12. Welcome House of the Pearl S. Buck Foundation International (Welcome House), Leonette Boiarski, Program Director

13. Wide Horizons, Jane C. Miller, Regional Director

General Comments

1. COMMENT: Children's Home Society indicated that the proposed amendments are great and should have been enacted a long time ago.

RESPONSE: The Department thanks Children's Home Society for their comment.

2. COMMENT: Welcome House expressed disappointment that the addition of a substantial compliance designation will only allow adoption agencies not operating within the guidelines (rules) to do so and adoptive families will not be aware as the agency will have a Certificate Approval. This is only weakening compliance requirements in a climate where more regulations of adoption agencies are needed to protect families.

RESPONSE: The Department appreciates Welcome House for their comments and concern regarding compliance with the rules and protection of families. The Department proposed the amendment at N.J.A.C. 10:121A-2.2(d) to eliminate Temporary Certificates of Approval and issue a single Certificate of Approval based upon substantial compliance to reduce confusion and delay when adoptive applicants seek to adopt a child born outside the United States. The previous rules permitted adoption agencies to operate on a Temporary Certificate of Approval issued to agencies that were in substantial compliance with the rules. Adoption agencies that are not in substantial compliance or at any point in time have serious or imminent hazards are subject to a range of enforcement actions, including revocation of the Certificate of Approval. Also, adoption agencies are required to make available to parents and adoption applicants, as specified at N.J.A.C. 10:121A-3.4(b)6 any inspection or violation reports that provide the families information that reflects current or previous compliance matters.

3. COMMENT: Homestudies & Adoption Placement Services indicated that many of the proposed changes were welcomed and way overdue, including Adoption Complaint Investigations and requirements for Criminal History Record Information (CHRI) and Child Abuse Record Information (CARI) background checks.

RESPONSE: The Department thanks Homestudies & Placement Services for their comment.

4. COMMENT: Golden Cradle inquired if out-of-State adoptive applicants who have lived or worked in New Jersey can be scanned at the electronic fingerprinting sites in New Jersey if they choose to do so.

RESPONSE: Yes. Such adoptive applicants can be scanned at numerous locations

throughout New Jersey.

5. COMMENT: Golden Cradle indicated that the regulation changes do not, in any way acknowledge or deal with the increase cost to adopting families. It is ignored in the narrative that was sent to our agency. The shortened life of a home study and all the costs associated with it such as CARI and CHRI background checks and staff time all will be significant issues to adopting families. In addition, the requirement to have two staff persons at each surrender further increase the cost that will be borne by adopting families. (There has been no case made for two staff persons at the surrender signing. The agency has asked other agencies and attorneys and they do not see this as more protection. There has not been an increase in litigation over this issue to indicate a problem with the current system.)

RESPONSE: As noted in the Economic Impact of the notice of proposal at 43 N.J.R. 1965(a), 1969, the Department does not anticipate any significant economic impact or negative consequences as a result of the proposed amendments and new rules on the Department, adoption agencies, children, birth parents, adoptive applicants, adoptive parents and adult adoptees who use the services of adoption agencies. While there is no anticipated significant economic impact, clearly there are some costs associated with some of the proposed amendments noted above. When amendments and new rules are proposed, as noted in the Social Impact of the notice of proposal, it is done to strengthen and update rules in order to provide better services to children, birth parents and adoptive applicants. In addition, the Department disagrees that the proposed amendment regarding having two agency staff members present at the surrender will result in increase costs or that it is not necessary to have the two staff members present. While surrenders often take place outside of the agency's office, there would be more than one staff member available for surrenders that do take place in the office. Also, there are practical considerations for having two staff members present in terms of safe handling of the child and any related equipment that may be needed to safely transport the child. Please see the response to the comment regarding N.J.A.C. 10:121A-5.4 below: While this requires additional paperwork, it is appropriate and would provide further protection for an agency in the event of a dispute later involving the surrender itself.

6. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that given the number of changes involved and the number of comments made by NJAAA, it is recommended that an advertised or properly noticed public hearing be requested with regard to these proposed regulations and that the public be given the opportunity to ask questions of the Department's Office of Licensing and to submit additional comments based upon the Department's responses.

RESPONSE: The Department does not intend to pursue a public hearing. In accordance with N.J.S.A. 52:14B-4(a)3, the Department of Children and Families has adopted standards of what constitutes sufficient public interest for conducting a public hearing at N.J.A.C. 10:1-3.2(c)2, which require 50 or more individuals to have either expressed the need for public hearing on the rule or disagreement with one or more of the substantive provisions of the rule proposed. The Department follows the Department of Human Services rule set forth at N.J.A.C. 10:1-3.2 in accordance with N.J.S.A. 9:3A-9, which provides that all regulations in force at the time the Legislature created the Department of Children and Families, formerly a division of the Department of Human Services, continue in force and effect upon the

Department of Children and Families until duly modified, abrogated or completed by the Department of Children and Families. These proposed amendments received comments from 13 individuals, therefore there is not sufficient public interest for conducting a public hearing. Additionally, these proposed amendments and new rules were proposed in the New Jersey Register on September 7, 2010 and a 60-day comment period was provided. The majority of these proposed amendments and new rules were developed with input from the regulated community and the Adoption Agency Council of New Jersey. The proposed amendments and new rules were shared with all the regulated adoption agencies prior to their publication in the New Jersey Register. It is unclear what would be realized from such a hearing or what additional comments other than the comments already received would be identified.

7. COMMENT: Children's Aid & Family Services requested clarification regarding some of the requirements for families to be licensed as resource family homes, in particular CHRI and CARI background checks. The agency noted that such background checks are required when the family is being licensed as a Resource Family Home and if the resource family parents then pursue adoption through the Division of Youth and Family Services (DYFS), new CHRI and CARI background checks must be obtained. The agency felt that this was duplicative and costly. The agency also noted that treatment home providers who pursue adoption through the DYFS must be licensed as resource family homes after providing care for children under more stringent group home regulations.

RESPONSE: Adoptive applicants seeking to adopt children through DYFS are required to be licensed resource family parents. CHRI and CARI background checks are authorized under specific statutes (N.J.S.A. 30:4C-4(h) and 30:4C-26a). All adoptive applicants seeking to adopt children are required to obtain CHRI and CARI background checks in keeping with the State Adoption Law and the Manual of Requirements for Adoption Agencies. The State Adoption Law (N.J.S.A. 9:3-37 et seq.) authorizes CHRI and CARI background checks for all adoptive applicants. While all resource family parents are required to obtain the CHRI and CARI background checks under N.J.S.A. 30:4C-4(h) and 30:4C-26a, not all licensed resource family parents choose to adopt children through DYFS. The CHRI and CARI background checks for resource family parents and adoptive applicants are authorized and required under separate statutes. Obtaining CHRI and CARI background checks for one purpose and used for another purpose is prohibited under Federal and State statutes. Similarly, CHRI and CARI background checks for treatment home parents are authorized under different statutes and rules and as such, cannot be used for the purpose of resource family parent licensing or adoption. While treatment home parents are approved under more stringent rules (Manual of Requirements for Children's Group Homes), the licensing of such homes is to provide services to seriously emotionally disturbed children. Treatment home parents who choose to adopt children through DYFS are required to be licensed as resource family parents. While these CHRI and CARI background checks appear to be duplicative and costly, as noted above, the Department must comply with Federal and State confidentiality and dissemination statutes. In addition, there are different CHRI databases for flagging arrests and convictions and different time frames for updating CARI checks depending upon the purpose of obtaining such checks.

N.J.A.C. 10:121A-1.5(b)2 and 5.9(d)

8. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The

Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA objecting to the proposed amendments at N.J.A.C. 10:121A-1.5(b) and 5.9(d), which require, for a foreign adoption, that the agency conduct at least one visit to home within 30 days of the child entering the United States and must comply with each country's supervision and visitation requirements under the Hague Convention. The commenters indicate that the family has a Constitutional right to privacy that permits the refusal to allow the agency to perform post-adoption supervision, even when the foreign country from which the family adopted requires such reporting. An agency acting in good faith may not be able to fulfill this requirement despite its efforts to do so. Language that mandates the agency's compliance imposes what could be an impossible burden on agencies where the adoptive parents refuse to cooperate. The commenter cites the Hague Regulations 96.50(b) and 96.51(c) to note the differences between post-placement and post-adoption services. The commenters indicated that clarification is needed as to whether it is the home study agency or placing agency that provides these services. Finally, the commenters recommended that foreign adoption cases where an adoptive family returns to the United States with legal custody or guardianship of a child for the purpose of adoption in the United States, that the agency must provide post-placement supervision in accordance with N.J.A.C. 10:121A-5.8 and shall also ensure that the number of home visits required by the country of origin are performed, if greater than the New Jersey standard.

RESPONSE: The Department appreciates these thoughtful comments and understands the differences regarding post-placement and post-adoption services as they relate to foreign adoptions. The proposed amendments require that an agency comply with each country's supervision and visitation requirements and relevant requirements of the Hague Convention on Intercountry Adoption when the child has entered the United States with the adoptive family. These amendments include adoptions that are not finalized in the foreign country and adoptions that are finalized in a foreign country. While the Hague Regulation 96.51(c) includes the language for an agency regarding post-adoption supervision to make a good faith effort to encourage the family's compliance - the regulation also includes that the agency has a requirement for such reports (visits) in the adoption services contract. The Department believes that these amendments protect children and enable adoption agencies to provide services to adoptive families and children and reinforce the foreign country's visitation and reporting requirements that the adoptive family agreed to abide by before leaving the country. As such, the Department leaves these requirements as proposed. In the United States and in New Jersey there have been serious incidents that involved the mistreatment of children adopted from foreign countries - and certain countries have placed or threatened to place bans on adoptions for United States citizens. These amendments will help agencies to better protect children and offer needed services when adoptive families face difficulties with their new child. When situations occur where the adoptive family refuses to permit an agency to provide a post-placement or post-adoption service, the Department will provide the agency with guidance and direction including possible protective services intervention. Unless, there is a written agreement specifying otherwise, the agency that conducted the home study would provide these services. With regards to the final comment, the Department declines to make a change at this time. Before the Department can consider this change, the Department needs to review the requested change through its long-standing ad-hoc committee process, with participants from a variety of stakeholder groups in order to obtain feedback and impact on this recommended change. If appropriate, the Department will propose amendments at a later time.

9. COMMENT: Golden Cradle inquired how the adoption agencies would enforce the one-month post-adoption supervision if it is not required by the sending country. Also, the agency inquired if there would be any consequences to the adoptive parents.

RESPONSE: The proposed amendment at N.J.A.C. 10:121A-5.9(d) requires that the agency conduct at least one visit to the home within 30 days after the child has entered the United States. When situations occur where the adoptive family refuses to permit an agency to provide a post-placement or post-adoption service, the Department will provide the agency with guidance and direction, including possible protective services intervention. In terms of consequences to the adoptive parents, agencies can choose to have certain services identified as part of an agreement, contract or escrow account that the agency can use to help compel the adoptive parents to cooperate with the visit.

N.J.A.C. 10:121A-1.6

10. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendment clarifying an Adoption Complaint Investigation (ACI) must include a home study and post-placement supervision unless otherwise indicated by the court is appropriate and acceptable. The commenters also raised a question regarding whether a New Jersey certified adoption agency should be appointed to do the ACI when a private placement involves a child born in New Jersey, but the couple is from another state, especially if that (out-of-State) agency is not licensed in the home state of the adopting family. The commenters suggest that the proposed amendments should be further amended to specify that if a New Jersey agency is appointed it must enter into an agreement with the out-of-State agency, which most likely performed the home study.

RESPONSE: The Department thanks Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin, Adoption Services and NJAAA for their comments. The above question is difficult to answer in a broad fashion since other states have different requirements. However, most states require that an adoption agency or other qualified person be licensed or certified in order to conduct a home study. Thus, if a New Jersey-certified adoption agency was not also licensed or certified in another state, the New Jersey certified adoption agency would not be permitted to provide adoption services. Also, N.J.A.C. 10:121A-3.3(c) already obligates New Jersey-certified agencies to develop and execute written cooperative agreements when working with out-of-State licensed or certified adoption agencies. The Department does not believe there is a need to make changes to this proposed amendment.

11. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendment at N.J.A.C. 10:121A-1.6 regarding the designation of a sole Certificate of Approval and the elimination of Temporary Certificates of Approval is a welcome change. The commenters also expressed concern that what might happen if an agency disagrees with violations cited and required corrective actions in keeping with their concerns regarding the proposed amendment at N.J.A.C. 10:121A-2.4(a).

RESPONSE: The Department thanks Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin, Adoption Services and NJAAA. The Department's response to the comments regarding N.J.A.C. 10:121A-2.4(a) can be found below, under that section.

N.J.A.C. 10:121A-2.3(a)4, 2.6(f) and 2.7(a)

12. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed regulation to include an agency's refusal to cooperate with an inspection or investigation would expand the basis to deny, suspend, revoke or nor renew a license. The terminology is not defined and would allow the Department to request items to which it is not entitled, for example documents that are attorney-client privileged.

RESPONSE: The terminology is defined and would not allow the Department to request items to which it is not entitled. All adoption agencies are subject to inspections in order to assess compliance with the rules - to establish whether or not a license is issued. In addition, the Department is required to investigate complaints lodged against adoption agencies. Inspections and investigations are necessary in order to prevent the exploitation and to protect the health and well-being of children served by adoption agencies, as well as to protect the legal rights of children and birth and adoptive parents. In matters where an adoption agency indicated that certain information identified during an inspection or investigation was attorney-client privileged, the Department's Office of Licensing (OOL) would seek consultation with the Office of the Attorney General before any actions were taken. It is important that agencies maintain compliance with the rules at N.J.A.C. 10:121A-3.5(b)3, which requires an agency to notify the Department's Office of Licensing regarding any legal action against an agency or staff member that involves the operation of the agency or any child under the care of the agency, excluding any legal actions unrelated to agency business.

N.J.A.C. 10:121A-2.3(a)4 through 15, 4.5 and 4.6(a), (b) and (c)

13. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comments provided by NJAAA that indicated that some provisions of the proposed regulations regarding criminal histories and child abuse histories especially pertaining to termination of employment must be clarified. They indicated that if an executive director does not take appropriate steps to terminate the employee, the executive director could be terminated. There is no definition of "substantiated finding."

RESPONSE: The Criminal History Record Information (CHRI) background check and Child Abuse Record Information (CARI) background check requirements as specified in N.J.S.A. 9:3-40.2 through 40.10 and the Manual of Requirements for Adoption Agencies set forth the disqualifying crimes and termination of employment requirements for staff when the Department determines that an incident of child abuse or neglect has been substantiated. The Department does not define "substantiated finding" through these rules because this is determined by other entities, such as the Department's Division of Youth and Family Services and Institutional Abuse Investigation Unit or the Office of the Public Defender. For example, any agency staff member who has been determined to have a substantiation of child abuse or neglect under the Protective Welfare laws in N.J.S.A.

9:6-1 et seq. is notified of their due process rights for an appeal. It is within the context of due process or other appropriate hearings that determine substantiation of child abuse or neglect and any termination of employment. The commenters are incorrect in that failure by an executive director to terminate a staff member with a child abuse or neglect substantiation could result in the executive director being terminated. Such actions on the part of an executive director may result in certain actions taken against the agency's certificate of approval.

N.J.A.C. 10:121A-2.3(e)

14. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA expressing concern that the existing requirement at N.J.A.C. 10:121A-2.3(e) that the Office of Licensing may impose condition's upon an agency's adoption services, and shall provide notice if an agency's certification will contain such conditions. The concern was that such conditions may be beyond what is required either under statute or the rules.

RESPONSE: See the Response to Comment 16 below.

N.J.A.C. 10:121A-2.4

15. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA regarding the elimination of N.J.A.C. 10:121A-2.4(a). NJAAA indicates that N.J.A.C. 10:121A-2.4(a) should remain in its entirety and not be eliminated. NJAAA indicates that if this subsection is deleted, the only way an agency can challenge a Department finding, citation or imposed condition is to respond that no abatement is required, thus risking that the Department may propose suspension, revocation or non renewal of the agency's license before that issue can be resolved. The Gladney Center indicated its concern regarding the elimination of this requirement since it is a critical safeguard to ensure accountability and to provide a voice to agencies that wish to challenge an action taken by the Department's Office of Licensing. The Gladney Center does not believe the other sections of the regulations adequately address these needs.

RESPONSE: N.J.A.C. 10:121A-2.4(a) is unnecessary as all adoption agency administrative appeals transmitted to the Office of Administrative Law (OAL) are transmitted as contested cases pursuant to N.J.A.C. 10:121A-2.4(b).

16. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA asking what mechanism or procedure would be available to an agency to challenge the Department finding or citing a violation of regulation by the agency, if the agency believes, in good faith, that the Department finding is contrary to either statutory law or the regulation.

RESPONSE: The Department's OOL provides verbal and written findings and violations to the adoption agency staff at the conclusion of each inspection. Agencies have several opportunities to seek clarifications if they question or disagree with the findings or violations. For instance, agencies can submit a written explanation in their corrective action plan or request a conference call or a meeting with the OOL. The Department's OOL seeks out legal advice as necessary in order to respond to an

agency's question or disagreement.

N.J.A.C. 10:121A-2.5

17. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA expressing concern regarding the existing requirement at N.J.A.C. 10:121A-2.5(a) that indicates that the Department may institute a civil action in a court of competent jurisdiction for injunctive relief to enjoin the operation of an adoption agency for good cause including imminent dangers or hazards that threaten the health and safety of children and families served by the agency; repeated violations of the State Adoption Law or of this chapter; or opening and operating an adoption agency without a certificate or without complying with the requirements of the State Adoption Law or of this chapter. The concern expressed is that the adoption agencies should have a corresponding right to seek assistance from the courts if an agency believes that the Department is exceeding its statutory or regulatory authority, if there is no other forum or mechanism where decision can be reviewed short of license revocations, suspensions, refusals to renew or denial of being granted.

RESPONSE: When the Department makes the decision to institute a civil action in a court of competent jurisdiction for injunctive relief to enjoin the operation of an adoption agency for good cause, the adoption agency is entitled to legal representation. Such action by the Department is substantially different from action that may be taken against an agency's certificate of approval. The Department would institute such court action due to serious or imminent dangers or hazards or other serious repeated violations or illegal operation of an adoption agency. There would be no such need for the requirements to include requirements that the adoption agency can institute a civil action since there is comparable set of risks that the Department might present to the adoption agency. However, the commenters are aware that any entity can seek legal action against other entities.

N.J.A.C. 10:121A-2.6

18. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA regarding the proposed technical amendments to existing N.J.A.C. 10:121A-2.6(b) and (c). Specifically, in reference to public records there is no mention of providing an agency of any complaint filed against the agency by a third party. The commenters continue that individuals are still able to file complaints anonymously, but even if identified, the agency should receive everything that has been given to the Department's Office of Licensing. The proposed regulations, like the current ones, list those items which cannot be included in public records, which include allegations of abuse and neglect. This is not a change but is very important since dissemination of these allegations is either prohibited or strictly limited by statute.

RESPONSE: The Department's Office of Licensing provides the agency with a complaint report that outlines the findings of the complaint investigation. The report includes the allegation and description of the person(s) making the complaint. If the person is identified, this information is included in the report. In many instances such persons are adoptive applicants or birth parents who make the complaints and these individuals are known to the agency. The Department disagrees that the all

information provided to the OOL should be provided to the agency, however, in many cases the supporting documentation is already included in the agency's own records. The Department thanks the commenters for their comments on the protection of protective services information.

N.J.A.C. 10:121A-3.1

19. COMMENT: A Loving Choice indicated that its board has considerable concerns regarding the board's responsibility for insuring funds for the transfer and storage of records in the event that the adoption agency ceases operation. While the board will accept this responsibility, the board is concerned as to how this might be put into practice. While the proposed amendments require a one-year time frame to transfer records to a successor agency, the board questions whether that can be accomplished depending upon the volume of files. The board asked if the one-year time frame cannot be met, is the board responsible for providing funds beyond that point.

RESPONSE: The Department appreciates that the board accepts this responsibility and believes that the board's suggestion for a separate escrow account is worth pursuing. The adoption agency may want to develop transfer of records plans and agreements with other agencies prior to any anticipated closing of operations in order to meet the one-year time frame. The boards of adoption agencies would be responsible for ensuring the availability of funds for transfer of records in keeping with the requirements at N.J.A.C. 10:121A-3.1.

20. COMMENT: A Loving Choice recommended that the State allow adoption agencies to save files electronically with options for both on and off-site storage. The agency indicated that such files can be transferred efficiently and economically in the event of an agency closing and allow for efficient and economic storage for the original agency, as well as protect files in the event of disaster.

RESPONSE: The Department thanks A Loving Choice for their comment. The Department has already begun to explore electronic files as an option. When the Department has thoroughly researched this matter, it will reach out to the adoption agencies for their input and guidance regarding possible amendments.

21. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that expressed concern that the proposed amendment at N.J.A.C. 10:121A-3.1(b) regarding the governing board's responsibility to ensure there is sufficient funds to cover the cost to transfer records to other agencies and for storage of the records in the event the agency ceases operations. The commenters feel that this could be interpreted as a personal guarantee by the board members, which is unacceptable.

RESPONSE: Existing rules require that the board establish policies pertaining to the fiscal operations and responsibility to oversee the transfer of clients and services and preserve records. Board members must be familiar with all the duties and responsibilities in the agency's documents that outline the board's duties and responsibilities. This rule is not intended to require a personal guarantee by board members, but is intended to ensure the board has sufficient resources to transfer records in the event the agency ceases operations.

22. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that indicated disagreement with the proposed amendments that requires board members to obtain Criminal History Record Information (CHRI) background checks and Child Abuse Record Information (CARI) background checks.

RESPONSE: There are no CHRI and/or CARI background check requirements for board members.

23. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that indicated that the proposed amendment that requires the board to have at least five voting members that is representative of a variety of interests and points of view in the communities where the agency provides services is a vague and completely subjective standard. The commenters also asked how the Department defines a variety of interests and points of views in the communities.

RESPONSE: The proposed amendment provides for greater diversity and variety of the board members and is intended to strengthen board capacity for oversight of agency policies. The Department would assess compliance as part of the review of the agency's application for a Certificate of Approval. The Department expects each agency to establish its board membership inclusive of varying interests and points of view of the communities where the agency provides services. For example, the Department will not consider a board comprised solely of members representing only one interest, such as a board comprised of only adoptive parents, to be compliant with this requirement.

24. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendments at N.J.A.C. 10:121A-3.1(h) regarding the good character of the board members and not permitting any conduct inappropriate to the purpose of the agency is subjective and vague. The commenters indicate that the amendments also give the Department's Office of Licensing the right to investigate board members if there are complaints against any member of the board, a further unnecessary expansion of the Office of Licensing's power. This type of intrusive power will certainly create a chilling effect and possibly discourage board members and potential board members from serving.

RESPONSE: The proposed amendments require that the board members be of good character as evidenced by the agency's application for certification and administrative records, which speak to the qualifications of the board members and board meeting minutes. The Department also disagrees that the investigation of complaints related to allegations that a board member has engaged in or permitted any conduct inappropriate to the purpose of the agency is unnecessary. Clearly, the Board is empowered with a wide range of duties and responsibilities that provide the guidance that ensure the viability and integrity of the agency's services, and as such, the Department is obligated to investigate any complaints that may compromise the adoption services provided. Finally, the Department disagrees that the proposed amendments will have a chilling effect on and possible discouragement of board members and potential board members from serving. Board members are aware of the importance of their participation and service on the board, as well as their responsibilities for ensuring the adoption agency's viability and integrity.

25. COMMENT: Adoption Services, Inc. recommended that a "grandfather" clause should be added to the proposed amendments at N.J.A.C. 10:121A-3.1(a) allowing already approved agencies (with less than five board members) to operate with its current number of board members. For all new agencies the board members could be five.

RESPONSE: Existing and any new certified adoption agencies must have at least five board members in order to strengthen board capacity for oversight of agency policies. The Department is requiring at least five board members in order to help ensure minimal disruption to the board activities when, for example, one or more board members unexpectedly or suddenly resigns from the board, other remaining board members will carry on with board activities.

N.J.A.C. 10:121A-3.3

26. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that there should be a State policy included in existing N.J.A.C. 10:121A-3.3 that would allow an agency, if the agency is unable to place a hard-to-place child or if there is a disruption of the placement and the hard-to-place child cannot be placed again, to transfer the custody of the child to the State, without the agency being charged with abandonment. The commenters make references to other sections of the requirements that mention hard-to-place children and that these sections should be reviewed and modified in keeping with their above comments.

RESPONSE: Certified adoption agencies are authorized to place children for adoption, accept relinquishment of parental rights, receive custody and/or guardianship and have the right to consent to adoption. An agency that takes custody or guardianship of the child is legally responsible for the child under care or guardianship until the adoption is finalized or until the child's custody and care or guardianship is transferred to another certified agency or person. In addition, before services are provided, the agency is required to make available to its adult clients (birth parents and adoptive applicants) a written description of its current adoption program, including information on the services, adoption process, including the availability of subsidy for special needs children, and other major referring agencies with whom the agency works. In addition, the rules indicate what an agency must do when an appropriate adoptive family cannot be located after the child is legally freed for adoption, including contacting various exchanges.

27. COMMENT: Lutheran Social Ministries found the proposed amendment at N.J.A.C. 10:121A-3.3(c)3iii confusing. We thought the State in which the adoptive parents reside is responsible for subsidy payments.

RESPONSE: As indicated in the notice of proposal Summary, the proposed amendment addresses agreements between a New Jersey certified adoption agency and an out-of-State adoption agency when the New Jersey certified adoption agencies place New Jersey children out-of-State. The proposed amendment mirrors existing N.J.A.C. 10:121A-3.3(c)3ii in terms of content and includes the placement situations that involve the placement of New Jersey children in other states. Existing N.J.A.C. 10:121A-3.3(c)3ii only captured out-of-State agencies placing children in New Jersey. The state of residence of the adoptive parent is responsible for the subsidy.

N.J.A.C. 10:121A-3.5(g)4

28. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that asked for clarification as how, where and when an agency must transfer closed files when it ceases operation. The commenters also asked about such matters as it pertains to previously New Jersey-certified adoption agencies that continue to operate in a state other than New Jersey.

RESPONSE: The requirements for transfer of closed files and/or active records are included at N.J.A.C. 10:121A-3.5(g) and specify the time frames for the transfer of such records to another adoption agency that is certified by the Department. The State Adoption Law and the Manual of Requirements for Adoption Agencies permit only adoption agencies that are certified by the Department to provide adoption services in New Jersey for adoptive applicants, birth parents, children or adult adoptees. As such, an agency previously certified by the Department and that continues to operate in another state must comply with the requirements in subsection (g). An agency that is no longer certified by the Department would be in violation of New Jersey law and rule if it continued to provide services that involved the closed New Jersey records. The appropriate transfer of such records to another agency certified by the Department allows for the lawful continuity of adoption services should inquiries be made regarding such closed records.

N.J.A.C. 10:121A-3.7

29. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendment at N.J.A.C. 10:121A-3.7(d) that requires an agency that operates in a private home must provide documentation that the local municipality permits such business use in the home. The commenters indicated that this is appropriate and acceptable.

RESPONSE: The Department appreciates the comment.

30. COMMENT: Adoption Services, Inc. indicated that the proposed amendments at N.J.A.C. 10:121A-3.7(a), (b) and (c) do nothing but restrict the agency from providing services based on community and client needs. The commenter indicated that the Department's Office of Licensing is trying to decide for the professional staff of an agency where interviews should take place and under what conditions.

RESPONSE: The proposed amendments clarify existing requirements that an agency's office provide space that affords privacy for conducting interviews; equipment, storage space and furnishings necessary to implement the activities of the adoption program; and the telephone number for the agency office. These requirements constitute minimum features for the office in order to ensure privacy, accessibility, reasonable comfort and storage of documents. The rules for an adoption agency's office do not preclude agency staff from interviewing adoptive applicants, birth parents or children in places other than the agency's office.

N.J.A.C. 10:121A-4.1

31. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment

provided by NJAAA that indicated that the proposed amendment that requires all staff, employees and board members shall be of good character is vague and subjective and must either be defined with specificity or eliminated, otherwise this could lead to decisions that are arbitrary and based purely on opinions of Department staff. The commenters suggested certain criteria to be used similar to the Department of State to determine the suitability of staff members or trustees.

RESPONSE: As a point of clarification for the above comment, the proposed amendments at N.J.A.C. 10:121A-4.1(c)1 through 4 do not include board members. The requirements indicate that staff be of good character as evidenced by the agency's application and personnel records, which provides for sufficient criteria, including references and job performance evaluations.

32. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that indicated the proposed amendment at N.J.A.C. 10:121A-4.1(b) that requires the executive director and social work supervisor be available at the agency during regular business hours makes no sense since no business, including even the largest corporations, would require a CEO to be sitting at a desk the entire day. The Gladney Center suggested that this proposed amendment be changed from requiring specified staff members to be "at the agency" to being "available." It is unreasonable to expect that their work would not require these staff members to be away from the agency often in the performance of their various job functions.

RESPONSE: The Department disagrees with the commenters' interpretation of the proposed amendment. The purpose of the amendment is for such staff to be readily accessible to the clients they serve during the agency's regular business hours. There may be certain times when such staff is not available during the regular business hours and that is acceptable as there is no expectation that such staff sit at a desk all day and are precluded from participating in meetings or conferences that take place outside of the office.

33. COMMENT: Adoption Services, Inc., recommended that the existing regulation at N.J.A.C. 10:121A-4.1(b) of the number of full-time staff be reduced from three to two staff to allow smaller agencies that can provide excellent services on a more personalized basis with only two staff members.

RESPONSE: This regulation stipulates the minimum number of full-time staff that is required for a certified adoption agency regardless of any particular criteria for the provision of excellent services. The three minimum staff required are the executive director, the social work supervisor and at least one social worker and/or staff member in accordance with N.J.A.C. 10:121A-4.4. The executive director cannot function as the social work supervisor. The social work supervisor is responsible to review and approve home studies conducted by the social worker. There is a separation of responsibilities as set forth in N.J.A.C. 10:121A-4.4 in order to avoid conflicts of interest and to ensure a system of checks and balances in order to protect the health and well being of children being serviced by adoption agencies.

N.J.A.C. 10:121A-4.2

34. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment

provided by NJAAA that the proposed amendment at N.J.A.C. 10:121A-4.2(b)4 that requires adoption agencies to include in their policies sanctions the agency may take when a staff member fails to notify the agency of a criminal conviction or engages in conduct inappropriate to the purpose of the agency. The commenters indicate that these sanctions must be specified so that there is certainty.

RESPONSE: Adoption agencies are capable of including the criteria for sanctions in their policies as they do for other policies that address the criteria or standards for job qualifications, promotions, performance evaluations, suspension or dismissal of a staff member.

The Department thanks Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services for this comment.

N.J.A.C. 10:121A-4.4

35. COMMENT: Adoption Services, Inc. indicated that clarification is needed regarding the terms "social worker" and "staff member who provides social work services." These are existing terms used in the regulations. The commenter expressed concern that the Department might use changes in this section to limit the work of those already providing social work services. The commenter indicated that the term "social work services" are in reality "social services" and can be provided by those in related fields of psychology or counseling. The commenter recommended that a "grandfather" clause should be included in the proposed changes, so as to not to impact current agencies and staff who may not meet the strict requirement of a "social worker" as defined.

RESPONSE: The proposed amendments at N.J.A.C. 10:121A-4.4(c) are technical in nature, eliminating the text reflected in the Social Workers' Licensing Act (N.J.S.A. 45:15BB-5) for the non-applicability of the act and specifying the exemption from social worker certification or licensure by direct reference to N.J.S.A. 45:15BB-5, thus the current exemptions remain the same. The responsibilities for the social worker and/or staff member who provides social work services as specified at N.J.A.C. 10:121A-4.4(c)2 remain unchanged. It is important to note that the Department would be obligated to include any changes to the Social Workers' Licensing Act in the rules for adoption agencies should any such changes occur in the future.

N.J.A.C. 10:121A-4.8

36. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA regarding the proposed new regulations on background checks for out-of-State adoption agencies. Specifically, the commenters indicated that the proposed new rule at N.J.A.C. 10:121A-4.8(c) places an unreasonable burden on New Jersey agencies located in another state to obtain New Jersey CHRI and CARI checks on contracted or hired staff working in New Jersey. The commenters indicate that their comment would not apply if the new rule pertains to out-of-State agencies that are licensed by the Department.

RESPONSE: These rules apply only to certified adoptions agencies under the auspices of the New Jersey Department of Children and Families Office of Licensing. As such,

the Department will not address the commenter's concerns that this would dissuade an adoption agency not certified by the Department from placing children in New Jersey. To state the obvious, only adoption agencies certified by the Department are permitted to provide adoption services in New Jersey. Any non-New Jersey certified adoption located in another state that is licensed or approved in that state and is non-profit must execute a written agreement with a New Jersey-certified adoption agency if such agency is placing a child in New Jersey.

N.J.A.C. 10:121A-5.4

37. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendment to N.J.A.C. 10:121A-5.4(b)4 to encourage the birth mother to reveal the identity and the whereabouts of the birth father is appropriate and acceptable. The commenters indicated that the steps to be taken to encourage the birth mother should be defined to ensure that agencies understand what is expected of them, and so that the agencies can provide appropriate counseling to a birth mother so that it properly preserves her right to privacy and safety while simultaneously explaining the important impact of a decision not to name a birth father.

RESPONSE: The Department appreciates the positive comment. The Department also appreciates the suggestions that an agency might include when the agency staff are working with the birth mother to reveal the identity and whereabouts of the birth father. However, the Department believes that the proposed amendment is sufficient as written and allows the agency to use counseling expertise to work with the birth mothers in this sensitive area. In addition, there are rules that require the agency search for the birth father, as well as counseling requirements for the birth mother and birth father.

38. COMMENT: The Gladney Center expressed concern regarding the proposed amendments at N.J.A.C. 10:121A-5.4(b)4, 5, 7 and 8. The agency indicated that the requirements do not specify that the application of the regulations is limited to New Jersey clients. Specifically, the agency is concerned that the Department's Office of Licensing requires the agency to comply with the New Jersey State Adoption Law and regulations to provide services to Texas birth parents whose rights were terminated under Texas law and completes the adoption through Texas courts for a child who is placed with adoptive applicants in New Jersey. The agency would like to see this type of matter addressed in changes made to the regulations.

RESPONSE: The New Jersey State Adoption Law and the Manual of Requirements for Adoption Agencies permit adoption agencies located in other states to be certified by the New Jersey Department of Children and Families, which enables such agencies to provide adoption services in New Jersey. As required at N.J.A.C. 10:121A-1.4(b), under the State Adoption Law, all private and public adoption agencies, both within New Jersey and outside the State that are involved in the placement of children for adoption in New Jersey, must be certified by the Department in order to open and operate. In keeping with N.J.A.C. 10:121A-1.4(c), in order to be eligible for a certificate of approval, an adoption agency shall demonstrate to the satisfaction of the Department or its duly authorized agent, the Office of Licensing, compliance with the requirements of the State Adoption Law and with the rules contained in this chapter, which constitute minimum requirements only. While the Department recognizes the Texas authority regarding services to birth parents, an out-of-State

agency certified by the Department placing a child in New Jersey must comply with the minimum requirements for birth parents in N.J.A.C. 10:121A-5.4(b) and (c) as well. In addition, the New Jersey State Adoption Law (N.J.S.A. 9:3-3.1.(b)) indicates that the birth parent, except one who cannot be identified or located prior to the placement of a child for adoption, shall be offered counseling as to his or her options other than placement of the child for adoption. Such counseling shall be made available by or through an approved licensed agency in New Jersey or in the birth parent's state or country of residence. The fact that counseling has been made available, and the name, address and telephone number of the agency through which the counseling is available, shall be confirmed in a written document signed by the birth parent and acknowledged in this State pursuant to section 1 of P.L. 1991, c. 308 (N.J.S.A. 46:14-2.1) or acknowledged in another state or country pursuant to section 1 of P.L. 1991, c. 308 (N.J.S.A. 46:14-6.1) a copy of which shall be provided to the birth parent and the agency conducting the adoption complaint investigation pursuant to section 12 of P.L. 1977, c. 367 (N.J.S.A. 9:3-48) and shall be filed with the court prior to termination of parental rights. The rules and the State Adoption Law support the application of ensuring the rights of birth parents regardless of their state of residence or location at the time of the surrender. As such, the Department does not believe there is a need to make any changes to these rules.

39. COMMENT: Golden Cradle indicated that the proposed amendment at N.J.A.C. 10:121A-5.4(c)2 needs clarification as to what is specifically meant when an agency offers counseling that fully addresses any presented emotional problems by a birth parent. The agency indicated that the term "presented emotional problems" is vague.

RESPONSE: The regulation requires adoption agencies to provide at least three face-to-face counseling sessions to the birth parents by qualified social work staff. These counseling sessions provide the birth parents opportunities to receive important information, guidance and support regarding the adoption of their child. The term emotional problems is understood by qualified social work staff and can encompass a range of mental health factors that may need to be addressed by the adoption agency or referred to mental health agencies in order to ensure that the birth parents can exercise reasonable decision-making regarding the adoption of their child. Adoption agency social work staff use their training and skills to make similar assessment regarding the suitability of adoptive applicants during the home study process.

40. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendment at N.J.A.C. 10:121A-5.4(b)5 that agencies already use regular and certified mail and make discreet inquiries as part of conducting a reasonable search for birth fathers, as long as this does not place adoption agency staff at risk. And that great care must be taken when making these inquiries not to breach confidentiality.

RESPONSE: The Department appreciates these observations and agrees that adoption agency staff should not place themselves at risk and that great care must be taken when making these inquiries not to breach confidentiality.

41. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendments at N.J.A.C. 10:121A-5.4(b)7 and

8 that it is unclear what is meant by impending adoption. The commenters further indicate that the existing regulation and proposed amendment appears to conflict with N.J.S.A. 9:3-45 with regards to the 20-day notice when the presumed birth father has not complied with N.J.S.A. 9:3-45(a).

RESPONSE: The existing regulations indicate that at least 20 days before the child's adoption that the agency provides written notification of the impending adoption. Since the regulations refer specifically to the child's adoption, the Department believes the term "impending" accurately describes that the finalization hearing has not yet occurred. In regards to the second concern, since adoption agencies are required to comply with the provisions of the State Adoption Law, as specified at N.J.A.C. 10:121A-1.4(c) and 2.3(a)1, the Department maintains that agencies know that the proposed amendment does not conflict with N.J.S.A. 9:3-45. As such, there is no need to make any changes.

42. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendments regarding surrenders at N.J.A.C. 10:121A-5.4(d)5 and 6. The commenters indicated that the proposed amendment that the surrender must be acknowledged by an agency staff member needs to be clarified, since a formal "acknowledgement" as opposed to a notarization, is contained, for example, in a deed. Good form would probably have a formal acknowledgement at the end of the document naming both the agency representative who is present, as well as the surrendering parent. The commenters observed that the agency also is being required to document the identities of all the people who were present at the time of the surrender, where it took place and the agency's representative's observation of the birth parent's demeanor and competence. A statement that the birth parents were not coerced is now included. While this requires additional paperwork, it is appropriate and would provide further protection for an agency in the event of a dispute later involving the surrender itself.

RESPONSE: The Department appreciates the positive comments. The Department, however, disagrees that the proposed regulations that note that the surrender shall be acknowledged by an agency representative needs to be clarified. An agency staff member's signature is all that is required.

43. COMMENT: Golden Cradle indicated that clarification is needed where surrenders were taken in keeping with the requirements at N.J.A.C. 10:121A-5.4(d). The agency specifically wanted to know if surrenders had to be taken in a certain city or state.

RESPONSE: Each state has its own requirements for surrenders, however, in keeping with N.J.S.A. 9:3-41, surrenders may be taken anywhere in New Jersey and would not be specific to location. New Jersey surrenders may be used in other states that permit such use.

N.J.A.C. 10:121A-5.6

44. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendments at N.J.A.C. 10:121A-5.6(m), (o) and (u) regarding the time frames for CHRI background checks, time frames for CARI background checks and time frames for home studies for foreign adoptions are acceptable.

RESPONSE: The Department thanks Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin, Adoption Services and NJAAA for their comments.

45. COMMENT: Golden Cradle asked what the frequency is for out-of-State clearances and how far back does the agency need to go. While the written comment did not specify whether or not the agency meant clearances for staff or adoptive applicants, the Department believes the agency meant for adoptive applicants.

RESPONSE: As indicated in the proposed amendment at N.J.A.C. 10:121A-5.6(m), the CHRI background checks are valid for 12 months. As indicated in the proposed amendment at N.J.A.C. 10:121A-5.6(o), the CARI background checks are valid for 12 months. There are no time frames for either the CHRI and CARI background checks in terms of how far back the records would go that are assessed.

46. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the procedures have been clarified for agencies when they need to obtain CHRI and CARI background checks for out-of State adoptive applicants or when the agencies are working with out-of-State adoption agencies. The commenters indicated that CHRI and CARI background checks could still be conducted by the Department in these cases, and then an Affidavit would not be needed. Agencies might be better served doing it this way, and some already do this.

RESPONSE: The Department appreciates the comments. However, the proposed amendments at N.J.A.C. 10:121A-5.6(h) would eliminate the need for an out-of-State adoptive applicant to obtain a CHRI background check when the agency documents that such person never resided or worked in New Jersey and the agency obtains a Federal CHRI. This way, the adoptive applicant would not have to incur an unnecessary cost for the CHRI background check. However, if the adoptive applicant's home state does not require or have access to a Federal CHRI background check then they would need to obtain the New Jersey CHRI check, since such check includes the Federal CHRI check. The proposed amendments at N.J.A.C. 10:121A-5.6(m)5 would eliminate the need for an out-of-State adoptive applicant to obtain a CARI background check when the agency documents that such person never resided or worked in New Jersey. In addition to the above, an agency could choose to request New Jersey CHRI and CARI for adoptive applicants who never resided or worked in New Jersey, but such checks would always reveal no record.

47. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendment at N.J.A.C. 10:121A-5.6(e) regarding the lessening of some of the requirements with regards letters of recommendation for adoptive applicants is appropriate.

RESPONSE: The Department appreciates the comment.

48. COMMENT: Golden Cradle inquired whether the proposed time frames for home studies at recodified N.J.A.C. 10:121A-5.6(u) would permit "grandfathering" for existing home studies.

RESPONSE: No. The proposed amendments afford appropriate updated information regarding the applicants pending the placement of a child in their home.

N.J.A.C. 10:121A-5.8

49. COMMENT: Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin and Adoption Services supported the comment provided by NJAAA that the proposed amendments at N.J.A.C. 10:121A-5.8 regarding further details on reports and adjustment of the family to the adoption are acceptable.

RESPONSE: The Department thanks Homestudies & Adoption Placement Services, Adoptions From The Heart, Wide Horizons, Spence Chapin, Adoption Services and NJAAA for their comments.

Federal Standards Statement

The adopted amendments and new rules do not exceed analogous Federal requirements pertaining to adoption agencies and adoptive homes imposed by Federal law within the scope of these rules, specifically, the Federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89), the Federal statutes and rules at 42 U.S.C. §§ 670 et seq. and 45 CFR Part 1356, and the Interethnic Adoption Provisions (IEP) of 1996 (P.L. 108-382). In order to meet certain provisions of the Federal Adoption and Safe Families Act (ASFA) and NJ ASFA, amendments are adopted at N.J.A.C. 10:121A-5.6(j) and (k) specifying the criminal convictions that disqualify adoptive applicants who use the services of a public adoption agency. In order to meet certain provisions of the IEP, amendments are adopted at N.J.A.C. 10:121A-3.6(e) and 5.6(f)3 and 17 that eliminate references to children's racial and ethnic backgrounds.

Full text of the adopted amendments and new rules follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:121A-1.3 Implementation and enforcement responsibility; information

The Office of Licensing of the New Jersey Department of Children and Families 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:

Office of Licensing
Department of Children and Families
PO Box 717
Trenton, New Jersey 08625-0717
(609) 826-3999

10:121A-1.4 Legal authority

(a) (No change.)

(b) Under the State Adoption Law, all private and public adoption agencies, both within New Jersey and outside the State that are involved in the placement of children for adoption in New Jersey, must be certified by the New Jersey Department

of Children and Families in order to open and operate.

(c) In order to be eligible for a certificate of approval, an adoption agency shall demonstrate to the satisfaction of the Department of Children and Families compliance with the requirements of the State Adoption Law and with the rules contained in this chapter, which constitute minimum requirements only.

(d) (No change.)

10:121A-1.5 Definition and types of adoptions

(a) (No change.)

(b) Adoptions that are subject to the provisions of this manual are classified as follows:

1. (No change.)

2. "Foreign adoption" is the adoption of a child who resides in a country other than the United States of America. An agency shall comply with the requirements of the Federal Immigration and Naturalization Act (P.L. 95-417), and any successor or amending legislation regarding the classification of an alien orphan child as an immediate relative for purposes of an immigration visa; and shall comply with each country's supervision and visitation requirements and relevant requirements of the Hague Convention on Intercountry Adoption when the child has entered the United States with the adoptive family;

3.-6. (No change.)

10:121A-1.6 Definitions

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

...

"Adoption agency" or "agency" means a Department-certified public or private non-profit corporation organized for all or part of its purpose to provide adoption services to children, adoptees, adoption applicants and birth and/or adoptive parents. Adoption services may include: pre-placement, home study, placement, post-placement or post-adoption services or other related activities, including those requested by courts and other adoption agencies and organizations, whether or not the agencies and organizations are certified in New Jersey.

...

"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. Such investigation includes a home study and post-adoption services unless otherwise specified by the court.

. . .

"Branch office" means a Department-certified adoption program that is a geographically separate but administratively dependent part of an agency.

"Certificate of approval" or "certificate" means a document issued by the Office of Licensing to an agency indicating that the agency is in substantial or full compliance with all applicable provisions of this chapter, and that there is no serious or imminent hazard to the health, safety or well-being of the children, birth parents, adoptive parents or adoptive applicants being served by the agency.

. . .

"Denial of a certificate" means the withholding of a certificate of approval for which an agency has applied, based on the agency's failure or inability to comply with requirements of the State Adoption Law and/or of this chapter.

"Department" means the New Jersey Department of Children and Families.

"Division" means the Division of Youth and Family Services of the New Jersey Department of Children and Families.

. . .

"Office of Licensing" or "Office" means the Office of Licensing of the New Jersey Department of Children and Families.

. . .

"Revocation of a certificate" means a rescinding of an agency's current certificate to operate because of the agency's failure or refusal to comply with the requirements of the State Adoption Law and/or of this chapter.

. . .

"State Adoption Law" means N.J.S.A. 9:3-37 et seq., the statutes that New Jersey certified adoption agencies must comply with and authorizes this chapter, which provides rules to ensure the protection of children, legal rights of children and birth and adoptive parents who receive adoption services, as well as establishing requirements of agency organization and administration, professional training, experience, practices and requirements relating to the responsibility of adoption agencies providing adoption services in New Jersey.

"Substantial compliance" means compliance by an agency that does not meet all applicable requirements of the law and of this chapter, when there is no serious or imminent hazard to the health, safety or well-being of the children, birth parents, adoptive parents or adoptive applicants served by the agency.

. . .

"Suspension of a certificate" means a temporary rescinding of an agency's current certificate of approval to operate. The suspended certificate may be reinstated by the Office of Licensing upon the agency's compliance with requirements of the State

Adoption Law and of this chapter.

...

10:121A-1.7 Compliance with State laws

(a) (No change.)

(b) No certified adoption agency shall discriminate with regard to the provision of any adoption-related services on the basis of age, religion, marital status, civil union or employment status with regard to the selection of adoptive parents for any child. However, these factors may be considered, pursuant to N.J.S.A. 9:3-40, in determining whether the best interests of a child would be served by a particular placement for adoption or by finalization of an adoption.

(c) (No change.)

SUBCHAPTER 2. CERTIFICATION PROCEDURES

10:121A-2.1 Application for a certificate of approval

(a) An organization interested in providing any kind of adoption service shall first secure a certificate of approval from the Department, pursuant to the requirements of the State Adoption Law and of this chapter. Operation of an adoption agency without a valid certificate, as required by law, constitutes a crime of the third degree, pursuant to N.J.S.A. 9:3-39.

(b) The agency shall file a completed application for a new or renewed certificate with the Office of Licensing at least 60 calendar days prior to the anticipated date of operation or the expiration of an agency's existing certificate.

(c) An applicant for a new certificate shall submit to the Office of Licensing a written plan for the agency's operation that includes the following:

1. (No change.)

2. A description of organizational structure, including the names of the board of directors and its committees, staff organization charts, number and qualifications of board members and names of executive officers and titles of offices held, such as president or chairperson;

3.-7. (No change.)

8. A copy of the agency's non-discrimination policy, as specified in N.J.A.C. 10:121A-1.7(b), and approved by the agency's governing board;

9. A copy of an audit or financial statement, if requested by the Office of Licensing; and

10. (No change.)

(d) An agency applying for a renewal of a certificate of approval shall submit those items listed in (c)2, 3, 4 and 5 above, and (c)10 above, if applicable. An agency shall

submit the item listed in (c)9 above upon request of the Office of Licensing.

10: 121A-2.2 Issuance of a certificate of approval

(a) The Office of Licensing 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) After the Office of Licensing conducts an initial inspection of a new agency and finds the agency to be in substantial or full compliance with the State Adoption Law and this chapter, the Office shall issue a certificate of approval.

(c) If the Office of Licensing issues a certificate of approval to an agency that is in substantial compliance with the requirements of the State Adoption Law and of this chapter, the Office shall provide written notification to the agency indicating the steps the agency must take to achieve full compliance.

(d) If the Office of Licensing determines that the agency cannot be issued a certificate of approval because there is a serious or imminent hazard to the health, safety or well-being of the children, birth parents, adoptive parents or adoptive applicants being served by the agency, the Office shall provide written notification to the agency indicating the steps the agency must take to secure a certificate of approval, if applicable.

(e) Each certification period shall be two years.

1. In determining the expiration date of the first certificate of approval, the Office of Licensing shall compute the two-year certification period from the date of issuance of the first certificate.

2. In determining the expiration date of a renewed certificate, the Office of Licensing shall compute the two-year certification period from the date on which the agency's previous certificate expired. If, however, the agency has ceased to operate for a period of six months following the expiration date of its previous certificate, the Office shall compute the date of expiration from the date of issuance of a new certificate.

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

(i) The Office of Licensing shall not issue a certificate to an out-of-State agency unless the agency has received a license or approval from that state's authorized licensing or regulatory agency and has been in operation for at least two years.

10: 121A-2.3 Denying, suspending, revoking or refusing to renew a certificate of approval

(a) The Office of Licensing may deny, suspend, revoke or refuse to renew an adoption agency's certificate for good cause, including, but not limited to, the following:

1.-3. (No change.)

4. Refusal to furnish the Department with files, reports, records or other information as required by this chapter, or to cooperate with an inspection or investigation by the Department;

5. Refusal to permit an authorized representative of the Department to gain access to the agency during normal operating hours. An authorized representative includes:

i. A representative of the Office of Licensing;

ii. (No change.)

iii. The Commissioner or his or her designee;

iv.-v. (No change.)

6. Any activity, policy or conduct that adversely affects or is deemed by the Office of Licensing to be detrimental to the families and children being served, including, but not limited to, violations of the requirements of N.J.S.A. 9:3-37 et seq., the State Adoption Law, N.J.S.A. 9:23-5 et seq., the Interstate Compact on the Placement of Children, N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14, State child abuse laws, and this chapter;

7. Failure of an out-of-State agency to maintain a license, approval or certificate in its own state;

8. Failure to employ the necessary qualified professional staff, as specified in N.J.A.C. 10:121A-4.4;

9. Failure by the agency or director to secure and to maintain on file documentation from the Department showing compliance with criminal conviction disclosures, as specified in N.J.A.C. 10:121A-4.2(a), Criminal History Record Information background checks, as specified in N.J.A.C. 10:121A-4.5, or Child Abuse Record Information background checks, as specified in N.J.A.C. 10:121A-4.6;

10. Refusal by the director to consent to or cooperate in a Criminal History Record Information background check or Child Abuse Record Information background check for himself or herself;

11. Refusal by the director to terminate the employment of a staff member who refuses to consent to or cooperate in a Criminal History Record Information background check or Child Abuse Record Information background check;

12. Refusal by the director to terminate the employment of a staff member when an allegation of child abuse or neglect has been substantiated against the staff member;

13. Refusal by the director to terminate the employment of a staff member convicted of a crime or offense requiring disqualification, as specified in N.J.A.C. 10:121A-4.5(e);

14. A substantiated allegation of child abuse or neglect against the director; and

15. Conviction by the director for a crime or offense requiring disqualification, as

specified in N.J.A.C. 10:121A-4.5(e).

(b) If an agency's certificate is suspended, the Office of Licensing shall issue or reinstate the agency's certificate once the agency achieves compliance with the requirements of the State Adoption Law and of this chapter. In such a case, the Office shall not require the agency to submit a new application for a certificate unless such reapplication is expressly made a condition of the issuance or reinstatement of the certificate.

(c) The Office of Licensing shall provide written notice to the agency before denying, suspending, revoking or refusing to renew the agency's certificate. The notice shall specify the Office's reasons for such action.

(d) If the Office of Licensing denies, revokes or refuses to renew an agency's certificate of approval, and the reason(s) for the denial, revocation or refusal have been resolved, the agency may reapply to the Office for a certificate in order to secure a new certificate prior to resuming operations.

(e) The Office of Licensing may impose conditions upon an agency's adoption services, and shall provide notice if an agency's certification will contain such conditions.

(f) Each certificate issued by the Office of Licensing to an adoption agency remains the property of the State of New Jersey. If an agency's certificate is suspended or revoked, or upon the permanent closing of the agency, the agency shall return the certificate to the Office immediately.

10:121A-2.4 Administrative hearings

(a) When the Office of Licensing proposes to deny, suspend, revoke or refuse to renew a certificate, the Office shall afford the applicant or agency written notice of an opportunity for an administrative hearing by certified or registered mail or in-person delivery.

1. (No change.)

2. If the agency fails to request a hearing within 10 working days of receipt of the notice, the Office of Licensing shall take the proposed action immediately.

(b) (No change in text.)

10:121A-2.5 Court action

(a) The Department may institute a civil action in a court of competent jurisdiction for injunctive relief to enjoin the operation of an adoption agency for good cause, including, but not limited to, the following:

1.-3. (No change.)

10:121A-2.6 Complaints

(a) Whenever the Office of Licensing receives a report questioning the certification status or compliance of an adoption agency with requirements of the State Adoption

Law or alleging violations of this chapter by the agency, the Office of Licensing shall ensure that the allegation is investigated to determine whether the complaint is substantiated.

(b) The Office of Licensing shall notify the complainant and the agency in writing of the results of the complaint investigation after the report of the investigation has been finalized. Such notification shall include the results of the investigation, pursuant to the State Public Records Act (N.J.S.A. 27:1A-1 et seq.), commonly known as the State Right to Know Law and the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.), except that any information not permitted to be disclosed under the Child Abuse and Neglect Law (N.J.S.A. 9:6-8 et seq.), the State Adoption Law or other law prohibiting such disclosure shall be withheld.

(c) Any individual filing a complaint may do so anonymously. If the complainant reveals his or her identity, the name of the complainant, together with a description of the complaint and its status, shall be included in the Office of Licensing's records and shall be available for public review upon completion of the investigation, pursuant to the State Public Records Law and the Open Public Records Act, except that any information not permitted to be disclosed pursuant to the Child Abuse and Neglect Law, the State Adoption Law or other law prohibiting such disclosure shall be withheld.

(d) The Office of Licensing shall consider complaints or other notifications regarding an agency's adoption practices in a state other than New Jersey in reviewing that agency's adoption practices, if such complaints have implications for the agency's service in New Jersey.

(e) (No change.)

(f) The agency shall cooperate with the Office of Licensing's investigations whenever such complaint investigations are conducted and shall ensure that all information that is requested by the Office of Licensing is complete and accurate. The agency shall ensure that all staff members are available for interview upon the Office of Licensing's request.

10:121A-2.7 Public access to Office of Licensing records

(a) The Office of Licensing shall make its adoption agency certification files available for examination during regular business hours by any person and shall supervise any person examining its files on the adoption agency.

(b) The Office of Licensing shall make the following items in the files open to public review:

1. (No change.)
2. Copies of certificates;
3. Correspondence between the Office of Licensing and the agency or other parties in matters pertaining to the Office's review, inspection or certification of the agency;
4. Program evaluation, inspection and violation reports where applicable, reflecting results of Office of Licensing inspections and/or reinspections of the agency;

5. (No change.)

6. Enforcement letters from the Office of Licensing requiring abatement of violations of the Manual of Requirements;

7.-10. (No change.)

(c) The Office of Licensing shall keep confidential and not part of the public record the following:

1.-4. (No change.)

5. Memoranda and other internal correspondence between and among public agencies, including internal communication between the Department and the Attorney General, except as otherwise provided by law; and

6. (No change.)

(d) Office of Licensing records shall be available for public inspection at the Office during regular business hours. Copies of these records shall be available for purchase in accordance with the public records copy fee schedule set forth at N.J.S.A. 47:1A-2.

SUBCHAPTER 3. ADMINISTRATION

10:121A-3.1 Governing board requirements for private agencies

(a) Each private agency shall have a governing board composed of at least five voting board members that is representative of a variety of interests and points of view in the communities where the agency provides services, which shall have the authority to:

1.-2. (No change.)

(b) The governing board shall establish policies pertaining, but not limited to:

1.- 2. (No change.)

3. Fiscal operations, including budget and resource development and fund raising.

i. The governing board shall ensure that there are sufficient funds available to cover the costs of the transfer of records to other agencies when the agency ceases operation.

ii. The governing board shall ensure that there are sufficient funds available to cover the costs for storage of records pending the actual transfer of records to other agencies when the agency ceases operation.

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

(e) The governing board shall meet at least every six months and make records of attendance and minutes of each meeting available for inspection by the Office of

Licensing.

(f) The governing board shall have a written policy covering conflict of interest, which shall include the following provisions:

1.-5. (No change.)

6. Agency personnel and members of their families shall not serve as officers of the board or voting members of the board.

(g) The board shall oversee the transfer of clients and services and preserve records, as specified in N.J.A.C. 10:121A-3.5(g), whenever an agency terminates its adoption program.

(h) Each member of the governing board shall:

1. Be of good character, as evidenced by the agency's application for certification, as specified at N.J.A.C. 10:121A-2.1(c), and administrative records, as specified at N.J.A.C. 10:121A-3.6(g); and

2. Not engage in or permit any conduct inappropriate to the purposes of the agency.

(i) Upon receipt of an allegation that a member of the governing board may be in violation of any provision in (h) above, the Office of Licensing shall conduct a complaint investigation and provide written notification of the results, as specified in N.J.A.C. 10:121A-2.6.

10:121A-3.2 Advisory board requirements for public agencies

(a) Each public agency shall have an advisory board or advisory council that is representative of a variety of interests and points of view in the communities where the agency provides services. The advisory board shall:

1.-3. (No change.)

4. Meet at least annually and make records of attendance and minutes of each meeting available for inspection by the Office of Licensing; and

5. Adhere to the standards for private agency governing boards, as specified in N.J.A.C. 10:121A-3.1(d) through (i).

10:121A-3.3 Legal responsibilities

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

(c) A New Jersey-certified agency may provide services for an out-of-State agency only if:

1. The New Jersey-certified agency verifies that the out-of-State agency is licensed, certified or approved in the state where the agency's principal office is located and is a non-profit agency if it places children in New Jersey for adoption or placing a child in a state other than New Jersey;

2. Both agencies execute a written cooperative agreement that has been approved by the Office of Licensing; and

3. Both agencies develop a written plan that:

i. Defines financial and social work responsibilities before, during and after the placement of each child;

ii. States that the out-of-State agency shall be financially responsible for any child placed in New Jersey until and unless the child's adoption has been finalized or the child has reached the age of majority or been removed from New Jersey. This requirement shall not affect an out-of-State agency's responsibility for providing subsidy payments to the child subsequent to finalization of the adoption or to the child's reaching the age of majority; or an out-of-State agency's voluntary agreement to assume financial responsibility after finalization of the adoption or until the child's reaching the age of majority; and

iii. States that the New Jersey-certified agency shall be financially responsible for any child placed in a state other than New Jersey until and unless the child's adoption has been finalized or the child has reached the age of majority or has been removed from that state. This requirement shall not affect the New Jersey-certified agency's responsibility for providing subsidy payments to the child subsequent to finalization of the adoption or to the child's reaching the age of majority; or the New Jersey-certified agency's voluntary agreement to assume financial responsibility after finalization of the adoption or until the child's reaching the age of majority.

(d) (No change.)

10:121A-3.4 Information to parents and adoption applicants

(a) (No change.)

(b) The written statement or pamphlet shall contain the following information:

1. That the agency is required to be certified by the New Jersey Department of Children and Families pursuant to the State Adoption Law (N.J.S.A. 9:3-37 et seq.);

2.-3. (No change.)

4. That any parent who believes or suspects that the agency is in violation of any requirements of the Manual of Requirements for Adoption Agencies may report such alleged violations to the Office of Licensing;

5. That any parent may secure a copy of the Manual of Requirements for Adoption Agencies by contacting the Office of Licensing, Department of Children and Families. The Office will charge a nominal fee for the manual, in keeping with Department policy;

6. That when so requested by parents of children served by the agency, the agency shall make available for review the Office of Licensing's certification records and any Inspection or Violation Reports on the agency, except for those records prohibited from disclosure, pursuant to the State Child Abuse and Neglect Law (N.J.S.A. 9:6-8.10(a)) and to any other laws prohibiting such disclosure;

7. That any person who has reasonable cause to believe that a child being served by the agency has been or is being subjected to any form of child abuse or neglect or exploitation by any person, whether working at the agency or not, shall report such allegations to the Department of Children and Families' toll-free hotline, 1-877-NJ-ABUSE (652-2873), pursuant to the State Child Abuse and Neglect Law (N.J.S.A. 9:6-8.1 et seq.). Such reports may be made anonymously;

8. That parents may secure information about child abuse and neglect by contacting the Office of Communication and Legislation, Department of Children and Families;

9.-10. (No change.)

(c) When a child has been identified by the agency as having a disability or suspected disability and services have not been arranged, the agency shall inform the parent(s) of their child's right to special educational and medical services and shall refer the parent(s) to:

1. (No change.)

2. The New Jersey Department of Health and Senior Services, Division of Local and Community Health Services, Special Child Health Services Program (currently (609) 292-5676) for a possible comprehensive medical evaluation for the child.

10:121A-3.5 Reporting requirements

(a) The agency shall orally notify the Department of Children and Families' toll-free hotline, 1-877-NJ-ABUSE (652-2873), immediately whenever there is any allegation received by the agency or other reasonable cause to believe that a child under the supervision or care of the agency has been or is being abused or neglected by any person, pursuant to the State Child Abuse and Neglect Law (N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14).

1. The agency shall notify the Office of Licensing of these allegations, as well as of any other allegations that were made by other parties and came to the agency's attention.

2. The Department shall make copies of the child abuse law and information about the law available, upon request, through its Office of Communication and Legislation, PO Box 717, Trenton, New Jersey 08625-0717.

(b) The agency shall notify the Office of Licensing orally of any of the following changes or events within 24 hours after the agency learns of their occurrence and shall submit written notification to the Office within five working days:

1.-5. (No change.)

(c) The agency shall notify the Office of Licensing in writing at least 30 calendar days prior to any of the following proposed changes and events, if known:

1. (No change.)

2. Any change in the name, location, executive director, administrator or social work

supervisor of the agency; or

3. (No change.)

(d) The agency shall notify the Office of Licensing in writing 90 calendar days prior to the date when the agency expects to suspend or cease operations of the agency's adoption program.

(e) The agency shall notify both the appropriate county prosecutor and the Office of Licensing within three working days of any adoption activity that involves an intermediary that allegedly violates N.J.S.A. 9:3-37 et seq., the State Adoption Law.

(f) The agency shall notify the Office of Licensing in writing of any adoption activity specified in (e) above within five working days of the agency's notification to the county prosecutor.

(g) The agency shall make the following arrangements once a decision to cease its adoption program has been made:

1. Transfer the care and custody of any children in the supervision of the agency to another agency certified by the Department on or before the anticipated date of closing;

2. Transfer responsibility for any other clients, such as adoptive and/or birth parents in the adoption program to another agency certified by the Department on or before the anticipated date of closing;

3. Notify the Office of Licensing of the successor agency within 30 calendar days of closing;

4. Transfer all closed adoption records to a successor private agency certified by the Department. The closing agency shall ensure that such transfers of closed adoption records are implemented within one year after the agency's adoption program ceases to operate;

5. (No change.)

6. Return its certificate to the Office of Licensing.

10:121A-3.6 Agency records

(a) The agency shall ensure that the following general requirements are met:

1.-3. (No change.)

4. The agency shall maintain the confidentiality of all information in all client case records, including those of the child, birth parents, foster parents, adoptive parents, adult adoptees and all other persons residing in the adoptive parents' home, except by court order, as specified in this chapter or by written consent of the specific party.

i. Staff members or persons associated with or working in cooperation with the agency shall not disclose or knowingly permit the disclosure of any identifying information concerning the child, birth parents, foster parents, adoptive parents or

adult adoptees to any unauthorized person(s). Authorized persons are:

(1) Department representatives involved in child abuse and/or neglect investigations, or as otherwise authorized by statute;

(2) Office of Licensing representatives or designees engaged in review activities related to certifications;

(3)-(5) (No change.)

ii. The agency may disclose identifying information to bona fide researchers who have received permission from the Commissioner or his or her designee, subject to any restrictions and/or limitations set by the Commissioner or designee, and who agree to maintain the confidentiality of the child, birth parents, foster parents, adoptive parents and/or adult adoptees.

iii.-v. (No change.)

(b) (No change.)

(c) The agency shall establish and maintain statistical information on adoption services.

(d) An agency shall maintain case records for each child served and for his or her birth family for 99 years. Certified agencies that work with referring agencies or intermediaries shall make efforts to obtain background information for birth family and child records. These records shall include:

1.-5. (No change.)

6. Social, psychological, developmental and educational circumstances including school reports and medical history of the child and copies of any professional recommendations, evaluations or treatment, including the Adoption Medical Information Form pursuant to N.J.S.A. 9:3-41.1(b), or any other required form issued by the Office of Licensing, and a complete medical history of the birth family;

7.-8. (No change.)

9. Summary reports of social services provided or offered for the child and birth family, including possible alternatives to adoption, pre- and/or post-natal care for the birth mother, temporary care for the birth mother and/or child, reasons for adoption as the plan of choice and birth parent preferences, if any, regarding characteristics of the adoptive family;

10.-15. (No change.)

(e) The agency shall maintain records of home studies of adoptive applicants, who have had a child placed for adoption, for 99 years. These records shall include:

1.-3. (No change.)

4. Characteristics of the child, including: age range, sex, social, psychological, physical, developmental and educational circumstances acceptable to the family,

including any specific limits to the extent of special conditions acceptable to the adoptive family;

5.-8. (No change.)

(f) The agency shall maintain on file records, as specified in N.J.A.C. 10:121A-5.5(b), for each foster family used by the agency in support of the agency's adoption service.

1. (No change.)

2. Such records shall include documentation that the requirements specified in N.J.A.C. 10:121A-5.5(b) and (c) were met. When a foster family is also the adoptive family, the adoptive family records shall include the content specified in N.J.A.C. 10:121A-5.5(b).

(g)-(h) (No change.)

(i) The agency shall maintain personnel records on all agency personnel, including paid staff members employed by the agency, paid consultants who provide contracted services and volunteers and students who have direct contact with clients.

1.-2. (No change.)

3. State-operated agencies shall follow policies and guidelines established by the Department for personnel information and information regarding paid consultants in lieu of the information specified in (i)1 and 2 above.

10:121A-3.7 Office facilities

(a) The agency shall provide space that affords privacy for conducting interviews at its office facilities.

(b) The agency shall provide equipment storage space and furnishings necessary to implement the activities of the adoption program at its office facilities.

(c) The agency shall have the telephone number for the agency office listed in the public telephone directory.

(d) An agency that operates in a private home shall provide documentation that the local municipality permits such business use in the home.

SUBCHAPTER 4. PERSONNEL

10:121A-4.1 General requirements

(a) (No change.)

(b) An agency shall have at least three full-time staff members or their equivalents in part-time staff members, as specified in N.J.A.C. 10:121A-4.4(a) through (c). Staff members as specified at N.J.A.C. 10:121A-4.4(a) and (b) and shall be available at the agency during regular business hours.

1.-2. (No change.)

(c) The executive director or administrator and every staff member shall:

1. Be of good character, as evidenced by the agency's application for certification, as specified in N.J.A.C. 10:121A-2.1(c), and personnel records, as specified in N.J.A.C. 10:121A-3.6(i);
2. Be in sufficient physical, mental and emotional health to perform his or her job duties satisfactorily;
3. Possess skills, attributes and characteristics conducive to and suitable for operating an agency and dealing with children, birth parents and adoptive applicants; and
4. Not engage in or permit any conduct inappropriate to the purposes of the agency.

(d) Upon receipt of an allegation that the executive director, administrator or a staff member may be in violation of any provision in (c) above, the Office of Licensing shall conduct a complaint investigation and provide written notification of the results to the agency, as specified in N.J.A.C. 10:121A-2.6.

10:121A-4.2 Personnel policies

(a) The agency shall require all applicants for employment to disclose criminal convictions in writing. Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from working in the agency and shall not automatically result in the removal or termination of a director or staff member from his or her position or job. Such determinations shall be made on a case-by-case basis, in keeping with the provisions of the State Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.). The agency shall maintain evidence of compliance with requirements for criminal conviction disclosures on file.

(b) The agency shall develop and maintain on file current written personnel policies and make them available to all staff members. The personnel policies shall be reviewed annually and updated every three years by the agency. The personnel policies shall include:

1.-3. (No change.)

4. Provisions for responding to any staff member misconduct that constitutes criminal, unethical or unprofessional behavior, including sanctions that may be taken by the agency when a staff member fails to notify the agency of a criminal conviction or engages in conduct inappropriate to the purposes of the agency.

(c) The agency shall ensure that any staff member or consultant that utilizes the title or designation of social worker, licensed clinical social worker, licensed social worker, certified social worker, medical social worker, social work technician or any other title or designation that includes the words social worker or social work, or any abbreviations such as SW, LCSW, LSW, CSW or SWT is certified or licensed pursuant to N.J.S.A. 45:15BB-1 et seq., the Social Workers Licensing Act of 1991, unless the individual is exempt from certification or licensure as specified in N.J.S.A. 45:15BB-

5.

(d) All new in-State agencies prior to receiving a certificate shall ensure that social work staff and social work supervisors are certified or licensed pursuant to (c) above.

(e) (No change in text.)

10:121A-4.4 Staff qualifications and duties

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

(c) A social worker and/or a staff member who provides social work services shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below. The agency may choose to utilize part-time staff members in lieu of one full-time staff member, provided that these staff members have the qualifications and responsibilities as specified in (c)1 and 2 below.

1. Each social worker and each staff member who provides social work services shall either:

i. (No change.)

ii. Meet the criteria for exemption from social worker certification or licensure as specified in N.J.S.A. 45:15BB-5; or

iii. (No change in text.)

2. (No change.)

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

10:121A-4.5 Criminal History Record Information (CHRI) background checks

(a) As a condition of securing and maintaining a certificate, the agency shall ensure that a State and Federal CHRI fingerprint background check, in keeping with P.L. 2008, c. 114, is completed for the director and each staff member.

1. If the director refuses to consent to or cooperate in a CHRI background check, the Department shall deny, suspend, revoke or refuse to renew the certificate, as applicable. The agency may appeal the denial, suspension, revocation or refusal to renew, as specified in N.J.A.C. 10:121A-2.3.

2. If a staff member refuses to consent to or cooperate in a CHRI background check, the agency shall immediately terminate the staff member's employment at the agency.

(b) If any person identified in (a) above has a record of criminal conviction, the Department of Children and Families shall review the record with respect to the type and date of the criminal offense and make a determination as to the suitability of the person to administer or work at the agency.

(c) A person shall be disqualified from administering or working at the agency if that

person ever committed a crime that resulted in a conviction for:

1. A crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S.A. 2C:24-4;
2. Abuse, abandonment or neglect of a child pursuant to N.J.S.A. 9:6-3;
3. Endangering the welfare of an incompetent person pursuant to N.J.S.A. 2C:24-7;
4. Sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.A. 2C:14-2 through 4;
5. Murder pursuant to N.J.S.A. 2C:11-3 or manslaughter pursuant to N.J.S.A. 2C:11-4;
6. Stalking pursuant to section 1 of P.L. 1992, c. 209 (N.J.S.A. 2C:12-10);
7. Kidnapping and related offenses including criminal restraint, false imprisonment, interference with custody, criminal coercion or enticing a child into a motor vehicle, structure or isolated area pursuant to N.J.S.A. 2C:13-1 through 5 and section 1 of P.L. 1993, c. 291 (N.J.S.A. 2C:13-6);
8. Arson pursuant to N.J.S.A. 2C:17-1, or causing or risking widespread injury or damage, which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:17-2;
9. Aggravated assault, which would constitute a crime of the second or third degree pursuant to N.J.S.A. 2C:12-1b;
10. Robbery, which would constitute a crime of the first degree pursuant to N.J.S.A. 2C:15-1;
11. Burglary, which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:18-2;
12. Domestic violence pursuant to P.L. 1991, c. 261 (N.J.S.A. 2C:25-17 et seq.);
13. Terroristic threats pursuant to N.J.S.A. 2C:12-3;
14. An attempt or conspiracy to commit any of the crimes or offenses listed in (c)1 through 13 above; or
15. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or offenses described in (c)1 through 14 above.

(d) As an exception to (c) above, the Department may approve the employment at, or administration of, an agency by an individual convicted of a crime specified in (c) above, if all of the following conditions are met:

1. The Department determines that the crime does not relate adversely to the position the individual is employed in pursuant to the provisions of P.L. 1968, c. 282 (N.J.S.A. 2A:168A-1 et seq.);

2. The conviction is not related to a crime committed against a child, as specified in (c) above;

3. The agency documents that the individual's employment or administration of the agency does not create a risk to the safety or well-being of children due to the nature and requirements of the position. As necessary, the agency shall identify restrictions regarding the individual's contact with, care or supervision of children;

4. The agency documents that the individual is uniquely qualified for the position due to specific skills, qualifications, characteristics or prior employment experiences; and

5. The Department determines that the individual has affirmatively demonstrated rehabilitation, pursuant to the factors specified in (e) below.

(e) For crimes and offenses other than those cited in (c) above, an individual may be eligible to administer or work at the agency if the individual has affirmatively demonstrated to the Department clear and convincing evidence of rehabilitation.

1. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

i. The nature and responsibility of the position at the agency that the convicted individual would hold, has held or currently holds, as the case may be;

ii. The nature and seriousness of the offense;

iii. The circumstances under which the offense occurred;

iv. The date of the offense;

v. The age of the individual when the offense was committed;

vi. Whether the offense was an isolated or repeated incident;

vii. Any social conditions that may have contributed to the offense; and

viii. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of those who have had the individual under their supervision.

2. Upon receipt of documentation submitted by the agency, indicating why the individual at issue should not be precluded from administering, working or residing at the agency, the Department, after assessing the facts on a case-by-case basis, shall make the final determination regarding the individual's rehabilitation, in keeping with the provisions of the State Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq.

3. The Department shall make the final determination regarding the suitability of the director of an agency with a criminal conviction other than those cited in (c) above.

4. For a current or prospective staff member with a criminal conviction other than

those cited in (c) above, the director of the agency or the agency's board of directors shall make a determination regarding the individual's suitability upon the Department's determination that the individual has affirmatively demonstrated rehabilitation.

(f) If the director of an agency has knowledge that any individual specified in (a) above has criminal charges pending against the individual, the director shall promptly notify the Department to determine whether or not any action concerning the individual is necessary in order to ensure the safety of the children.

(g) If the Department is notified that any individual specified in (a) above is convicted of a crime or offense after the CHRI has been completed, the Department shall make a determination whether to suspend or revoke the certificate or require the agency to terminate the individual's employment or service, as applicable.

(h) Upon completion of the CHRI for an individual specified in (a) above, the Department shall notify the individual, and the agency as applicable, in writing, of the individual's qualification or disqualification for employment or service under section 4 or 5 of P.L. 2008, c. 114 (N.J.S.A. 9:3-40.5 and 9:3-40.6).

1. If the individual is disqualified, the convictions that constitute the basis for the disqualification shall be identified in the written notice to the individual.
2. The individual shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the CHRI.
3. If no challenge is filed or if the determination of the accuracy of the CHRI upholds the disqualification, the Department shall notify the agency that the individual has been disqualified.
4. The agency shall immediately terminate the disqualified individual's employment at the agency.
5. If the disqualified individual is an agency director, the Department shall deny, suspend, revoke or refuse to renew the certificate, as applicable.

(i) An agency that has received an employment application from an individual, or currently employs a director or staff member, shall be immune from liability for acting upon or disclosing information about the disqualification or termination of that individual to another agency seeking to employ that individual, if the agency has:

1. Received notice from the Department or the agency's board of directors, as applicable, that the applicant, director or staff member has been determined by the Department or the board of directors to be disqualified from employment or service at an agency pursuant to P.L. 1968, c. 282 (N.J.S.A. 2A:168A-1 et seq.); or
2. Terminated the employment of a staff member because the individual was disqualified from employment or service at the agency on the basis of a conviction of a crime pursuant to P.L. 1968, c. 282 (N.J.S.A. 2A:168A-1 et seq.) after commencing employment or service at the agency.

(j) An agency that acts upon or discloses information pursuant to (i) above shall be presumed to be acting in good faith unless it is shown by clear and convincing

evidence that the agency acted with actual malice toward the individual who is the subject of the information.

10:121A-4.6 Child Abuse Record Information (CARI) background checks

(a) As a condition of securing and maintaining a certificate, the agency shall provide written consent to the Department from the director and each staff member for a CARI background check to be conducted.

1. If a director refuses to consent to or cooperate in a CARI background check, the Department shall deny, suspend, revoke or refuse to renew the certificate, as applicable. The agency may appeal the denial, suspension, revocation or refusal to renew, as specified in N.J.A.C. 10:121A-2.3.

2. If a staff member refuses to consent to or cooperate in a CARI background check, the agency shall immediately terminate the staff member's employment at the agency.

(b) Upon receipt of written consent from an individual specified in (a) above, the Department shall conduct a search of its records to determine if an allegation of child abuse or neglect has been substantiated, pursuant to section 4 of P.L. 1971, c. 437 (N.J.S.A. 9:6-8.11), against the individual.

1. The Department shall consider incidents of child abuse and neglect that were substantiated on or after June 29, 1995, to ensure that the perpetrator has had an opportunity to appeal a substantiated finding of child abuse or neglect.

2. The Department may consider incidents substantiated prior to June 29, 1995, if the Department, in its judgment, determines that the perpetrator poses a risk of harm to children in a home. In cases involving incidents substantiated prior to June 29, 1995, in which the Department determines that the individual is disqualified, the Department shall offer the perpetrator an opportunity for a hearing to contest the substantiation.

(c) If the Department determines that an allegation of child abuse or neglect has been substantiated against an individual specified in (a) above, the agency shall immediately terminate the individual's employment at the agency.

(d) If the Department determines that an allegation of child abuse or neglect has been substantiated against a director, the Department shall also deny, suspend, revoke or refuse to renew the certificate of approval, as applicable.

1. The agency may appeal the denial, suspension, revocation or refusal to renew, as specified in N.J.A.C. 10:121A-2.3.

2. If the incident was substantiated prior to June 29, 1995, the Department shall notify the individual in writing that the individual may request a hearing to contest the substantiation.

(e) If the Department determines that an allegation of child abuse or neglect has been substantiated against a staff member, the agency shall notify the staff member in writing that the termination of employment is based on a substantiated allegation of child abuse or neglect. If the incident was substantiated prior to June 29, 1995,

the agency shall notify the staff member in writing that the staff member may request a hearing to contest the substantiation.

10:121A-4.7 Background check procedures for New Jersey agencies

(a) Prior to the opening of a new agency located in New Jersey, the agency shall ensure that a request for a Criminal History Record Information (CHRI) background check, as specified in N.J.A.C. 10:121A-4.5, and a Child Abuse Record Information (CARI) background check, as specified in N.J.A.C. 10:121A-4.6, is submitted for each person identified in N.J.A.C. 10:121A-4.5(a) and 4.6(a).

(b) Prior to the first renewal of a certificate on or after June 13, 2009 for an existing agency located in New Jersey, the agency shall ensure that a request for a CHRI background check, as specified in N.J.A.C. 10:121A-4.5, is submitted for the director and each staff member.

(c) Prior to each renewal of a certificate on or after June 13, 2009, for an existing agency located in New Jersey, the agency shall ensure that a request for a CARI background check, as specified in N.J.A.C. 10:121A-4.6, is submitted for the director and each staff member.

(d) Within two weeks after a new staff member begins employment at an agency located in New Jersey, the agency shall ensure that a request for a CHRI background check, as specified in N.J.A.C. 10:121A-4.5, and a CARI background check, as specified in N.J.A.C. 10:121A-4.6, is submitted for the individual.

(e) An individual shall not be left alone as the only adult accompanying or caring for a child until documentation from the Department showing compliance with a CHRI check and CARI check for the individual has been received by the agency.

10:121A-4.8 Background check procedures for out-of-State agencies

(a) For an agency located outside New Jersey, the agency shall ensure that the director and each applicant or staff member meet all applicable laws and regulations in that state governing criminal history record background checks and child abuse record information checks that may be required as a condition of employment.

(b) In the event that criminal history record background checks and child abuse record information checks are not mandated in that state, the agency shall require that the director and each applicant, staff member make a disclosure of any criminal conviction. The results of the disclosure shall be made available to the Department, so that the Department can determine the suitability of the individual for employment or service at the agency.

(c) For an agency located outside of New Jersey that hires or contracts with persons providing adoption services in New Jersey, the agency shall meet the CHRI background check requirements specified at N.J.A.C. 10:121A-4.5 and CARI background check requirements specified at N.J.A.C. 10:121A-4.6.

SUBCHAPTER 5. SERVICES

10:121A-5.2 General requirements

(a) (No change.)

(b) An agency shall notify adoptive applicants and the Office of Licensing in writing within five working days when the agency receives information that a country is suspending adoption services and shall not accept any additional clients for assignment of children from that country until such time that adoption services have been re-established.

(c) (No change.)

(d) An agency that plans to place a child with an out-of-State family or to receive a child from out-of-State for placement within the State of New Jersey shall notify the Interstate Services Units of the Department and shall comply with the regulations governing child placement in the other state, where applicable.

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

(g) An agency may refer a child to any adoption exchange(s) earlier than is required under (f) above.

(h)-(i) (No change.)

10:121A-5.4 Services to birth parents

(a) (No change.)

(b) The agency shall:

1.-3. (No change.)

4. Encourage the birth mother to reveal the identity and whereabouts of the birth father;

5. Conduct a reasonable search for the birth father, if the name of the birth father is identified and his location is not known. The agency shall:

i. Send notice via regular and certified mail to the last known address of the birth father;

ii. Inquire discreetly among any known relatives, friends or employers of the birth father; and

iii. Make direct inquiry to public agencies that are believed to have information on the whereabouts of the birth father;

6. (No change in text.)

7. At least 20 calendar days before the child's adoption, provide written notification of the impending adoption to:

i.-ii. (No change.)

iii. The birth father of the child to be adopted, unless the birth father is not identified

or cannot be located after a reasonable search;

8. Inform those persons specified in (b)7 above that they have the opportunity to object to the adoption within 20 days after notice of the adoption is given in accordance with the Rules of Court; and

9. Provide documentation of the agency's compliance with (b)4 through 8 above in the case record.

(c) Before taking a surrender, the agency shall document that the birth parents were:

1. Provided at least three face-to-face counseling sessions conducted in a private and professional setting as specified in N.J.A.C. 10:121A-3.7(e), or at the birth parents' home, by qualified social work staff on separate days and that the birth parents were:

i. Offered counseling that fully:

(1) Explores alternatives to adoption;

(2) Addresses any presented emotional problems;

(3) Includes referrals to mental health agencies when such emotional problems interfere with the birth parents' decision-making regarding adoption; and

(4) Explores alternative plans for the child, including, but not limited to, temporary foster care, day care and care by relatives;

ii.-viii. (No change.)

2. (No change.)

(d) The agency shall ensure that the birth parents understand the terms of the surrender and realize that the agency will assume custody and will have the right to consent to adoption of the child, pursuant to N.J.S.A. 9:3-41 and 30:4C-23.

1.-4. (No change.)

5. Each surrender shall be acknowledged by an agency representative and shall be notarized. The agency representative and the notary shall not be the same person; however, the notary may be a staff member from the agency.

6. The agency shall document the following:

i. The names of the persons who were present at the time of the surrender;

ii. Where the surrender was taken; and

iii. The agency representative's observation of the birth parents' demeanor and competence during the discussion of the surrender and a statement that the birth parents were not coerced.

Recodify existing 5.-7. as 7.-9. (No change in text.)

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

(g) An agency that arranges for, provides directly, finances or subsidizes the costs of adoption expenses, as specified in N.J.A.C. 10:121A-5.8(i)1viii, of a birth mother shall comply with all of the following:

1. The agency shall maintain on file a written policy that governs payments made on behalf of birth mothers.

i. A copy of this policy shall be given to each birth mother and prospective adoptive parent at the time of initial inquiry or application; and

ii. (No change.)

2. (No change.)

3. The agency shall maintain in its case files any receipts, cancelled checks and/or invoices or photocopies of such receipts, cancelled checks and/or invoices as a record of all cash payments that were made on behalf of the birth mother. The agency may utilize a case ledger to record this information provided that copies or actual receipts, cancelled checks and/or invoices are made available to the Office of Licensing upon request.

10:121A-5.5 Pre-placement services to the child

(a) The agency shall complete a comprehensive study for each child evaluated for adoption. The study shall include:

1.-2. (No change.)

3. Information to the extent available about the child's birth family to determine hereditary factors or pathology that may affect the child's normal development and potentialities as required on forms developed by the Commissioner of the Department of Children and Families, pursuant to N.J.S.A. 9:3-41.1(b);

4. (No change.)

5. Any specialized evaluations for a physically and/or mentally disabled child to help better understand the child's strengths and limitations;

6.-7. (No change.)

(b) The agency shall provide foster care services, as necessary, to ensure the health and safety of children who are waiting for legal clearance and/or adoptive placement.

1. The agency shall establish written criteria by which foster parent applicants are eligible to apply to the agency to provide foster care for a child.

i. (No change.)

ii. The agency shall make the criteria available to the Office of Licensing, to all

prospective foster parent applicants and, upon request, to any person.

2.-4. (No change.)

(c) An agency that provides foster care services in homes located in New Jersey for children under the auspices of the Department who are waiting for legal clearance and/or adoptive placement shall ensure that such homes comply with the provisions of N.J.S.A. 30:4C-27.3, the Resource Family Parent Licensing Act.

Recodify existing (c)-(d) as (d)-(e) (No change in text.)

10:121A-5.6 Home study services

(a) (No change.)

(b) The agency shall:

1.-3. (No change.)

4. Make the criteria specified in (b)2 above available to the Office of Licensing, to all prospective adoptive applicants and, upon request, to any person.

(c) The agency shall ensure that each adoptive applicant:

1. Has attained the age of 18 years and is at least 10 years older than the child being adopted. If the applicant is not 10 years older than the child to be adopted, the agency may petition the court to waive the requirement; and

2. Has the capacity to meet the child's physical and emotional needs.

(d) (No change.)

(e) The agency shall advise the applicants of the home study process, including the length of time involved. The home study process shall include the following:

1.-4. (No change.)

5. A review of three personal references from persons unrelated to the applicant(s):

i. (No change.)

ii. The agency shall obtain at least one reference from a neighbor of the applicant(s). However, if such a reference cannot be obtained, a second reference as specified in (e)5i above may be substituted.

iii. Applicants from the same household may obtain the same personal reference, provided that the personal reference source has knowledge of each applicant.

(f) The agency shall obtain information on the applicants. Such information shall include, but not be limited to:

1.-2. (No change.)

3. The family's recognition of the importance of and the family's plans for helping the child accept being adopted;

4.-6. (No change.)

7. State of their marital, civil union or domestic partner relationship, decision making, communication, roles in the family and how they handle differences of opinion, if relevant;

8.-13. (No change.)

14. A statement of the agency's assessment of the results of Division of Youth and Family Services Child Abuse Record Information (CARI) background checks, as specified in (n) below;

15.-16. (No change.)

17. A description of the type(s) of children the adoptive applicants can accept, including age range, sex, sibling groups and physical, social, emotional or developmental disabilities in the child;

18.-19. (No change.)

(g) As part of the home study, the agency shall obtain Criminal History Record Information (CHRI) fingerprint background checks on each adoptive applicant and all persons residing in the adoptive applicant's home who are 18 years of age or older, except as specified in (v) below. For the purposes of processing requests for CHRI fingerprint background checks, the agency shall ensure that:

1. The identity of each adoptive applicant and each adult who resides in the adoptive applicant's home is verified through a valid driver's license with photograph, a valid passport or other government-issued picture identification;

2. Fingerprints are obtained utilizing the electronic fingerprinting process through the vendor authorized by the State to conduct CHRI background checks through the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation, except as specified in (h) and (i) below;

3. (No change in text.)

4. All required fees for electronic fingerprinting are submitted by the adoptive applicants to the vendor authorized by the State to conduct CHRI background checks through the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation;

5. All correspondence involving individual fingerprints or the results of the CHRI is marked "Confidential";

6. A record of the results of the CHRI and the date the results are received by the agency is maintained in the applicant's case record; and

7. When the results of a CHRI reveal a criminal conviction, the agency:

i. (No change.)

ii. Discloses to the adoptive applicant(s) the name of the adult residing in the applicant's home who has a criminal conviction, but does not disclose to the adoptive applicant(s) any other information about the conviction.

(h) An agency providing services to an adoptive applicant residing in a state other than New Jersey shall obtain the CHRI background check for the applicant and adult members of the applicant's household from the state where the applicant resides, in lieu of obtaining a New Jersey State CHRI, provided that:

1. The agency obtains the Federal CHRI background check for the individual; and
2. The agency documents that the individual never resided or worked in New Jersey.

(i) An agency providing services to an out-of-State resident who previously resided or worked in New Jersey, or to a New Jersey resident who is unable to access the electronic fingerprinting process due to illness or injury, shall obtain the CHRI background check using the fingerprint cards supplied by the Department of Children and Families.

1. Such fingerprints may be taken:

i. At the adoption agency by trained agency staff or by a trained person who is hired or volunteers to take fingerprints on behalf of the agency;

ii. At the local police station; or

iii. By trained staff of another adoption agency, as part of a cooperative effort.

2. The completed fingerprint cards and required fees shall be submitted to the Department of Children and Families.

(j) A public adoption agency shall disqualify an adoptive applicant if the applicant or any adult residing in the applicant's household was convicted of one of the following crimes or offenses:

1. A crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S.A. 2C:24-4; or child abuse, neglect or abandonment pursuant to N.J.S.A. 9:6-3;

2. Murder pursuant to N.J.S.A. 2C:11-3 or manslaughter pursuant to N.J.S.A. 2C:11-4;

3. Aggravated assault, which would constitute a crime of the second or third degree pursuant to N.J.S.A. 2C:12-1b;

4. Stalking pursuant to N.J.S.A. 2C:12-10;

5. Kidnapping and related offenses, including criminal restraint; false imprisonment; interference with custody; criminal coercion; or enticing a child into a motor vehicle, structure or isolated area pursuant to N.J.S.A. 2C:13-1 through 6;

6. Sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.A. 2C:14-2 through 4;

7. Robbery, which would constitute a crime of the first degree pursuant to N.J.S.A. 2C:15-1;

8. Burglary, which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:18-2;

9. Domestic violence pursuant to N.J.S.A. 2C:25-17 et seq.;

10. Endangering the welfare of an incompetent person pursuant to N.J.S.A. 2C:24-7 or endangering the welfare of an elderly or disabled person pursuant to N.J.S.A. 2C:24-8;

11. Terrorist threats pursuant to N.J.S.A. 2C:12-3;

12. Arson pursuant to N.J.S.A. 2C:17-1, or causing or risking widespread injury or damage, which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:17-2; or

13. An attempt or conspiracy to commit an offense specified in (j)1 through 12 above.

(k) A public adoption agency shall disqualify an adoptive applicant if the applicant or an adult residing in the applicant's household was convicted of one of the following crimes or offenses, and the date of release from confinement (the date of termination of court-ordered supervision through probation, parole, or residence in a correctional facility, whichever date occurs last) occurred within the preceding five years:

1. Simple assault pursuant to N.J.S.A. 2C:12-1a;

2. Aggravated assault which would constitute a crime of the fourth degree pursuant to N.J.S.A. 2C:12-1b;

3. A drug-related crime pursuant to the Comprehensive Drug Reform Act, N.J.S.A. 2C:35-1 et seq.;

4. Robbery which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:15-1;

5. Burglary which would constitute a crime of the third degree pursuant to N.J.S.A. 2C:18-2; or

6. An attempt or conspiracy to commit an offense specified in (k)1 through 5 above.

(l) For a public adoption agency when the conviction is for a crime or offense other than those specified in (j) and (k) above, and for a private adoption agency for a conviction for any crime or offense, the agency shall utilize the following criteria for assessing the suitability of the adoptive applicant when the CHRI reveals a record of criminal conviction by the adoptive applicant or an adult residing in the applicant's household. The agency shall:

Recodify existing i.-v. as 1.-5. (No change in text.)

6. Determine whether the convicted individual completed a rehabilitation program, including a prison sentence, stays in a half-way house, treatment received in a drug treatment facility, treatment received in a psychiatric hospital or counseling received in the community. If such evidence exists, the agency shall assess whether the convicted individual has been rehabilitated and shall consider such rehabilitation in making a determination; and

7. Inform the Office of Licensing of its assessment of the suitability of the adoptive applicant(s).

(m) The CHRI background checks specified in (g) and (h) above shall be valid for 12 months from the date the results are received by the agency.

(n) The agency shall obtain Child Abuse Record Information (CARI) background checks from the Division of Youth and Family Services on each adoptive applicant and all persons residing in the adoptive applicant's home who are 18 years of age and older, except as specified in (n)5 below. The agency shall ensure that:

1. CARI background check forms supplied by the Office of Licensing are completed and signed by the adoptive applicant(s) and other adult(s) residing in the adoptive applicant's home and submitted along with a fee of \$ 10.00 for each CARI background check, in the form of a check or money order made payable to the "Treasurer, State of New Jersey," to the address designated by the Office of Licensing;

2. All correspondence between the agency and the Department involving CARI background check forms and related information is marked "confidential";

3. When the results of a CARI background check reveal a substantiated incident(s) of child abuse and/or neglect, the agency:

i. Discloses the results of the CARI background check only to the individual identified by the Department as the perpetrator of the child abuse and/or neglect incident(s); and

ii. (No change.)

4. As part of the home study, the agency utilizes the following criteria for assessing the suitability of the adoptive applicant(s) when the CARI background check reveals that the adoptive applicant(s) or adult(s) residing in the home has a record of a substantiated incident(s) of child abuse and/or neglect. Utilizing the results of the CARI background checks and through contacts with the adoptive applicant(s), the agency shall:

i. (No change.)

ii. Discuss the circumstances of the abuse and/or neglect incident(s) with the adoptive applicant(s) or adult(s) residing in the home in a confidential manner as specified in (n)3 above;

iii.-v. (No change.)

vi. Determine if the perpetrator has completed a rehabilitation program or counseling program. If such evidence exists, the agency shall make an assessment whether the perpetrator has been rehabilitated and shall consider such rehabilitation in making a determination;

5. For an adoptive applicant residing in a state other than New Jersey, the agency obtains a child abuse background check for the applicant and adult members of the applicant's household from the state where the applicant resides, in lieu of obtaining a New Jersey CARI check, provided that the agency documents that the individual never resided or worked in New Jersey. For individuals who previously resided or worked in New Jersey, the agency shall obtain both a New Jersey CARI check and a child abuse background check from the state where the applicant resides. For individuals who previously resided or worked in a state other than New Jersey and currently reside in New Jersey, the agency shall obtain both a New Jersey CARI check and a child abuse background check from the state where applicant previously resided; and

6. The agency maintains the results of the CARI background check and/or child abuse background check from another state in the adoptive applicant's file.

(o) The CARI background checks specified in (n) above shall be valid for 12 months from the date the results are received by the agency.

1. If a child is not placed in the adoptive applicant's home within 12 months, the agency shall obtain an additional CARI background check as specified in (n)² above, for each applicant and all persons residing in the applicant's home who are 18 years of age and older, prior to placement of a child in the adoptive applicant's home.

2. (No change.)

(p) The home study shall not be shared with any person, parent, adoptive applicant or agency until it has been completed. The home study shall be considered complete when it contains all information specified in (g) through (n) above.

Recodify existing (l)-(o) as (q)-(t) (No change in text.)

(u) For applicants who have been studied, approved and placed on a waiting list for longer than 12 months from the time their home study was approved, the agency shall ensure that the home study is current within 12 months of the child's being placed into the home, except for home studies for foreign adoption, which may be current for 18 months of the child's being placed in the home. The updated home study shall include:

1.-3. (No change.)

4. Updated financial information, as specified in (f)¹⁶ above.

(v) For applicants who are being considered for adoption of one or more additional children, the agency shall:

1. Update the home study as specified in (u) above; and

2. (No change.)

Recodify existing (r)-(t) as (w)-(y) (No change in text.)

10:121A-5.7 Placement services

(a) The agency shall have responsibility for the selection of approved adoptive parents for a child upon successful completion of a home study as specified in N.J.A.C. 10:121A-5.6.

1.-3. (No change.)

4. In instances where an agency that is not certified by the Department is involved with a Department-certified agency, both agencies shall share information and reach a mutual decision on each adoptive placement.

5. (No change.)

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

10:121A-5.8 Post-placement services

(a) In keeping with the home study and supervision requirements specified at N.J.A.C. 10:121A-3.6(d)14, the agency shall:

1. (No change.)

2. For children under five years of age, the agency shall:

i.-ii. (No change.)

iii. Document in the child's record that the following issues were discussed:

(1) How the presence of the child changed the lifestyle and marital, civil union, domestic partnership and/or sibling relationships and how the child and extended family view each other;

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

3. For children age five or older, the agency shall:

i.-ii. (No change.)

iii. Document in the child's record that the following issues were discussed:

(1) How the presence of the child changed the lifestyle and marital, civil union, domestic partner and/or sibling relationships and how the child and extended family view each other;

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

(4) How the family perceives the child's sense of identity and the need to fill in gaps

in the child's history;

(5) How the child has adjusted to the school environment; and

(6) Document in the child's record that all members of the adoptive family's household were interviewed during the placement supervision period.

(b) (No change.)

(c) If a child under two years of age is in an adoptive home for more than one year without the adoption being finalized, the agency shall document to the Office of Licensing in writing the reason(s) that the adoption has not been finalized. Such information shall be provided no later than 30 calendar days after the one-year adoptive placement supervision period has ended.

(d) If a child over two years of age is in an adoptive home for more than two years without the adoption being finalized, the agency shall document to the Office of Licensing in writing the reason(s) that the adoption has not been finalized. Such information shall be provided no later than 30 calendar days after the two-year adoptive placement supervision period has ended.

(e)-(i) (No change.)

10:121A-5.9 Post-adoption services

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

(d) For a foreign adoption, as specified at N.J.A.C. 10:121A-1.5(b)2, the agency shall conduct at least one visit to the home within 30 days after the child has entered the United States with the adoptive family and shall comply with each country's supervision and visitation requirements and relevant requirements of the Hague Convention on Intercountry Adoption when the child has entered the United States with the adoptive family.