

NEW JERSEY



REGISTER

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(Includes rules filed through August 2, 1982)

The New Jersey Register supplements the New Jersey Administrative Code. See the Index of Adopted Rules on Page 842 of the August 2 issue for the Registers that should be retained as an update to the Administrative Code.

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice Jurisdiction of the Office of Administrative Law

Proposed New Rule: N.J.A.C. 1:20

Authorized By: Howard H. Kestin, Director, Office of Administrative Law.

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

Interested persons may present comments, statements or arguments at a **public hearing** to be held at the following location and time:

September 10, 1982
10:00 A.M.
88 East State Street
Trenton, NJ 08625

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Burton D. Weltman, Esq.
Assistant Director
Office of Administrative Law
88 East State Street
Trenton, NJ 08625

The Office of Administrative Law thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-333.

The agency proposal follows:

Summary

This proposal will establish rules of special applicability for hearings initiated before the Public Employment Relations Commission Appeal Board (see 14 N.J.R.903(a), this issue). These hearings will deal with the payment of representation fees in lieu of dues by non-member public employees to the union which represents those employees' collective negotiations unit. A procedure to review such payment is provided by N.J.S.A. 34:13A-5.5 et seq.

These special rules supplement, and in places supersede, the general hearing rules in N.J.A.C. 1:1-1.1 et seq., in order to meet the special needs of the Appeal Board cases. Specifically, these rules provide for:

- (a) Pleadings, times for filing, and proof of service appropriate to the Appeal Board cases;
- (b) Notification of the petitioner's employer and the petitioner's fellow employees when a case has been transmitted to the OAL. This notification is to facilitate the consolidation of cases from the same negotiations unit;
- (c) A de novo hearing with the burden of proof on the union, pursuant to N.J.S.A. 34:13A-5.6; and
- (d) Procedures for requesting oral argument of exceptions.

Social Impact

N.J.S.A. 34:13A-5.5 et seq. permits public employee unions to collect from nonmembers a fee in lieu of dues to help defray the costs of representing the nonmembers in collective negotiations. N.J.S.A. 34:13A-5.5 et seq. also permits a nonmember to demand the return of any fees used by a union for partisan political or other similar ideological activities only incidentally related to terms and conditions of employment, or for members-only benefits. These proposed rules implement this latter part of the statute, and prescribe the hearing procedures to be followed when a nonmember seeks a review of the payment before the Appeal Board.

Economic Impact

In implementing N.J.S.A. 34:13A-5.5 et seq., these hearing rules will facilitate the return to nonmembers of that portion of the representation fee which is expended on matters outside the scope of the statute. The number of cases which will be added to the OAL caseload by N.J.S.A. 34:13A-5.5 et seq., as implemented by these rules, cannot be estimated.

Full text of the proposed new rule follows.

NEW JERSEY REGISTER

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PROPOSALS

ADMINISTRATIVE LAW

CHAPTER 20 RULES OF SPECIAL APPLICABILITY FOR HEARINGS BEFORE THE PUBLIC EMPLOYEE RELATIONS APPEAL BOARD

SUBCHAPTER 1. APPLICABILITY AND DEFINITIONS

1:20-1.1 Applicability

In addition to the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1, the following rules of special applicability¹ shall apply to any hearing initiated before the Public Employment Relations Commission Appeal Board pursuant to P.L. 1979, c.477, (N.J.S.A. 34:13A-5.5 et seq.) To the extent that these rules of special applicability are inconsistent with the UAPR, these rules shall apply.

1:20-1.2 Definitions

As used in this chapter, the term:

"Appeal Board" means the Public Employment Relations Commission Appeal Board established by N.J.S.A. 34:13A-5.6 to consider complaints concerning the amount of fees paid by nonmembers who pay a representation fee in lieu of dues.

"Demand and return system" means the procedure established and maintained pursuant to N.J.S.A. 34:13A-5.6 by a majority representative to provide a public employee who pays a representation fee in lieu of dues the right to demand and receive from the majority representative that portion of the fee returnable under the circumstances described by N.J.S.A. 34:13A-5.5(c).

"Employer" means, for purposes of these rules only, the public employer which is signatory to the agreement requiring payment by the petitioning nonmember of representation fee in lieu of dues.

"Nonmember" means a public employee who is not a member of the majority representative which represents the employee's collective negotiations unit but who pays a representation fee in lieu of dues to the majority representative.

"Petition" means the document described in N.J.A.C. 1:20-6.1 and which initiates a complaint before the Appeal Board about the amount of representation fee in lieu of dues.

"Petitioner" means the nonmember who is filing a petition.

"Representation Fee" means the fee in lieu of dues defined in N.J.S.A. 34:13A-5.5, deducted from a nonmember's wages or salary and paid to the majority representative of the nonmember's unit.

"Respondent" means the majority representative which represents the petitioner's collective negotiations unit and which receives petitioner's representation fee.

¹An attempt has been made to codify these rules of special applicability so that their subchapter designations are generally consistent with the subchapter designations of corresponding subject matter in the Uniform Administrative Procedure Rules of Practice. Thus, Subchapter 1 of these special rules deals with Applicability and Definitions, since Subchapter 1 of the UAPR (N.J.A.C. 1:1-1) deals with Applicability and includes definitions. This method of codification is for the sake of the user's convenience only, and has no legal implications or effects.

SUBCHAPTER 2. COMMENCEMENT OF PROCEEDING

1:20-2.1 Commencement of proceeding before the Appeal Board

A nonmember may initiate a proceeding before the Appeal Board to review the amount of a representation fee in lieu of dues by filing a petition with the Appeal Board pursuant to this chapter.

1:20-2.2 Who may commence a proceeding before the Appeal Board

A petition may be filed by any nonmember public employee who

pays a representation fee in lieu of dues to a majority representative. Neither a public employer nor a majority representative may file a petition.

SUBCHAPTER 3. CONDUCT OF HEARING

1:20-3.1 Nature of hearing

The hearing shall be a de novo proceeding.

1:20-3.2 Burden of proof

Pursuant to N.J.S.A. 34:13A-5.6, the burden of proof shall be on the majority representative.

SUBCHAPTER 4. TIME FOR FILING OF PETITION AND ANSWER

1:20-4.1 Time for filing of petition; exhaustion of demand and return system

(a) At any time after the nonmember has exhausted, or has made a good faith attempt to exhaust, the demand and return system required to be maintained by the majority representative, the nonmember may file a petition with the Appeal Board.

(b) If during the administrative processing of the petition of appeal, it is determined that the majority representative's demand and return system has either not been utilized to resolve the dispute or that the demand and return proceeding has not been completed, the Appeal Board may take whatever action it deems appropriate, including but not limited to dismissing the petition of appeal, staying proceedings before the Board pending the completion of the majority representative's demand and return system, or continue to process the petition.

(c) A nonmember of a majority representative who has a claim pending in the majority representative's demand and return system may intervene in a proceeding before the Appeal Board involving the same majority representative, collective negotiations agreement, public employer and the same period of time, notwithstanding that the nonmember has not yet exhausted the majority representative's demand and return system.

1:20-4.2 Time for filing answer

No later than 20 days from the date of service of the petition upon the respondent by the Appeal Board, the respondent shall file with the Appeal Board and serve upon the petitioner an answer to the petition. For good cause, the Appeal Board may extend the time for answer. Failure to file and serve an answer on time may result in a default judgment against the respondent.

SUBCHAPTER 5. TRANSMISSION OF CASES

1:20-5.1 Transmission of cases to the Office of Administrative Law

In addition to the completed transmittal form, two copies of the petition and answer, and other papers required by N.J.A.C. 1:1-5, the Appeal Board shall transmit to the Office of Administrative Law copies of the parties' proof of service of the petition and answer.

SUBCHAPTER 6. PETITION AND ANSWER

1:20-6.1 Contents of petition

(a) A petition shall be in writing and signed by the nonmember(s) making the complaint. More than one nonmember in the same negotiations unit may sign a petition.

(b) A blank form for filing such a petition will be supplied upon request. Requests shall be addressed to: Public Employment Relations Commission Appeal Board, 429 East State Street, Trenton, NJ 08608.

(c) The petition shall contain the following:

1. The full name, address and telephone number of the nonmember filing the petition and, where applicable, the name, address and telephone number of any authorized representative;

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2. The full name and address of the majority representative of the nonmember's collective negotiations unit;

3. The full name and address of the public employer of the nonmember filing the petition;

4. The amount of the representation fee in lieu of dues, and, where known, the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members;

5. A statement of the grounds for the nonmember's belief that the representation fee in lieu of dues is excessive or improper, including a brief recitation of the facts, if any, which give rise to the belief that the fee is excessive. It shall be sufficient for the petitioner to state opposition either to all expenditures of a political or ideological nature only incidentally related to the terms and conditions of employment, or to expenditures applied toward the costs of any benefits available only to members of the majority representative, or to both; and

6. A statement as to whether the nonmember filing the petition has exhausted the majority representative's demand and return system and the result of that proceeding. If the result of that proceeding was in written form, a copy of the writing should be appended to the petition.

(d) The petition shall constitute the first pleading for the purposes of N.J.A.C. 1:1-6.2.

1:20-6.2 Contents of answer

(a) An answer shall be in writing and signed by a representative of the respondent.

(b) An answer shall contain the following:

1. A statement of the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members in the petitioner's collective negotiations unit;

2. A statement of the representation fee in lieu of dues charged the petitioner;

3. A description of the disposition of the petitioner's demand and return system proceeding. A copy of any written decision or result of that proceeding shall be appended as an exhibit to the answer, unless it has been appended to the petition;

4. A clear and concise statement which specifically admits, denies or explains any factual allegations contained in the petition; and

5. Any affirmative defenses to the legal and factual allegations of the petition.

(c) Attached to the answer shall be:

1. A copy of the collective negotiations agreement or other written agreement with the public employer of the petitioner which provides for the payment of the representation fee in lieu of dues; and

2. A copy of the demand and return procedures established by the majority representative.

SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION

1:20-7.1 Filing of petition and copies

A petitioner shall file an original and four copies of the petition with the Appeal Board.

1:20-7.2 Service of petition upon majority representative

Upon filing of a petition, the petitioner shall serve a copy of the petition and any attached documents upon the respondent named in the petition. The petitioner shall file a proof of service with the Appeal Board.

1:20-7.3 Petition to public employer; posting

Upon receipt of a petition, the Appeal Board shall forthwith provide a copy of the petition to the public employer. The public employer shall post copies of the petition at locations where notices to employees in the petitioner's collective negotiations unit are

normally posted. The copies of the petition shall remain posted for a period of 30 days.

1:20-7.4 Filing of answer and copies

(a) The respondent shall file an original and four copies of the answer with the Appeal Board.

(b) The respondent shall file two copies of the documents required by N.J.A.C. 1:20-6.2(c).

1:20-7.5 Service of answer upon petitioner

Upon filing the answer, the respondent shall serve a copy of the answer and of the documents required by N.J.A.C. 1:20-6.2(c) upon the petitioner. The respondent shall file proof of service with the Appeal Board.

SUBCHAPTER 8. NOTICES

1:20-8.1 Notice of filing; employer posting

(a) In addition to the requirements of N.J.A.C. 1:1-5.2(d), a copy of the notice of filing shall be sent by the Office of Administrative Law to the public employer of the petitioner.

(b) The public employer shall post such notice at locations where notices to employees in the petitioner's collective negotiations unit are normally posted.

SUBCHAPTERS 9.-14. (RESERVED)

SUBCHAPTER 15. EVIDENCE

1:20-15.1 Evidence of demand and return proceedings

The record, or any portion of it, developed at the demand and return system proceeding may be introduced as evidence by either party, subject to the general rules of evidence contained in N.J.A.C. 1:1-15.

SUBCHAPTER 16. CONCLUSION OF HEARING

1:20-16.1 Oral argument on exceptions

(a) As part of any written exceptions to an initial decision, a party may file a written request for oral argument on the exceptions before the Appeal Board. The written request shall be served, along with the exceptions, upon the other parties to the hearing.

(b) If the Appeal Board grants the request for oral argument, the Appeal Board shall give each party at least five days notice of the date of the argument.

(c) Only issues and evidence of record at the hearing may be considered at the oral argument. No new issues or evidence may be presented.

1:20-16.2 Motion to reopen

A party to a proceeding before the Appeal Board may, because of extraordinary circumstances, move to reopen the matter after the Appeal Board decision has been rendered. The movant shall state with particularity the grounds claimed and, where applicable, shall specify the portion of the record relied upon. Any motion pursuant to this section shall be filed within 15 days after service of the Appeal Board decision. Copies shall be served on the parties of record, and a statement of service shall be filed with the motion papers. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Appeal Board decision unless otherwise ordered by the Appeal Board. A motion to reopen need not be filed to exhaust administrative remedies.

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Brucellosis Control and Eradication Brucellosis Testing for Intrastate Movement

Proposed New Rule: N.J.A.C. 2:2-2.19

Authorized By: Arthur R. Brown, Jr., Secretary,
Department of Agriculture.
Authority: N.J.S.A. 4:5-93.22.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Dr. Robert E. Horton, Director
Division of Animal Health
New Jersey Department of Agriculture
CN 330
Trenton, NJ 08625

The Department of Agriculture thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-313.

The agency proposal follows:

Summary

With the recent outbreak of brucellosis in Salem County, New Jersey is no longer a brucellosis-free state. Present herd infection rates would place New Jersey in a Class B status. Federal recommendations for Class B states include compulsory testing of all cattle moving "intrastate". Required testing would help to prevent the spread of brucellosis to additional herds in New Jersey and help regain brucellosis-free status.

Social Impact

This will affect cattle breeders, cattle dealers, veterinarians, and State and Federal brucellosis eradication programs. It will help reduce the incidence of brucellosis, thereby decreasing the risk to veterinarians and cattlemen who may contract undulant fever. (Brucellosis, when contracted by humans, is referred to as undulant fever.) There are already two confirmed human cases of undulant fever due to this outbreak. In this case, exemptions from the test are as important as inclusions. By exempting vaccinates and certified brucellosis-free herds, there is an incentive to vaccinate and maintain a certified free herd. This new rule will help New Jersey become a brucellosis-free state more rapidly.

Economic Impact

The fact that there is presently an outbreak of brucellosis in Salem County has an adverse economic impact on the entire New Jersey cattle industry. Any rules or regulations which encourage testing, vaccinating, and the prevention of the spread of disease, necessarily have to impact economically upon the bovine industry. While it will cost the individual farmer more to test under these rules, the cost is minimal when compared to that of the consequences of becoming infected with brucellosis and losing all or part of his herd. The economic impact to the State will be considerable if brucellosis is not eradicated. The cost to the laboratory for additional testing will be minimal when compared to indemnity fees in the event that an outbreak is not controlled.

Full text of the proposed new rule follows.

2:2-2.19 Brucellosis testing for intrastate movement

(a) All test eligible cattle moving between herds intrastate must be negative to an official test for brucellosis within 30 days prior to movement. Exempt from testing are:

- (1) Cattle originating from certified brucellosis-free herds;
- (2) Official calfhood vaccinates under 18 months of age; and
- (3) Steers and spayed heifers.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF COASTAL RESOURCES

Shore Protection Program

Proposed New Rule: N.J.A.C. 7:7F

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-9h; P.L. 1978, c. 157, Section 10.
DEP Docket No.: 032-82-07

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Allan Campbell, Chief
Bureau of Coastal Planning and Development
CN 401
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-324.

The agency proposal follows:

Summary

P.L. 1978, c. 157 authorizes the Department of Environmental Protection to adopt regulations implementing the Beaches and Harbors Bond Act of 1977 (P.L. 1977, c. 208). These proposed rules will implement that law by establishing procedures for expending the remainder of the fund established by the Beaches and Harbors Bond Act.

The proposed rules consist of four subchapters: general provisions, selection of projects to be funded, local government grants (procedures and requirements), and contract management.

1. General Provisions: The general provisions specify the purpose and scope of the chapter, and contain definitions.

2. Selection of Projects to be Funded: This subchapter is explanatory only. It explains the project selection procedures and criteria contained in the New Jersey Shore Protection Master Plan adopted by the Department in October 1981.

3. Local Government Grants (Procedures and Requirements): This subchapter sets out the procedures and conditions under which local governments apply for and receive State-aid grants.

4. Contract Management: This subchapter sets out procedures for the supervision of shore protection project contractors by the Division of Coastal Resources' Bureau of Coastal Engineering.

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Social Impact

Although these rules will implement the intended purpose of the Beaches and Harbors Bond Act and are simply procedural in nature, there will be a social impact for the State-at-large and on the beach-going residents of our State in that preservation of our coastal resources will be maintained.

Economic Impact

These rules are entirely procedural in nature, and impose no additional costs on local governments beyond those already associated with the application process for State-aid grants.

Full text of the proposed new rule follows.

SUBCHAPTER 1. GENERAL PROVISIONS

7:7F-1.1 Scope and construction

(a) This chapter shall constitute the rules governing the distribution of State funds for matching grants and State conducted shore protection projects pursuant to the Beaches and Harbors Bond Act of 1977, P.L. 1977, c. 208 and any appropriation bills passed thereafter. This chapter prescribes procedures for selection of projects to be funded, applications for local grants, and contract management.

(b) This chapter is to be applied in conjunction with the Department's Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E-1 which sets forth the substantive standards for all Department of Environmental Protection decision making in the coastal zone, including decisions on the funding, design and construction of shore protection projects, and with the New Jersey Shore Protection Master Plan, which sets forth the engineering techniques and priorities for the allocation of funds pursuant to this chapter.

7:7F-1.2 Purpose

- (a) This chapter is promulgated for the following purposes:
1. To implement the purposes and objectives of the Beaches and Harbor Bond Act of 1977, P.L. 1977, c. 208;
 2. To establish policies and procedures for selecting projects to be funded under the Act;
 3. To establish policies and procedures for distribution of matching State funds appropriated pursuant to the Act for the purposes of shore protection;
 4. To protect the public by insuring that funds appropriated are spent in a proper manner and for the intended purposes; and
 5. To insure that the distribution and use of funds are consistent with the laws of the State of New Jersey and the policies of the Department.

7:7F-1.3 Authority

This chapter is promulgated pursuant to the authority of P.L. 1978, c. 157, Section 10 and N.J.S.A. 13:1D-9.

7:7F-1.4 Definitions

The following words shall have the following meaning when used in this chapter, unless the context clearly indicates a different meaning or intent.

"Bond Act" means the Beaches and Harbors Bond Act of 1977, P.L. 1977, c. 208.

"Bureau" means the Bureau of Coastal Engineering in the Division of Coastal Resources.

"Chief" means Chief, Bureau of Coastal Engineering.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection, or designated representative.

"Construction contractor" means the person, firm, or corporation selected to carry out a shore protection project construction contract.

"Consulting engineer" means the person, firm, or corporation selected to carry out a shore protection project design contract.

"Department" means the New Jersey Department of Environmental Protection.

"Director" means the Director of the Division of Coastal Resources of the Department of Environmental Protection.

"Division" means the Division of Coastal Resources, New Jersey Department of Environmental Protection.

"Grant agreement" means a cost sharing agreement entered into by the Division of Coastal Resources and a local government grantee, for the construction of shore protection facilities.

"Local government grantee" means a municipality or county which has entered into a grant agreement for construction of a shore protection project.

"Project design" means the detailed plans and specifications prepared by a municipal engineer, consulting engineer or State engineer for a specific shore protection project.

"Reach plan" means a detailed shore protection engineering plan developed for a single shoreline segment affected by similar coastal processes. Such plans have been developed independent of these rules by consulting engineers under contract to the Department, and are contained in the State's Shore Protection Master Plan.

"Shore Protection Master Plan" means the comprehensive shore protection decision-making plan prepared pursuant to P.L. 1978, c. 157 and adopted by the Department in January, 1982.

"Shore protection project" means any combination of structural (bulkheading, jetties, seawall and other stone, metal, or timber work), non-structural (beach-filling, dune creation or restoration) shoreline construction.

7:7F-1.5 Severability

If any provision of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions or applications which can be given effect.

SUBCHAPTER 2. SELECTION OF PROJECTS TO BE FUNDED

7:7F-2.1 Introduction

This subchapter explains how the Department decides what proposed shore protection projects will or will not be undertaken. Because shore protection funds are limited, a process is necessary to determine what sections of the coast will be given priority and what are the most cost effective methods of protection. This decision making process has been developed in the form of the New Jersey Shore Protection Master Plan, which was adopted by the Department of Environmental Protection in October, 1981.

7:7F-2.2 The Shore Protection Master Plan

The New Jersey Shore Protection Master Plan was adopted in October, 1981 after two years of detailed study. It was prepared pursuant to a legislative directive "to prepare a comprehensive beach protection plan for a five year capital program for beach protection facilities, projects and programs" (P.L. 1978, c. 157, Section 5). The plan examines a wide variety of shore protection methods for 16 discrete sections of shoreline (called "reaches") and then sets forth a "preferred engineering plan" for each reach and a priority list.

7:7F-2.3 Reach Plans

(a) The "reach concept" or approach is a method whereby consistent shore protection engineering plans are developed within areas affected by similar coastal processes. The reach concept in the engineering design process endeavors to reduce the potential for any one shore erosion control program to produce adverse effects in adjacent shore areas (e.g., down-drift effects). Shore protection is thereby provided for an entire coastal compartment, irrespective of political subdivision boundaries, rather than for only local erosion problem areas, as has been the traditional practice in New Jersey.

(b) As discussed in the Master Plan, relationships between coastal

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processes in major coastal geomorphic zones do exist. However, the major geomorphic zones can be divided into smaller portions (reaches), which reflect a sufficient degree of similarity of processes to allow development of individual alternative plans for shore protection. The New Jersey shoreline has been divided into 16 reaches (13 ocean, two bay and one river reach) based on an evaluation of natural punctuations in operative coastal processes. The importance of the inlets in punctuating the coastal processes is reflected in the fact that most of the ocean reaches are defined by inlet positions. The 16 reaches are as follows:

1. Raritan Bay;
2. Sandy Hook to Long Branch;
3. Long Branch to Shark River Inlet;
4. Shark River Inlet to Manasquan Inlet;
5. Manasquan Inlet to Mantoloking;
6. Mantoloking to Barnegat Inlet;
7. Barnegat Inlet to Little Egg Inlet;
8. Little Egg Inlet to Absecon Island;
9. Absecon Inlet to Great Egg Harbor Inlet;
10. Great Egg Harbor Inlet to Corson Inlet;
11. Corson Inlet to Townsends Inlet;
12. Townsends Inlet to Hereford Inlet;
13. Hereford Inlet to Cape May Inlet;
14. Cape May Inlet to Cape May Point;
15. Delaware Bay-Cape May Point to Stow Creek; and
16. Delaware River-Stow Creek to Crosswicks Creek.

7:7F-2.4 Preferred engineering plans

For each reach, the Master Plan analyzes erosion rates, coastal features and dynamics, and socio-economic and environmental factors, and arrives at a preferred engineering plan. These plans are described in Volume I of the Master Plan, and should be referred to in conjunction with these rules.

7:7F-2.5 Priority list

After arriving at a preferred engineering plan for each reach, the Master Plan examined the relative ranking of each based on a cost/benefit analysis, total costs, and existing commitments to maintain completed Federally funded projects within the reach. This list, which is found in Volume I of the Master Plan, describes priorities for State expenditures of shore protection funds for oceanfront projects.

7:7F-2.6 Emergency projects

(a) The Division may, in its discretion, undertake emergency projects necessary for the protection of lives or property by reason of damage caused by flood or storms.

(b) Emergency bids shall be accepted and contracts awarded pursuant to procedures established by the Division.

(c) The State shall be responsible initially for 100 percent of the costs of the emergency project, provided that the affected local government grantee adopts a resolution authorizing reimbursement to the State for its share of the cost, as provided for in N.J.A.C. 7:7F-3.4.

SUBCHAPTER 3. LOCAL GOVERNMENT GRANTS

7:7F-3.1 Eligibility

Any local government applicant is eligible for a shore protection grant in any year where the proposed shore protection project ranks high enough on the oceanfront priority list to be funded (given the funds available), is in compliance with the Department's Rules on Coastal Resource and Development Policies (see N.J.A.C. 7:7F-3.8), and for which the local government and other local governments in the reach have irrevocably committed funds.

7:7F-3.2 Pre-application procedures

(a) The Division requires informal conferences with local governments interested in applying for shore protection matching

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grants, unless waived. Inquiries and questions should be directed to the Chief, Bureau of Coastal Engineering, Division of Coastal Resources, 1433 Hooper Avenue, Toms River, New Jersey 08753.

(b) During the conference the Division shall identify and explain all grant application requirements. The conference is for informational purposes only, and neither written nor verbal statements made during the conference shall be binding on the Department or on the local government.

7:7F-3.3 Application procedures

(a) An application may be in letter form, and shall include all technical documents and supplementary materials necessary for the Division's review. Submittals which do not substantially comply with this chapter shall not be processed further.

(b) Applications shall be signed by a person authorized by resolution or ordinance obligating the applicant to the terms and conditions of the requested grant.

(c) Applications shall be submitted well in advance of the desired grant award date. Generally, processing of a completed grant application by the Department requires 120 calendar days after receipt of the application.

(d) Applications for shore protection State-aid grants shall be sent to the Chief, Bureau of Coastal Engineering, Division of Coastal Resources, 1433 Hooper Avenue, Toms River, New Jersey 08753.

(e) The Division shall, prior to making any decision on whether to approve or deny a grant application, hold an informational public meeting in the municipality in which the proposed project site is located, and shall give notice of that meeting to appropriate local officials and to the general public by publication in the DEP Bulletin and a local newspaper of general circulation.

(f) The Division shall review the completed application for the shore protection project in terms of its standing on the applicable priority list as set forth in the Shore Protection Master Plan (see N.J.A.C. 7:7F-2.1) and shall notify the applicant that the application has been approved, denied, or approved with conditions. If the application is approved, the contractor selection process shall then begin as provided in N.J.A.C. 7:7E-4.

7:7F-3.4 Funding formula

(a) Shore Protection grants shall provide 75 percent of eligible project costs, with 25 percent to be provided by the grantee. Projects undertaken solely by the State shall be 100 percent State funded.

(b) In cases where emergency repairs resulting from storm damage are required and where the local government is unable to initially finance its share of the work, the State may fund 100 percent of the cost, with the understanding that the local government will reimburse the Division for its share of the cost.

7:7F-3.5 Eligible costs

(a) Funds from the Beaches and Harbors Bond Fund may be used for the following costs:

1. The cost of researching, planning, developing and designing the project, including the cost of consulting engineers contracted by the Department;

2. Construction; and
3. Administrative costs.

(b) Funds from the Beaches and Harbors Bond Fund may not be used for the following costs incurred by local governments:

1. Pre-application and application phase engineering;
2. Land acquisition, access, or easements;
3. In kind costs; and
4. Administrative costs.

7:7F-3.6 Grant agreement

(a) Upon execution of State-aid grant agreement between the State and a local government, the Division shall transmit the grant agreement (certified mail, return receipt requested) to the applicant for execution. The applicant shall execute it and return it within 30

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calendar days after receipt. The Division may, at its discretion, extend the time for execution. The grant agreement shall set forth the approved project scope, budget (including the local government and State shares), and total project costs. The grant agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

(b) The grant shall become effective and shall constitute an obligation of appropriated Beaches and Harbors Bond Act funds in the amount and for the purposes stated in the grant agreement, at the time of execution of the grant agreement by the Department and the applicant.

(c) Neither the approval of a project nor the award of any grant shall commit or obligate the Department to award any continuation grant or to enter into any grant agreement, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

(d) Where the total amount paid under a grant and grant amendments is less than the amount appropriated by the Division of Coastal Resources for the grantee's project, then such unused funds shall be retained by the State for reallocation pursuant to the Beaches and Harbors Bond Act. The local government matching share of the difference shall be returned to the respective local government.

(e) The grant agreement or any amendment thereto may include special condition or requirements necessary to assure accomplishment of the project or Department objectives. The grantee or contractor shall comply with any special conditions or requirements which the Department requires in the grant agreement or any amendment thereto; such requirements will include the Affirmative Action requirements of P.L. 1975, c. 127.

7:7F-3.7 Compliance with Coastal Resource and Development Policies

(a) Grants will be conditioned on compliance with the Department's Rules on Coastal Resource and Development Policies (N.J.A.C. 7:7E-1) in four policy areas:

1. Public access to the shorefront;
2. Beaches;
3. Dunes; and
4. Erosion hazard areas.

(b) Local governments must be able to demonstrate that adequate public access will be provided to the area affected by the Shore Protection Project. Factors to be evaluated will include, but are not limited to:

1. Physical access to anyone, at a reasonable, non-discriminatory cost (if a fee is charged) to the area affected by the Shore Protection Project;
2. Adequate parking or public transportation for non-residents; and
3. Public ownership or control of beach areas and access routes, to insure that the beach area protected by the Shore Protection project will be accessible to the public.

(c) N.J.A.C. 7:7E-3.21 prohibits most development on beaches, except for development in six limited categories. Local governments must be able to demonstrate that their zoning ordinances comply with this policy.

(d) N.J.A.C. 7:7E-3.22 prohibits development which destroys dunes or impairs their natural functioning. Local governments must be able to demonstrate that their zoning ordinances and the implementation of such ordinances for the area affected by the Shore Protection Project comply with this policy.

(e) N.J.A.C. 7:7E-3.24 prohibits development in coastal erosion hazard areas, except for linear development and shore protection activities. These areas are identified in the Shore Protection Master Plan, and local governments wanting to undertake a shore protection project in an erosion hazard area must be able to demonstrate that local ordinances comply with this policy.

7:7F-3.8 Federal reimbursement

Any funds reimbursed to the State by the Federal Government in connection with a shore protection project shall be passed on to a local government on a pro-rata basis to the extent that the local government participated in the funding of the project.

7:7F-3.9 Payment of local share

The local share of the cost of a shore protection project must be paid in full prior to the award of a contract by the State. This requirement may be waived for emergency projects, but the governing body of a local government grantee receiving a grant for an emergency project pursuant to N.J.A.C. 7:7F-2.6 must authorize, by resolution, the payment of its share of the project cost.

SUBCHAPTER 4. CONTRACT MANAGEMENT

7:7F-4.1 Contract to be managed by Division

The Division of Coastal Resources shall be responsible for managing all aspects of the performance of the contractor for a shore protection project, and for obtaining all necessary State and Federal approvals.

7:7F-4.2 Contract selection

Contractors shall be qualified, classified and selected pursuant to "Rules Governing Classification and Qualification of Bidders", issued by the Department of Treasury, at N.J.A.C. 17:19-1.

7:7F-4.3 Fraud and other unlawful or corrupt practices

The contractor or consulting engineer shall administer contracts and subcontracts free from bribery, graft, kickbacks, and other corrupt practices. The contractor or consulting engineer bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State shall also pursue administrative or other legally available remedies. The consulting engineer or contractor shall notify the Director immediately when such allegation or evidence comes to its attention, and shall periodically advise the Director of the status and ultimate disposition of any matter.

7:7F-4.4 Accessibility to records, premises, and facilities

The contractor and consulting engineers shall provide reasonable access for the Department personnel and any authorized representative of the Department to the facilities, premises and records related to the project. The contractor or consulting engineer shall submit to the Department such documents and information as requested by the Department.

7:7F-4.5 Publicity

Press releases shall be in writing and cleared first with the Department, and other public dissemination of information by the contractor concerning the project work shall acknowledge State financial support.

7:7F-4.6 Signs

A project identification sign, using a format provided by Division of Coastal Resources, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project and State financial support.

7:7F-4.7 Project changes and modifications

(a) A modification means any written alteration of the contract amount, terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) The consulting engineer or contractor shall promptly notify the Bureau in writing of events or proposed changes which may require a contract modification including but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;

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3. Changes which may affect the approved scope or objective of a project;
4. Significant changes in conditions at the project site;
5. A change in the time for performance of the project or any major phase thereof;
6. Changes which may increase or substantially decrease the total cost of a project; and
7. Changes in construction subcontracts.

7:7F-4.8 Public accountability

(a) Each responsible consulting engineer or construction contractor shall establish controls to safeguard the use of public funds and assure that such funds are not diverted to anyone's personal use.

(b) Each responsible consulting engineer or construction contractor shall act to assure that qualified individuals are employed to function on shore construction projects, in accordance with established personnel procedures and practices or otherwise mandated by law.

7:7F-4.9 Disclosure by persons providing services

Any professional firm providing services to the Department may be required to disclose in writing any business, financial or personal interests which might conflict in any way with the interests of the Department, with regard to the services being rendered.

7:7F-4.10 Construction responsibilities

The construction contractor is responsible for all construction of the project, including subletting of contracts in connection therewith, which shall conform to applicable requirements of Federal, State, and local laws, ordinances, rules and regulations and to contract specifications and requirements. All construction activity will be monitored by the inspectors of the Bureau.

7:7F-4.11 Contract payment

Reach plan, project design or construction contracts shall be paid in intervals as work progresses and expenses are incurred, but in no event shall payment exceed 90 percent of the eligible costs which have been incurred to that time. Each payment shall be signed and approved by the Commissioner or his authorized representative. Ten percent of earned construction or design contract costs is retained until satisfactory completion and inspection of the project by the Division.

7:7F-4.12 Assignment

The right to receive payment under a contract may not be assigned, nor may payments due under a contract be similarly encumbered.

7:7F-4.13 Executive Order No. 34 of 1976

The Department will enforce Executive Order No. 34, prescribing debarment of contractors involved in unlawful practices.

7:7F-4.14 Administrative contract changes

Administrative contract changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted shall constitute changes to the contract agreement which the Department may issue unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested).

7:7F-4.15 Enforcement measures regarding contractors

(a) In addition to other remedies as may be provided by law, in the event of noncompliance with any contract condition, requirement or specification, the Department may take any of the following actions or combinations of actions defined in this section.

(b) Where the Department determines that the engineer or contractor is in noncompliance with any condition or requirement or these rules or with any contract specification or requirement, it shall notify the contractor of the noncompliance. The Department

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may require the contractor to take and complete corrective action within 10 working days or receipt of notice. If the engineer, and/or contractor does not take corrective action, or if the action is not adequate, then the Department may issue a stop-work order or withhold payment.

(c) The Department may withhold a contract payment or any portion thereof, where it determines in writing that a contractor has failed to comply with any provision of this subchapter, or contract specification or requirement.

(d) The following shall control the use, issuance and effect of stop-work orders.

1. The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default or noncompliance with the terms and conditions of the contract. The Department shall limit use of a stop-work order to those situations where it is advisable to suspend work on the project or on a portion or phase of the project for important program or Department considerations. Prior to issuance, the Department shall afford the contractor an opportunity to discuss the stop-work order with the Department personnel. The Department shall consider such discussions in preparing the order.

2. The Department may, by written order, require the contractor to stop all, or any part of, the project work for a period of not more than 45 days after the contractor has received the order, and for any further period to which the parties may agree.

3. Upon receipt of a stop-work order, the contractor shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

- i. Rescind the stop-work order, in full or in part;
- ii. Terminate the work covered by such order; or
- iii. Authorize resumption of work.

4. If a stop-work order is cancelled or the period of the order or any extension thereof expires, the contractor shall promptly resume the previously suspended work. An equitable adjustment shall be made by the Department, where necessary, in terms of the project scope, dollar amount of the contract, or other appropriate measures.

(e) Contracts may be terminated in the following manner:

1. Termination by department:

i. The Department may terminate a contract for good cause, subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include but not be limited to

(1) Substantial failure to comply with the terms and conditions of the contract; or

(2) Default by the contractor.

ii. The Department shall give written notice to the contractor (certified mail, return receipt requested) of intent to terminate a contract in whole or in part at least 10 days prior to the intended date of termination.

iii. The Department shall afford the contractor an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested) terminate the contract in whole or in part.

2. Termination by mutual written agreement: The Department and contractor may enter into a written agreement to terminate the contract at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and contract, basis for settlement of contract termination costs, and the amount and date of payment of any sums due either party.

3. Effect of termination: Upon termination, the contractor shall refund or credit to the State of New Jersey that portion of contract funds paid to the contractor except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination and as may be otherwise allowable. The contractor shall make no new commitments without Department approval.

(f) Contracts may be annulled in the following manner:

1. The Department may, in writing, annul the contract if it determines that:

i. Without good cause, substantial performance of the project work has not occurred;

ii. The contract was obtained by fraud; or

iii. Gross abuse or corrupt practices in the administration of the project have occurred.

2. At least 10 days prior to the intended date of annulment, the Department shall give written notice to the contractor (certified mail, return receipt requested) of its intent to annul the contract. The Department shall afford the contractor an opportunity for consultation prior to annulment. The contractor shall return all contract funds previously paid to it and, the Department shall make no further payments to the contractor. In addition, the Department shall pursue such remedies as may be available under Federal, State and local law.

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineations
Flood Delineations Along the Robinsons
Branch No. 15 and Robinsons Branch No.
15-1

Proposed Amendment: N.J.A.C. 7:13-1.11

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et
seq.
DEP Docket No.: 028-82-07.

A public hearing concerning this rule will be held on September
3, 1982 at 10:00 A.M. at:

Westfield Municipal Building
425 E. Broad Street
Westfield, NJ

Interested persons may submit in writing, data, views or
arguments relevant to the proposal on or before September 15,
1982. These submissions, and any inquiries about submissions and
responses, should be addressed to:

Clark Gilman
Bureau of Flood Plain Management
Division of Water Resources
1911 Princeton Avenue
CN 029
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt
this proposal without further notice (see: N.J.A.C. 1:30-3.5). The
adoption becomes effective upon publication in the Register of a
notice of adoption.

This proposal is known as PRN 1982-317.

The agency proposal follows:

Summary

New information made available to and reviewed by the
Department of Environmental Protection necessitates the
amendment and revision of the existing flood delineation along the
Robinsons Branch No. 15 and the Robinsons Branch No. 15-1
within the Town of Westfield, Union County, New Jersey. This
proposed amendment would allow for the development and use of
land in the previously designated floodways along portions of the

Robinsons Branch No. 15 and Robinsons Branch No. 15-1, in the
Town of Westfield, Union County, New Jersey.

Social Impact

This proposed amended delineation applies flood protection to
the following areas within the Rahway River Basin: Town of
Westfield, Union County.

Economic Impact

This proposed amended flood delineation will have a relatively
positive economic impact by allowing development in a previously
designated floodway while still preserving the flood carrying
capacity. This proposed amended delineation would more
accurately define the flood hazard area to coincide with the
proposed development completion of the development project. The
public safety, health and general welfare shall continue to be
adequately protected if the amended flood delineation should be
adopted by the Department.

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

7:13-1.11 Delineated Floodways

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

(d) A list of delineated streams in the Passaic-Hackensack Basin
and a list of delineated streams in the Raritan Basin follow:

**The flood hazard area of the Robinsons Branch No. 15 from
Lamberts Mill Road to approximately 1200 feet upstream and
the flood hazard area of the Robinsons Branch No. 15-1 from
the mouth to approximately 375 feet upstream.**

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

OFFICE OF ADMINISTRATIVE LAW NOTE: A map
delineating the flood hazard area described in this notice was
submitted as part of the Department's notice of proposed rule. This
map can be inspected at:

Bureau of Flood Plain Management
Division of Water Resources
1911 Princeton Avenue
CN 029
Trenton, New Jersey 08625

or

Office of Administrative Law
Administrative Filings
88 East State Street
CN 301
Trenton, New Jersey 08625

(b)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineations
Flood Delineations Along the Great Brook

Proposed Amendment: N.J.A.C. 7:13-1.11

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et
seq.
DEP Docket No.: 029-82-07.

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A **public hearing** concerning this rule will be held on September 1, 1982 at 1:00 P.M. at:

Morristown Municipal Building
Council Chambers
110 South Street
Morristown, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clark Gilman
Bureau of Flood Plain Management
Division of Water Resources
1911 Princeton Avenue
CN 029
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-318.

The agency proposal follows:

Summary

Engineering data for a proposed development project, including associated channel and impoundment work, made available to and reviewed by the Department of Environmental Protection necessitates the amendment and revision of the existing flood delineation along the Great Brook within the Town of Morristown, Morris County, New Jersey. This proposed amendment would allow for the development and use of land plus the removal of certain land and structures in the previously designated floodways along a portion of the Great Brook in the Town of Morristown, Morris County, New Jersey.

Social Impact

This proposed amended delineation applies flood protection to the following areas within the Passaic River Basin: Town of Morristown, Morris County.

Economic Impact

This proposed amended flood delineation will have a relatively positive economic impact by allowing development in a previously designated floodway while still preserving the flood carrying capacity. This proposed amended delineation would more accurately define the flood hazard area to coincide with the proposed development after completion of the development project. In addition, the proposed channelization will require the removal of certain structures from the previously delineated floodway. The public safety, health and general welfare shall continue to be adequately protected if the amended flood delineation should be adopted by the Department.

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

7:13-1.11 Delineated Floodways

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

(d) A list of delineated streams in the Passaic-Hackensack Basin and a list of delineated streams in the Raritan Basin follow:

The flood hazard area of the Great Brook from Interstate Route I-287 upstream to James Street in the Town of Morristown, Morris County.

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

OFFICE OF ADMINISTRATIVE LAW NOTE: A map delineating the flood hazard area described in this notice was

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submitted as part of the Department's notice of proposed rule. This map can be inspected at:

Bureau of Flood Plain Management
Division of Water Resources
1911 Princeton Avenue
CN 029
Trenton, New Jersey 08625

or

Office of Administrative Law
Administrative Filings
88 East State Street
CN 301
Trenton, New Jersey 08625

(a)

DIVISION OF FISH, GAME AND WILDLIFE

**Fish and Game Council
1982-83 Game Code**

**Proposed Amendments: N.J.A.C. 7:25-5.13,
5.28 and 5.29**

Authorized By: Fish and Game Council, Anthony DiGiovanni, Acting Chairman.

Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq. DEP Docket No.: 027-82-07.

A **public hearing** concerning the proposed amendment will be held on September 14, 1982 at 7:15 P.M. at:

Division of Fish, Game and Wildlife
363 Pennington Avenue (2nd Floor)
Trenton, NJ 08625

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

George P. Howard, Chief
Bureau of Wildlife Management
CN 400
Trenton, NJ 08625

The Fish and Game Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-316.

The agency proposal follows:

Summary

The proposed amendments to the 1982-83 Game Code include: An adjustment in the duration of the woodcock season if necessitated by proposed changes in Federal migratory bird regulations, and quota adjustments for the muzzle loader and regular firearm, special permit deer seasons in Zone 41, exclusively.

Social Impact

According to the Division, this amended rule has no social impact because the scope of the proposal primarily encompasses only adjustments to the existing Code relating to the duration of the woodcock season and to the either-sex deer permit quotas for one zone.

Economic Impact

According to the Division, this amended rule has no economic impact because the scope of the proposal primarily encompasses only adjustments to the existing Code relating to the duration of the woodcock season and to the either-sex deer permit quotas for one zone.

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

7:25-5.13 Migratory birds
 (a)-(1) (No change.)
 (m) Seasons and bag limits:
 1.-2. (No change.)
 3. Woodcock:
 i. North Zone: The duration of the season for hunting woodcock (*Philohela minor*) in that portion of the State situated north of Route 70 from Point Pleasant west to Camden shall be October [2]5 through November [25] 27, 1982.

7:25-5.28 White-tailed deer (*Odocoileus virginianus*) special permit season, muzzle loader rifle only, either-sex
 (a)-(i) (No change.)
 (j) Deer Management Zone Map:

1982 MUZZLE LOADER EITHER-SEX SEASONS PERMIT QUOTAS

Deer Mgt. Zone No.	Anticipated Either-Sex Day Harvest	Permit Quota Either-Sex	Portions of Counties Involved
41	[36]55	[137] 210	Mercer, Hunterdon
Total	[1,339] 1,358	[8,337] 8,410	

(k)-(m) (No change.)

7:25-5.29 White-tailed deer (*Odocoileus virginianus*) special permit season, regular firearms only, either-sex
 (a)-(j) (No change.)
 (k) Deer Management Zone Map:

1982 EITHER-SEX REGULAR FIREARM PERMIT QUOTAS

Deer Mgt. Zone No.	Anticipated Either-Sex Day Harvest	Permit Quota Either-Sex	Portions of Counties Involved
41	[144] 222	[588] 910	Mercer, Hunterdon
Total	[5,346] 5,424	[23,842] 24,164	

(l)-(m) (No change.)

(a)

FISH AND GAME COUNCIL

1983-1984 Fish Code

Proposed Amendment: N.J.A.C. 7:25-6

Authorized By: Fish and Game Council, Anthony DiGiovanni, Acting Chairman.

Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq.
 DEP Docket No.: 026-82-06

A **public hearing** concerning this rule will be held on September 14, 1982 at 7:30 P.M. at:

Division of Fish, Game and Wildlife Office
 363 Pennington Avenue
 Trenton, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 14, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

A. Bruce Pyle, Chief
 Bureau of Freshwater Fisheries
 CN 400
 Trenton, NJ 08625

The Fish and Game Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-285.

The agency proposal follows:

Summary

The proposed fish code states when, under what circumstances, in what locations, by what means and in what amounts fish may be taken, killed or had in possession.

Substantive changes incorporated in the proposed code as compared to the previous code are as follows:

1. The traditional opening of trout season will be at 8:00 A.M. on Saturday, April 9, 1983.
2. Square Circle Lake (Camden County) and the Kikeout Intake Reservoir (Morris County) will be deleted from the trout stocked waters list.
3. A Natural Trout Fishing Area will be established on the Big Flatbrook from a defined location in the Polegate Area downstream to Three Bridges, a distance of approximately 1.5 miles. Regulations that will be imposed on this area will be: (a) A 12 inch minimum size limit on trout; (b) A one trout daily bag limit; and (c) A gear restriction limiting the area to the use of artificial lures.
4. A "Trophy Trout" management program will be instituted at Round Valley Reservoir. Regulations that will be imposed at the reservoir will be: (a) A 13 inch size limit on brown trout and rainbow trout; (b) A daily creel limit of two brown trout and rainbow trout in aggregate; and (c) No closed season on brown trout and rainbow trout.
5. The minimum legal length on lake trout will be reduced from 26 inches to 24 inches.
6. An anti-multilution law which would prohibit the cutting up of fish so that the fish would be unidentifiable as to original size or species will be established at Round Valley Reservoir.
7. A section on "Nets" will be included in the code. This became necessary with the passage of "The Marine Fisheries Management and Commercial Fisheries Act" which repealed the laws pertaining to the use of nets in the tidal freshwaters of the State (except the Delaware River) and effectively made the use of nets in these waters illegal.
8. A 15 inch size limit will be established on walleyes taken from waters, other than the Delaware River.

Social Impact

According to the Division, this amended rule has no social impact because the scope of the proposed primarily encompasses adjustments to the existing Code relating to dates of the various fishing seasons, size and bag limits governing the taking of fish and the manner and means for taking fish.

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Economic Impact

According to the Division, this amended rule has no economic impact because the scope of the proposal primarily encompasses adjustments to the existing Code relating to dates of the various fishing seasons, size and bag limits governing the taking of fish and the manner and means for taking fish.

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

SUBCHAPTER 6. 1983-84 FISH CODE

7:25-6.1 General provisions

(a) Authority. This Code is adopted pursuant to the provisions of N.J.S.A. 13:1B-29 et seq. and the provisions of N.J.S.A. 23:1-1 et seq.

(b) Judicial notice. N.J.S.A. 13:1B-34 provides in pertinent part, "(C)opies of the State Fish & Game Code, and its amendments, duly certified by the chairman of the council, shall be received in evidence in all court or other judicial proceedings in the State".

(c) Time: The hours listed in this Code are EST or EDT at date.

(d) This Code, when adopted and when effective, shall supersede the provisions of the [1981-82] **1982-83** Fish Code. Publication of this Code in the New Jersey Administrative Code was suspended inasmuch as this Code is a temporary rule (one year unless continued). Subchapter 6 of chapter 25 of Title 7 of the Administrative Code is reserved for the Fish Code.

7:25-6.2 Trout season and angling in trout-stocked waters

Authority: N.J.S.A. 23:51

(a) The trout season for [1982] **1983** shall commence 12:01 A.M. January 1, [1982] **1983** and extend to midnight March [21, 1982] **20, 1983**. The trout season shall re-open at 8:00 A.M. Saturday, April [10, 1982] **9, 1983** and extend to include March [20, 1983] **18, 1984**. Between [the 21st of March] **March 20** and 8:00 A.M. on April [10, 1982] **9, 1983** it shall be unlawful to angle with fly, bait or lure, hook and line, or with bow and arrow in ponds, lakes or those portions of streams that are listed herein for stocking during [1982] **1983**. (See separate regulations for Greenwood Lake, and for the Delaware River between New Jersey and Pennsylvania.)

(b) Waters with listed stocking dates shall be closed to all fishing from 5:00 A.M. to 5:00 P.M. on listed dates; included in these waters are all feeder and tributary streams for a distance of 100 feet from the main channel.

(c) Trout stocked waters for which in-season closures will be in force; waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated.

1. Big Flat Brook - 100 feet above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River - April [16] **15, [23] 22, [30] 29; May [7] 6, [14] 13, [21] 20, [28] 27.**

2. Black River - Route 206, Chester to Dam at lower end of Hacklebarney State Park - April [15] **14, [22] 21, [29] 28; May [6] 5, [13] 12, [20] 19. [27] 26.**

3. Manasquan River - Route 9 bridge downstream to the Allenwood Bridge - April [12] **11, [19] 18, [26] 25; May [3] 2, [10] 9, [17] 16, [24] 23.**

4. Metedeconk River, N. Br. - Aldrich Road Bridge to Ridge Avenue - April [12] **11, [19] 18, [26] 25; May [3] 2, [10] 9, [17] 16, [24] 23.**

5. Metedeconk River, S. Br. - Bennets Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood - April [12] **11, [19] 18, [26] 25; May [3] 2, [10] 9, [17] 16, [24] 23.**

6. Musconetcong River - Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong - April [16] **15, [23] 22, [30] 29; May [7] 6, [14] 13, [21] 20, [28] 27.**

7. Paulinskill River - Limecrest Railroad Spur Bridge, Sparta Township, to Delaware River - April [15] **14, [22] 21, [29] 28; May [6] 5, [13] 12, [20] 19, [27] 26.**

8. Pequest River - Source to Delaware River - April [16] **15, [23] 22, [30] 29; May [7] 6, [14] 13, [21] 20, [28] 27.**

9. Pohatcong Creek - Route 31 to Delaware River - April [13] **12, [20] 19, [27] 26; May [4] 3, [11] 10, [18] 17, [25] 24.**

10. Ramapo River - State line to Pompton Lake - April [15] **14, [22] 21, [29] 28; May [6] 5, [13] 12, [20] 19.**

11. Raritan River, N. Br. - Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River - April [14] **13, [21] 20, [28] 27; May [5] 4, [12] 11, [19] 18, [26] 25.**

12. Raritan River, S. Br. - Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River - April [13] **12, [20] 19, [27] 26; May [4] 3, [11] 10, [18] 17, [25] 24.**

13. Rockaway River - Holland Mt. Road Bridge, Milton to Jersey City Reservoir in Boonton - April [12] **11, [19] 18, [26] 25; May [3] 2, [10] 9, [17] 16, [24] 23.**

14. Tom's River, N. Br. - Ocean County Road **Route 528** Holmansville to [Bowman's Bridge Road] **Ocean County Route 571** - April [12] **11, [19] 18, [26] 25; May [3] 2, [10] 9, [17] 16, [24] 23.**

15. Wallkill River - W. Mt. Road to Route 23, Hamburg - April [12] **11, [19] 18, [26] 25; May [3] 2, [10] 9, [17] 16, [24] 23.**

16. Wanaque River - Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez - April [16] **15, [23] 22, [30] 29; May [7] 6, [14] 13, [21] 20, [28] 27.**

Note: The Division reserves the right not to stock on the above dates when emergency situations prevail.

(d) No person shall catch, take, kill or possess trout during the closed period (5:00 A.M. to 5:00 P.M.) on any of the waters listed for in-season closures N.J.S.A. 23:5-1.

(e) Trout stocked waters for which no in-season closures will be in force. The figure in parenthesis indicates the anticipated number of stockings to be carried out from April [12] **11** through May [28] **27.**

Note: The Division reserves the right to suspend stocking when emergency conditions prevail.

1. Atlantic County:

i. Birch Park Pond - Northfield - (3);

ii. Hammonton Lake - Hammonton - (3).

2. Bergen County:

i. Hackensack River - Lake Tappan to Harriot Avenue, Harrington Park - (4);

ii. Hohokus Brook - [Brookside] **Allendale** Avenue to Whites Pond - (1);

iii. Indian Lake - Little Ferry - (4);

iv. Pascack Creek - Orchard Street, Hillsdale, to Lake Street, Westwood - (4);

v. Saddle River - State Line to Grove Street, Ridgewood - (6);

vi. Tienekill Creek - Closter, entire length - (1);

vii. Whites Pond - Waldwick - (2);

3. Burlington County:

i. Crystal Lake - Willingboro - (3);

ii. Sylvan Lake - Burlington - (2);

iii. Woolman's Lake - Mount Holly - (2);

4. Camden County:

i. Big Lebanon Run - Neely's Pond dam to Grenloch Lake - (2);

ii. Grenloch Lake - Turnersville - (2);

iii. Hopkins Pond - Haddonfield - (3);

iv. Square Circle Lake - Gibbsboro - (2).

5. Cape May County:

i. Dennisville Lake - Dennisville - (2).

6. Cumberland County:

i. Cohansey River - Dam at Seecley's Pond to Powe above Sunset Lake, Bridgeton - (3);

ii. Giampietro Park Lake - Vineland - (3);

iii. Mary Elmer Lake - Bridgeton - (3);

- iv. Maurice River - Willow Grove Lake Dam to Sherman Avenue, Vineland - (3);
- v. Shaw's Mill Pond - Newport - (3);
- 7. Essex County:
 - i. Branch Brook Park Lake - Newark - (4);
 - ii. Verona Park Lake - Verona - (4);
- 8. Gloucester County:
 - i. Greenwich Lake - Gibbstown - (4);
 - ii. Harrisonville Lake - Harrisonville - (3);
 - iii. Iona Lake - Iona - (3);
 - iv. Mullica Hill Pond - Mullica Hill - (2);
 - v. Raccoon Creek - Ewan Lake dam to Harrisonville Gibbstown Road Bridge - (2);
 - vi. Swedesboro Lake - Swedesboro - (3);
- 9. Hudson County:
 - i. James J. Braddock Park Lake - North Bergen - (4);
- 10. Hunterdon County:
 - i. Alexandria Brook - Milford, entire length - (2);
 - ii. Alexauken Creek - Mt. Airy, entire length - (2);
 - iii. Amwell Lake - Linvale - (4);
 - iv. Back Brook - Ringoes - (1);
 - v. Beaver Brook - Annandale, entire length - (2);
 - vi. Capoolong Creek - Pittstown, entire length - (6);
 - vii. Delaware - Raritan Feeder Canal - Raven Rock to Hunterdon County Line - (6);
 - viii. Everittstown Brook - Everittstown, entire length - (2);
 - ix. Frenchtown Brook - Frenchtown, entire length - (1);
 - x. Hakihoake Creek - Milford, entire length - (2);
 - xi. Little York Brook - Little York, entire length - (2);
 - xiii. Lockatong Creek - Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal - (3);
 - xiii. Milford Brook - Milford, entire length - (1);
 - xiv. Mt. Pleasant Brook - Mt. Pleasant, entire length - (0);
 - xv. Mulhockaway Creek - Pattenburg, source to Norton Road Bridge - (2);
 - xvi. Neshanic River - Kuhl Road to Hunterdon County Route 514 - (1);
 - xvii. Prescott Brook - Clinton Township, entire length - (1);
 - xviii. Rockaway Creek, N/B - Tewksbury and Readington Township, entire length - (4);
 - xix. Rockaway Creek, S/B - Lebanon to Whitehouse, entire length - (3);
 - xx. Round Valley Reservoir - Lebanon - (1);
 - xxi. Spring Mills Brook - Spring Mills, entire length - (0);
 - xxii. Spruce Run - Glen Gardner and Lebanon Township entire length - (3);
 - xxiii. Spruce Run Reservoir - Clinton - (5);
 - xxiv. Sydney Brook - Sydney, entire length - (0);
 - xxv. Tetertown Brook - Tetertown, entire length - (0);
 - xxvi. Wickecheoke Creek - Covered Bridge, Sergeants to Delaware River - (1);
- 11. Mercer County:
 - i. Assunpink Creek - Rt. 130 Bridge to Carnegie Hamilton Township - (4);
 - ii. Delaware-Raritan Canal - U.S. 1 to Alexander Street, Princeton - (4);
 - iii. Delaware - Raritan Feeder Canal - Hunterdon County Line to Upper Ferry Road Bridge - (6);
 - iv. Rosedale Lake - Rosedale - (4);
 - v. Stony Brook - Woodsville to Port Mercer - (4);
- 12. Middlesex County:
 - i. Farrington Lake - North Brunswick - (4);
 - ii. Ireland Brook - Farrington Lake to point 500 upstream of Riva Avenue - (0);
 - iii. Lawrence Brook - Dam at Farrington Lake to 2nd RR Bridge (Raritan Railroad) below Main St. Milltown - (5);
 - iv. Roosevelt Park Pond - Edison Township - (4);
- 13. Monmouth County:
 - i. Big Brook - Clover Hill, Route 34 to Swimming River Reservoir - (2);
 - ii. Englishtown Mill Pond - Englishtown - (2);
 - iii. Garvey's Pond - Navesink - (2);
 - iv. Hockhocks Brook - Hockhocks Road to spillway at Tinton Falls - (3);
 - v. Holmdel Park Pond - Holmdel - (2);
 - vi. Mingamahone Brook - Farmingdale, Hurley Pond Road to Manasquan River - (1);
 - vii. Mohawk Pond - Red Bank - (1);
 - viii. Pine Brook - Tinton Falls, Jersey Central Railroad to Hockhocks Brook - (1);
 - ix. Ramanessan (Hop) Brook - Holmdel, Route 520 to Swimming River Reservoir - (2);
 - x. Shadow Lake - Middletown Township - (2);
 - xi. Shark River - Hamilton, Route 33 to Remsen Mill Road - (3);
 - xii. Spring Lake - Spring Lake - (2);
 - xiii. Takanassee Lake - Long Branch - (2);
 - xiv. Topenemus Lake - Freehold - (2);
 - xv. Willow Brook - Holmdel, Route 520 to Swimming River Reservoir - (2);
 - xvi. Yellow Brook - Colts Neck, Route 34 to Swimming River Reservoir - (3);
- 14. Morris County:
 - i. A.B.C. Pond - Succasunna - (2);
 - ii. Beaver Brook - Rockaway, entire length - (2);
 - iii. Budd Lake - Budd Lake, Mt. Olive - (2);
 - iv. Burnett Brook - Ralston, entire length - (2);
 - v. Burnham Park Pond - Morristown - (1);
 - vi. Den Brook - Union Hill, entire length - (1);
 - vii. Drakes Brook - Flanders, entire length - (1);
 - viii. Flanders Brook - Mt. Olive, entire length - (3);
 - ix. Hibernia Brook - Hibernia, entire length - (4);
 - x. India Brook - Mt. Freedom to Rt. 24, Ralston, entire length - (2);
 - xi. India Brook Impoundment - Colemans Hollow - (2);
 - xii. [Kikeout Intake Reservoir - Kinnelon - (2)] Lake Hopatcong - Lake Hopatcong - (2);
 - xiii. Lake Musconetcong - Netcong - (2);
 - xiv. Ledgewood Brook - Ledgewood - (2);
 - xv. Mill Brook - Center Grove, entire length - (4);
 - xvi. Mt. Hope Pond - Mt. Hope - (2);
 - xvii. Passaic River - White Bridge to Dead River - (6);
 - xviii. Pompton River - Pequannock Township (see Passaic Co.) - (6);
 - xix. Reservoir Brook - Brookside, entire length - (1);
 - xx. Rhinehart's Brook - Hacklebarney State Park, entire length - (2);
 - xxi. Speedwell Lake - Morristown - (2);
 - xxii. Stickle Brook - Boonton Township, entire length - (3);
 - xxiii. Trout Brook - Hacklebarney State Park, entire length - (2);
 - xxiv. Washington Valley Brook - Morristown, entire length - (3);
- 15. Ocean County:
 - i. Prospertown Lake - Prospertown - (3);
- 16. Passaic County:
 - i. Barbour's Pond - West Paterson - (2);
 - ii. Belcher's Creek - West Milford, entire length - (0);
 - iii. Cooley's Brook - West Milford, entire length - (0);
 - iv. Greenwood Lake - West Milford - [(1)] (3);
 - v. Oldham Pond - North Haledon - (2);
 - vi. Pequannock River - Route 23, Smoke Rise to North Main Street, Butler - (3)
 - vii. Pompton Lake - Pompton Lakes - (2);
 - viii. Pompton River - Pompton Lake to Newark - Paterson Turnpike - (6);
 - ix. Ringwood Brook - State line to Sally's Pond, Ringwood Park - (4);
 - x. Sheppard's Lake - Thunder Mountain, Ringwood Borough - (3);
- 17. Salem County:

PROPOSALS

ENVIRONMENTAL PROTECTION

- i. Schadler's Sand Wash Pond - Pennsgrove - (3);
 ii. Harrisonville Lake - Harrisonville - (3);
 ii. Maurice River - Willow Grove Lake Dam to Sherman Avenue, Vineland - (3);
 18. Somerset County:
 i. Harrison Brook - Liberty Corner, entire length - (3);
 ii. Lamington River - [Dam at Burnt Mills] **Rt. 523 (Lamington Road) at Burnt Mills** to Jct. with North Branch of Raritan River - (6);
 iii. Passaic River - White Bridge to Dead River - (6);
 iv. Peapack Brook - Peapack, entire length - (5);
 v. Raritan River - Jct. of Raritan River N/Br an S/Br to dam at Edgewater Road - (4);
 vi. Rock Brook - Zion, entire length - (2);
 vii. Middle Brook; E/Br. - Martinsville, entire length - (2).
 19. Sussex County:
 i. Alm's House Brook - Myrtle Grove, Hampton Township, entire length - (2);
 ii. Andover Junction Brook - Andover, entire length - (3);
 iii. Beaver Run Brook - Beaver Run, entire length - (1);
 iv. Bier's Kill - Shaytown, entire length - (2);
 v. Big Flat Brook, Upper - Saw Mill Lake, High Point State Park to 100 ft. above Steam Mill Bridge on Crigger Road - (1);
 vi. Clove River - Junction of Route 23 and Mt. Salem Road to Route 565 bridge - (3);
 vii. Cranberry Lake - Byram Township - (2);
 viii. Culver's Lake Brook - Frankford Township, entire length - (2);
 ix. Dragon Brook - Cranberry Lake, Byram Township entire length - (3);
 x. Dry Brook - Branchville, entire length - (0);
 xi. Franklin Pond Creek - Hamburg Mt. W.M.A., entire length - (2);
 xii. Glenwood Brook - Lake Glenwood to Stateline - (1);
 xiii. Hardystonville Brook - Hardystonville, entire length - (1);
 xiv. Hunt's Lake Brook - Yellow Frame, entire length - (2);
 xv. Iliff Lake - Andover Township - (3);
 xvi. Kymer's Brook - Andover, entire length - (2);
 xvii. Lake Musconetcong - Netcong - (2);
 xviii. Lake Hopatcong - Lake Hopatcong - (2);
 xix. Lake Ocquittunk - Stokes State Forest - (6);
 xx. Little Flat Brook - Sandyston Township, entire length - (3);
 xxi. Little Swartswood Lake - Swartswood - (2);
 xxii. Lubbers Run - Byram Township, entire length - (3);
 xxiii. Mill Brook - Montague Township, entire length - (2);
 xxiv. Neldon Brook - Swartswood, entire length - (2);
 xxv. North Church Brook - Monroe, entire length - (1);
 xxvi. Papakating Creek - Plains Road bridge to Route 565 Lewisburg - (2);
 xxvii. Papakating Creek, W. Br. - Libertyville, entire length - (2);
 xxviii. Parker Brook - Stokes State Forest, entire length - (1);
 xxix. Pond Brook - Middleville, entire length - (2);
 xxx. Roy Spring Brook - Stillwater, entire length - (2);
 xxxi. Saw Mill Lake - High Point State Park - (6);
 xxxii. Shimers Brook - Montague Township, entire length - (1);
 xxxiii. Sparta Junction Brook - Sparta Junction, entire length - (3);
 xxxiv. Stony Brook - Stokes State Forest, entire length - (2);
 xxxv. Stony Lake - Stokes State Forest - (1);
 xxxvi. Swartswood Lake - Swartswood - (2);
 xxxvii. Tar Hill Brook - Lake Lenape, entire length - (1);
 xxxviii. Trout Brook - Middleville, entire length - (2);
 xxxix. Tuttle's Corner Brook - Tuttle's Corner, entire length - (2);
 xl. Wawayanda Lake - Highland Lakes - [14] (3);
 xli. Yellow Frame Brook - Yellow Frame, entire length - (1);
 20. Union County:
 i. Green Brook - Route 527 to Route 22 - (2);
 ii. Lower Echo Park Pond - Mountainside - (2);
 iii. Milton Lake - Madison Hill Road Bridge to Milton Lake Dam, Rahway - (2);
 iv. Rahway River - Morris Ave. (Route 24) to St. George Ave. (Route 27), Rahway - (4);
 v. Seeleys Pond - Watchung Reservation - (2).
 21. Warren County:
 i. Barker's Mill Brook - Vienna, entire length - (2);
 ii. Bear Creek - Southtown, entire length - (2);
 iii. Beaver Brook - Silver Lake Dam to Pequest River - (2);
 iv. Blair Creek - Hardwick Center to Blair Lake - (2);
 v. Blair Lake - Blairstown - (2);
 vi. Buckhorn Creek - Roxburg, entire length - (2);
 vii. Dark Moon Brook - Johnsonburg, entire length - (1);
 viii. Delawanna Brook - Delaware Lake to Delaware River - (1);
 ix. Dunnfield Creek - Delaware Water Gap National Recreation Area, entire length - (3);
 x. Furnace Brook - Oxford, entire length - (2);
 xi. Honey Run - Swayze's Mill Road to Route 519, Hope Township - (2);
 xii. Jacksonburg Creek - Jacksonburg, entire length - (3);
 xiii. Johnsonburg Creek - Johnsonburg, entire length - (1);
 xiv. Lopatcong Creek - Route 519 to South Main Street Phillipsburg - (3);
 xv. Merrill Creek - Stewartsville, entire length - (2);
 xvi. Mountain Lake - Buttzville - (5);
 xvii. Muddy Run - Hope Township, entire length - (2);
 xviii. Oxford Furnace Lake - Oxford - (4);
 xix. Pohatcong Creek - Mt. Bethel to Route 31 - (2);
 xx. Pophandusing Creek - Oxford Road, Hazen to Delaware River - (2);
 xxi. Roaring Rock Brook - Brass Castle, entire length - (2);
 xxii. Silver Lake - Hope - (5);
 xxiii. Trout Brook - Hackettstown, entire length - (3);
 xxiv. Trout Brook - Hope, entire length - (2);
 xxv. Yards Creek - Mount Vernon to Paulinskill River - (2).
 (f) There will be no minimum size on brook trout, brown trout, rainbow trout or hybrids thereof except as designated for Special Regulation Trout Fishing Areas. Authority: N.J.S.A. 23:5-7.
 (g) No person shall take, kill, or have in possession one day more than six in the aggregate of brook trout, brown trout, rainbow trout or hybrids thereof during the period extending from 8:00 A.M. April [10, 1982] **9, 1983** until midnight May 31, [1982] **1983**, or more than four of these species during the periods of January 1, [1982] **1983** to midnight March [21, 1982] **20, 1983** and June 1, [1982] **1983** through midnight March [20, 1983] **18, 1984** except as designated for Special Regulation Trout Fishing Areas and Round Valley Reservoir. Authority: N.J.S.A. 23:5-10.
 (h) Landlocked Atlantic salmon (*Salmo salar*), if caught may be retained during the open season for trout prescribed herein. Authority: N.J.S.A. 23:5-1.
 (i) Lake trout (*Salvelinus namaycush*) if caught, may be retained during the period from 8:00 A.M., April [10, 1982] **9, 1983** to midnight September 30, [1982] **1983** and from 12:01 A.M. January 1, [1982] **1984** to midnight March [20, 1983] **18, 1984**. Authority: N.J.S.A. 23:5-1.
 7:25-6.3 Fly-fishing waters
 Authority: N.J.S.A. 13:1B-31, 23:5-10, 23:5-11, 23:5-1
 (a) From and after 5:00 A.M. on Monday April [19, 1982] **18, 1983** to and including November 30, [1982] **1983** the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:
 1. Big Flat Brook, Sussex County - from the concrete bridge on Route 206 downstream to the [Roy Bridge on Mountain Road, a distance of approximately four miles, except that portion known as the Blewett Tract, regulated below (see (b)1 below)] **Polegate, the upstream terminus of the Flat Brook Natural Trout Fishing Area clearly defined by markers.**
 2. South Branch of the Raritan River, Hunterdon County - the stretch of water known as the "Ken Lockwood Gorge", a distance of approximately 2 1/2 miles.

(b) Beginning January 1, 1982 to midnight March 21, 1982 and from 8:00 A.M. on April 10, 1982 to midnight, March 20, 1983, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1. Big Flat Brook, Sussex County - that portion known as the Blewett Tract, which extends from the Bridges Road to a point immediately upstream the junction of the Big Flatbrook and the Lit Flatbrook, a distance of approximately 0.5 miles this stretch being clearly defined by markers.]

[(c)] (b) The following stretch is open to fly fishing only year-round, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking.

1. Musconetcong River, Morris and Warren Counties the stretch starting at the bridge on Schooley Mountain Road, extending downstream one mile to entrance of the river into the Johnson property this stretch being clearly defined by markers. This stretch is designated as a "no kill" area and all trout caught must be returned to the water unharmed.

[(d)] (c) The following regulations shall apply to the above designated fly-fishing waters:

1. Fishing in fly-fishing waters is permitted 24 hours daily except on those days during April and May when they are closed for stocking (see separate regulation for Natural Trout Fishing Areas). Authority: N.J.S.A. 23:5-11; 23:5-17.

2. Not more than six trout may be killed daily during the April [10] **9 through May 31 portion of the season; at other times the limit is four.**

i. Any number of trout may be caught provided such trout are immediately returned to the water unharmed, except the Musconetcong fly-fishing stretch is designated a "no kill" area and all trout caught in this stretch must be immediately returned to the water unharmed. Authority: N.J.S.A. 23:5-10.

3. No bait or lures of any kind may be used except artificial flies which are expressly limited to dry flies, wet flies, bucktails, nymphs and streamers. Expressly prohibited are metal, plastic or wooden lures, plugs, spinners and flies with spinners attached, or any multiple-hooked device. In the Musconetcong "no kill" area, only single pointed barbless hooks may be used. Authority: N.J.S.A. 23:5-11, 23:5-15.1.

4. Also expressly prohibited are spinning reels or any type of angling whereby the fly is cast directly from the reel. Authority: N.J.S.A. 23:5-11.

5. No person may have in possession while engaged in angling on the waters designated as fly waters, any natural bait, live or preserved, in that period of time during which fly-fishing only is in effect. Authority: N.J.S.A. 23:5-11; 23:5-15.1.

7:25-6.4 Natural trout fishing areas

Authority: N.J.S.A. 23:5-10, 23:5-11, 23:5-17, 13:1B-31

(a) The following unstocked stretches of waters are hereby designated as Natural Trout Fishing Areas:

1. Mulhockaway Creek, Hunterdon County - the stretch of water extending from the Norton Road Bridge downstream to Spruce Run Reservoir, a distance of approximately 0.3 miles, and the State owned portions of tributaries thereto.

2. Van Campens Brook, Warren County - the stretch of water extending from the powerline at the Watergate recreation area downstream to the Delaware River, a distance of approximately 3.3 miles.

3. **Big Flat Brook, Sussex County - The stretch of water, clearly defined by markers, extending the Polegate Area downstream to Three Bridges a distance of approximately 1.5 miles.**

(b) The following regulations apply to the above designated Natural Trout Fishing Areas:

1. Mulhockaway Creek [is] and **Big Flat Brook** are closed to fishing from midnight March [21, 1982] **20, 1983** to 8:00 A.M. April [10, 1982] **9, 1983** and in the case of the **Big Flat Brook**

from 5:00 A.M. to 5:00 P.M. on those days listed for stocking. Van Campens Brook is open to fishing year-round. N.J.S.A. 23:5-1.

2. No bait or lures of any kind may be used except artificial lures and flies. Authority: N.J.S.A. 23:5-11; 23:5-15.1.

3. No person may have in possession while engaged in angling on the waters designated as Natural Trout Fishing Areas any natural bait, live or preserved. Authority: N.J.S.A. 23:5-11, 23:5-15.1.

4. No person shall kill or have in possession while fishing any trout less than 12 inches in total length on the Mulhockaway Creek [Natural Trout Fishing Area] and **Big Flat Brook Natural Trout Fishing Areas** and less than 10 inches in total length on the Van Campens Brook Natural Trout Fishing Area. Authority: N.J.S.A. 23:5-7.

5. No person shall have in possession while engaged in angling on the waters designated as Natural Trout Fishing Areas, any more than one dead, creeled or otherwise appropriated trout, except that additional fish may be caught providing they are returned to the water immediately and unharmed. Authority: N.J.S.A. 23:5-10, 23:5-7.

7:25-6.5 Round Valley Reservoir

(a) The minimum size of smallmouth bass (*Micropterus dolomieu*) shall be 13 inches. There shall be no size limit on largemouth bass (*Micropterus salmoides*). Daily bag and possession limit for largemouth bass and smallmouth bass shall be five in aggregate. Authority: N.J.S.A. 23:5-7, 23:5-10.

(b) **The minimum size of brown trout and rainbow trout shall be 13 inches. Daily bag and possession limit for brown trout and rainbow trout shall be two in aggregate. Authority: N.J.S.A. 23:5-7, 23:5-10.**

(c) There shall be no closed season for brown trout and rainbow trout. Authority: N.J.S.A. 23:5-1.

[(b)] (d) During the [periods 8:00 A.M. April 10, 1982 to midnight September 30, 1982 and from] **period from 12:01 A.M. January 1, 1983 to midnight [March 20, 1983] September 30, 1983**, one lake trout of legal size may be retained. [as part of the legal total daily bag and possession limit for trout]. Authority: N.J.S.A. 23:5-1, 23:5-10.

[(c)] (e) The minimum size for lake trout shall be [26] **24** inches. Authority: N.J.S.A. 23:5-7.

(f) **No person shall have in possession, while on the State-owned lands and waters at Round Valley Reservoir, any brook, brown or rainbow trout, or any part thereof, less than 13 inches in total length, or lake trout, or any part thereof, less than 24 inches in total length, or any portion of fish less than 24 inches in total length that is unidentifiable as to species, except that this restriction shall not apply to fish which are being prepared for immediate on-site consumption. Authority N.J.S.A. 23:5-7.**

7:25-6.6 Baitfish

(a) [In waters listed in this code to be stocked with trout during 1982, it is prohibited to net, trap, or attempt to net or trap any type of species of baitfish from March 21st to June 15th except where the taking is otherwise provided for. In 1982 from January 1st through March 21st and after June 15th any type or species of baitfish may be taken from these waters provided that they be limited to 35 per person per day; any seine so used shall not be greater than 10 feet in length and four feet in depth; and any minnow trap so used shall not be larger than 24 inches in length, nor have a funnel mouth greater than two inches in diameter. Authority: N.J.S.A. 23:5-11.] **Except as provided for in trout-stocked waters listed in this Code, up to 35 baitfish per person per day may be taken from the freshwaters of the State with a seine not over 50 feet in length in all ponds and lakes which have an area of over 100 acres, and in all other waters with a seine not over 30 feet in length, year-round. Minnow traps not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter may be used in any of the freshwater of the State. Authority: N.J.S.A. 23:5-11.**

(b) In waters listed in this Code to be stocked with trout during 1983, it is prohibited to net, trap or attempt to net or trap baitfish from March 20 to June 15th except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter. Authority: N.J.S.A. 23:5-11.

[(b)] (c) Baitfish may be taken from the freshwaters of the State in numbers greater than 35 per day, under special permit issued by the Division at its discretion. Authority: N.J.S.A. 23:5-11.

7:25-6.7 [Snagging prohibited] Nets

(a) Except as provided for the taking of baitfish, it shall be illegal to take fish from the freshwaters of the State, including tidal freshwaters, by means of nets except as hereafter provided for.

(b) In the tidal freshwaters of New Jersey other than the Delaware River, its tributaries and tributaries to Delaware Bay:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until the following Sunday at 12 midnight. Authority: N.J.S.A. 25:5-1, 13:1B-30, 13:1B-31.

2. It shall be legal to take baitfish by means of a bait seine not more than 150 feet in length or a dip net not to exceed 24 inches in diameter. Authority: N.J.S.A. 23:5-11.

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-6.16(k) by the following means.

i. Haul seines, the mesh of which shall not be larger than three inches stretched while being fished and not to exceed 70 fathoms in length, whether singly or attached, for all species except striped bass. November 1 to April 30.

ii. Fykes, with leaders shall not exceed 30 fathoms in length and no part of the net or leaders to be larger than three inches stretched mesh while being fished for all species excepting striped bass. November 1 to April 30.

iii. Miniature fykes or pots for the taking of catfish, suckers and eels, the same not to exceed 16 inches in diameter. March 15 to December 15.

iv. Drifting gill nets, the smallest mesh of which shall be five inches while being fished, and shall not exceed 50 fathoms in length, for all species excepting striped bass. March 1 to June 15. Authority: N.J.S.A. 23:5-1, 23:5-11.

(c) In the waters of the tributaries of the Delaware River, in New Jersey, between Trenton Falls and Birch Creek:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character, except for fyke nets and nets commonly used for the purpose of taking baitfish, from Saturday at 2:00 P.M. until Sunday at 12 midnight next ensuing in each week. Authority: N.J.S.A. 23:5-1, 13:1B-30, 13:1B-31.

2. It shall be legal to take baitfish by means of minnow seine not more than 100 feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than 1 1/4 inches in diameter; or a scoop net with a single handle and with a diameter of not more than two feet. Authority: N.J.S.A. 23:5-11.

3. It shall be legal to take foodfish as defined in N.J.S.A. 7:25-6.16(k) by means of a seine, gill net, eelpot or fyke net each without wings, or a parallel net at the edge of the water. Authority: N.J.S.A. 23:5-11.

4. It shall be illegal to take or attempt to catch and take Atlantic sturgeon by means of a seine or a grill net the meshes of which are less than 13 inches stretched measure while being fished, or to catch and take or attempt to catch and take any

other foodfish with a seine the meshes of which shall be less than 2 1/2 inches stretched measure while being fished, or any gill net the meshes of which shall be less than 5 1/4 inches stretched measure while being fished, provided that gill nets with a mesh not smaller than three inches may be used from March 1 through June 10 in each year, for the purpose of taking herring only. No person shall catch and take or attempt to catch and take any food fish, except Atlantic sturgeon, by means of a seine or gill net between June 10 in each and every year, and March 1 next ensuing. Suckers may be taken with a seine only from October 15 in each and every year to March 15 next ensuing. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

5. No person shall catch and take or attempt to catch and take fish of any kind, with a pound net, or net of any character, which is anchored or staked or fastened down in any manner, permanently or otherwise, or use any net so anchored or fastened down in any manner, except for a parallel net set at the edge of low water, but no such net shall be set within 500 feet of a sluice, breach or intake emptying into the Delaware River or its tributaries. Authority: N.J.S.A. 23:5-11.

6. Eelpots and fyke nets, each without wings, may only be used from July 1, to May 31, both dates inclusive, in each year for the purpose of catching carp, catfish, eels, and suckers only provided, that the entrance of said eelpot and fyke net shall not be more than six inches in diameter and the outside diameter not more than 30 inches. All other species of fish which may be caught in said nets must be returned unharmed immediately to the waters from which taken. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

7. Parallel nets whose meshes are not less than 3 1/2 inches stretched measure, when being fished, may be used from September 1 to May 31, next ensuing in each year for the purpose of taking carp only.

8. Seines with meshes not smaller than 2 1/2 inches, and cast nets may be used from September 1 to May 31 for the purpose of taking catfish and carp only. No such net shall be set in a manner that will impede navigation. All fish other than catfish and carp shall be returned unharmed to the water below low-water mark. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

(d) In the tidal freshwater portions of the tributaries to the Delaware Bay and River between New Jersey and Delaware.

1. No person shall catch or take or attempt to catch or take fish of any kind by means of a net or use a net of any kind, except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until Sunday at 12:00 midnight next ensuing in each week. Authority: N.J.S.A. 23:5-1, 13:1B-30, 13:1B-31.

2. It shall be legal to take baitfish by means of a minnow seine not more than 100 feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than 1 1/4 inches diameter or a scoop net with a single handle and with a diameter of not more than two feet. Authority: N.J.S.A. 23:5-11.

3. No person shall catch and take or attempt to catch and take Atlantic sturgeon with any device excepting a seine or gill net, the meshes of which shall be not less than 13 inches stretched measure while being fished.

4. Shad may be taken with a drifting gill net, the meshes of which shall be not less than 5 1/4 inches stretched while being fished, from February 1 to June 15. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

5. All foodfish may be taken with:

i. A drifting gill net, the meshes of which shall be not less than 2 3/4 inches stretched measure, while being fished, and not exceeding 200 feet in length, from April 1 to November 30.

ii. A hauling seine, the meshes of which shall be not less than 2 3/4 inches stretched measure while being fished, and not exceeding 70 fathoms in length at any time of year.

iii. Parallel nets, the mesh of which are not less than three inches stretched measure while being fished, and cast nets may be used for the capture of carp, suckers and catfish only from July 15 to May 31, but no net shall be set within 500 feet of another net or within 500 feet of a sluice, breach or intake emptying into the tributaries of the Delaware River and Bay.

iv. Eel pots or fyke nets, each without wings, provided the entrance to said eel pots and fyke nets shall not exceed six inches in diameter and the outside diameter not exceed 30 inches may be used at any time for the taking of eels only. Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.

6. Not more than one gill net or hauling seine shall be used from a boat. Authority: N.J.S.A. 23:5-11.

[7:25-6.7] 7:25-6.8 Snagging prohibited

(a) The foul hooking of largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*) chain pickerel (*Esox niger*), northern pike (*Esox lucius*), muskellunge (*Esox masquinongy*) or any hybrid thereof walleye (*Stizostedion vitreum vitreum*), brook trout (*Salvelinus fontinalis*), lake trout (*Salvelinus namaycush*), brown trout (*Salmo trutta*) rainbow trout (*Salmo gairdneri*) or any of the hybrids thereof, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season (see separate regulations for Greenwood Lake, and for the Delaware River between New Jersey and Pennsylvania). Authority: N.J.S.A. 23:5-11.

[7:25-6.8] 7:25-6.9 Warmwater fish

(a) Except as noted for waters stocked with trout, closed seasons are hereby eliminated in open (unfrozen) waters on all freshwater fish, and also on striped bass (*Morone saxatilis*) in non-tidal waters. (See Delaware River between New Jersey and Pennsylvania, and see ice fishing regulations.) Authority: N.J.S.A. 23:5-1.

(b) The size limits on rock bass (*Ambloplites rupestris*) black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), redbfin pickerel (*Esox americanus americanus*) and chain pickerel (*Esox niger*) are hereby eliminated in all waters except in Lake Hopatcong, Swartswood Lake (Sussex County), Farrington Lake (Middlesex County), and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches for chain pickerel. (See separate regulations for Greenwood Lake.) Authority: N.J.S.A. 23:5-7; 23:5-10; 13:1B-31.

(c) The provision that a person may not take or have in possession more than 25 in the aggregate of fish commonly classed as fresh water game and food fish is hereby abolished. (See Code and statutes for bag limits on individual species.) Authority: N.J.S.A. 23:5-10.

(d) The minimum size of largemouth bass (*Micropterus salmoides*) and smallmouth bass (*Micropterus dolomieu*) shall be nine inches in all waters except for Mountain Lake (Warren County), Parvin Lake (Salem County), Lake Musconetcong (Sussex County), and Lake Carasaljo including the South Branch of the Metedeconk River downstream of the twin foot bridges opposite Lake Park Boulevard on South Lake Drive and Lake Manetta to the bridge over Watering Place Brook on Sunset Avenue (Ocean County) where the minimum size shall be 12 inches. Daily bag and possession limit for largemouth bass and smallmouth bass shall be not more than five in the aggregate. (See separate regulations for Greenwood Lake, and the Delaware River between New Jersey and Pennsylvania, and Round Valley Reservoir.) Authority: N.J.S.A. 23:5-7; 23:5-10.

(e) Warmwater fish in excess of the daily limit may be caught provided they are returned to the water immediately and unharmed. Authority: N.J.S.A. 23:5-10.

(f) Eels (*Anguilla rostrata*) may not be taken from non-tidal waters of this State by use of eel baskets, fykes, or traps of any kind,

except that eel weirs may be operated under permit of the Division in accordance with Statute 23:3-55. Authority: N.J.S.A. 23:5-11.

(g) The minimum length on northern pike (*Esox lucius*) and tiger muskie (*Esox lucius X Esox masquinongy*) shall be 24 inches, and 30 inches for the muskellunge (*Esox masquinongy*). The daily bag and possession limit for these species shall be two in aggregate. Authority: N.J.S.A. 23:5-7; 23:5-10.

(h) Fishing for all species of fresh water fish is permitted 24 hours daily except on those days that certain trout waters are closed for stocking during April and May. Authority: N.J.S.A. 23:5-17.

(i) Daily bag and possession limit for chain pickerel (*Esox niger*) and walleye (*Stizostedion vitreum vitreum*) shall be not more than five of each. Authority: N.J.S.A. 23:5-10.

(j) No person shall take, attempt to take, kill or have in possession American shad (*Alosa sapidissima*) in the Raritan River drainage (including the Millstone River) upstream of the confluence of the Raritan River and the Millstone River. Authority: N.J.S.A. 23:5-10.

(k) The minimum length on walleye (*Stizostedion vitreum vitreum*) shall be 15 inches. Authority: N.J.S.A. 23:5-7.

[7:25-6.9] 7:25-6.10 Ice Fishing

Authority: N.J.S.A. 23:5-3; 23:5-11

(a) Ice fishing shall be permitted whenever ice is present. (See separate regulations for trout-stock waters.)

(b) A person, while fishing through the ice, may use not more than five devices for the taking of fish. The types of devices that may be used are:

1. Ice supported tip-ups or lines with one hook attached;
2. An artificial jigging lure with not more than one burr of three hooks that measure not more than 1/2 inch from point to point;
3. An artificial jigging lure with not more than three single hooks measuring not more than 1/2 inch from point to shaft;
4. An artificial jigging lure with a combination of the hook limitations described in (b)2 and 3 above.

(c) Natural bait may be used on the hooks of the artificial jigging lure. All devices that are not hand-held must be clearly marked with the name and address of the user and shall not be left unattended.

(d) When ice is not present, open water regulations will be in effect. (See separate regulations for Greenwood Lake and for the Delaware River between New Jersey and Pennsylvania.)

[7:25-6.10] 7:25-6.11 Bow and arrow fishing

(a) It shall be legal to take any species of fish except brook trout (*Salvelinus fontinalis*), lake trout (*Salvelinus namaycush*), brown trout (*Salmo trutta*), rainbow trout (*Salmo gairdneri*), landlocked Atlantic salmon (*Salmo salar*), largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), chain pickerel (*Esox niger*), northern pike (*Esox lucius*), muskellunge (*Esox masquinongy*) or any hybrid thereof, walleye (*Stizostedion vitreum vitreum*), or American shad (*Alosa sapidissima*) in the Raritan River drainage (including the Millstone River) upstream of the confluence of the Raritan River and the Millstone River, at any time by use of longbow and arrow with line attached, provided a person has a proper fishing license. (See separate regulations for Greenwood Lake, for the Delaware River between New Jersey and Pennsylvania, and for the waters listed for trout stocking during the current season.) Authority: N.J.S.A. 23:5-11.

[7:25-6.11] 7:25-6.12 Closed waters

(a) It is illegal to fish, place any contrivance for the taking of fish, or attempt to catch or kill fish by any manner or means in any fish ladder or within 20 feet of any fish ladder entrance or exit. Authority: N.J.S.A. 23:5-11.

(b) It is illegal to fish or attempt to catch or kill fish by any manner or means in waters within the boundaries of the State Fish Hatcheries, except where specifically permitted, i.e. the Musconetcong River and Pequest River. Authority: N.J.S.A. 13:1B-31.

PROPOSALS

ENVIRONMENTAL PROTECTION

[7:25-6.12] **7:25-6.13** Emergency closure notice

It shall be illegal to fish or attempt to catch or kill fish by any manner or means in any waters for which the Director of the Division of Fish, Game, and Wildlife, upon approval of the Fish and Game Council, issues an Emergency Closure Notice. Such notice shall be effective and/or rescinded immediately upon public notification. It shall be based upon imminent threat to the well-being of the fishery resource and/or its users, and may include any exceptions to the total ban on fishing that the Director deems practical. Authority: N.J.S.A. 23:5-11.

[7:25-6.13] **7:25-6.14** Greenwood Lake

Authority: N.J.S.A. 13:1B-31; 23:5-1; 23:5-3; 23:5-10; 23:5-11; 23:5-17; 23:9-126.

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife the New Jersey Division of Fish, Game and Wildlife announces the following regulations for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York. These regulations are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both States.

1.	Season	Size	Bag Limit
Trout	No closed season	No Minimum	3
Largemouth bass & smallmouth bass	No closed season	9" minimum	5 singly or in aggregate
Chain pickerel	No closed season	No minimum	10
All other species	No closed season	No minimum	No limit

Authority: N.J.S.A. 23:5-1; 23:5-10

2. On Greenwood Lake, it shall be illegal for any ice fisherman to use at any time more than five devices for the taking of fish. All devices that are not hand held must be plainly marked with the name and address of the angler. The ice fishing season is November 15 to the next following April 30. Authority: N.J.S.A. 23:5-11.

3. On Greenwood Lake, fishing will be permitted 24 hours a day. Authority: N.J.S.A. 23:5-17.

4. Either New York or New Jersey fishing licenses will be honored on all of Greenwood Lake. Authority: N.J.S.A. 23:9-126.

5. Bow and arrow fishing for carp, suckers, herring, catfish and eels will be permitted on Greenwood Lake by properly licensed fishermen. Authority: N.J.S.A. 23:5-11.

[7:25-6.14] **7:25-6.15** Delaware River Between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the New Jersey Division of Fish, Game and Wildlife announces the following regulations for the Delaware River between New Jersey and Pennsylvania. These regulations are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state. Authority: N.J.S.A. 23:9-6; 23:9-7; 23:9-13; 23:9-16.

1.	Season	Size Limit	Bag Limit
Trout	April 15–Sept. 30	No minimum	5
Largemouth bass & smallmouth bass	No closed season	9" minimum	5 in aggregate
Walleye	No closed season	15" minimum	5
Chain pickerel	No closed season	12" minimum	5
Muskellunge, Northern			

Pike & any hybrid thereof	No closed season	30" minimum	2
Striped bass	March 1-Dec. 31	14" minimum	No limit
Baitfish, Fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other fresh-water species	No closed season	No minimum	No limit

Authority: N.J.S.A. 23:9-12; 23:9-13; 23:9-34.

2. Fishing licenses of either State will be recognized in the Delaware River from water's edge to water's edge and fishermen will be permitted to take off in a boat from either shore and on returning, to have in possession any fish which may be legally taken, however, any person fishing from the shore must obtain a license in that State on whose shore fishing is done. Residents of Pennsylvania must possess a New Jersey non-resident license if they fish from the New Jersey bank, and residents of New Jersey must have a Pennsylvania license if they fish from the Pennsylvania bank.

3. Angling may be done with two rods each with one line or two hand lines or one of each. Not more than three single hooks or three burrs of three hooks each may be used per line. Authority: N.J.S.A. 23:9-6; 23:9-8.

4. Ice fishing shall be legal whenever ice is present. Open (unfrozen) water bag and size limits shall apply. The maximum size of the ice hole shall not exceed 10 inches in diameter. Five tip-ups or any combination of five devices that will include tip-ups and not more than two rods and lines or two hand lines or one of each may be used. Authority: N.J.S.A. 23:9-6; 23:9-8; 23:9-12; 23:9-13.

5. Spears (not mechanically propelled) and longbows may be used to take shad, eels, carp, suckers, herring and bullheads by properly licensed fishermen, except within 50 rods (825 feet) of an eel weir. Authority: N.J.S.A. 23:9-8.

6. Bait fish may be taken and possessed for personal use only but not to exceed 50 per day. Authority: N.J.S.A. 23:9-7.

7. Eel weirs for the catching of carp, catfish, eels, and suckers only, may be operated under permit from the Division of Fish, Game and Wildlife at any time of the year and at any time of day. Authority: N.J.S.A. 23:9-14.

7:25-6.16 Tributaries of the Delaware River between Trenton Falls and Birch Creek where tide ebbs and flows

(a) Except for striped bass, the seasons, size, and bag limits established for the taking of fish in the tributaries of the Delaware River between Trenton Falls and Birch Creek shall be the same as those previously outlined for all waters of the State, other than those for the Delaware River between New Jersey and Pennsylvania, Round Valley Reservoir, and Greenwood Lake, where special regulations apply. (Note: Birch Creek is located in Gloucester County approximately one mile north of the Salem County line). Authority: N.J.S.A. 23:9-30; 23:9-31; 23:9-34.

(b) The minimum length on striped bass (*Morone saxatilis*) shall be 14 inches. There shall be no maximum or minimum weight. Authority: N.J.S.A. 23:9-34.

7:25-6.17 Fresh Tidal Tributaries of the Delaware River and Bay

The minimum length on Atlantic sturgeon (*Acipenser oxyrinchus*) shall be 60 inches with no daily bag limit. Authority: N.J.S.A. 28:5-10, 13:1B-30, 13:1B-31.

[7:25-6.17] **7:25-6.18** Definitions

(a) Unless the context clearly implies a differing usage, the following definitions shall apply in this Code.

"Bag or possession limit" means the total number of fish that are legally retainable. Most normally this is expressed on a daily basis.

ENVIRONMENTAL PROTECTION

PROPOSALS

“Baitfish” means The term “baitfish” shall include the following species:

- | | |
|---|--|
| 1. Alewife (landlocked form) | Alosa pseudoharengus; |
| 2. Golden shiner | Notemigonus crysoleucas; |
| 3. Banded killifish | Fundulus diaphanus; |
| 4. Mummichog | Fundulus heteroclitus; |
| 5. Spotfin killifish | Fundulus luciae; |
| 6. Rainwater killifish | Lucania parva; |
| [4]7. American brook lamprey | Lampetra lamottei; |
| [5]8. Fathead minnow | Pimephales promelas; |
| [6]9. Bluntnose minnow | Pimephales notatus; |
| 10. Stonecat | Noturus flavus; |
| 11. Tadpole madtom | Noturus gyrinus; |
| 12. Margined madtom | Noturus insignis; |
| [7]13. All shiner, dace, and minnows of the following genera: | Notropis, Rhinichthys, and Semotilus. |

“Closures” (closed waters) means those waters in which angling is not permitted, particularly in reference to time (also Closed Season).

“Code” means the State Fish Code.

“Director” means Director of the Division of Fish, Game and Wildlife.

“Division” means The Division of Fish, Game and Wildlife.

“Foodfish” for purposes of N.J.A.C. 7:25-6.6 only, means the following species.

- | | |
|------------------------------|-------------------------------|
| 1. Atlantic sturgeon | Acipenser oxyrhynchus; |
| 2. White sucker | Catostomus commersoni; |
| 3. Carp | Cyprinus carpio; |
| 4. American eel | Anguilla rostrata; |
| 5. Blueback herring | Alosa aestivalis; |
| 6. Hickory shad | Alosa mediocris; |
| 7. American shad | Alosa sapidissima; |
| 8. Gizzard shad | Dorosoma cepedianum; |
| 9. Alewife (anadromous form) | Alosa pseudoharengus; |
| 10. Yellow perch | Perca flavescens; |
| 11. White perch | Morone americana; |
| 12. White catfish | Ictalurus catus; |
| 13. Black bullhead | Ictalurus melas; |
| 14. Brown bullhead | Ictalurus nebulosus; |
| 15. Yellow bullhead | Ictalurus natalis; |
| 16. Channel catfish | Ictalurus punctatus; |
| 17. Bowfin | Amia calva; |

18. Also any marine fish species that is legal for taking in marine waters, except striped bass.

“Natural bait” means any bait that in its live, preserved or original form would be consumed by fish.

“Open Waters” (all sections except N.J.A.C. 7:25-6.8) means those waters in which angling is permitted, particularly in reference to time.

“Open Waters” (N.J.A.C. 7:25-6.8) means those waters not covered with ice.

“Other fish species” which are provided for by the provisions of this Code, either directly or implied, are as follows:

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|-------------------------------|-------------------------------|
| 1. Landlocked Atlantic salmon | Salmo salar |
| 2. Shortnose sturgeon | Acipenser brevirostrum |
| 3. Atlantic sturgeon | Acipenser oxyrhynchus |
| 4. Striped bass | Morone saxatilis |
| 5. White sucker | Catostomus commersoni |
| 6. Creek chubsucker | Erimyzon oblongus |
| 7. American eel | Anguilla rostrata |
| 8. Blueback herring | Alosa aestivalis |
| 9. Hickory shad | Alosa mediocris |
| 10. American shad | Alosa sapidissima |
| 11. Gizzard shad | Dorosoma cepedianum |
| 12. Alewife (anadromous form) | Alosa pseudoharengus |

“Size limit” means the legal length of fish and may be expressed as a minimum size or a maximum size of a fish that may be retained.

Length shall be the maximum total length.

“Snagging” means Snagging shall mean the hooking of a fish, in other than inside the mouth, through the action the fisherman.

“Trout” shall include the following species and all hybrids and strains thereof:

- | | |
|------------------|------------------------------|
| 1. Brook trout | Salvelinus fontinalis |
| 2. Lake trout | Salvelinus namaycush |
| 3. Brown trout | Salmo trutta |
| 4. Rainbow trout | Salmo gairdneri |

“Unattended” means user not available for questioning by officer at the time of inspection.

“Warmwater fish” [-The term “warmwater fish” shall] includes the following species and all hybrids and strains thereof:

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|----------------------|-------------------------------------|
| 1. Largemouth bass | Micropterus salmoides |
| 2. Smallmouth bass | Micropterus dolomieu |
| 3. Black crappie | Pomoxis nigromaculatus |
| 4. White crappie | Pomoxis annularis |
| 5. Rock bass | Ambloplites rupestris |
| 6. Redbreast sunfish | Lepomis auritus |
| 7. Green sunfish | Lepomis cyanellus |
| 8. Pumpkinseed | Lepomis gibbosus |
| 9. Bluegill | Lepomis macrochirus |
| 10. Longear sunfish | Lepomis megalotis |
| 11. Redear sunfish | Lepomis microlophus |
| 12. Yellow perch | Perca flavescens |
| 13. Walleye | Stizostedion vitreum vitreum |
| 14. White perch | Morone americana |
| 15. White catfish | Ictalurus catus |
| 16. Black bullhead | Ictalurus melas |
| 17. Brown bullhead | Ictalurus nebulosus |
| 18. Yellow bullhead | Ictalurus natalis |
| 19. Channel catfish | Ictalurus punctatus |
| 20. Redfin pickerel | Esox americanus americanus |
| 21. Northern pike | Esox lucius |
| 22. Muskellunge | Esox masquinongy |
| 23. Chain pickerel | Esox niger |
| 24. Bowfin | Amia calva |
| 25. Carp | Cyprinus carpio |

OFFICE OF ADMINISTRATIVE LAW NOTE: N.J.A.C. 7:25-6 (State of New Jersey Fish Code) is presently referenced but not reproduced in the New Jersey Administrative Code. Beginning with the 1982-83 calendar year, the Fish Code (including yearly amendments) will be officially codified and reproduced in the New Jersey Administrative Code. The codification of the Fish Code as reproduced in this notice of proposed rule represents the first and the only official codification of the Fish Code. Existing copies of the Fish Code as previously furnished to requesting parties by the Fish and Game Council or the OAL, will have a slightly different codification from that which appears in this notice.

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(a)

DIVISION OF FISH, GAME AND WILDLIFE

Shellfisheries Harvest of Sea Clams

Proposed Amendment: N.J.A.C. 7:25-12.1

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 50:2-6.1, 6.2 and 6.3.
DEP Docket No.: 030-82-07

A public hearing concerning these rules will be held on September 9, 1982 at 7:00 P.M. at:
Stockton State College
Pomona, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Gale Critchlow
Bureau of Shellfisheries
Division of Fish, Game and Wildlife
CN 400
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-319.

The agency proposal follows:

Summary

The proposed amendment changes the dates when an adjustment of weekly vessel harvest quotas may be made by the Department. At the request of the clambers, harvest will be allowed seven days a week, and with their agreement, the landing fee will be raised from 7 1/2 cents per bushel to 10 cents. A definition of bait clams and an exemption from license requirement for the collection of clams beached by storms have been added to the text, and some wording with regard to issuance of licenses has been changed for clarification of the intent of the rule.

Social Impact

The proposed changes will favorably affect New Jersey licensed sea clambers and sea clam processing plants by providing a reliable continuity of harvest, allowing them to market clams from November through May, spreading out the harvest and making early closure unlikely. It will have little or no effect on the general public.

Economic Impact

There will be some additional expense for surveillance of landings seven days per week but it is expected that the 2 1/2 cent increase in the landing fee will defray the cost, without working a hardship on the members of the industry.

Environmental Impact

Rutgers sea clam investigations, carried on annually under contract with the Department of Environmental Protection, have demonstrated that the harvest quota limits set by the sea clam regulations have successfully prevented devastation of the

resource. In years when high market prices would have encouraged over harvest, the quotas and the limited number of licenses issued have equitably divided a limited share of the resource among New Jersey clambers. Closure of areas where there are a large number of juvenile clams allows for undisturbed growth of the standing stock to marketable size.

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

7:25-12.1 Preservation of the sea clam resource in New Jersey

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

(c) General provisions are as follows:

1.-2. (No change.)

3. This regulation, when adopted and when effective shall supersede the provisions of the [1980-1981] **1981-1982** Sea Clam Regulations.

4.-7. (No change.)

(d) Harvest limitations are as follows:

1. Weekly limitations: Vessels licensed to take sea clams in the waters of this State shall harvest only from November 1 through May 31 of the following year. A vessel shall not harvest from New Jersey State waters more than [768] **512** bushels during any week from November 1 through [January] **December** 31 [the following year]. On or about [January] **December** 31, the Commissioner will determine the total State catch. If less than 100,000 bushels have been harvested, then the Commissioner [will] **may** by public notice increase the weekly vessel quota to [1,024] **768** bushels. If it is determined that more than [300,000] **250,000** bushels have been harvested, then the Commissioner [will] **may** by public notice reduce the weekly vessel quota to [512] **400** bushels. If the Commissioner determines that the total State catch is between 100,000 and [300,000] **250,000** bushels then the weekly vessel quota will remain at [768] **512** bushels until [March 31] **February 28**, when the Commissioner will again determine the total State catch. If less than 250,000 bushels have been harvested, then the Commissioner [will] **may** by public notice, increase the weekly vessel quota to [1,024] **768** bushels for the remainder of the season, or until 500,000 bushels have been harvested. If more than 350,000 bushels have been harvested, then the Commissioner [will] **may** by public notice reduce the weekly vessel quota to [512] **400** bushels for the remainder of the season, or until 500,000 bushels have been harvested. **Public notice shall be given in the same manner as that given for shellfish council meetings.**

2. The owner of two or more New Jersey licensed sea clam vessels may not harvest his entire weekly quota using only one of said vessels. The weekly quota is [768] **512** bushels or as modified above.

3. When at any time during the period November 1, [1981] **1982** through May 31, [1982] **1983** the department has determined that 500,000 bushels have been harvested from the waters of this State, the department shall close the State's waters to any further harvesting upon two days public notice. Said notice may be accomplished by publications in newspapers circulating in Monmouth, Ocean, Salem, Cumberland, Burlington, Atlantic and Cape May Counties, and by certified mail to each licensee.

4. Season: Except for bait purposes as hereafter provided, the season for taking sea clams (*Spisula solidissima*) on the waters of the State shall extend from November 1, [1981] **1982** through and including May 31, [1982] **1983** unless the season is earlier terminated if the season limit is reached.

5. (No change.)

(e) General Control Methods are as follows:

1.-5. (No change.)

6. Time: Except for bait purposes as hereinafter provided, sea clams shall be harvested from the waters of this state [on Monday through Saturday] between sunrise and [4:00] **6:00** P.M. prevailing time.

(f) Commercial [L]icensing rules are as follows:

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1. General: **Commercial sea clam** [L]licenses shall be issued pursuant to N.J.S.A. 50:2-6.1 et. seq. (L. 1975, c. 398) as amended. A license year shall be the calendar year.

2. Issuance: [In the calendar year 1982 an applicant may be issued a license if he had a license in one of the two preceding years. In any year thereafter,] **Except for casualty loss**, licenses must be renewed annually before **December 31. A license not renewed annually shall be voided.**

3. Transfer of ownership: A person transferring ownership of his **commercially licensed sea clam** vessel may:

- i. Be issued a new license within one year for a replacement sea clam vessel; or
- ii. (No change.)

[4. Transfer of license: A right to a 1981 license may be transferred from one vessel to another provided that all statutory criteria for licensing are satisfied. A new 1981 license will be issued to the vessel with the acquired right after presentation of the transferrer's license and payment of the license fee. After June 1, 1982 a sea clam license cannot be transferred except as stated in 7:25-12.1(f)(3)(i).]

[5.]4. **Casualty loss:** A replacement license for any licensed vessel which may be lost or destroyed or disabled **during the license year** shall be issued to the former vessel owner at any time within two years of December 31 of the year for which the disabled, destroyed or lost vessel was licensed.

[6.]5. (No change.)

(g) Miscellaneous Provisions are as follows:

1. Bait clams:

i. **Definition: Sea clams taken from specially restricted or condemned waters not for human consumption but only for use as fish bait.**

i.-iv. Renumbered ii.-v.

2.-4. (No change.)

(h) Rules on reports are as follows:

1. All licensed vessels that land any sea clams including bait clams in this State shall provide to the Director, Division of Fish, Game and Wildlife:

i. Weekly sea clam catch reports (forms to be supplied by the Division) which specify the vessel name, sea clamming license number and home port; and for each date, the time at sea, the latitude and longitude or loran bearings of all locations fished; and the catch location fished, the depth, the time fished, the number of tows per hours, and the catch in bushels; and for each landing, the port, the date the clams were sold, whether they were bait or edible clams. All reports are to have the name and signature of the captain attesting to the validity of the report. The reports shall be mailed to the Division of Fish, Game and Wildlife, Nacote Creek Shellfish Office, Star Route, Absecon, New Jersey 08201 together with check or money order in proper amount, made payable to the "Treasurer, State of New Jersey" no more than five working days after the weeks end, **Saturday, 6:00 P.M. If the vessel did not fish in New Jersey waters, a weekly report to that effect shall be provided.**

2.-3. (No change.)

(i) Licensees shall pay a fee of [seven and one half] **10 cents** [\$0.075] **\$0.10** for each bushel, or its equivalent, of the sea clams harvested from the waters of this State. The Department shall use such monies for the conservation, protection, management and improvement of the sea clam resource and industry.

(j)-(k) (No change.)

(l) **Exemptions: Beached clams or sea clams gathered from beaches after storms are exempt from the provisions of this regulation, however, appropriate permits may be needed from the Division of Water Resources, Bureau of Shellfish Control or the Department of Health.**

(a)

DIVISION OF FISH, GAME AND WILDLIFE

**Defining Fishing Lines
Defining Lines Upstream of which a License
is Required to Fish with Handlines, Rod
and Line, or Long Bow and Arrow**

Proposed Amendment: N.J.A.C. 7:25-16.1

Authorized By: Russell A. Cookingham, Director, Division of Fish, Game and Wildlife.
Authority: N.J.S.A. 23:1-2, 23:3-1 and 23:9-1.
DEP Docket No.: 025-82-06

A **public hearing** concerning this rule will be held on September 14, 1982 at 8:00 P.M., in conjunction with a hearing on the proposed 1983-1984 Fish Code, at:

Division of Fish, Game and
Wildlife Office
363 Pennington Avenue
Trenton, NJ 08625

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

A. Bruce Pyle, Chief
Bureau of Freshwater Fisheries
Division of Fish, Game and
Wildlife
CN 400
Trenton, NJ 08625

The Bureau of Freshwater Fisheries thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-305.

The agency proposal follows:

Summary

The proposed amendment will correct an error in the description of the line for the Manumuskin River in Cumberland County where Route 47 was mistakenly referred to as Route 55. A new wet line for the Manasquan River in Monmouth County at Bennetts Bridge, Manasquan Wildlife Management Area replaces the former line at the Allenwood Bridge.

Social Impact

According to the Division, this amended rule will have no social impact, inasmuch as a portion of the proposed rule merely corrects a previous mistake in the rule and the other action modifies an existing line on the Manasquan River with no anticipated impact on the public.

Economic Impact

According to the Division, this amended rule will have no economic impact for additional licensing requirements due to this proposed correction and modification of upstream line on the Manasquan River with otherwise existing upstream line limits.

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

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7:25-16.1 Defining lines upstream of which a license is required to fish with handline, rod and line or long bow and arrow

(a) The following table defines lines upstream of which a license is required to fish with handline, rod and line or long bow and arrow:

Name of Water	License required upstream of this location
CUMBERLAND COUNTY	
Manumuskin River	Route [55] 47 Southbound Bridge.
MONMOUTH COUNTY	
Manasquan River	[Allenwood Bridge] Bennetts Bridge, Manasquan Wildlife Management Area

(a)

DIVISION OF WASTE MANAGEMENT

Collection and Disposal of Waste Sanitary Landfill Facility Closure and Post-Closure Requirements

Proposed Amendments: N.J.A.C. 7:26-1.4, 2.9 and 2.13

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.
 Authority: N.J.S.A. 13:1E-6, 13:1E-9 and P.L. 1981, c.306.
 DEP Docket No.: 031-82-07.

A public hearing concerning this rule will be held on September 16, 1982 at 9:00 A.M. at:
 Auditorium of the State Museum
 205 West State Street
 Trenton, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 1, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:
 Carol N. Tomson
 Division of Waste Management
 32 E. Hanover Street
 Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-320.

The agency proposal follows:

Summary

The intent of these rules is to require that sanitary landfill facilities set aside funds and meet technical standards to insure that closure and post-closure care of such facilities can be accomplished in an environmentally sound manner. Any sanitary landfill facility constructed or operating in New Jersey will be required to develop the following: an approved Closure Plan, a Post-Closure Care Plan, and a Closure and Post-Closure Financial Plan in compliance with the standards and financial requirements in these rules. Sanitary

landfill facilities will be required to establish an interest-bearing escrow account with an accredited New Jersey financial institution to insure adequate funding for proper closure of the landfill facility.

The Closure and Post-Closure Care Plans required by these new rules provide for the design and implementation of specific environmental protections, including final cover, groundwater monitoring wells, leachate collection and/or control systems and other measures necessary to maintain and monitor public health and safety. The Closure and Post-Closure Financial Plan is required to project the costs associated with the implementation of the Closure and Post-Closure Plan. The rules also provide for the continued review and upgrading of the plans as circumstances necessitate and penalties for failure to prepare or adequately maintain such plans.

These rules also provide for funds to be collected during the course of the facility's operation, based on the amount of waste received. These funds will be put in an escrow account to be administered jointly by the landfill owner and the Department of Environmental Protection for the purpose of paying closure and post-closure expenses. The rules address the specific reporting requirements relating to the deposits and expenditures of the account. Expenditures will be made in accordance with the Closure and Post-Closure Financial Plan so as to maintain a sufficient balance required for full payment of all projected costs.

In order to simplify the procedures for review and applications for approval of the Closure, Post-Closure and Financial Closure Plans required by these rules, this process has been linked with the permitting system set up under the New Jersey Water Pollution Control Act, the New Jersey Pollutant Discharge Elimination System (NJPDES).

Further, the Department proposes to amend the definition of sanitary landfill as established in N.J.A.C. 7:26-1.4. This revised definition is necessary because the term was not defined in P.L. 1981. c. 306. This proposed version makes its current usage more accurate and clearly indicates that facilities approved for disposal of hazardous waste are not included in its meaning. Hazardous waste facilities are required to establish substantial financial guarantees under separate regulations provided for their licensure.

In order to insure that landfill operators keep adequate waste disposal records, some minor amendments to the existing sanitary landfill daily recordkeeping rules (N.J.A.C. 7:26-2.13) have also been made.

The rules proposed here replace four existing rules which dealt with landfill termination (N.J.A.C. 7:26-2.9). Equivalent or stronger requirements are present in the new rules.

Social Impact

By far the greatest impact of the rules proposed is a social one. Perhaps the most chronic and recurring health and environmental problem faced today is due to the fact that we have dumped our waste without consideration of the long-term damage.

The factors included in determining the social cost of landfilling include the abuse of the land and other resources, lowered property values, and degradation of the aesthetic environment of the area. Though the Department has been requiring landfill closure design and planning for several years as part of our overall waste control program, there has been a clear need to develop an overall waste control program and to set forth a comprehensive set of rules. We will be dealing with the results of our past ignorance for many years in the form of illness, disease, and polluted air and water. These new rules are a vital part of the Department's efforts to insure that our children and their environmental future will be protected and preserved. It is this social impact which justifies adoption of the proposed rules.

There is a negative social impact which will result from the regulations herein proposed, and that is the increased cost to taxpayers and homeowners in New Jersey for garbage disposal. We believe, however, that the cost of closure and post-closure care of waste disposal facilities is one which will have to be paid, now or later. These new rules will make those whose waste is dumped in

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landfills pay for monitoring and controlling the pollution, rather than those whose water or land may be contaminated 20 years from now.

Economic Impact

The economic impact of these rules on sanitary landfill facilities will not exceed that already required by existing law. New facilities have been required to allow for the expenses associated with proper closure and post-closure care requirements for the last three years. The impact will be felt on those facilities which do not have a Closure and Post-Closure Plan and have not financially planned for those expenses.

Unfortunately there are no industry-wide figures on the expenses associated with proper closure. Closure costs will differ for every landfill. The resulting increase in disposal rates will be dependent on the volume of waste to be received at the facility and the facility's expected period of operation.

The imposition of a tax to be paid throughout the operating life of a facility is necessary because the highest facility operating costs occur at and after the time of closure when revenues are no longer generated. These rules are intended to insure that the customers of the landfill pay these true costs and that a portion of the tipping fee is set in an escrow account to be used for closure and post-closure maintenance.

The owner or operator must also establish an escrow account equal to \$.30 per cubic yard of solids and \$.004 per gallon of liquid for all solid waste accepted for disposal during the preceding month. This account will provide funds for the closure and post-closure expenses.

The law provides that the resulting cost increase for landfilling activity may be passed on as a surcharge on any tariff established by the Board of Public Utilities for solid waste operations. The estimated net effect of the cost increase on the average individual residence would be \$.36 per month, or \$4.32 annually.

Although these costs will be passed on to consumers, it is clear that the true costs of waste disposal through landfilling have yet to be fully recognized. The corresponding benefit of this expenditure is to ensure that the costs of proper closure will be provided for. In absence of this law and these rules, funds might not be available to close many nonconforming facilities.

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

7:26-1.4. Definitions

["Sanitary Landfill" means that the land disposal site employing an engineered method of disposal of solid waste in a manner that minimizes environmental hazards, including, but not limited to the spreading of the solid waste in thin layers, compacting the waste to the smallest practical volume, and applying cover material on a daily or more frequent basis.]

"Sanitary landfill" means a solid waste facility at which solid waste is deposited on or in the land as fill for the purpose of permanent disposal or long-term storage, except that it shall not include any waste facility approved for disposal of hazardous waste pursuant to these rules.

7:26-2.9 [Termination or change of ownership of a landfill] Closure and post-closure of sanitary landfill facilities

(a) The registered operator of any landfill shall notify in writing the State Department of Environmental Protection, and utilities shall petition the Public Utilities Commission pursuant to its rules and regulations of his intent to discontinue operations thereon, at least 30 days prior to the intended date of discontinuance.

(b) The State Department of Environmental Protection shall examine all sanitary landfills upon discontinuance of operations to

determine whether there is compliance with N.J.A.C. 7:26-2.1 et seq., the rules of the Bureau of Solid Waste Management concerning disposal.

(c) Upon termination of the landfill, a detailed description of the landfill shall be recorded, along with the deed, with the appropriate county hall of records. The description shall include the general types and locations of wastes on the site, the depth and type of cover material, the dates the landfill was in use, and all such other information as may be of interest to potential landowners.

(d) Any landfill that is terminated under the provisions of this Subchapter must be maintained in accordance with the landfill submitted and must remain in compliance with all regulations of this Subchapter. Responsibility for the maintenance of discontinued operations shall rest with the property owner of record.]

(a) This section shall govern the closure and post-closure care of all sanitary landfill facilities. For the purpose of this section, sanitary landfill facilities shall not include any solid waste transfer stations. This section includes requirements for the preparation of a Closure and Post-Closure Plan and design and a Closure and Post-Closure Financial Plan. It also establishes requirements concerning establishment and use of the closure escrow account required pursuant to The Sanitary Landfill Facility Closure and Contingency Fund Act P.L. 1982, c.306, N.J.S.A. 13:1E-100 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

(b) The terms used in this section are defined as follows:

"Accredited financial institution" means any bona fide commercial bank, savings bank or savings and loan association located in the State of New Jersey, and insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation.

"Closure" shall mean the construction and implementation of all environmental safeguards required by law or by the sanitary landfill facility's approved Closure Plan and the approved engineering design subsequent to the termination of operations at any portion of that facility. It may include but is not limited to all activities and costs associated with the design, purchase, construction and maintenance of all items in order to prevent, minimize or monitor pollution or health hazards resulting from landfill facilities subsequent to the termination of operations at any portion thereof, including but not necessarily limited to, the costs of placement of acceptable cover, the installation of methane gas monitoring, venting, or evacuation systems, the installation and monitoring of wells or leachate collection and control systems at the site or in the vicinity of any sanitary landfill facility.

"Closure period" shall mean, unless otherwise specified, the period beginning after the landfill or a portion thereof has ceased to accept waste or the period as determined by the Department.

"Department" means the New Jersey Department of Environmental Protection.

"Owner or operator" includes, in addition to the usual meanings, every owner of record of any interest in land whereon a sanitary landfill facility is or has been located, and any person, partnership or corporation owning a majority interest in any corporation which owns a majority interest in any sanitary landfill facility.

"Post-closure care" shall mean those activities necessary to maintain and monitor a landfill in accordance with an approved engineering design and applicable laws and regulations after the facility has been properly closed.

(c) The Post-closure care period shall continue for 30 years after the date of completing closure of the landfill or as the following conditions apply:

1. Post-closure care shall continue until such other time as approved by the Department;
2. The Department may reduce the post-closure care period to less than 30 years when it has been adequately demonstrated

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that the reduced period is sufficient to protect human health and the environment;

3. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period upon a finding that such extended period is necessary to protect human health and/or the environment; and

4. Any aggrieved party may petition the Department for an extension or reduction of the post-closure care period, based on good cause.

(d) General requirements for a Closure and Post-Closure Care Plan and a Closure and Post-Closure Financial Plan are as follows:

1. No person shall construct or operate a sanitary landfill facility without both a Closure and Post-Closure Care Plan and a Closure and Post-Closure Financial Plan approved by the Department.

2. The submission for approval of the Closure and Post-Closure Plan shall conform with the regulations set forth in the New Jersey Pollutant Discharge Elimination System (NJPDES) as established in N.J.A.C. 7:14A-1;

3. Any sanitary landfill that is required to be closed under the provisions of this section shall be maintained in accordance with the approved Closure and Post-Closure Plan and must remain in compliance with all regulations of this subchapter. Joint and several responsibility for the maintenance of discontinued operations shall rest with any property owner or record since the commencement of facility operations and any facility operator regardless of whether they disposed of the waste or caused an environmental health problem;

4. When closure is complete the owner or operator must submit certification both by the owner or operator and by an independent licensed professional engineer that the facility has been closed in accordance with the specifications of the approved closure plan;

5. Upon closure of the landfill, a detailed description of the landfill shall be recorded, along with the deed, with the appropriate county recording office. The description shall include the general types, locations, and depths of wastes on the site, the depth and type of cover material, the dates the landfill was in use and all such other information as may be of interest to potential landowners, and shall remain in the record in perpetuity;

6. No person shall contract to sell any land which has been utilized as a sanitary landfill facility at any time unless the contract of sale for the land describes such use and the period of the time that the land was so utilized, as required in (d)1, above. Any prospective purchaser of such land may obtain from the Department, upon written request therefor, a history of the compliance by the facility with all applicable statutes, rules and regulations administered by the Department; and

7. The owner or operator of any sanitary landfill shall notify, in writing, the Department, and operators of landfills which are public utilities shall also notify the Board of Public Utilities, pursuant to its rules and regulations, of intent to discontinue operations at least 180 days prior to the intended date of closure.

(e) The owner or operator of a sanitary landfill facility shall comply with the following record keeping and reporting requirements:

1. Every owner or operator of a sanitary landfill facility shall file with the Department an annual audit or the closure and post-closure escrow account established pursuant to these rules;

2. The annual audit of the escrow account shall be conducted by a New Jersey Certified Public Accountant and shall be filed with the Department no later than October 31 of each year, including during the post-closure care period;

3. The owner or operator of all sanitary landfill facilities shall maintain daily records of wastes received, as required by

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N.J.A.C. 7:26-2.13;

4. On or before January 1 of each year, the owner or operator of the landfill facility shall submit a summary of all waste quantities disposed of at the facility in the preceeding year or shall submit to the Department copies of all completed New Jersey tax forms submitted to the Department of Treasury pursuant to P.L. 1981, c.306; and

5. The owner or operator shall comply with the recordkeeping and reporting requirements of N.J.A.C. 7:26-2.9 (h).

(f) The Closure and Post-Closure Plan shall meet the following specific requirements:

1. The owner or operator of all sanitary landfill facilities shall prepare and submit to the Department a Closure and Post-Closure Plan to provide for closure and post-closure care of the sanitary landfill facility;

2. A copy of the Closure and Post-Closure Plan shall be kept on record at the sanitary landfill facility during the course of the facility's operation and, after approved closure, shall be filed with the municipal clerk;

3. The Closure and Post-Closure Plan shall provide for the design and implementation of the following:

i. A Soil Erosion and Sediment Control Plan certified by the local soil conservation district in accordance with the Soil Erosion and Sediment Control Act of 1975, as amended: (N.J.S.A. 4:24-39 et seq.);

ii. Final cover;

iii. Final cover vegetation;

iv. A program for the maintenance of final cover and final cover vegetation;

v. A program for the maintenance of side slopes;

vi. Institution of run-on and run-off control programs;

vii. A program for the maintenance of run-on and run-off control programs;

viii. Groundwater monitoring wells;

ix. A program for the maintenance of groundwater monitoring wells;

x. A program for the monitoring of groundwater in accordance with NJPDES rules and any permit for that sanitary landfill issued pursuant thereto;

xi. A methane gas venting and evacuation systems;

xii. A program for the maintenance of a methane gas venting and evacuation system;

xiii. A leachate collection and/or control system;

xiv. A program for the collection and/or control of leachate;

xv. Facility access control system;

xvi. A program for the maintenance of the facility access control system;

xvii. Site beautification measures;

xviii. A program for the maintenance of site beautification measures;

4. The department may require additional closure and post-closure measures or waive any of the above requirements, should specific health and/or environmental circumstances justify such action;

5. The Closure and Post-Closure Plan shall include a schedule for the implementation of all the provisions of this section; and

6. The owner or operator of the sanitary landfill facility shall obtain and submit to the Department an "as built" certification by a New Jersey licensed Professional Engineer that each provision of Closure and Post-Closure Plan has been implemented as designed and approved.

(g) The Closure and Post-Closure Financial Plan shall meet the following requirements:

1. The owner or operator of all landfill facilities shall submit a Closure and Post-Closure Financial Plan to the Department which shall provide for the costs and expenses associated with full implementation of the approved Closure and Post-Closure Plan. The financial plan shall take into consideration the effect of inflation on closure and post-closure expenses. Unless

otherwise approved, the owner or operators shall adjust the latest closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its "Survey of Current Business". The inflation factor shall be calculated by dividing the latest published annual Deflator by the Deflator for the previous year. The result is in the inflation factor. The adjusted closure cost estimate shall equal the latest closure cost estimate times the inflation factor;

2. A copy of the Closure and Post-Closure Financial Plan shall be kept on record at the sanitary landfill facility during the course of the facility's operation and, after approved closure, shall be filed with the municipal clerk;

3. The Closure and Post-Closure Financial Plan shall include a cost estimate established pursuant to departmental guidelines and shall include financial arrangements for all items described in the Closure and Post-Closure Plan; and

4. The owner or operator shall prepare a new closure cost estimate whenever a change in the operation of the facility or in the closure plan affects the cost of closure.

(h) Pursuant to P.L. 1981, c. 306, the requirements for the Escrow Account are as follows:

1. The owner or operator of every sanitary landfill shall deposit, on or before the 20th of each month, in an interest-bearing account with an accredited financial institution in the State of New Jersey, an amount equal to \$0.30 per cubic yard of solids and \$0.004 per gallon of liquids of all solid waste accepted for disposal during the preceeding month. It is noted that disposal of liquid waste in landfill facilities is limited to only those few facilities permitted to accept such waste;

2. In the event that a measure other than the "cubic yard" or "gallon" is used by the owner or operator of a sanitary landfill facility, the amount to be deposited shall be calculated by using equivalents established by the Division of Taxation;

3. The escrow account shall be for the closure of a particular landfill facility and all funds therein shall be used exclusively for the closure of that landfill. Failure to deposit the required funds in the escrow account or misuse of such funds shall subject the owner or operator to criminal penalties of the third degree;

4. Where an owner or operator has ownership or control over more than one sanitary landfill facility, separate escrow accounts must be established for each facility;

5. The escrow account shall be kept separate and apart from all other accounts maintained by the owner or operator. The fact that the owner or operator has previously established an escrow account pursuant to another law, rule or regulation, does not relieve them of their responsibility to establish an escrow account under these rules;

6. The document(s) evidencing the existence of the escrow account must contain a reference to the purpose of the account that will put the personal creditors of the owner or operator on notice as to the nature of the account;

7. All funds deposited in the escrow account must be readily available in the event that circumstances necessitate the partial or total closure or post-closure care of the sanitary landfill facility prior to the date originally contemplated. An owner or operator who chooses to place escrow funds into term investments shall apply to the Department of Environmental Protection for written permission to do so;

8. All interest or other income that results from investment of funds in the escrow account shall be deposited into the escrow account and subjected to the same restrictions as the principal;

9. Only after all other closure and post-closure funding alternatives have been exhausted will funds be authorized for expenditure from the escrow account;

10. The signature of both the duly authorized representative of the Commissioner of the Department of Environmental Protection and the owner or operator or the agent thereof shall

be required for all withdrawals from an escrow account;

11. The Department, although acknowledging the need for fund expenditure totaling a specific sum may, at its discretion, grant approval for the withdrawal of only a portion thereof, conditioning subsequent approvals upon the owner or operator's verification that the sum(s) authorized have been used solely for closure costs;

12. The Department may, at its discretion, determine that there is a need for closure or post-closure expenditures and may require the owner or operator to withdraw such funds from the escrow account to meet such expenses;

13. Funds remaining in the escrow account after complete and proper closure and post-closure operations shall be paid into the Sanitary Landfill Facility Contingency Fund. A landfill will be deemed to be properly and completely closed where the Department determines that no further post-closure maintenance or monitoring is necessary at the facility. When the Department makes such a determination it shall notify the trust officer, escrow agent, and the owner and/or operator of the determination and shall supply the owner or operator with written approval for the transfer of the excess funds. Upon receipt of this written approval, all funds in said account shall be transferred to the Sanitary Landfill Facility Contingency Fund establishment pursuant to P.L. 1981 c. 306 and the account will be closed;

14. No expenditure from the escrow account will be permitted until the closure period has begun;

15. The escrow account shall not constitute an asset of the owner or operator and shall be established in such a manner as to ensure that the funds in the account will not be available to any creditor other than the Department in the event of bankruptcy or reorganization of the owner or operator;

16. The owner or operator of every sanitary landfill must arrange, with the financial institution wherein the funds are to be deposited, for a monthly statement of account to be sent to Landfill Closure Escrow Account, the Office of Special Funds Administration, Department of Environmental Protection, CN 402, 88 East State Street, Trenton, New Jersey 08625;

17. The owner or operator of every sanitary landfill facility shall file with the Department an annual audit of the escrow account established for the closure of the facility. The audit shall be conducted by a certified public accountant, and shall be filed no later than October 31 of each year; and

18. The owner or operator of every sanitary landfill facility must supply, by the 20th of every month, to the Office of Special Funds Administration, Department of Environmental Protection, CN 402, 88 East State Street, Trenton, New Jersey 08625, a statement showing the exact amounts of all solid waste accepted for disposal during the preceeding month, the total amounts of solid waste received year-to-date, the funds deposited in and withdrawn from the escrow account at the particular sanitary landfill facility during the preceeding month, and the total year-to-date fund deposits in and withdrawals from the escrow account. These statements shall be filed on forms provided by the Department.

(i) The procedures for approval of Closure and Post-Closure Plans and for Closure and Post-Closure Financial Plans will be as follows:

1. The owner or operator of a new facility shall submit a Closure and Post-Closure Plan and a Closure and Post-Closure Financial Plan as part of its application for the facility's Certificate of Approved Registration and Engineering Design Approval (N.J.A.C. 7:26-1), pursuant to the Solid Waste Management Act and other applicable laws, and in accordance with the schedule established as part of the facility's application for a New Jersey Pollutant Discharge Elimination System (NJPDES) permit as required by N.J.A.C. 7:14-A1.1;

2. The owners and operators of all sanitary landfill facilities operating subsequent to January 1, 1982, shall submit a

PROPOSALS

HEALTH

proposed Closure and Post-Closure Plan and a Closure and Post-Closure Financial Plan as part of its application for an operating permit and in accordance with the schedule established as part of the NJPDES permit application;

3. Owners and operators of existing landfill facilities operating subsequent to January 1, 1982, who are not required to obtain a NJPDES permit, shall submit a proposed Closure and Post-Closure Plan and a Closure and Post-Closure Financial Plan within 90 days of the effective date of these regulations unless otherwise determined by the Department;

4. No owner or operator shall submit a Closure and Post-Closure Plan or a Closure and Post-Closure Financial Plan for approval which includes any expansion of the proposed or actual facility operation;

5. Any owner or operator who fails to submit the Closure and Post-Closure Plan and the Closure and Post-Closure Financial Plan, as required by this subchapter, shall be subject to denial, revocation or suspension of the registration of the sanitary landfill facility and other regulatory or legal actions which the Department is allowed to institute by law;

6. The Department may require the amendment of any engineering design at any time it is deemed necessary, including during the post-closure care period; and

7. The owner or operator may apply for Departmental approval to amend the Closure and Post-Closure Plan or the Closure and Post-Closure Financial Plan at any time during facility life or during the post-closure care period.

7:26-2.13 Sanitary landfills; records

(a) Sanitary landfills shall maintain a daily record of wastes received [(not applicable to those qualifying under N.J.A.C. 7:26-4.8 or specifically exempted by the department)]. The record shall include:

1.-3. (No change.)

4. Date and time of delivery to the facility [.]; and

5. The license plate number of the delivery vehicle.

(b) The record will be maintained on forms provided by the Department (or duplication of same), shall be kept for five years, and shall be available for inspection by representatives of the Department at any time. If required by the Department [M]monthly summaries shall be submitted to the [Solid Waste Administration] Division of Waste Management no later than 10 days after the last day of each quarter (that is, January 10, April 10, July 10 and October 10).

(c) Upon approval by the Department, those landfills qualifying for exemption under N.J.A.C. 7:26-4.8 may compute quantities of waste received by using an alternative, acceptable method.

(c), (d) and (e) renumbered (d), (e) and (f).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

James R. Hub, Director
Health Economics Services
New Jersey State Department of Health
CN 360, Room 600
Trenton, NJ 08625

The Department of Health thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-325.

The agency proposal follows:

Summary

The Proposed 1983 Standard Hospital Accounting and Rate Evaluation (SHARE) Regulation contains few changes from the 1982 Regulations, none of which are substantial with regard to the rate setting methodology.

The proposed changes include:

1. All years have been increased by one, i.e., 1982 will now read 1983, 1980 will now read 1981, etc.
2. The rate setting methodology will only apply to specialized and rehabilitation hospitals not covered under N.J.A.C. 8:31B.
3. All references to major teaching, minor teaching and general acute hospitals and services have been eliminated from N.J.A.C. 8:31A-7 but can be found in N.J.A.C. 8:31B.
4. All peer comparison screens will be comprised of data from only specialized and rehabilitation hospitals not covered under N.J.A.C. 8:31B-1.

Social Impact

The proposed revisions will have no new social impact.

Economic Impact

The proposed changes will have no new economic impact.

Copies of the full text may be inspected at:

Health Economics Services
New Jersey Department of Health
Room 600
Health-Agriculture Building
John Fitch Plaza
Trenton, NJ 08625

or

Office of Administrative Law
Administrative Filings
88 East State Street
Trenton, NJ 08625

HEALTH

(a)

HEALTH ECONOMICS SERVICES

Standard Hospital Accounting and Rate Evaluation (SHARE) Rate Review Guidelines

Proposed Amendment: N.J.A.C. 8:31A-7

Authorized By: Shirley A. Mayer, M.D., M.P.H.,
Commissioner, Department of Health (with Approval
of Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq..

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Proposed Amendment: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Robert
G. Kowalski, Chairman.
Authority: N.J.S.A. 24:6E-6g.

A public hearing concerning this rule will be held on September 9, 1982 at 10:00 A.M. at:

Auditorium (Room 106)
1st Floor
Health-Agriculture Bldg.
John Fitch Plaza
Trenton, NJ 08625

Thomas T. Culkin, PharmD, MPH
Drug Utilization Review Council
Department of Health
CN 360
Trenton, NJ 08625
(609)984-2157

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Thomas T. Culkin, PharmD, MPH
Drug Utilization Review Council
Department of Health
CN 360
Trenton, NJ 08625
(609)984-2157

The Drug Utilization Review Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-327.

The agency proposal follows:

Summary

At its May 18, 1982 meeting, the Drug Utilization Review Council acted to **reject** Steri-med's hydrochlorothiazide tablets, 50 mg. This action was inadvertently published as an adoption at 14 N.J.R. 655(b). This proposal will correct that error.

Social Impact

None expected.

Economic Impact

No negative impact on consumers expected, since 21 other acceptable manufacturers of this product are already listed in the List of Interchangeable Drug Products.

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

[Hydrochlorothiazide tabs, 50 mg Steri-med]

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Robert G. Kowalski, Chairman.

Authority: N.J.S.A. 24:6E-6g.

A **public hearing** concerning this rule will be held on September 9, 1982 at 10:00 A.M. at:

Auditorium (Room 106)
1st Floor
Health-Agriculture Building
John Fitch Plaza
Trenton, NJ 08625

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

The Drug Utilization Review Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-328.

The agency proposal follows:

Summary

The proposed additions will expand the List of Interchangeable (Generic) Drug Products. For example, drugs such as doxycycline hyclate can now be substituted by pharmacists for the brand Vibramycin.

Social Impact

If a patient's physician approves of substituting a different brand name or a non-brand name drug product, the pharmacist may dispense a substituted drug if it reflects a lower cost to the consumer. The substitution can only occur if the drug is placed on the List of Interchangeable Drug Products. Thus, additions to the list expand the choice to the consumer.

Economic Impact

There will be an expanded opportunity for customers to save money on prescriptions through the use of generic medicines in place of name brand medicines. The extent of the savings due to these special proposed additions cannot be quantitated.

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

Acetaminophen/codeine tabs 15, 30, 60 mg	Chelsea
Acetaminophen/codeine 60 mg	Barr
Butalbital/APC caps	Chelsea
Chlorthalidone tabs 25, 50 mg	Danbury
Clomiphene citrate tabs 50 mg	Plantex/Ikapharm
Diphenoxylate/atropine tabs	MD
Dipyridamole tabs 25, 50, 75 mg	Chelsea
Doxycycline hyclate caps 100 mg	Danbury
Ergoloid Mesylates oral tabs 1 mg	Bolar
Hydroxyzine pamoate caps 25, 50, 100 mg	Par, Chelsea
Isosorbide dinitrate s.l. 10 mg	Par
Isosorbide dinitrate tabs 30 mg	Par
Levothyroxine sodium tabs 0.1, 0.2 mg	Cord
Liothyronine sodium 25, 50 mcg	Bolar
Medroxyprogesterone acetate tabs 10 mg	Graham
Methandrostenolone tabs 2.5, 5 mg	Par
Methyclothiazide tabs 2.5, 5 mg	Zenith
Metronidazole tabs 250 mg	Chelsea
Phenylbutazone tabs 100 mg	Cord
Potassium chloride powder 20 mEq, 25 mEq	Upsher-Smith
Pseudoephedrine HCl tabs 60 mg	Cord
Silver sulfadiazine cream 1%	Paco
Spironolactone 25 mg/hydrochlorothiazide 25 mg tabs	Cord
Spironolactone tabs 25 mg	Cord
Sulfinpyrazone tabs 100 mg	Danbury
Sulfinpyrazone tabs 100 mg	Zenith
Tolbutamide tabs 500 mg	Cord

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICE

Nurse-Midwifery Services Manual Provider Qualification, Enrollment, Billing Procedures, and Fee Schedules

Proposed New Rule: N.J.A.C. 10:58 – Nurse-Midwifery

Proposed New Rule: N.J.A.C. 10:54-3 – Procedure Code Manual

Authorized By: George J. Albanese, Commissioner,
Department of Human Services
Authority: N.J.S.A. 130:4D-6b(16) and 30:4D-7 and 7b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Administrative Practice Officer
Division of Medical Assistance
and Health Services
324 East State Street
CN 712
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-331.

The agency proposal follows:

Summary

This proposal concerns nurse-midwife services which are authorized under Title XIX of the Social Security Act (1905 (a)(17)). The Medicare-Medicaid Omnibus Reconciliation Act of 1980 required states to make nurse-midwife services available to categorically needy Medicaid patients if said services were authorized by State law (Section 965 of P.L. 96-499).

New Jersey law authorizes the practice of "midwifery" (N.J.S.A. 45:10-1) in accordance with regulations established by the State Board of Medical Examiners (N.J.A.C. 13:35-9.1 to 9.6). In addition to the State regulations, the Federal government recently adopted regulations defining the terms and conditions for Federal financial participation (42 CFR 440.1 et seq.). Therefore, this proposal was developed in conformity with both Federal and State law and regulations.

This proposal is designed to establish nurse-midwifery services in the New Jersey Medicaid Program. Those individuals who are qualified to perform midwifery services are certified nurse-midwives (C.N.M.) who must be a registered professional nurse and licensed by the New Jersey Board of Medical Examiners. A C.N.M. is required to function within a health care system which provides for physician referral (N.J.A.C. 13:35-9.1). A C.N.M. must have a written agreement(s) with one or more licensed physicians who practice obstetrics and who have hospital privileges in that field (N.J.A.C. 13:35-9.3).

A C.N.M. may perform those services within the scope of practice of the nurse/midwifery profession as defined by the Board of Medical Examiners regulations. The services can be rendered in the patient's home, a hospital, an independent clinic or birthing center.

The Federal Department of Health and Human Services has established two important conditions for midwife services:

1. Nurse-midwives must be allowed to enter into an independent provider agreement (42 CFR 441.21); and
2. Only services rendered during the maternity cycle will be considered for Federal matching funds. The maternity cycle, as defined by Federal regulation, means a period limited to pregnancy, labor, birth, and the immediate post-partum period, not to exceed six weeks (42 CFR 440.165(c)).

This proposal contains both of these requirements. Procedures for independent provider enrollment and billing instructions are set forth in N.J.A.C. 10:58. Procedure codes and fee schedules applicable to a C.N.M. with independent provider status are set forth in N.J.A.C. 10:54-3.

Social Impact

If there is any social impact on the Medicaid patient, it should be positive, because there will be an additional service available to such patients.

Economic Impact

The economic impact on the Division cannot be determined at this time, because the extent of provider enrollment and/or client utilization of this service is unknown. This is a new service being offered by the Medicaid program. Medicaid patients will not be required to contribute toward the cost of this service.

The economic impact on a C.N.M. will depend on their provider status. A C.N.M. with independent provider status will be reimbursed directly on a fee-for-service basis in accordance with the procedure codes and fee schedules contained in this proposal. In order to obtain independent provider status, a C.N.M. must make application to Prudential Insurance Company, a Fiscal Intermediary for the Division, and receive written approval. As indicated previously, independent provider status for C.N.M.s is a Federal requirement.

The Division will also recognize nurse-midwife services when performed within the scope of other Title XIX approved services, such as hospital services, clinic services, physician services. In these cases, payment to the nurse-midwife will be made indirectly, i.e., payment will be made to the hospital, clinic, or physician that employs the nurse midwife. The provision for indirect payment is also a Federal requirement.

The economic impact on hospitals and physicians will vary, depending on whether or not they employ C.N.M.s.

Full text of the proposed new rule follows.

CHAPTER 58 NURSE-MIDWIFERY SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

10:58-1.1 Nurse-midwifery

This chapter is concerned with the provisions of health care services by certified nurse-midwives, in accordance with the New Jersey Medicaid Program Provider Agreement and the minimal standards as set forth by the New Jersey Board of Medical Examiners, N.J.A.C. 13:35-9.1-9.6.

10:58-1.2 Definitions

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

"Certified nurse-midwife" (C.N.M.) means a registered professional nurse licensed in New Jersey who, by virtue of added knowledge and skill gained through an organized program of study and clinical experience, receives certification by the American College of Nurse-Midwives. A C.N.M. shall be licensed by and registered with the New Jersey Board of Medical Examiners. The

C.N.M. manages the care of essentially normal newborns at the time of delivery and essentially normal women during the maternity cycle.

"Nurse-midwifery services" means those services provided within the scope of practice of the nurse-midwifery profession as defined by the laws and regulations of the State of New Jersey. It includes nurse-midwifery services provided in the office, the patient's home, a hospital, an independent clinic or a birthing center.

"The maternity cycle" means a period limited to pregnancy, labor, birth and the immediate six week post-partum period.

10:58-1.3 Scope of service

(a) A certified nurse-midwife may, to the extent of her/his license and approved New Jersey Medicaid Program Provider Agreement, provide those obstetrical services required to manage the care of mothers and newborns throughout the maternity cycle.

(b) The C.N.M. shall not work alone in an individual or independent practice but shall function within a health care system which provides for consultation, collaborative management and referral with a physician licensed to practice medicine and surgery in the State of New Jersey.

(c) Certified nurse-midwives shall have, by virtue of their license, a written agreement(s) with one or more licensed physicians in the State of New Jersey who practice obstetrics and who have hospital privileges in that field. The agreement must conform to the requirements of N.J.A.C. 13:35-9.3(a)1-5 as currently exists or as hereinafter may be amended.

10:58-1.4 Basis of payment

(a) The New Jersey Medicaid Program shall reimburse a New Jersey licensed/registered certified nurse-midwife for nurse-midwifery services provided in New Jersey.

1. A certified nurse-midwife who has independent provider status, (see 10:58-1.5 Provisions for participation), shall be reimbursed directly by the New Jersey Medicaid Program on a fee for service basis in accordance with the nurse-midwifery procedure codes, descriptions and maximum dollar allowances for nurse-midwifery services as listed in the Procedure Code Manual at N.J.A.C. 10:54-3.

2. A certified nurse-midwife shall not be reimbursed as an independent provider by the New Jersey Medicaid Program when the program is required to reimburse an approved provider through another mechanism for these same services, e.g., a hospital salaried C.N.M. whose salary is included in the per diem.

(b) Separate procedure codes are used for physician obstetrical services and nurse-midwifery services. Therefore, the appropriate procedure code(s) should be used depending upon who rendered the service and separate 1500-N.J. claim forms should be filed. Whenever a claim for reimbursement is filed, the claim form must contain the Individual Medicaid Practitioner (IMP) number of the practitioner who performed the service(s).

(c) The New Jersey Medicaid Program shall reimburse for nurse-midwifery services provided, only when the patient is an eligible Medicaid client at the time services are rendered. Medicaid clients should present verification of current eligibility status at each visit.

1. Reimbursement is not made for, and clients may not be asked to pay for, broken appointments.

10:58-1.5 Provisions for participation

(a) Those certified nurse-midwives who are eligible for direct reimbursement from the New Jersey Medicaid Program must be individually approved as a provider and obtain a provider number.

1. To become an approved Medicaid provider, the C.N.M. must complete the Medicaid Provider Application (FD-22) and the Provider Agreement (FD-62) and submit these to:

The Prudential Insurance Company
P.O. Box 471
Millville, New Jersey 08332

2. Upon signing and returning the Medicaid Provider Application,

the Provider Agreement and other enrollment documents to the Prudential Insurance Company (a fiscal agent for New Jersey Medicaid), the C.N.M. will receive written notification of approval or disapproval. If approved, the C.N.M. will be assigned an Individual Medicaid Practitioner (IMP) number and added to the Medicaid Directory of Practitioners. The Prudential Insurance Company will furnish an IMP number, provider number, provider manual and an initial supply of pre-printed claim forms.

(b) A birthing center must have a current and valid approval from the New Jersey Department of Health and be individually approved as a provider by the New Jersey Medicaid Program before the birthing center will be reimbursed for maternity services.

(c) To become an approved Medicaid provider, the birthing center must complete the Medicaid Provider Application (FD-20), the Provider Agreement (FD-62) and the Ownership and Control Interest and Disclosure Statement (HCFA-1513) and submit these to:

Chief, Provider Enrollment
Division of Medical Assistance
and Health Services
CN 712
Trenton, New Jersey 08625

1. Upon signing and returning the Medicaid Provider Application, the Provider Agreement and other enrollment documents to the New Jersey Medicaid Program, the birthing center will receive written notification of approval or disapproval. If approved, the birthing center will be assigned a provider number and added to the Medicaid Directory of Independent Clinics. The Prudential Insurance Company will furnish a provider manual, provider number and an initial supply of pre-printed claim forms.

2. It shall be the responsibility of each approved birthing center to notify the New Jersey Medicaid Program a minimum of 30 days prior to the relocation or closing of its facilities.

10:58-1.6 Supplies and equipment

When the certified nurse-midwife performs a home delivery, the C.N.M. may be reimbursed for a "home delivery pack" (see 10:54-3, Procedure Code Manual).

10:58-1.7 Medication dispensing policy

All New Jersey licensed certified nurse-midwives shall have, by virtue of their license, established written agreement(s), with one or more licensed physicians in the State of New Jersey who practice obstetrics and who have hospital privileges. This agreement includes a written protocol setting forth standing orders for approved medications which may be dispensed by the C.N.M.

10:58-1.8 Recordkeeping

Certified nurse-midwives in all settings are to keep legible individual records as are necessary to fully disclose the kind of extent of services provided, as well as the medical necessity for those services. Minimum requirements for services performed by the certified nurse-midwife at home, hospital, independent clinic, office or birthing center shall include a progress note in the clinical record for each visit, except where otherwise specified (e.g., initial visit), which supports the procedure code or codes to be claimed. This information must be available upon the request of the New Jersey Medicaid Program or its agents.

SUBCHAPTER 2. BILLING PROCEDURES

10:58-2.1 Billing procedures: Scope

This subchapter contains basic information necessary for the proper completion and submission of a claim. A sample of the Health Insurance Claim Form, 1500-N.J., is included in this subchapter.

10:58-2.2 General policy

(a) Billing should be done on a monthly basis and submitted for

payment as soon after the end of the month as possible (see N.J.A.C. 10:49-1.12).

(b) All claims must be received by the fiscal agent, Prudential Insurance Company, no later than 90 days after the last day the services were rendered and no later than 12 months from any date of services on the claim form.

(c) For purposes of this time limitation, a claim is a submission on a Health Insurance Claim, 1500-N.J., or by any approved method of Automated Data Exchange, which indicates a request for reimbursement for C.N.M. services provided to an eligible recipient.

(d) If a claim, as defined in (c) above, is received within the time limit specified, the claim is considered to be filed timely, even though additional information is supplied after the time limitations.

10:58-2.3 Health Insurance Claim Form

(a) The Health Insurance Claim Form, 1500-N.J., is used for the purposes of billing for covered services of physicians, podiatrists, optometrists, psychologists, chiropractors and certified nurse-midwives.

(b) Instructions for completion of the Health Insurance Claim Form, 1500-N.J., (Exhibit 1) follow:

1. Item 1: Copy the patient's name exactly as it appears on the Validation Form or Medicaid Eligibility Identification Card;
2. Item 2: Indicate patient's date of birth. Use six digits (e.g., Sept. 10, 1980 is written 09/10/80). If only the year is known, enter the year. If actual birthdate is unavailable, enter the patient's age;
3. Item 3: Not applicable to Medicaid;
4. Item 4: Indicate patient's address and telephone number;
5. Item 5: Check appropriate block to identify patient's sex;
6. Item 6: Copy the patient's Medicare I.D. Number as it appears on the Medicare Health Insurance Card when the patient is covered by both Medicare and Medicaid;
7. Item 7: Not applicable to Medicaid;
8. Item 8: Copy the patient's Health Services Program (HSP) Case Number and Person Number exactly as it appears on the Validation Form or Medicaid Eligibility Identification Card;
9. Item 9: Check appropriate block to indicate whether the patient has other health insurance coverage. If yes, you must attach a copy of the decline notice or a copy of the explanation of payment;
10. Item 10: Check as appropriate:
 - i. If patient's illness or injury is work related; or
 - ii. If patient's injury resulted from an automobile accident or other;
11. Item 11: Not applicable to Medicaid;
12. Under ordinary circumstances, the patient must sign the claim form when services have been received. The claim form must indicate services rendered prior to presenting it to the patient for signature. If patient's signature is unobtainable, refer to N.J.A.C. 10:49-1.26;
13. Items 13-18: Not applicable to Medicaid;
14. Item 19: If patient was referred to you, you must indicate the name of the referring practitioner;
15. Item 19a: Enter the Individual Medicaid Practitioner (IMP) Number of the referring practitioner you entered in Item 19;
16. Item 20: Not applicable to Medicaid;
17. Item 21: Write in the name of the institution if place of service is other than office or patient's home. To be completed in addition to Item 24b;
18. Item 21a: Not applicable to Medicaid;
19. Item 22: For C.N.M. services always check "Yes";
20. Item 23a: Enter diagnoses for all services identified in Item 24d;
21. Item 23b: EPSDT Program Referral: Complete this item for recipients under 21 years of age. Ask the patient and/or referring physician or clinic if this visit is a result of an EPSDT screening. Indicate if this patient is such a referral by checking the appropriate block;
22. Item 24a: Enter date(s) of each visit;

23. Item 24b: Identify place of service by selecting appropriate alpha code as listed on the reverse side of form under "Place of Service" Codes. Identify place of service for services performed in a birthing center as "Clinic";

24. Item 24c: Identify type of service by selecting appropriate code as listed on the reverse side of form under "Type of Service Codes";

25. Item 24d: Identify the procedure by code number, as listed in either the Procedure Code Manual or your respective Medicaid Provider Manual, and by a brief corroborative narrative description in the two columns provided under 24d. If a code to describe the service rendered is not provided in the manual, enter an adequate description of the service;

26. Item 24e: Enter reference numbers in (23a) related to applicable diagnosis for that visit;

27. Item 24f: Not applicable to Medicaid;

28. Item 24g: Enter your usual and customary charge for each service or procedure;

29. Item 24h: Check this column for each service ascribable to "Family Planning". These should include visits for infertility studies, oral, mechanical or chemical contraceptives;

30. Item 24i: Leave blank;

31. Item 25: Read the Medicaid Provider Certification on the reverse side of the form carefully. The individual practitioner who personally performed or supervised the service(s) represented on the claim must put his/her signature on each claim before submitting for payment. If a claim covers services performed by more than one practitioner, the group member who performed the last procedure should sign the claim;

Note: (1) Services rendered by a certified nurse-midwife in the employ of a physician or physician group must be billed by the physician/physician group on the 1500-N.J. The appropriate C.N.M. procedure code(s) must be indicated;

(2) If services are provided by more than one practitioner, separate claim forms for each practitioner (e.g. physician or C.N.M.) must be submitted for payment, i.e. C.N.M. procedure codes and physician procedure codes may not be placed on the same claim form;

32. Item 26: Not applicable to Medicaid;

33. Item 27: Enter the sum total of the individual charges;

34. Item 28-29: Not applicable to Medicaid;

35. Item 30: Enter the Individual Medicaid Practitioner (IMP) Number of the practitioner actually performing the service described on the claim, i.e. physician or C.N.M.;

36. Item 31: If not preprinted, write provider name, address and provider number; and

37. Item 32-33: Not applicable to Medicaid.

10:58-2.4 Mailing instructions

For all claims for certified nurse-midwife services, mail the 1500-N.J. to:

The Prudential Insurance Company
P.O. Box 1900
Millville, NJ 08332

CHAPTER 54

SUBCHAPTER 3. PROCEDURE CODES

Procedure codes and brief narrative descriptions must be used when submitting claims for services. The applicable procedure codes and descriptions are listed in the Procedure Code Manual (see N.J.A.C. 10:54-3, Nurse-Midwifery Services).

GENERAL POLICY

The coding and procedures in this manual have been developed to aid the certified nurse-midwife in the preparation of claims. For purposes of reimbursement, as narrated in this

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chapter, a certified nurse-midwife and a group are to be considered one and the same, e.g. a single practitioner is allowed one initial visit, therefore only one initial visit is allowed per group regardless of the number of practitioners in the group.

The certified nurse-midwife or group must use a procedure code and brief corroborative narrative description of services rendered.

It should be emphasized that the use of a code number and narrative infers that the service was delivered as specified. Written records in substantiation of the use of a given procedure code must be available for review and/or inspection if requested by the New Jersey Health Services Program.

It is not the intent of the Program to reimburse a certified nurse-midwife for history and/or physical examinations performed by Interns, Residents, other House Staff Members or Physicians' Assistants.

All references to performance of any or all parts of a history or physical examination shall mean that for reimbursement purposes these services were personally performed by the certified nurse-midwife submitting the claim.

If documented that a covered service was rendered by the certified nurse-midwife in a hospital, the medical record must contain notes by him/her which show that the certified nurse-midwife personally did the following:

- (1) Reviewed the patient's medical history with the patient and/or his family, depending upon the medical situation;
- (2) Performed a physical examination;
- (3) Confirmed or revised the diagnosis; and
- (4) Visited and examined the patient on the days for which a claim for reimbursement is made.

NOTE: In hospital or group practice settings, such medical records as noted above must be signed by the certified nurse-midwife providing the services.

For all other individual occasions of service billed, documentation of the billing certified nurse-midwife's involvement must be clearly demonstrated in notes reflecting his/her personal involvement with the service rendered. This refers to those occasions when these notes are written into the medical record by interns, residents, other house staff members, or nurses. A countersignature alone is not sufficient.

Dates(s) of service(s) for each procedure code in this manual must be indicated on both the claim form as well as the certified nurse-midwife's own record.

The fees as noted with these procedure codes represent the maximum payment for the given procedure. When submitting a claim, you must always use your usual and customary fee.

USE OF PROCEDURE CODES

The use of a procedure code and its brief corroborative description on a claim form will be interpreted by this Program as evidence that the certified nurse-midwife personally furnished, as a minimum, the stated services. All references to time parameters in this manual means certified nurse-midwife's personal time.

The certified nurse-midwife must list on the Health Insurance Claim Form (1500-N.J.) both procedure code and brief narrative description.

EXAMPLES: 4841 - Total obstetrical care, antepartum visits 7/1, 8/1, 9/1, 10/1, 11/1, 12/1, 1/1 delivery 1/15, postpartum visit 2/21

4846 Insertion of IUD

NOTE: If the service rendered does not conform with any given code, the provider should enter an adequate narrative description of the services rendered in item 24d of the Health Insurance Claim Form (1500-N.J.).

Procedure Code	Description	Medicaid Dollar Value
4841	Total obstetrical care when given by a certified nurse-midwife and	\$165.20

includes:

- (1) Ante partum care consisting of initial ante partum visit and seven subsequent ante partum visits. Specific dates of all visits are to be listed on the 1500-N.J. claim form.

NOTE: Reimbursement will be decreased by the fee for the initial ante partum visit (code 4845) if patient not seen for this visit. The total fee will also be decreased by the reimbursement sum for each subsequent ante partum visit (code 4843) which is less than seven.

NOTE: If medical necessity dictates, corroborated by the record, then additional visits above seven ante partum may be reimbursed under procedure code 0009 (routine or follow-up office visit). The claim form should clearly indicate the reason for the medical necessity and date for each code 0009 listed.

- (2) Obstetrical delivery per vagina when performed by a certified nurse-midwife with in hospital, home, or birthing center post partum care, whichever applies, and with or without episiotomy. This applies to a vaginal delivery at full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours. This shall also include one visit between the 15th and 42nd post partum day following delivery and out of the hospital. Include delivery date on the 1500-N.J. claim form.

4842	Obstetrical delivery per vagina when performed by a certified nurse-midwife with inhospital, home, or birthing center post partum care, whichever applies, and with or without episiotomy. This applies to a vaginal delivery at full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours. This shall also include one visit between the 15th and 42nd post partum day following delivery and out of hospital. Include delivery date on the 1500-N.J. claim form.	\$112.00
4845	Initial ante partum visit provided by a certified nurse-midwife (independent procedure).	\$15.40
4843	Subsequent ante partum visits provided by a certified nurse-midwife (independent procedure). Indicate specific dates of service.	\$5.60
4844	Post partum care provided by a certified nurse-midwife who is other than the individual who performed the delivery and who is not related to this individual by any financial or contractual arrangement, e.g.	\$9.10

	group, clinic, employee, employer, etc. One visit between the 15th and 42nd post partum day following delivery. Include delivery date on the claim form. (independent procedure).	
4846	Insertion of intracervical or intra uterine device for contraception by certified nurse-midwife (includes cost of device and post insertion visit). Include delivery date on the claim form. Note: Limited to within the 6 week post partum period.	\$23.80
4847	Removal of an IUD by a certified nurse-midwife. Include delivery date on the claim form. Note: Limited to within the 6 week post partum period.	\$11.50
0009	Office or home visit by certified nurse-midwife applicable only when medical necessity warrants more than seven ante partum visits and is corroborated on the record.	
4848	Home Delivery Pack. All drugs and supplies etc., necessary for delivery in this setting.	\$40.00

(a)

DIVISION OF PUBLIC WELFARE

**Public Assistance Manual
Extension of Medicaid Benefits**

Proposed Amendment: N.J.A.C. 10:81-8.22

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 44:7-6 and 44:10-3.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

G. Thomas Riti, Director
Division of Public Welfare
CN 716
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-310.

The agency proposal follows:

Summary

The proposed amendment revises existing language to comply with Federal rules. When an AFDC-C or -F family loses AFDC benefits due to increased earnings or increased hours of employment, extended Medicaid benefits are available for a four

month period beginning with the first month the family is no longer eligible for AFDC benefits.

Social Impact

The Department anticipates little impact. The only population affected by the proposed amendment are persons who fail to make a timely report to the county welfare agency of increased earnings or hours of employment.

Economic Impact

The proposed amendment, if adopted, would result in a minimal savings in Medicaid expenditures.

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

Public Assistance Manual

10:81-8.22 Persons eligible for medical assistance

(a) (No change.)

(b) **Extension of Medicaid benefits:** When an AFDC-C or -F family loses eligibility for money payment due to increased earnings from or increased hours of employment, Medicaid eligibility continues for a period of four months beginning with the [date of termination] **month in which the family is no longer eligible for an AFDC money payment** if the following exist:

1. Such family was eligible for at least three of the six months immediately preceding the month [of termination] **in which the family lost eligibility for an AFDC money payment;** and

2. (No change.)

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

(b)

DIVISION OF PUBLIC WELFARE

**General Assistance Manual
Living Arrangements: Boarder/Household
Member, Age 18 and Older**

Proposed Amendment: N.J.A.C. 10:85-3.3

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 44:8-111(d).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

G. Thomas Riti, Director
Division of Public Welfare
CN 716
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-309.

The agency proposal follows:

Summary

This proposal requires that, in General Assistance, a person over age 18, who lives in the same household as the parent(s) who is under age 60, be counted as a member of the household of the

parent(s) rather than as a roomer-boarder. (Persons under 18 are already so counted.)

Social Impact

This proposal recognizes a de-facto social situation and bases the household size determination upon it. It discontinues the effort to view a family relationship in strictly business terms. In that it recognizes that which actually exists, little or no social impact is foreseen.

Economic Impact

Children over age 18 who have no income and who live with parents will receive somewhat smaller assistance grants. Such situations are usually of a short term nature. A small saving in assistance costs is foreseen.

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

10:85-3.3 Financial eligibility

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

(f) Assistance allowance standards are as follows:

1.-3. (No change.)

4. Room and board living arrangements: When an individual is purchasing a room and board living arrangement, the following shall apply:

i. (Change as proposed at PRN 1982-311.)

ii. Other boarding homes: When an individual [other than a spouse or dependent child under 18 of the operator] is purchasing room and board in a group facility or a boarding home (including a private home) other than a Residential Health Care Facility as in (f)4i above, or a center for treatment of drug or alcohol abuse as in (f)4iv below, the total monthly allowance shall be the amount for a single individual in a household of one as given in Schedule I or Schedule II, as appropriate, less any countable income.

(1) The spouse of a boarding home operator when living in the same home is also considered a boading home operator. Neither the spouse nor a child under age 18 of a boarding home operator may be considered a boarder there.

(2) A child age 18 or over of a boarding home operator may be a boarder in the home of the parent/operator if the parent/operator (or one of them if both are present) is age 60 or over. Otherwise such child shall not be considered a boarder but a member of the parent's household.

(a)

DIVISION OF PUBLIC WELFARE

**General Assistance Manual
Increase Boarding Rate in Residential Health
Care Facilities**

Proposed Amendment: N.J.A.C. 10:85-3.3

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 44:8-111(d).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

G. Thomas Riti, Director
Division of Public Welfare
CN 716
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-311.

The agency proposal follows:

Summary

The rate paid for General Assistance recipients in Residential Health Care Facilities (RHCFs) has in the past been maintained at the same level as that paid for recipients of the Federal Supplemental Security Income program for the same class of services. This revision maintains this alignment by raising the General Assistance monthly rate from \$408.50 to \$428.10.

Social Impact

The increase will help to assure that the RHCFs will remain available to those General Assistance recipients in need of such care.

Economic Impact

Based on the approximately 65 RHCF cases statewide being funded through the General Assistance program, the yearly cost of the increase to the public treasury is estimated at \$15,288. Seventy-five percent of the General Assistance funds will come from the State, while 25 percent will come from municipal funds.

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

10:85-3.3 Financial eligibility

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

(f) (No change.)

1.-3. (No change.)

4. Room and board living arrangements: When an individual is purchasing a room and board living arrangement, the following shall apply:

i. Residential health care facility: When an individual who is in need of extensive personal services on a regular and continuous basis is purchasing a room and board living arrangement in a Residential Health Care Facility (licensed by the New Jersey Department of Health for purposes other than the care or treatment of drug or alcohol abuse), the monthly assistance payment, including a personal allowance, shall not exceed \$[408.50]428.10, less any countable income. However, the cost of purchasing such living arrangement shall not exceed the minimum amount which the establishment customarily charges to or for other guests not dependent or public assistance, for the same accommodations and/or services.

ii.-iv. (No change.)

5. (No change.)

(g) (No change.)

LAW AND PUBLIC SAFETY

(a)

BOARD OF ACCOUNTANCY

Rules of Professional Conduct Professional Misconduct

**Proposed Amendments: N.J.A.C. 13:29-3.1
though 3.9, 3.12, 3.14, 3.15 and 3.16
Proposed New Rule: N.J.A.C. 13:29-3.13
Proposed Repeal: N.J.A.C. 13:29-3.17 and
3.18**

Authorized By: New Jersey State Board of Accountancy,
Elliott Pachtman, President.
Authority: N.J.S.A. 45:2B-6(g).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

John J. Meade, Executive Secretary
State Board of Accountancy
1100 Raymond Boulevard, Room 507-A
Newark, NJ 07107

The Board of Accountancy thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-326.

The agency proposal follows:

Summary

The proposal sets forth rules to govern the conduct of licensees of the State Board of Accountancy as mandated by N.J.S.A. 45:1-21(e). The proposal defines the areas of accountancy practice which the Board deems to be professional misconduct.

Social Impact

The social impact of this proposal is that it will provide consistency. The public will be assured that all licensees conform to standards of professional conduct and the licensees will know what is expected of them professionally.

Economic Impact

The proposal will pose no economic impact upon the public or the licensees because it does not impose any economic burdens on any party.

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

13:29-3.1 [Scope] Independence

[(a) The New Jersey State Board of Certified Public Accountants exercises its influence in every possible way to maintain a high standard of ethic in accountancy practice in order that the interests of the public, the client, and the certified public accountant may be safeguarded.

(b) Toward this end the following rules of professional conduct must be observed by every person practicing accountancy in the State of New Jersey under the provision of the Revised Statutes, N.J.S.A. 45:2A-1 to 25.]

(a) A licensee or a firm of which he is a partner or a shareholder shall not express an opinion on financial statements of an enterprise in such a manner as to imply that he is acting as an independent public accountant with respect thereto unless he or his firm is independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

1. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee or his firm:

i. Was connected with the enterprise as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

ii. Was a trustee for any pension or profit-sharing trust of the enterprise.

2. During the period of his professional engagement, or at the time of expressing his opinion, he or his firm:

i. Had or was committed to acquire any direct or material indirect financial interest in the enterprise; or

ii. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise; or

iii. Had any joint closely held business investment with the enterprise or any officer, director or principal stockholder thereof which was material in relation to his or his firm's net worth; or

iv. Had any loan to or from the enterprise or officer, director or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms and requirements:

(1) Loans obtained by the licensee or his firm which are not material in relation to the net worth of the borrower;

(2) Home mortgages; and

(3) Other secured loans, except those secured solely by a guarantee of the licensee or his firm.

13:29-3.2 [Obligations and responsibilities of practice] Integrity and objectivity

[A practitioner voluntarily assumes the obligation and responsibility of a high standard of skill in the performance of his professional service and he will act with dignity, fairness, and justice in his relations with clients and the public.]

A licensee or his firm shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, shall not subordinate his judgment to others. In tax practice, a licensee or his firm may resolve doubt in favor of his client as long as there is reasonable support for his position.

13:29-3.3 [Opinions] Competence

[A practitioner shall not render an opinion of financial statements, or verify any other form of accountancy work, unless such statement or work has been examined by him, a member of his firm, one of his staff, or a certified public accountant of a state or territory of the United States, the District of Columbia, or a qualified accountant of similar standing in a foreign country.]

A licensee or his firm shall not undertake any engagement for the performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with N.J.A.C. 13:29-3.5 and 3.6.

13:29-3.4 [Clients' affairs confidential] Forecasts

[All information concerning the affairs of his client, or any client of his employer, which the practitioner has acquired, shall be considered confidential and, subject to law, he shall neither directly or indirectly furnish a third party with any information with respect thereto, without the consent of the client, or former client.]

A licensee or his firm shall not in the performance of professional services permit his name to be used in conjunction with any forecast of future transactions in a manner which may reasonably lead to the belief that the licensee vouches for the achievability of the forecast.

13:29-3.5 [Use of name with misleading statements] **Auditing standards**

[No practitioner shall permit the use of his name in connection with any statement which he knows, or acting in his professional capacity he should know, contains a material misstatement of fact, or omits a material fact, the omission of which would make the statement misleading.]

A licensee or his firm shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant with respect to such financial statements unless he has complied with applicable generally accepted auditing standards. Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures therefrom must be justified by those who do not follow them.

13:29-3.6 [Incompatible occupations] **Accounting principles**

[No practitioner shall engage in any business or occupation which may bring his professional standing as a certified public accountant into disrepute or be incompatible or inconsistent with his professional practice.]

(a) A licensee or his firm shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such a case, the licensee's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(b) For purposes of this rule, generally accepted accounting principles are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

13:29-3.7 [Conflicts of interest] **Confidential client information**

[A practitioner shall not represent two or more conflicting interests, except by express consent of all concerned, given after a full disclosure of the facts as to the engagement.]

(a) A licensee or his firm shall not without the consent of his client disclose any confidential information pertaining to his client obtained in the course of performing professional services.

(b) This rule does not:

1. Relieve a licensee of any obligations under N.J.A.C. 13:29-3.5 and N.J.A.C. 13:29-3.6; or
 2. Affect in any way a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order of a court; or
 3. Prohibit disclosures in the course of a quality review of a licensee's professional services; or
 4. Preclude a licensee from responding to any inquiry made by the Board or any investigative or disciplinary body established by law or formally recognized by the Board.
- (c) Members of the Board and professional practice reviewers shall not disclose any confidential client information which

comes to their attention from licensees or their firms in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to an investigative or disciplinary body of the kind referred to above.

13:29-3.8 [Commissions, brokerage, fees] **Contingent fees**

[(a) Commissions, brokerage or other participation in the fees or profits of professional work shall not be allowed or paid directly, nor indirectly by a practitioner to any individual or firm not regularly engaged or employed in the practice of public accounting as a principal occupation.]

(b) Commissions, brokerage, or other participation in the fees, charges or profits of work recommended or turned over to any individual or firm not regularly engaged or employed in the practice of public accounting as a principal occupation, as incident to services for clients, shall not be accepted directly, nor indirectly, by a practitioner.]

A licensee or his firm shall not offer or perform professional services for a fee which is contingent upon the findings or results of such services; provided, however, that this rule does not apply to professional services involving Federal, State, or other taxes in which the findings are those of the tax authorities and not those of the licensee, nor does it apply to professional services for which the fees are to be fixed by courts or other public authorities, and which are therefore indeterminate in amount at the time the professional services are undertaken.

13:29-3.9 [Name of practice] **Discreditable acts**

[(a) A practitioner shall not practice in the name of another unless he is in partnership with him or in his employ, nor shall he allow any person to practice in his name who is not in partnership with him or in his employ.]

(b) This rule shall not prevent a partnership or its successors from continuing to practice under a firm name which consists of or includes the name or names of one or more former partners, nor shall it prevent the continuation of a partnership name for a reasonable period of time by the remaining partner practicing as a sole proprietor after the withdrawal or death of one or more partners.]

A licensee shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy.

13:29-3.12 [Recruiting] **Commissions**

[No practitioner shall negotiate directly, or indirectly for the services of an employee of another practitioner without first informing the employer of or in response to a public advertisement.]

A licensee or his firm shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others. This rule does not prohibit payments for the purchase of all, or a material part, of an accounting practice, or retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of such persons.

13:29-3.13 [(Reserved)] **Incompatible occupation**

A licensee or his firm shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs his independence or objectivity in rendering professional services.

13:29-3.14 [Contingent fees] **Form of practice**

[(a) Professional service shall not be rendered or offered for a fee which shall be contingent upon the findings or results of such service.]

(b) This provision does not apply to cases involving Federal, State or other taxes, in which the findings are those of the tax authorities and not those of the practitioner.

(c) Fees to be fixed by courts or other public authorities, which

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are therefore of an indeterminate amount at the time when an engagement is undertaken, are not regarded as contingent fees within the meaning of this Section.]

A licensee or his firm may practice public accountancy only in a proprietorship, a partnership or a professional corporation, organized in accordance with applicable New Jersey law.

13:29-3.15 [Use of name in connection with financial statements] Firm names

[(a) A practitioner shall not permit his name to be associated with financial statements unless he shall:

1. Express an unqualified opinion; or
2. Express a qualified opinion; or
3. Disclaim an opinion on the financial statements as a whole and indicate clearly his reasons therefor; or
4. Disclose that such financial statements were prepared without his audit.

(b) A practitioner shall not permit his name to be used in conjunction with any forecast of the results of future transactions in a manner which may lead to the belief that the practitioner vouches for the accuracy of the forecast.]

A licensee shall not practice public accountancy under a firm name which is misleading in any way, as to the legal form of the firm, or as to the persons who are partners, officers or shareholders of the firm, or as to any matter with respect to which public communications are restricted by N.J.A.C. 13:29-3.10. However, names of one or more past partners or shareholders may be included in the firm name of a partnership or corporation or its successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

13:29-3.16 [Use of certain descriptions] Records

[A practitioner shall not describe himself as a "tax consultant" or "tax expert" or use any similar phrase which could be construed as advertising or publication of a special branch of public accounting.]

(a) A licensee or his firm shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

1. A copy of a tax return of the client;
2. A copy of any report, or other document, issued by the licensee to or for such client;
3. Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account, but the licensee or his firm may make and retain copies of such documents when they form the basis for work done by him; and
4. A copy of the licensee's or his firm's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records, and are not otherwise available to the client.

13:29-3.17 [Independent opinions] (Reserved)

[(a) Neither a practitioner, nor a firm of which he is a partner, shall express an opinion on financial statements of any enterprise unless he and his firm are in fact independent with respect to such enterprise.

(b) Independence is not susceptible of precise definition, but is an expression of the professional integrity of the individual.

(c) A practitioner, before expressing his opinion on financial statements, has the responsibility of assessing his relationships with an enterprise, its officers, directors and principal owners to determine whether, in the circumstances, he can reach an independent, objective and unbiased opinion.

(d) A practitioner will be considered not independent, for example, with respect to any enterprise if he, or one of his partners:

1. During the period of his professional engagement or at the time

of expressing his opinion, had, or was committed to acquire, any direct financial interest or material indirect financial interest in the enterprise; or

2. During the period of his professional engagement, at the time of expressing his opinion or during the period covered by the financial statements, was connected with the enterprise as a promoter, underwriter, voting trustee, director, officer or key employee; or

3. Participated directly or indirectly in loans or exchange of funds as principal or agent with the enterprise.]

13:29-3.18 [Violations] (Reserved)

[Any practitioner who shall violate any of the foregoing provisions of professional conduct of this subchapter shall be subject to such disciplinary action as the New Jersey State Board of Certified Public Accountants may deem proper.]

(a)

BOARD OF MORTUARY SCIENCE

**Examinations
Examination Subjects**

Proposed Amendment: N.J.A.C. 13:36-3.4

Authorized By: Board of Mortuary Science, Maurice W. McQuade, Executive Secretary.
Authority: N.J.S.A. 45:7-49(a)(1).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Maurice W. McQuade
Executive Secretary
Board of Mortuary Science
1100 Raymond Boulevard, Room 331
Newark, NJ 07102

The Board of Mortuary Science thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-314.

The agency proposal follows:

Summary

Mortuary science curricula currently include courses in sociology, psychology, counseling, merchandising, and funeral service law, and the Board of Mortuary Science believes that these are important subjects with which practitioners should be familiar. The proposed amendment adds these areas to the list of possible subjects for examination so that candidates may be tested on them.

Social Impact

The proposed amendment is expected to assure that licensees are qualified to properly deal with grief-stricken consumers during a sensitive period and that licensees understand their rights and obligations in the practice of mortuary science.

Economic Impact

The proposed amendment will have no significant economic impact on candidates for licensure since the subjects being added are already taught in the schools of mortuary science. It may have a beneficial impact on the public and on State expenditures by

improving the quality of the profession and reducing the number of consumer complaints due to poor interpersonal relations between consumers and licensees.

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

13:36-3.4 Examination subjects

(a) The scope, character and content of the examination to be conducted by the Board shall be determined by the Board, shall be the same for all candidates at each examination and may include the following subjects:

- 1.-14. (No change.)
- 15. Professional ethics; [and]
- 16. Accounting [.];
- 17. Sociology;**
- 18. Psychology and counseling;**
- 19. Funeral service law; and**
- 20. Funeral merchandising.**

(a)

BOARD OF MORTUARY SCIENCE

**Mortuaries
Advertising**

Proposed Amendment : N.J.A.C. 13:36-5.12

Authorized By: Board of Mortuary Science, Maurice W. McQuade, Executive Secretary.
Authority: N.J.S.A. 45:7-38.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Maurice W. McQuade
Executive Secretary
Board of Mortuary Science
1100 Raymond Boulevard, Room 331
Newark, New Jersey 07102

The Board of Mortuary Science thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-315.

The agency proposal follows:

Summary

The disclosure requirements of subsection (g) of N.J.A.C. 13:36-5.12 are intended to inform consumers of the licensee who is responsible for fulfilling advertised terms so the consumer knows who to contact to discuss such terms or in the event the consumer has a complaint. During the months that this regulation has been in effect, it has become evident that since the name, address and telephone number of the licensee are disclosed, the publication of the license number adds little benefit for consumers and is unnecessary. On the other hand, in many cases, it causes an increase in licensees' advertising costs. The proposed amendment will remove the requirement that the license number be published in advertisements.

Social Impact

The proposed amendment will have no social impact because

consumers still will know the name, address and telephone number of each licensee responsible for fulfillment of advertised terms and conditions.

Economic Impact

The proposed amendment is expected to result in a slight decrease in advertising costs for some mortuaries and therefore should result in some savings to consumers.

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

13:36-5.12 Advertising

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

(g) All advertisements shall contain the name, address, **and** telephone number [and license number] of a licensee who is responsible for the fulfillment of the advertised terms and conditions.

(h) (No change.)

(b)

BOARD OF PHARMACY

**Pharmacist-In-Charge
Permit; Prescription Department or Pharmacy
Department in Large Mercantile
Establishments**

**Proposed Amendments: N.J.A.C. 13:39-8.14
and 9.14**

Authorized By: State Board of Pharmacy, Sheldon Moed, President.
Authority: N.J.S.A. 45:14-3, 45:14-26.2.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Sheldon Moed, President
Board of Pharmacy
1100 Raymond Boulevard, Room 325
Newark, NJ 07102

The Board of Pharmacy thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-312.

The agency proposal follows:

Summary

N.J.A.C. 13:39-8.14 is being amended to delete the requirement that only a registered pharmacist may maintain possession of the keys to the pharmacy department. The responsibility of the pharmacist-in-charge to employ pharmacy department personnel is also being deleted. Other changes are of a minor or grammatical nature. N.J.A.C. 13:39-9.14 is being amended to delete the requirement that a prescription label must bear the name of the pharmacist-in-charge. Other changes are of a minor or grammatical nature.

Social Impact

The proposed revisions of N.J.A.C. 13:39-8.14 will provide for more flexible management of pharmacy departments by allowing

employees other than the registered pharmacist to have access to the department and not requiring the pharmacist-in-charge to be responsible for employing prescription department staff. If, for example, the pharmacy department within another business is closed during business hours and an emergency requiring access to the pharmacy department ensues, other employees could enter the department. The registered pharmacist on duty is still responsible for keeping the prescription department secure.

The proposed revision of N.J.A.C. 13:39-9.14, which omits the requirement that the name of the pharmacist in charge must appear on prescription labels, will accommodate those pharmacies where there is frequent change or transfer of pharmacists in charge, while posing no substantial risk to the public. The actual pharmacist in charge remains responsible for the contents of every dispensed prescription.

Economic Impact

No increased financial cost is anticipated to those who are licensed as pharmacists, or to the public as a result of allowing non-registered pharmacist personnel to maintain keys to the pharmacy department, not requiring the pharmacist-in-charge to be responsible for employing personnel or as a result of not requiring prescription labels to bear the name of the pharmacist-in-charge. New labels are not required by the amendment.

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

13:39-8.14 Pharmacist-in-charge

(a) Whenever there is a new registered pharmacist-in-charge of a pharmacy, he [will be required to] **shall** take a new inventory of all controlled substances as defined in N.J.S.A. 24:21-5 through 24:21-8.

(b) Whenever a registered pharmacist assumes the duties of a pharmacist-in-charge of a pharmacy (manager of a prescription department), he shall so advise the Board by completing the "Notice of Change of Pharmacist-in-Charge" provided by the Board. The pharmacist-in-charge [will] **shall** be responsible for the following:

1. [Employing and s]Supervising of personnel in the prescription department;
- 2.-7. (No change.)
8. [Ensuring the use of prescription labels naming the pharmacist-in-charge;]
- 9.-16. Renumbered 8.-15.

13:39-9.14 Permit; prescription department or pharmacy department in large mercantile establishments

(a) (No change.)

(b) An applicant for a permit to operate a prescription department, the holder of a permit to operate a prescription department and the registered pharmacist-in-charge of said department shall be subject to the following additional requirements:

1. (No change.)
2. [Only the registered pharmacist(s) shall maintain possession of the keys to the department.] The registered pharmacist on duty shall be responsible for keeping the prescription department secure and locked and the alarm system turned on at all times that he does not have full vision or control of the prescription department or when he is not present within the department.
3. No person shall be permitted in the prescription department while a registered pharmacist is not present [within the pharmacy department].
4. (No change.)
5. All medication requiring supervision of a pharmacist, including dispensed medication, [must] **shall** remain within the confines of the prescription department barrier when the pharmacist is not within said department, until delivered to the patron.
6. The hours that the prescription department is open for the dispensing of medication [must] **shall** be posted in plain view

within or at the entrance to the prescription department, at the public entrances to the enterprise containing the prescription department and at the entrance of the prescription department when said department is closed.

7. Where the enterprise in which the prescription department is located maintains different store hours [than] **from** the prescription department, all advertising, announcement, signs or statements indicating store hours and presence of a prescription department [shall reflect the exception and] shall clearly and distinctly indicate the hours that the prescription department is open for the receipt of prescriptions and dispensing of medication.

8. (No change.)

9. The prescription department shall have a telephone number different [than] **from** that of the establishment in which the department is located. No extensions of this phone may be located outside of the prescription department.

10. (No change.)

11. There shall be provided a secure area for the receiving of prescription drugs from suppliers. No prescription drugs shall be accepted from **any** supplier during the hours the prescription department is closed unless adequate security for the storage of prescription department shipments has been provided and approved by the Board.

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

State of New Jersey Cash Management Fund Guidelines on Error Correction

Proposed New Rule: N.J.A.C. 17:16-31.15

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Roland M. Machold, Director
Division of Investment
349 West State Street
Trenton, NJ 08625

The State Investment Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-306.

The agency proposal follows:

Summary

The proposed new rule specifies how errors in the statement of daily income to participating members of the State of New Jersey Cash Management Fund will be corrected. Any error which is either less than one-third of the correct daily income or \$100,000 will be adjusted by the Director of the Division of Investment and any error above that amount will be adjusted by the State Investment Council. Such adjustments may be made as charges against future daily income.

Social Impact

Participating members of the Fund will be directly affected by this rule because it will provide a method for adjusting accounts of the Fund in the event of calculating errors. The proposal will therefore provide clearer standards for reporting income of the Fund.

Economic Impact

There are no expected costs to the agency or the participating members.

Full text of the proposed new rule follows.

17:16-31.15 Guidelines on error correction

Any error in the statement of daily income to participants which is less than either one-third of a true calculation of such income or \$100,000, whichever is greater, may be adjusted over future daily income of the Fund in such a manner as may be approved by the Director of the Division of Investment. Any error in excess of such amount may be adjusted in such manner as may be approved by the State Investment Council, through the restatement of income on days the error occurred, by charge against income on future days, or otherwise.

(a)

STATE INVESTMENT COUNCIL

New Jersey State Employees Deferred Compensation Plan

Proposed New Rule: N.J.A.C. 17:16-44

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Roland M. Machold, Director
Division of Investment
349 West State Street
Trenton, NJ 08625

The State Investment Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-307.

The agency proposal follows:

Summary

This new rule is being proposed pursuant to N.J.S.A. 52:18A-163 which established the State Employees Deferred Compensation Board. The purpose of the new rule is to define the investment and accounting guidelines which the Division of Investment must follow for the Deferred Compensation Plan.

Social Impact

Once the new Deferred Compensation Plan is implemented, it will provide State employees an opportunity to shelter a portion of their income from Federal taxes in a choice of investment programs.

Economic Impact

Any costs incurred as a result of the Deferred Compensation Plan will be covered by fees charged to State employees who participate in the Plan.

Full text of the proposed new rule follows.

SUBCHAPTER 44. DEFERRED COMPENSATION PLAN

17:16-44.1 Definition

Pursuant to N.J.S.A. 52:18A-163 there is hereby created in the Division of Investment, Department of the Treasury, three common funds to be known as New Jersey State Employees Deferred Compensation Equity Fund, New Jersey State Employees Deferred Compensation Income Fund and the New Jersey State Employees Deferred Compensation Cash Management Fund, in which will be deposited monies from salary reductions of New Jersey State employees.

17:16-44.2 Participation in the State of New Jersey Deferred Compensation Plan

Participation in the State of New Jersey Deferred Compensation Plan represented by contributions to the funds shall be evidenced by proper entries setting forth ownership units in the records of the Bureau of Accounting, Division of Budget and Accounting, Department of the Treasury, or an agent thereof. Contributions to the three common funds shall be made in cash. The participation of State employees is subject to the Plan as established by the State of New Jersey Deferred Compensation Board.

17:16-44.3 Distribution of income

All income as calculated under N.J.A.C. 17:16-44.7 shall be invested in units of participation in accordance with N.J.A.C. 17:16-44.9 and such units shall be withdrawn in accordance with N.J.A.C. 17:16-44.10.

17:16-44.4 Permissible investments

(a) The Director may invest the assets of the State of New Jersey Deferred Compensation Plan in securities which are legal investments for fiduciaries of trust estates in New Jersey which are permitted under N.J.S.A. 52:18A-163, subject to the applicable provisions of the regulations of the State Investment Council. The New Jersey State Employees Deferred Compensation Fixed Income Fund will be invested in fixed income securities having a maturity of one year or more, and the New Jersey State Employees Deferred Compensation Equity Fund will be invested in such common and preferred stocks and issues convertible into common stock as are permitted under Article 41 of the Rules and Regulations of the State Investment Council, subject, in the case of both funds, to the exception noted in (b) below. The New Jersey State Employees Deferred Compensation Cash Management Fund shall be invested in the State of New Jersey Cash Management Fund, which in turn will be invested in accordance with Article 61 of the Rules and Regulations of the State Investment Council, or in such other fixed income securities maturing in less than one year as may be permitted by the rules and regulations of the State Investment Council.

(b) Both the State of New Jersey State Employees Deferred Compensation Fixed Income Fund and the State of New Jersey State Employees Deferred Compensation Equity Fund may hold up to 25 percent of its assets either in short term fixed income securities, as permitted by the rules and regulations of the State Investment Council, or in the State of New Jersey Cash Management Fund.

(c) With respect to the State of New Jersey State Employees Deferred Compensation Equity Fund, not more than 10 percent of the book value of the Fund shall be invested in the common stocks, preferred stocks and securities convertible into common stock of any one corporation.

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(d) With respect to the State of New Jersey State Employees Deferred Compensation Fixed Income Fund, not more than 10 percent of the book value of the assets of the fund shall be invested in the debt of any one corporation, and not more than 10 percent of any one issue may be purchased at the time of issue.

17:16-44.5 Units of participation

Each unit of participation shall represent an equal beneficial interest in each of the funds and no unit shall have priority or preference over any other in each respective fund. Each unit of participation shall be valued at the net asset value per unit as defined in N.J.A.C. 17:16-44.7.

17:16-44.6 Date of valuation

The valuation shall be determined after the close of business on the last day of each month, and shall be based on market prices and accruals as of the close of such day.

17:16-44.7 Valuation

The net asset value of each fund on the last day of each month shall be determined by dividing the total value of the fund's securities and other assets, less any administrative expenses or other liabilities, by the total outstanding units of participation in the fund. Securities' prices will be determined by a pricing service or a method which has been approved by the State Investment Council. Accrual and amortization procedures will be calculated by procedures and formulas approved by the State Investment Council. The method of pricing each fund monthly will be in accordance with contractual obligations of the custodian bank, subject to the approval of the State Investment Council. The method of calculation of units of participation will be in accordance with an agreement between the State of New Jersey and the Plan Administrator. Initial unit values will be \$1.00.

17:16-44.8 Guidelines for valuation of securities

(a) An investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security and the cost thereof recorded as an account payable.

(b) An investment sold but not delivered pending receipt of proceeds shall be valued at the net sales price.

(c) For the purposes of valuation of an investment, with the exception of investments sold but not delivered, it shall not be necessary to deduct from the value ascertained by this rule, brokers' commission or other expenses which would be incurred on a sale thereof.

(d) In the case of a stock where a dividend has been declared and not as yet paid and the amount of such dividend has been included as income, such amount shall be deducted from the value of the stock, unless such value is based on an ex-dividend valuation.

17:16-44.9 Reinvestment of income earned

The aggregate of monthly income per participating unit on total units attributed to each participant will be reinvested automatically in additional units of participation. New units will be credited to the respective accounts of all of the participants in proportion to their holdings of participating units immediately prior to the determination of the monthly net income available for distribution. In the reinvestment of aggregate monthly income as described above, fractional units may be issued representing fractions of one dollar.

17:16-44.10 Admission and withdrawal of units of participation

Admission to or withdrawal from the common funds shall be permitted as of the first business day of each month, subject to the procedures of the Administrator of the Plan. All admissions and withdrawals will be made in cash.

17:16-44.11 Errors and omissions

(a) In the event of errors or omissions in the calculation of accruals of income, amortization or pricing of securities, the custodian bank shall correct such errors or omissions as is set forth in the custody agreement.

(b) In the event of errors or omissions in the calculation of unit values or participants' accounts the Administrator of the Plan shall correct such errors or omissions in accordance with its contract with the State of New Jersey.

17:16-44.12 Amendments

This rule may be amended from time to time by regulation of the State Investment Council. Any amendment adopted by such Council shall be binding upon all participants and beneficiaries thereof.

17:16-44.13 Liquidation

The Director, Division of Investment, upon direction of the New Jersey State Employees Deferred Compensation Board and with the approval of the State Investment Council, shall liquidate the aforementioned common funds.

OTHER AGENCIES

(a)

GARDEN STATE PARKWAY

Off-Premise, Outdoor Advertising

Proposed New Rules: N.J.A.C. 19:8-9

Authorized By: New Jersey Highway Authority, F. Joseph Carragher, Executive Director.

Authority: P.L. 1981, c. 463 (N.J.S.A. 27:12B-20(a)) and N.J.S.A. 27:12B-5(j)(s).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

F. Joseph Carragher, Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, NJ 07095

The New Jersey Highway Authority thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-330.

The agency proposal follows:

Summary

The proposed rule provides for the issuance of a permit for off-premise advertising on any roadside sign which has been located for a period of at least 25 years as of January 9, 1982 along the route of the Garden State Parkway pursuant to P.L. 1981, c. 463 (N.J.S.A. 27:12B-20).

Social Impact

This rule will affect owners of signs as described in P.L. 1981, c. 463, persons desiring to use such signs pursuant to said act and the motoring public. It will permit the regulation of the use of such signs in a manner which will maintain the efficient and safe use of the Garden State Parkway by the motoring public.

Economic Impact

The proposed rule will only have a minor economic impact. The signs to be regulated must, pursuant to P.L. 1981, c. 463, have been located for a period of at least 25 years as of January 9, 1982. Therefore, no new signs or structures will be affected by this regulation. The Highway Authority will not incur any additional costs in connection with the issuance of said permits.

Full text of the proposed new rule follows.

SUBCHAPTER 9. PERMITS FOR OUTDOOR ADVERTISING**19:8-9.1 General provisions**

(a) Any roadside signs permitted by P.L. 1981, c. 463, shall be by permit from the New Jersey Highway Authority (Authority) as provided in these regulations and pursuant to the conditions set forth in such permits, which conditions will be consistent with the following:

1. No off-premise, outdoor advertising signs may be used along the route of the Garden State Parkway which will unduly slow traffic;

2. No outdoor advertising signs may interfere or be likely to interfere with the ability of the operator of a motor vehicle to have a clear and unobstructed view of the roadway ahead or of approaching, merging or intersecting traffic, or of official signs, signals or traffic control devices;

3. No outdoor advertising signs may attempt or appear to attempt to direct the movement of traffic or interfere with, imitate or resemble any official traffic sign, signal or device, or utilize lighting equipment or reflectorized materials which emit or reflect a red, amber or green color;

4. Illumination of outdoor advertising signs must be effectively shielded so as to prevent light from being directed at any portion of the main-traveled portion of the roadway or, if not so shielded, be of such low intensity or brilliance as not to cause glare or impair the vision of operators of motor vehicles on such roadway or otherwise impair the operation of a motor vehicle;

5. Signs which contain, include or are illuminated by any flashing, intermittent or moving light or lights or any animated or moving parts are prohibited, except those giving public service information such as time, date, temperature, weather or similar information;

6. All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the State of New Jersey;

7. No outdoor advertising signs may be of such a type; size or character as will endanger or injure public safety, health or morals or be injurious to property in the vicinity thereof;

8. No outdoor advertising signs will be permitted which advertise activities that are illegal under Federal or State laws or rules in effect at the location of those activities;

9. All outdoor advertising signs must be maintained in a safe condition with due regard for conditions of climate, weather and terrain;

10. No outdoor advertising sign will be permitted that is not clean or in good condition; and

11. No outdoor advertising sign will be permitted which would injuriously affect any public interest. In determining whether the issuance of a permit would adversely affect any public interest, the Executive Director of the Authority shall consider public sentiment as expressed by the governing authorities and agencies of the United States, State of New Jersey or the affected county or municipality.

19:8-9.2 Procedures application for permit

(a) The Executive Director of the Authority is authorized to issue permits consistent with P.L. 1981, c. 463 as modified by the provisions of N.J.A.C. 19:8-9.1 above.

(b) Applicants are required to submit applications for permit for outdoor advertising on forms approved for such use by the

Authority. Said forms may be obtained by request, in writing, from the Executive Director, New Jersey Highway Authority, Garden State Parkway, Woodbridge, New Jersey 07095.

(c) Applicants are required to establish that road signs for which applications are sought satisfy the requirements of P.L. 1981, c. 463.

(d) There will be a fee of \$50.00 submitted with each application, which fee is not refundable, which will be used to defray costs of processing applications.

(e) Permits are subject to conformity with general conditions as enunciated in N.J.A.C. 19:8-9.1 above.

19:8-9.3 Suspension or revocation of permit

(a) A permit issued pursuant to the provisions of N.J.A.C. 19:8-9, may be suspended or revoked for cause for any of the following reasons:

1. Whenever the sign for which the permit is issued impairs the safe and efficient operation of the Garden State Parkway;

2. Whenever any statement made in the application for a permit is knowingly false or misleading;

3. Whenever any provision of law or rules contained in this subchapter are violated; or

4. Whenever a stipulation made in granting of the permit is violated.

(b) When it shall appear to the Operations Manager of the Authority that any permittee has committed a violation or offense as stated in (a) above, the permittee will be given a written notice stating the violation or offense and within 30 days the permittee must:

1. Correct the violation if same is subject to correction or compliance; or

2. Remove all signs, spaces and advertisements; or

3. File a protest, in writing, under oath, signed by the permittee or its duly authorized agent stating the reason(s) for the protest. In addition, the permittee may request a hearing, which may be formal or informal, pursuant to N.J.A.C. 19:8-9.4.

(c) If the permittee has filed a protest but has not requested a hearing, the Operations Manager shall carefully consider all available, relevant information and then issue an order confirming, modifying or vacating the original finding or determination.

(d) Whenever a permit has been revoked, the former holder shall be required to surrender same to the Operations Department, New Jersey Highway Authority, Garden State Parkway, Woodbridge, New Jersey 07095.

19:8-9.4 Nature of hearing

(a) An informal hearing before the Executive Director of the Authority is in the nature of a conference, with or without representation on behalf of the permittee.

(b) At a formal hearing, all evidence is taken before a court reporter and all testimony having reasonable probative value is admitted.

(c) After all parties have been given the opportunity of presenting evidence in support of the issues, the Executive Director shall take the matter under advisement and reach a determination on the record and facts disclosed. Upon reaching a determination, the permittee shall be notified by mail of the determination.

19:8-9.5 Notice of violation

(a) Any advertising sign used or to be used for outdoor advertising pursuant to the provisions of P.L. 1981, c. 463 and not authorized by a valid permit issued by the Authority is unlawful.

(b) The owner or the person making use of such sign shall be given written notice citing the violation of the provisions under this subchapter and, within 30 days, the owner or person making use of such sign must:

1. Correct the violation if possible; or

2. Remove all signs, spaces and advertisement.

PROPOSALS

OTHER AGENCIES

19:8-9.6 Removal provisions

(a) If within 30 days after mailing a notice of suspension or revocation of permit (see N.J.A.C. 19:8-9.3) or a notice of violation (N.J.A.C. 19:8-9.5) the violation or offense cited has not been corrected to the satisfaction of the Operations Manager of the Authority, the Executive Director of the Authority may order the immediate removal of the sign used for the display of outdoor advertising and may recover from the owner or person using such sign double the costs of removal or the sum of \$50.00, whichever is greater, in addition to any other penalties provided by law.

(b) Whenever the power of removal is exercised, the Executive Director of the Authority may, without further notice to the owner of the unlawful sign, deputize any person or persons to enter onto private property, without liability, to effect said removal.

19:8-9.7 Penalties

(a) In addition to the penalties stated in N.J.A.C. 19:8-9.6 regarding the removal of unlawful advertisements, any violation of any regulation adopted by the Authority under the provisions of P.L. 1981, c. 463 is punishable by a fine not exceeding \$200.00.

(b) Each day of violation is deemed to be a separate offense.

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Appeal Board

Proposed New Rule: N.J.A.C. 19:17

Authorized By: Public Employment Relations Commission,
James W. Mastriani, Chairman.
Authority: N.J.S.A. 34:13A-5.2 and 34:13A-5.9.

Interested persons may present comments, statements or arguments at a **public hearing** to be held at the following location and time:

September 10, 1982
10:00 A.M.
Office of Administrative Law
88 East State Street
Trenton, NJ 08625

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Public Employment Relations Commission
429 East State Street
Trenton, NJ 08608

This proposal is known as PRN 1982-332.

The agency proposal follows:

Summary

This proposal will facilitate the processing of appeals filed with the Public Employment Relations Commission Appeal Board created by N.J.S.A. 34:13A-5.6 to hear complaints by nonmember public employees who pay a representation fee in lieu of dues to their majority representative in accordance with N.J.S.A. 34:13A-5.5 and 5.6. This rule is proposed in conjunction with rules of special applicability proposed by the Office of Administrative Law (N.J.A.C. 1:20) which will establish uniform procedures for the conduct of appeals filed with the Appeal Board. See 14 N.J.R. 862(a), this issue.

Social Impact

These rules, in conjunction with those rules of special applicability being proposed by the Office of Administrative Law for the conduct of cases filed with the Appeal Board created by N.J.S.A. 34:13A-5.6, will provide a specific procedure by which public employees paying a representation fee in lieu of dues to a majority representative may challenge the appropriateness of the amounts returned by the majority representative through its internal procedure.

Economic Impact

The economic impact of these rules is difficult to measure as the amounts returned, if any, to public employees utilizing these procedures will vary depending upon the fact situations pertaining to each majority representative of public employees. Additionally, it is difficult to predict the number of public employees who will request returns from the majority representative of the amounts described in N.J.S.A. 34:13A-5.5, and how many will choose to pursue the dispute of the amount returned to the Appeal Board.

Full text of the proposed new rule follows.

CHAPTER 17

**PUBLIC EMPLOYMENT RELATIONS COMMISSION
APPEAL BOARD**

SUBCHAPTER I. DESCRIPTION OF ORGANIZATION

19:17-1.1 Description of the Appeal Board

The Public Employment Relations Commission Appeal Board (the "Appeal Board") is the board established by N.J.S.A. 34:13A-5.6 to consider complaints of public employees, who are not members of the employee organization which represents the employees' collective negotiations unit, concerning the amount of the representation fee in lieu of dues paid by the nonmember employees.

19:17-1.2 Staff of the Appeal Board

The staff of the Appeal Board shall consist of the personnel of the Division of Public Employment Relations (N.J.S.A. 34:13A-5.1), and the Appeal Board may utilize the services of the personnel of the Division of Public Employment Relations, as well as the offices and equipment of the said Division, to process those matters which come before it and to otherwise perform its functions pursuant to N.J.S.A. 34:13A-5.6.

19:17-1.3 Delegation of authority to staff of the division of public employment relations, officers of the Appeal Board

When the personnel of the Division of Public Employment Relations are carrying out functions on behalf of the Appeal Board, it shall be understood that such personnel are acting as officers of the Appeal Board and that the Appeal Board has delegated all the powers necessary to permit the discharge of the duty or duties delegated.

SUBCHAPTER 2. PROCEDURES

19:17-2.1 Rules to be read in conjunction with the rules of the Office of Administrative Law

These rules are to be read in conjunction with the Uniform Administrative Procedure Rules of Practice (UAPRP), N.J.A.C. 1:1-1, and the rules of special applicability for hearings initiated before the Public Employment Relations Commission Appeal Board, N.J.A.C. 1:20.

OTHER AGENCIES

PROPOSALS

(a)

CASINO CONTROL COMMISSION

Exclusion of Persons Hearings
Exclusion of Persons

Proposed Amendments and Recodifications:
N.J.A.C. 19:42-4.1, 4.2, 4.3 and 4.4
Proposed New Rule: N.J.A.C. 19:42-4.5
Proposed Amendments: N.J.A.C. 19:48-1.1,
1.4, 1.5 and 1.8

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c) and N.J.S.A. 5:121-71.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Robert J. Genatt, General Counsel
Legal Division
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, NJ 08625

The Casino Control Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-323.

The agency proposal follows:

Summary

Under the existing provisions of N.J.A.C. 19:48-1, an individual who is designated a candidate for the exclusion list may demand that a full evidentiary hearing be conducted prior to his placement on the list. Section 71 of the Casino Control Act, however, appears to provide that individuals designated for inclusion on the list should be granted such a hearing after their placement on the list.

Under the proposed amended regulations, the procedure for placing an individual on the list would be as follows. After conducting an investigation, the Division of Gaming Enforcement would petition the Commission to place an appropriate individual upon the list. The Commission would then schedule a limited pre-exclusion hearing, the purpose of which would be to determine if there exists a reasonable possibility that the designated individual satisfies the criteria for exclusion established by section 71 of the Act and the Commission's regulations.

Any individual placed on the exclusion list upon the completion of a preliminary hearing would be granted the opportunity to demand a post-exclusion evidentiary hearing within 30 days of his placement on the list. This final evidentiary hearing would be initiated within 30 days of the Commission's receipt of the individual's demand for such hearing. Upon completion of the final hearing, the Commission would enter a final order directing that the individual either remain on, or be removed from, the exclusion list.

This is to provide notice that two alternatives are being presented in N.J.A.C. 19:42-4.5(b) and N.J.A.C. 19:48-1.8(d).

Social Impact

The proposed rule changes would accelerate the process by which certain designated individuals would be excluded or ejected

from licensed casino hotel facilities in Atlantic City pursuant to the authority of section 71 of the Act. The State has an over-riding, interest in maintaining the public trust and confidence in the credibility and integrity of the regulatory process and of casino operations. The exclusion or ejection of individuals whose presence in licensed casino hotel facilities is found to be inimical to the interests of the State of New Jersey or of licensed casino gaming is consistent with that goal. Therefore, the proposed rule changes will promote the public policy of N.J.S.A. 5:12-1(b)(6),(7),(9) and (13).

Economic Impact

It is anticipated that the proposed rule changes will not have any significant economic impact other than the additional costs incurred by the introduction of a preliminary hearing. Since this additional hearing would be limited in scope, occur within the context of a regularly scheduled Commission meeting and not require extensive preparation of materials, any additional cost attendant to such additional hearing are not expected to be of consequence.

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

SUBCHAPTER 4. PROVISIONS APPLICABLE ONLY TO
EXCLUSION OF PERSONS HEARINGS

19:42-4.1 Definitions

The words and terms defined in N.J.A.C. 19:48-1.1 shall have the meanings set forth therein when used in this subchapter, unless the context clearly indicates otherwise.

19:42-[4.1]4.2 Preliminary hearing: [N]notice; service

(a) Whenever the [commission] **Division**, pursuant to section 71 of the Act and the regulations of the Commission, [places the name or description of any person on a list of persons who are to be excluded or ejected from any licensed casino establishment] **petitions to place a candidate on the exclusion list**, the Commission or **Division** shall give notice of such fact to [such person] **the candidate by:**

1. (No change.)
2. Certified mail at the last known address of [such person] **the candidate**; or,
3. (No change.)

(b) Such notice shall advise [such named or described person of his right to a hearing before the commission and of his responsibility to request such a hearing] **the candidate of the pending petition and his right to appear before the Commission at a preliminary hearing. The notice shall include a statement of the time, place and nature of the preliminary hearing. The preliminary hearing shall be scheduled no earlier than 15 days from the date of service.**

(c) **Unless otherwise agreed by the parties and the Commission, a preliminary hearing scheduled in accordance with these regulations shall not be postponed at the request of any party.**

19:42-[4.2]4.3 [Right to hearing; time; waiver] **Preliminary hearing: nature of hearing; burden of proof; service of order**

[(a) Any person so named for exclusion or ejection may, within 30 days after service in person or by certified mail or within 60 days from the time of last publication, as the case may be, demand a hearing before the commission and show cause why he should have his name removed from such list.

(b) Any person so named for exclusion or rejection who fails to demand such a hearing within the allotted time period shall be precluded from having a hearing before the commission; provided, however, that such preclusion shall in no way affect the right of any such person to judicial review as provided in the act and the regulations of the commission.]

PROPOSALS

OTHER AGENCIES

(a) A preliminary hearing shall be a limited pre-exclusion proceeding. The purpose of the preliminary hearing is to determine if there is a reasonable possibility that a candidate satisfies the criteria for exclusion established by section 71 of the Act and the Commission's regulations.

(b) A preliminary hearing shall be decided on the basis of the facts alleged by the petition and affidavits of the Division. The parties' right to participate in the preliminary hearing shall be limited to the presentation of oral argument on the sufficiency of the Division's petition. Parties may be represented by counsel.

(c) The Division shall have the affirmative obligation to establish that there is a reasonable possibility that the candidate satisfies the criteria for exclusion established by section 71 of the Act and the Commission's regulations.

(d) A preliminary order of the Commission designating a candidate as an excluded person shall be served within five days of its entry upon the candidate, the Division and all casino licensees in a manner provided by N.J.A.C. 19:42-4.2. A Commission order dismissing a Division petition naming a candidate shall be served upon the candidate and the Division in a manner provided by N.J.A.C. 19:42-4.2.

[19:42-4.3 Time and place of hearing]

[The commission shall, upon receipt of a timely and sufficient demand for a hearing, set a time and place for such hearing. Unless otherwise agreed by the commission and the named person, such hearing shall not be later than 30 days after the receipt by the commission of such a demand for a hearing.]

19:42-4.4 [Final decision and order; judicial review] **Right to a final hearing; time; waiver**

[(a) If, upon completion of the hearing, the commission determines that the regulations of the commission requiring the exclusion or rejection of certain persons, do not or should not apply to the person so listed, the commission shall make and enter an order to that effect. Such order shall be served personally or by certified mail upon the parties to the hearing and upon all casino licensees.

(b) If, upon completion of a hearing or in the absence of a hearing, the commission determines that the placement of the name of the person on the exclusionary list was appropriate, the commission shall make and enter an order to that effect. Such order shall be served personally or be certified mail upon the parties to the hearing, the person so named and upon all casino licensees. Such orders shall be subject to review by the Superior Court in accordance with the rules of court.]

(a) An excluded person placed on the list by preliminary order of the Commission shall be advised at the time of service of the preliminary order of his right to demand a final hearing before the Commission.

(b) A demand for a final hearing shall be in writing and must be received by the Commission within 30 days after service in person or by certified mail or within 60 days from the time of last publication, as the case may be, of the preliminary order placing the excluded person on the list.

(c) The Commission shall, upon receipt of a timely and sufficient demand for a final hearing, set a time and place for such hearing. Unless otherwise agreed by the Commission and the excluded person, a final hearing shall be initiated no later than 30 days after the receipt by the Commission of the written demand for a final hearing.

(d) Any excluded person placed on the list by preliminary order of the Commission who fails to demand a final hearing within the allotted time period shall be precluded from having a final hearing before the Commission, and shall be subject to the issuance of a final order directing that the excluded person shall remain on the list until further order of the Commission; provided, however, that such preclusion shall in no way affect

the right of any excluded person to judicial review as provided in the Act and regulations of the Commission.

19:42-4.5 Final hearing: nature of proceeding; burden of proof; service of order

Alternative No. 1

(a) A final hearing shall be a full evidentiary proceeding conducted in accordance with the provisions of section 107 of the Act and the Commission's regulations. The purpose of a final hearing is to determine if an excluded person placed on the list by preliminary order satisfies the criteria for exclusion established by section 71 of the Act and the Commission's regulations.

(b) The excluded person shall have the affirmative obligation to demonstrate by a fair preponderance of the evidence that he does not satisfy the criteria for exclusion established by section 71 of the Act and the Commission's regulations.

(c) The Commission shall render a decision and issue a final order as soon as is practicable after the completion of the final hearing. A final order directing that an excluded person shall either remain on the list or be removed from the list shall be served within five days of its entry upon the excluded person, the Division and all casino licensees in a manner provided by N.J.A.C. 19:42-4.2. A final order of the Commission shall be subject to review by the Superior Court in accordance with the rules of court.

Alternative No. 2

(a) (No change from Alternative No. 1.)

(b) The Division shall have the affirmative obligation to demonstrate by a fair preponderance of the evidence that the excluded person satisfies the criteria for exclusion established by section 71 of the Act and the Commission's regulations.

(c) (No change from Alternative No. 1.)

19:48-1.1 Definitions

...
 "Candidate" means any person [whom the Commission or the Chairman determines should be served with a notice of intention to place his name on the list] **whose name is included in a petition to place such person on the exclusion list pursuant to section 71 of the Act and these regulations.**
 ...

"Excluded person" means any person [whose name] **who** has been placed upon the list by **preliminary or final order of the Commission** [and with respect to whom the Commission has made a final decision and entered an order and has so notified the person listed and the casino licensee,] and who pursuant to section 71 of the Act and these regulations is required to be excluded or ejected from a casino hotel facility.
 ...

19:48-1.4 Duties of the Division of Gaming Enforcement

(a) The Division shall, on its own initiative, or upon the request of the Chairman, investigate any [individuals whose names] **individual who would appear to be an appropriate candidate** for placement on the exclusion list.

(b) If, [Upon] **upon** completion of [such] **an** investigation, [if] the Division [recommends the placement of a name on the exclusion list] **determines that an individual should be placed on the exclusion list**, the Division shall [submit a written report to the Commission setting forth the factual basis for such recommendation and the reasons] **file a petition with the Commission, with supporting affidavits, identifying the candidate and setting forth a factual basis why the Division believes the [individual's presence in a casino hotel facility would be inimical to the interest of the State of New Jersey or of licensed casino gaming] candidate satisfies the criteria for exclusion established by section 17 of the Act and these regulations.**

(c) If, [Upon] upon completion of an investigation undertaken at the request of the Chairman, [if] the Division [does not recommend the placement of a name on the exclusion list] determines that an individual should not be placed on the exclusion list, the Division shall so state in writing to the Chairman.

[19:43-1.5] 19:48-1.5 Procedure for entry of names

(a) [The Commission or the Chairman shall designate a person as a candidate for the exclusion list.] Upon receipt of a Division petition naming a candidate for the exclusion list, the Commission shall schedule a preliminary hearing in accordance with the provisions of N.J.A.C. 19:42-4. If, upon completion of the preliminary hearing, the Commission determines that there is a reasonable possibility that the candidate satisfies the criteria for placement on the exclusion list, the Commission shall issue a preliminary order placing the candidate on the exclusion list pending further proceedings in accordance with these regulations. A preliminary order designating a candidate as an excluded person shall be effective as to a particular casino licensee upon its service upon that casino licensee. The Commission shall deny any petition which does not present facts establishing a reasonable possibility that a candidate satisfies the criteria for placement on the exclusion list.

(b) [Notice of candidacy and an opportunity to be heard shall be afforded the candidate] An excluded person placed on the list by preliminary order of the Commission shall be advised of his right to a final hearing in accordance with the provisions of section 71 [sections 71e, f, g, h, and i] of the Act and N.J.A.C. 19:42-[1.4]4.

(c) [If, upon completion of the hearing, or in the absence of a hearing and the expiration of time for requesting such hearing, the Commission, after considering the criteria set forth in section 71a of the Act and these regulations, determines that the placement of a name on the exclusion list is appropriate, the Commission shall make and enter an order to that effect. Such order shall be served personally or by certified mail upon the parties to the hearing, the person so named and upon all casino licensees and shall have the effect of requiring the exclusion or ejection of such person from any casino hotel facility.] If, upon completion of a final hearing, or in the absence of a final hearing, upon the expiration of time for requesting such a hearing, the Commission determines that an excluded person placed upon the list by preliminary order of the Commission satisfies the criteria for exclusion established by section 71 of the Act and these regulations, the Commission shall issue a final order directing that the excluded person shall remain on the list until further order of the Commission. A final order directing that an excluded person remain on the list shall be effective immediately. If, upon completion of a final hearing, the Commission determines that an excluded person placed upon the list by preliminary order of the Commission does not satisfy the criteria for exclusion established by section 71 of the Act and these regulations, the Commission shall issue a final order directing that the excluded person be removed from the list. A final order directing the removal of an excluded person from the list shall be effective as to a particular casino licensee upon its service upon that casino licensee.

(d) The placement of a candidate on the exclusion list pursuant to section 71 of the Act and these regulations shall have the effect of requiring the exclusion or ejection of the excluded person from any casino hotel facility.

19:48-1.8 Petition to remove names from exclusion list

Alternative No. 1

[a] Any excluded person may petition the Chairman in writing and request a hearing concerning the removal of his name from the list. The petition shall be verified and state with specificity the grounds believed by the petitioner to constitute good cause for removal of his name.

(b) If the excluded person has not previously requested a hearing in accordance with Section 71(e)(f)(g)(h) and (i) of the Act and N.J.A.C. 19:42-4, the petitioner shall state that there existed sufficient reason for the failure to request a hearing and present evidence.

(c) The Chairman shall have the authority to either summarily deny the petition or to grant the petition and specify a hearing date before the Commission.

(d) The Chairman shall grant the petition only upon a showing that there is new evidence which is material and necessary, or that circumstances have changed since the placement of the excluded person's name upon the list, and that there would be a reasonable likelihood that the Commission would alter its previous decision.]

(a) Except as otherwise provided by (e) below, any excluded person placed on the list by final order of the Commission may, after five years have expired since his placement on the list, petition the Commission to request a hearing concerning his removal from the list.

(b) The petition shall be verified, with supporting affidavits, and shall state with particularity the grounds believed by the petitioner to constitute good cause for his removal from the list. Upon receipt of such petition, the Division shall be given an opportunity to state its position in writing.

(c) The Commission may decide the petition on the basis of the documents submitted by the parties. The Commission shall have the authority to either summarily deny the petition or grant the petition and direct that a hearing be held in accordance with the provisions of (d) below. The Commission shall grant the petition only upon a finding that there is new evidence which is material and necessary, or that circumstances have changed since the placement of the excluded person on the list, and that there would be a reasonable likelihood that the Commission would alter its previous decision.

(d) A hearing to determine if an excluded person placed on the list by final order of the Commission should be removed from the list shall be conducted as if it were a final hearing pursuant to the provisions of N.J.A.C. 19:48-1.5(c) and N.J.A.C. 19:42-4.5.

(e) Any excluded person who is barred from requesting a hearing concerning his removal from the list by (a) above may petition the Commission for early consideration of his request at any time. Such petition shall be verified, with supporting affidavits, and shall state with particularity any grounds upon which exclusion was based, and the facts and circumstances which warrant the relief sought. Upon receipt of such petition, the Division shall be given an opportunity to state its position in writing. The Commission may decide the petition on the basis of the documents submitted by the parties. The Commission shall have the authority to either summarily deny the petition or grant the petition and direct that a hearing be held in accordance with the provisions of (d) above. The Commission shall grant the petition only upon a finding that there exist extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the list.

Alternative No. 2

(a)-(c) (No change from Alternative 1.)

(d) A hearing to determine if an excluded person placed on the list by final order of the Commission should be removed from the list shall be conducted as if it were a final hearing pursuant to the provisions of N.J.A.C. 19:48-1.5(c) and N.J.A.C. 19:42-4.5. Notwithstanding the foregoing, an excluded person shall have the affirmative obligation to show cause why he should be removed from the list.

(e) (No change from Alternative 1.)

PROPOSALS

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Rules of the Games Blackjack

**Proposed New Rules: N.J.A.C. 19:47-2.8,
2.23, 2.24, 2.25, and 2.26**

Proposed Amendment: N.J.A.C. 19:47-2.13

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

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

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael A. Santaniello
Deputy Director - Operations
Financial Evaluation and Control
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN 208
Trenton, NJ 08625

The Casino Control Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1982-322.

The agency proposal follows:

Summary

N.J.A.C. 19:47-2.8 would permit casino licensees to offer a patron in the game of blackjack the option of surrendering one-half of his bet after receiving the initial two cards but before any additional cards are received.

N.J.A.C. 19:47-2.13 allows all patrons playing on one box to surrender one-half their bet or play the hand out in its entirety if surrender is offered by a casino licensee.

N.J.A.C. 19:47-2.23 would allow a casino licensee, at its discretion, to effectively treat a five card 21 as a blackjack.

N.J.A.C. 19:47-2.24 would allow a casino licensee, at its discretion to effectively treat three 7's as a blackjack.

N.J.A.C. 19:47-2.25 is an alternative to N.J.A.C. 19:47-2.10. It would allow a casino licensee, at its discretion, to offer a patron the option, after receiving two or more cards in blackjack, of doubling his wager and receiving only one additional card thereafter.

N.J.A.C. 19:47-2.26 is an alternative to N.J.A.C. 19:47-2.11. At the discretion of a casino licensee, this regulation would allow a patron whose initial two cards are identical in value, to split the hand into two separate hands. If the next card received is identical in value to a card of the split pair, the patron would be able to split the hand again. N.J.A.C. 19:47-2.26 would also allow a player who splits aces to draw additional cards to either hand of the split pair.

Social Impact

Each of the proposed rule changes will make the game of blackjack more interesting to gambling patrons playing at casinos which have instituted these procedures.

Economic Impact

Each of the proposed rule changes will decrease the house advantage in blackjack at those casinos which institute these

procedures. The patron's disadvantage would be reduced if one or all of the proposed rule changes are adopted. It is not known at this time, however, what the percentage of this reduction would be to the players.

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

19:47-2.8 [Reserved] Surrender

(a) The following procedures may be implemented at the discretion of the casino licensee at all tables throughout the casino. Adequate notification must be given to the Casino Control Commission or its authorized designee before these procedures are implemented.

(b) After the first two cards are dealt to a player, the player may elect to discontinue play on his hand for that round by surrendering half his bet. The remaining half may then be removed by the player. All decisions to surrender shall be made immediately after the player receives his initial two cards and the dealer receives the appropriate number and announces each player's point total.

(c) If the player has made an insurance wager and then elects to surrender, the player shall remove the insurance wager and surrender half of his original wager.

19:47-2.13 More than one player wagering on a box

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

(g) Whenever more than one player is wagering on a box and the player calling the decisions decides to surrender, the additional players shall either surrender as provided for in section 19:47-2.8 or continue to play such hand. In such circumstances, the player with the highest remaining wager shall have the exclusive right to call the decisions with regard to the cards dealt to such box.

Renumber (g) as (h).

19:47-2.23 Five card "21"

(a) The following procedures may be implemented at the discretion of the casino licensee at all tables throughout the casino. Adequate notification must be given to the Casino Control Commission or its authorized designee before these procedures are implemented.

(b) If a player's hand totals 21 in five cards he shall be paid at odds of at least 3 to 2.

(c) If the first face up card dealt to the dealer is a 2, 3, 4, 5, 6, 7, 8 or 9 and a player has a five card 21 the dealer shall announce such and pay the player at odds of at least 3 to 2 and shall remove the player's cards before any other players receive additional cards.

(d) If the first face up card dealt to the dealer is an Ace, King, Queen, Jack or 10 and a player has a five card 21, the dealer shall announce such but shall make no payment nor remove any cards until all other cards are dealt to the players and the dealer receives his second card. If, in such circumstances, the dealer's second card does not give him blackjack, the player having a five card 21 shall be paid at odds of at least 3 to 2. If, however, the dealer's second card gives him blackjack, the wager of the player having a five card 21 shall be void and constitute a standoff.

19:47-2.24 Three sevens

(a) The following procedures may be implemented at the discretion of the casino licensee at all tables throughout the casino. Adequate notification must be given to the Casino Control Commission or its authorized designee before these procedures are implemented.

(b) If a player obtains three 7's he shall be paid at odds of at least 3 to 2.

(c) If the first face up card dealt to the dealer is a 2, 3, 4, 5,

6, 7, 8 or 9 and a player has three 7's, the dealer shall announce such and pay the player at odds of at least 3 to 2 and shall remove the player's cards before any other players receive additional cards.

(d) If the first face up card dealt to the dealer is an Ace, King, Queen, Jack or 10 and a player has three 7's the dealer shall announce such but shall make no payment nor remove any cards until all other cards are dealt to the players and the dealer receives his second card. If, in such circumstances, the dealer's second card does not give him blackjack, the player having three 7's shall be paid at odds of at least 3 to 2. If, however, the dealer's second card gives him blackjack, the wager of the player having three 7's shall be void and constitute a standoff.

19:47-2.25 Doubling down-alternate procedures

(a) In lieu of the requirements of N.J.A.C. 19:47-2.10 the following procedures may be implemented at the discretion of the casino licensee at all tables throughout the casino. Adequate notification must be given to the Casino Control Commission or its authorized designee before these procedures are implemented.

(b) Except for blackjack or a point count of 21 in two cards, a player may elect to double down, i.e. make an additional wager not in excess of the amount of his original wager, on the first two cards or after receiving any additional cards dealt to him or on the first two cards or any additional cards of any split pair on the condition that one and only one additional card shall be dealt to the hand on which he has elected to double down. In such circumstances, the one additional card shall be dealt face upwards and placed sideways on the layout.

(c) If a dealer obtains blackjack after a player doubles down, the dealer shall only collect the amount of the original wager of such player and shall not collect the additional amount wagered in doubling down.

19:47-2.26 Splitting pairs - alternate procedures

(a) In lieu of the requirements of N.J.A.C. 19:47-2.11 the following procedures may be implemented at the discretion of the casino licensee at all tables throughout the casino. Adequate notification must be given to the Casino Control Commission or its authorized designee before these procedures are implemented.

(b) Whenever the initial two cards dealt to a player are identical in value, the player may elect to split the hand into two separate hands provided that he makes a wager on the second hand so formed in an amount equal to his original wager.

(c) When a player splits pairs, the dealer shall deal a second card to the first of the hands so formed and shall complete the player's decisions with respect to that hand before proceeding to deal any cards to the second hand.

(d) After a second card is dealt to a split pair, the dealer shall announce the point total of such hand and the player shall indicate his decision to stand, draw or double down with respect thereto except that:

1. A player may split pairs again if the second card so dealt is identical in value to a card of the split pair; and
2. A player splitting aces may elect to receive additional cards.

(e) If the dealer obtains blackjack after a player splits pairs, the dealer shall only collect the amount of the original wager of such player and shall not collect the additional amount wagered in splitting pairs.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF BANKING

Limitation on Liability to a Bank Expansion of List of Eligible Banks

Adopted Amendment: N.J.A.C. 3:11-7.7

Proposed: June 21, 1982 at 14 N.J.R. 608(b).
Adopted: July 28, 1982 by Michael M. Horn,
Commissioner, Department of Banking.
Filed: July 29, 1982 as R.1982 d.263, **without change**.

Authority: N.J.S.A. 17:9A-62H.

Effective Date: August 16, 1982.

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing
CN 804
Trenton, NJ 08625

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency new rule are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

This proposal is known as PRN 1982-321.

The agency emergency adoption and concurrent proposal follows:

Summary

By authority of P.L. 1982, c.49 (the Fiscal Year 1983 State Budget Act), the Department establishes, by regulation, a new fee schedule which supersedes the fee schedule established by N.J.S.A. 55:13A-13. This new fee schedule shall stay in effect until such time as statutory authority for it may expire.

Social Impact

The Legislature and the Administration have conditioned the appropriation for the hotel and multiple dwelling inspection program upon receipt of revenue sufficient to match the appropriation. The fees are therefore necessary if the inspection program is to continue to provide protection for the health, safety and welfare of residents of multiple dwellings and hotel guests. Failure to adopt this fee schedule would result in a substantial reduction of the inspection program.

Economic Impact

The fees for three-unit multiple dwellings will go from \$65 to \$142. On larger buildings, increases may be a good deal more substantial because the present per building and per project maximums, which have had the effect of shifting the burden of the fees away from the larger properties, are to be substantially increased. The fees were instituted in 1970 for the express purpose of making the inspection program self-sustaining. Inasmuch as they have not previously been changed despite 12 years of inflation, a major increase is needed at this time if the program is again to pay its own way.

Full text of the adoption and concurrent proposal follows.

5:10:1-17 Inspection fees

(a) The inspection fees established by this section shall be effective for all applications for certificates of inspection filed during Fiscal Year 1983 and until such time thereafter as the statutory authority of the Department to establish inspection fees by regulation may expire.

(b) The inspection fee charged for each hotel or multiple dwelling shall include a common areas fee of \$25.00 per building.

(c) The per unit inspection fee for each multiple dwelling or multiple dwelling project shall be determined as follows:

1. \$39.00 per unit for each of the first seven dwelling units;
2. \$25.00 per unit for each the next 16 dwelling units;
3. \$21.00 per unit for each of the next 24 dwelling units;
4. \$14.00 per unit for every dwelling unit thereafter.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING

Hotels and Multiple Dwellings Inspection Fees

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 5:10-1.17

Emergency New Rule Adopted: July 16, 1982 by John P. Renna, Commissioner, Department of Community Affairs.
Gubernatorial Approval (see: N.J.S.A. 52:14B-4(c)): July 22, 1982.
Emergency New Rule Filed: July 22, 1982 as R.1982 d.259.

Authority: N.J.S.A. P.L. 1982, c.49.

Emergency New Rule Effective Date: July 22, 1982.
Emergency New Rule Expiration Date: September 20, 1982.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

(d) The per unit inspection fee for each hotel or hotel project shall be determined as follows:

1. \$21.00 per unit for each of the first seven dwelling units;
2. \$14.00 per unit for each of the next 16 dwelling units;
3. \$12.00 per unit for each of the next 24 dwelling units;
4. \$9.00 per unit for every dwelling unit thereafter.

(e) The maximum fee for any single building shall be \$1,250 and the maximum fee for any project shall be \$3,500.

(a)

DIVISION OF HOUSING

Hotels and Multiple Dwellings Maintenance

Adopted Amendments: N.J.A.C. 5:10-2.2 and 25.3

Proposed: February 1, 1982 at 14 N.J.R. 119(a).

Adopted: July 16, 1982 by John P. Renna, Commissioner,
Department of Community Affairs.

Filed: July 19, 1982 as R.1982 d.253, **with substantive
and technical changes** not requiring additional public
notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 55:13A-6(e), -7 and -7.1.

Effective Date: August 16, 1982.

Full text of the changes between proposal and adoption follows
(additions to proposal shown in boldface with asterisks ***thus***;
deletions from proposal shown in brackets with asterisks ***[thus]***).

5:10-25.3 Smoke detectors and smoke alarms

(a) Smoke detectors shall be installed in all hotels and multiple dwellings and shall be Underwriters Laboratories, Inc. (U.L.), Factory Mutual Research Corporation (F.M.) or other nationally recognized testing laboratory listed ionization or photo-electric type units.

1. Single station units shall have the following features: integral alarms capable of emitting a minimum sound intensity of 85 dbA at a 10 foot distance, an easily seen and activated manual unit test button or approved alternative and a power source monitor light or trouble signal.

i. All units shall be listed ***[as conforming to]***, **shall meet the latest *requirements of*** U.L. 217 ***[requirements]*** and shall be installed and maintained as per manufacturer's recommendations and shall comply with the latest NFPA No. 72E and No. 74 standards ***[for design and performance]***, **except as otherwise provided in this section.**

***2.** Multiple station units shall be either a series of interconnected single station units or smoke detectors of the non-selfcontained type which are interconnected to a common alarm [annunciation or to a series of alarms with the same features as required for single station units.] **system.**

(b) All smoke detectors shall be powered by an alternating current (AC), constantly active electric circuit which cannot be deactivated by the operation of any interconnected switching device and shall comply with the latest NFPA-70 (National Electrical Code) requirements, **except as otherwise provided in this section. *All common area smoke detector units and systems shall be on circuitry that is connected into the building owner's electric meter.*** As an alternative, battery-powered single station units may be installed in dwelling units provided that the following conditions are met:

1. (No change.)

***2.** The owner of a multiple dwelling or his representative shall place a tag on each unit and shall place the date of inspection and his initials on the tag.

i. Entries shall be made on the tag upon initial installation, whenever a change of occupant occurs, when any reported malfunction of unit is corrected, and when required maintenance is performed.

ii. An entry made on a tag shall constitute a certification that the unit is operating properly.

iii. Tags shall be [attached or] **affixed so as not to impair the functioning of the unit.***

Renumber 5. as 3. (No change from proposal.)

Renumber 3.-4. as (c)-(d) (No change from proposal.)

Renumber (c)-(d) as (e)-(f) (No change from proposal.)

[(e)](g) Dwelling units in hotels and multiple dwellings shall have smoke detectors installed at locations as follows:

1. (No change from proposal.)

***2.** A basement or cellar **having** direct [ly connected to] **access from within** a dwelling unit and used **solely** by the occupants of that unit [only] shall have a minimum of one approved smoke detector [located in the highest ceiling area or at the ceiling of the first floor stair landing].

i. **One of such detectors shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening, or other approved location where the earliest detection of fire would activate the alarm(s).**

ii. **Basements or cellars which contains utility services or storage space for other dwelling units shall comply with common area requirements.***

3. (No change from proposal.)

[(f)](h) Common areas in all buildings that do not comply with the ***latest*** minimum life safety requirements of the New Jersey Uniform Construction Code shall be required to have an approved system of multiple station units installed as hereinafter provided.

1. Detection system shall be powered by alternating current (AC), constantly active electric circuits which cannot be deactivated by the operation of any interconnected switching devices and shall comply with the latest NFPA-70 (National Electrical Code) requirements, **except as otherwise provided in this section.**

i. Systems shall consist of smoke detectors of the non-selfcontained type ***[and]/*** or single station units so interconnected that the activation of any one unit will simultaneously activate the individual alarms of all other units ***[and]*** or other separate alarms in the system.

ii. Alarms shall be located so as to be effectively heard above all other sounds, by all the occupants, in every occupied space within the building ***not separated by fire walls having a minimum fire-resistance rating of two hours.***

iii. All detection ***and control*** units, wiring, and systems installations shall be listed as conforming to the latest U.L. [167, 168] ***[and]* 217, 268 *and 864*** requirements and shall comply with NFPA ***No. 72A,*** No. 72E and No. 74 standards, **except as otherwise provided in this section. *[No system of listed single station units complying to U.L. 217 requirements, shall be interconnected in a number exceeding the maximum specified by the manufacturer for which an Underwriters Laboratories, Inc. listing was given. The use of a relay or similar type device in order to increase the number of units in the system shall not be permitted. All components of any type system shall be compatible with each other so as not to void the Underwriters Laboratories, Inc. listing(s) for such components.]***

***iv.** The maximum number of single station units that can be interconnected in a multiple station system shall not exceed the number permitted in the installation manual or instructions provided with each detector and referenced in the detector marking.

v. All components of any interconnected system shall be compatible with each other as indicated in the installation

instructions provided with each such component.*

*[1.]2. All public corridors up to [30] **40** feet in length which form part of a means of egress shall have a minimum of one approved smoke detector.

i. An additional smoke detector shall be installed for every additional [30] **40** feet or part thereof.

ii. Detectors shall be [so] located [as to provide most complete coverage] at a maximum distance of **20 feet from end walls**.

iii. Where corridor width exceeds 10 feet, smoke detector unit spacing shall be reduced as per NFPA-72E standards.

[2.]3. All interior stairways [in buildings] not enclosed by a minimum one hour fire-rated separation from other common areas [and/] or which function as a sole interior means of egress, shall have approved smoke detectors installed at each floor level at either the ceiling of the landing or the high point of the sloped staircase soffit.*

[3.] ***4.* All interior common areas other than public corridors, interior stairs and basements or cellars shall have approved smoke detectors installed at spacings not to exceed 900 square feet of floor space coverage per smoke detector.**

i. No such detector shall be spaced further than 15 feet from the nearest wall or other vertical building element or by closer than three feet to a window*, door* or air vent *unless not practicable or noted otherwise in NFPA-72E standards.

ii. Attics with ceiling heights less than 7'-0" that are not used for any type of storage, and crawl spaces with ceiling heights less than 4'-0" that are not used for any type of storage and are separated from adjacent building spaces by minimum 1 1/2 hour fire rated walls and opening protectives will not be required to have smoke detectors installed therein.

[3.][4.]5. Basements and cellars shall be subject to the following:

i. All basements or cellars which lack a minimum one hour fire-rated smooth ceiling [surface] assembly shall have approved smoke detectors installed at spacings not to exceed [300] **450** square feet of floor space coverage per smoke detector [unless the detector is listed for a greater allowable spacing]. One of such detectors shall be located on the basement or cellar ceiling as close as possible to the *interior* stairway opening, [at the ceiling of the first floor stair landing] or other approved location where the earliest detection of fire would activate the alarm. The maximum spacing between [of] detectors [to conform to U.L./F.M. listings for "1/2S" distances of individual manufacturers units. The "1/2S" distance spacing] in open joist ceilings perpendicular to the joists shall be [one half of that listed for smooth ceiling surface] **15 feet, and the maximum spacing between detectors parallel to the joists shall be 30 feet. Such detectors shall be installed on the bottom surface of the joists.** *[Compartmentalized and partially enclosed areas shall have additional detectors as required to afford complete protection of the total basement/cellar area in conformity with the above criteria. The activated detector(s) shall set off alarms, which shall be so located to be effectively heard above all other sounds, by all the occupants, in every occupied space within the building not separated from the basement or cellar area by fire walls having a minimum fire-resistance rating of two hours.]*

[4.][5.] ii. All basements or cellars which have an existing approved minimum one hour fire-rated smooth ceiling assembly shall have a minimum of one approved smoke detector per [625] **900** square feet of area [unless the detector is listed for a greater allowable spacing]. One of such detectors [to] shall be located on the basement or cellar ceiling as close as possible to the *interior* stairway opening. [at the ceiling of the first floor stair landing] or other approved location where the earliest detection of fire would activate the alarm*(s).* *[Additional detectors shall be required in ceiling areas that are enclosed or separated by a minimum eight inch dropped girder or similar type projection to afford complete protection of the total basement/cellar area. The activated detector(s) shall set off alarms, which shall be so located to be effectively heard above all other sounds, by all the occupants,

in every occupied space within the building not separated from the basement or cellar area by fire walls having a minimum fire-resistance rating of two hours.]*

iii. Compartmentalized and partially enclosed basement or cellar areas shall have additional detectors as required to afford complete protection of the total basement/cellar area in conformity with the above spacing criteria. Where partitions do not extend beyond a distance of 18 inches below the ceiling surface, additional detectors shall not be required.

*6. Additional smoke detectors shall be required in all ceiling areas that are enclosed or separated by or similar type projections in order to afford complete protection of the total building area.

i. Beams that project more than eight inches from ceiling surfaces and girders which support open joists or beams and have less than a four inch clearance between the top of girder and ceiling surface, shall have smoke detectors spaced at a maximum distance of 20 feet perpendicular to the beam or girder projections.

ii. In building areas containing a single beam or girder that projects more than 12 inches from the ceiling surface, smoke detectors shall be located at a maximum distance of 10 feet from the beam or girder projection.

iii. Ceiling bays created by beams that exceed 18 inches in depth and which are spaced more than eight feet on centers, shall be treated as separate enclosed areas for determining the number of smoke detectors required.

iv. Additional smoke detectors will not be required in atrium or coffered type ceilings which exceed 12 feet in height.

v. Ceilings with beams or girders, or coffered type ceilings, or ceilings in atriums having a ceiling height of at least 12 feet, shall conform to the smooth ceiling requirements.*

*[5.] 6. [Additional smoke detector requirements for hotels:] All hotels [greater than three stories] **four stories or more** in height, or [greater than two stories] **three stories or more** in height and having more than 20 rooming units, and all multiple dwellings **four stories or more in height and having 15 or more dwelling units**, shall have approved detection systems located in all interior common areas, connected to a supervisory type [central] listed control panel conforming to the latest UL 268 requirements and NEPA No. 72A standards, except as otherwise provided in this section, that is powered by an approved emergency power source as required by the latest NFPA-70 (National Electrical Code). For all such buildings six stories or less in height and having 30 or fewer interconnected smoke detector units, the control panel need not be more elaborate than one which will indicate a fire alarm or system trouble condition (faulty circuit, loose connection in wiring, etc.) The panel shall be located so that it can be monitored 24 hours a day by persons in a responsible position.] [Such smoke detection systems shall be installed so as to include basement and cellar areas, storage rooms, soiled linen collection and sorting areas, rubbish and laundry chutes, refuse collection and disposal areas, laundry drying areas with two or more machines, interior corridors, work shops, recreation rooms, attics, enclosed stairways, escalators, kitchen, places of assembly, infirmaries and public foyers.]*

7. *[All buildings seven stories or more in height, or having more than 30 interconnected smoke detector units, shall have approved smoke detection systems installed in all common interior areas, which are connected to a supervisory type listed control panel conforming to the latest U.L. 268 requirements and NFPA - 72A standards, except as otherwise provided in this section that is powered by an approved emergency power source as required by the latest NFPA - 70 (National Electrical Code). The control panel shall be capable of indicating a fire alarm or system trouble condition and shall also visually indicate the floor or building area from which the alarm was activated. The panel shall be so located that it can be monitored 24 hours a day by persons in a responsible position.]*

*All hotels four stories or more in height, and all multiple dwellings six stories or more in height and having 30 or more dwelling units, shall have approved smoke detection systems located in all interior occupiable common areas, connected to a supervisory type listed control panel conforming to the latest U.L. 864 requirements and NFPA No. 72A standards, except as otherwise provided in this section, that is powered by an approved emergency power source as required by the latest NFPA-70 (National Electrical Code).

i. The control panel shall be of the multi-zoned type that will visually indicate the floor from which the alarm is activated.

ii. All such panels shall be located in accordance with NFPA-72A standards or as directed by the local fire subcode official.*

8. A pre-signal alarm feature and/or the separate zoning of floors in multiple story hotels and multiple dwellings for selective *[alarm announcement]* *floor evacuation* are not permitted, unless the building conforms to the *latest* minimum life safety fire protection and smoke control requirements of the New Jersey Uniform Construction Code for high-rise buildings.

9. Existing common area smoke detection systems that were installed in compliance with this chapter prior to the effective date of these amendments, for which a construction permit was issued subject to plan review approval, shall be accepted as conforming to this section, unless the Bureau shall determine, in accordance with N.J.A.C. 5:10-1.8, that a hazardous condition exists.

[(g)](i) With the approval of the [Bureau] local fire protection subcode official, fixed temperature or rate-or-rise and fixed temperature heat detectors may be substituted for smoke detectors in those locations where frequent nuisance alarms would be likely to occur.

1. Such building spaces *[not requiring individual approvals]* are: garages, crawl spaces, uninhabitable attics, heater and boiler rooms, laundry rooms and other such rooms where the ambient temperatures are under 40 degrees Fahrenheit or are above 100 degrees Fahrenheit and/or have a relative humidity either under 20 percent or above 85 percent.

2. The maximum spacing between *either* heat detector units *[and]* *or* the nearest side wall or partition *and a heat detector unit* shall not exceed the spacings permitted by Underwriters Laboratories, Inc. *[standards]* *listings*.*

Renumbering of (h)-(i) as (j)-(k) (No change from proposal.)

(a)

DIVISION OF HOUSING

Planned Real Estate Development Registration Fees

Adopted Amendment: N.J.A.C. 5:26-2.4

Proposed: June 21, 1982 at 14 N.J.R. 609(a).
 Adopted: July 22, 1982 by William M. Connolly, Acting Director, Division of Housing.
 Filed: July 23, 1982 as R.1982 d.260, **without change.**

Authority: N.J.S.A. 45:22A-35(a) and P.L. 1982, c.49.

Effective Date: August 16, 1982.

(b)

DIVISION ON AGING

Congregate Housing Services Program

Adopted New Rule: N.J.A.C. 5:70

Proposed: June 21, 1982 at 14 N.J.R. 609(b).
 Adopted: July 30, 1982 by John P. Renna, Commissioner, Department of Community Affairs.

Filed: August 3, 1982 as R.1982 d.272, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:27D-188.

Effective Date: August 16, 1982.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

5:70-3.4 Final approval

(a) As a precondition to final approval for the implementation of a Congregate Services Program, the following information shall be submitted for review by the Division on Aging:

1.-2. (No change from proposal.)

3. Proof of satisfying the requirements of State and Local Health Departments (i.e., Chapter 12, State Sanitary Code, N.J.A.C. 8:24), including a copy of the "Sanitation Inspection Report", *** issued within the preceding 12 month period of time,*** which must have a "Satisfactory Rating" ***[(white certificate)]***.

4. (No change from proposal.)

5:70-4.3 Meals

(a)-(i) (No change from proposal.)

(j) The food preparation facility must post a current satisfactory New Jersey State Department of Health Sanitary Inspection Report certificate ***issued within the preceding 12 month period of time*** prior to any food preparation.

(k) (No change from proposal.)

5:70-6.5 Income limits and payments schedules for individuals

(a) Operating subsidies for qualified congregate housing residents will be provided in accordance with the following subsidy formula:

$$\text{Net Income (NI)}^1 - \left[\begin{array}{l} \text{Rent (R)} \\ + \\ \text{Personal spending money } \$90 \\ + \\ \text{Credit for monthly program cost below } *[\$200]* \\ *\$225* \\ \text{ceiling (if applicable)}^2 \end{array} \right] = \text{Resident's payment towards cost of congregate services (P)} *5*$$

Cost of congregate services program $([\$200]* *\$225*$ or actual cost of services if less)

Amount of subsidy received by resident

- (P) =

¹As defined in N.J.A.C. 5:70-6.2.

²If a sponsoring group is able to provide the total service package

for less than *\$200.00* ***\$225.00*** per person, the cost difference will be applied to the participant's portion of the program cost, (i.e., if the program can be offered for *\$175.00* ***\$200.00*** per month, per person, the amount the resident pays would be reduced by \$25.00 irrespective of whether the person takes the full program or a modified program).

(b) Income limits and payment schedules for a couple or two persons sharing an apartment only one person participating shall be as follows:

$$\begin{array}{r} \text{Half of} \\ \text{Net} \\ \text{Income} \\ \text{(NI)} \end{array} - \left[\begin{array}{l} \text{Half} \\ \text{of rent} \\ \text{(R)} \end{array} \right] + \left[\begin{array}{l} \text{Personal} \\ \text{Spending} \\ \text{Money} \\ \$90 \end{array} \right] + \left[\begin{array}{l} \text{Credit for} \\ \text{monthly pro-} \\ \text{gram cost} \\ \text{below *$200}* \\ \text{*$225* ceil-} \\ \text{ing (if} \\ \text{applicable)}^3 \end{array} \right] = \left[\begin{array}{l} \text{Payment to-} \\ \text{ward cost} \\ \text{of congregate} \\ \text{services (P)}^{*5*} \end{array} \right]$$

Cost of Congregate Services Program (*\$200.00* ***\$225.00*** or actual cost of services if less) - (P) = Amount of subsidy received by resident

³If a sponsoring group is able to provide the total service package for less than *\$200.00* ***\$225.00*** per person, the cost difference will be applied to the participant's portion of the program cost, (i.e., if the program can be offered for *\$175.00* ***\$200.00*** per month, per person, the amount the resident pays should be reduced by \$25.00 irrespective of whether the person takes the full program).

(c) Income limits and payment schedules for a couple or two persons sharing an apartment for both participants shall be as follows:

$$\begin{array}{r} \text{Net} \\ \text{Income} \\ \text{(NI)} \end{array} - \left[\begin{array}{l} \text{Rent} \\ \text{(R)} \end{array} \right] + \left[\begin{array}{l} \text{Personal} \\ \text{spending} \\ \text{money} \\ \$158 \end{array} \right] + \left[\begin{array}{l} \text{Credit for} \\ \text{monthly pro-} \\ \text{gram cost} \\ \text{below *$345}* \\ \text{*$388*} \\ \text{ceiling (if} \\ \text{applicable)}^4 \end{array} \right] = \left[\begin{array}{l} \text{Couple's pay-} \\ \text{ment towards} \\ \text{cost of} \\ \text{congregate} \\ \text{services} \\ \text{(P)}^{*5*} \end{array} \right]$$

Cost of Congregate Services Program (*\$345.00* ***\$388.00*** or actual cost of services if less) - (P) = Amount of Subsidy received by residents

⁴The program credit is to be applied if the total service package for two is less than *\$345.00* ***\$388.00***.

⁵Food stamps may be accepted for resident's payment toward meal cost.*

*** (d) Projects offering two meals per day will be granted program credit for monthly program cost below \$275.00 for one person and \$488.00 for a couple or two persons sharing an apartment with two participants.***

EDUCATION

(a)

STATE BOARD OF EDUCATION

Appeals Rules and Regulations

Adopted Amendments: N.J.A.C. 6:2-1.1, 1.2 and 1.7 through 1.12

Adopted New Rules: N.J.A.C. 6:2-1.13 through 1.19

Proposed: March 15, 1982 at 14 N.J.R. 261(a).
 Adopted: July 7, 1982 by State Board of Education, Saul Cooperman, Secretary.
 Filed: August 2, 1982 as R.1982 d.268, **with technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 18A:4-1 through 18A:4-20, 18A:6-27 through 18A:6-29 and 18A:7A-25.

Effective Date: August 16, 1982.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

6:2-1.9 [Functions of legal committee] **Filing and service of briefs in support of cross-appeals**
 [(a)-(b)] (No change from proposal.)

Within 30 days after an appeal and cross-appeal *[has]* *have* been taken, the appellant shall file with the legal committee 15 copies of the brief in support of the appeal upon which appellant relies, and shall serve upon the cross-appellant or his/her counsel one copy thereof. Within 40 days thereafter, the cross-appellant shall file 15 copies of his/her brief in support of *[appeal]* *cross-appeal*** which shall include answer to appellant's brief with the legal committee and shall serve one copy thereof upon the appellant or his/her counsel. Within 10 days thereafter, the appellant shall serve 15 copies of his/her answering brief to the legal committee and shall serve one copy thereof upon the cross-appellant or his/her counsel. Filing deadlines as set forth herein are subject to the provisions as outlined in N.J.A.C. 6:2-1.8.**

6:2-1.10 [Decision of State Board] Contents of briefs
 [(a)-(d)] (a) (No change from proposal.)

(b) **Letter briefs, in lieu of filing a formal brief in accordance with (a) above, may be filed by any party. A letter brief shall not exceed 15 pages, single or double spaced, and shall conform with the requirements of (a)2, 3, 4 and 5 above. Any point not presented below must have a statement to that effect included in parenthesis in the point heading. No cover need be annexed, provided the information required by N.J.A.C. *[6:2-1.10]* ***6:2-1.12*** is included in the heading of the letter.**

(c) (No change from proposal.)

6:2-1.18 **Notice of motion to appear as amicus curiae**
 An application for leave to appear as amicus curiae shall be made by motion stating with specificity, the identity of the applicant, the issue intended to be addressed, the nature of the

public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The State Board shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall fix a briefing schedule. An amicus curiae who has been granted a leave to ***[appeal]*** ***appear*** in a case before the Commissioner may, without seeking further leave, file a brief and appear in an appeal taken to the State Board from the judgment or order entered therein.

(a)

STATE BOARD OF EDUCATION

**Teacher Education and Academic
Credentials
Standards for State Approval of Teacher
Education**

**Repealed: N.J.A.C. 6:11-7
Adopted New Rule: N.J.A.C. 6:11-7.1**

Proposed: May 17, 1982 at 14 N.J.R. 456(b).
Adopted: July 7, 1982 by State Board of Education, Saul Cooperman, Secretary.
Filed: August 2, 1982, as R.1982 d.269, **with technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 18A:4-15 and 18A:6-38.

Effective Date for 6:11-7.1(a): August 16, 1982.
Operative Dates for 6:11-7.1(b): September 1, 1983 (for entering freshmen), September 1, 1985 (for transfer students).

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

6:11-7.1 Procedures for accreditation or approval

(a) The State Board of Education ***[authorized]*** ***authorizes*** the use of Standards for State Approval of Teacher Education of the National Association of State Directors of Teacher Education and Certification (NASDTEC), in the evaluation of teacher preparation programs in colleges and universities of the State. The 1981 edition of NASDTEC (future editions, subsequent amendments and supplements) is hereby authorized for use in the evaluation of teacher preparation programs, and is hereby adopted as a rule.

1. (No change from proposal.)
2. This document may be purchased from NASDTEC, Utah State Office of Education, Staff Development Section, 250 East Fifth South, Salt Lake City, Utah ***[,]*** ***84111**.
 - (b) (No change from proposal.)
 1. (No change from proposal.)
 - i. (No change from proposal.)
 - ii. Achieved acceptable levels of proficiency in the use of English language (oral and written) and mathematics. Students with deficiencies in these areas upon admission to college shall be required to demonstrate the elimination of such deficiencies through an oral or written assessment ***[at]*** ***by*** the beginning of the junior year.
 - iii. (No change from proposal.)
 2. (No change from proposal.)

- i. (No change from proposal.)
- ii. Having demonstrated acceptable levels of teaching proficiency in junior ***[practical]*** ***field experience*** as indicated by the evaluation reports of college and school faculty. Such evaluations shall be communicated to the student and shall be included in the student's permanent file.
 - 3.-12. (No change from proposal.)
 13. Collegiate faculty assigned to supervise ***[practicum]*** students shall:
 - i.-ii. (No change from proposal.)
 - 14.-15. (No change from proposal.)
 16. Reading requirements ***[:]*** ***.*** See N.J.A.C. 6:11-8.2(a)8i-iv for requirements in all subject teaching programs and elementary teaching programs.
 17. (No change from proposal.)

(b)

STATE BOARD OF EDUCATION

**Business Services
Method of Determining Tuition Rates**

Adopted Amendment: N.J.A.C. 6:20-3.1

Proposed: May 17, 1982 at 14 N.J.R. 458(a).
Adopted: July 7, 1982 by State Board of Education, Saul Cooperman, Secretary.
Filed: August 2, 1982 as R.1982 d.270, **with technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 18A:4-15, 18A:38-19.

Effective Date: August 16, 1982.
Operative Date: July 1, 1982.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

- 6:20-3.1 Method of determining tuition rates
- (a)-(b) (No change from proposal.)
 - (c) (No change from proposal.)
 - 1.-11. (No change from proposal.)
 12. (No change from proposal.)
 - i. (No change from proposal.)
 - ii. Multiply the debt service interest charges paid by the ratio of State support obtained in (c)12**i** above;
 - iii. (No change from proposal.)
 - (d)-(f) (No change from proposal.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Water Supply Bond Loan Regulations for the Rehabilitation of Water Supply Facilities

Adopted New Rules: N.J.A.C. 7:1A-2.5, 2.12 and 2.13

Proposed: June 7, 1982 at 14 N.J.R. 499(c).

Adopted: August 3, 1982 by Robert E. Hughey,
Commissioner of the Department of Environmental
Protection.

Filed: August 3, 1982 as R.1982 d.281, **with substantive changes** not requiring additional public notice and comment.

Authority: Water Supply Bond Act of 1981, P.L. 1981,
c.261, section 5.

Effective Date: August 16, 1982.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

7:1A-2.12 Priority determination

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

(f) Priority points shall be given for the following factors and in the amount shown below:

1.-6. (No change from proposal.)

7. Priority points shall be awarded for the percentage of the present daily demand of the applicant's water supply system that can be ***[supplied]* *augmented*** from ***usable*** interconnections with other water systems. The present daily demand for the applicant's service area shall be calculated by totaling the daily water supply demand over a one year period ending in the month of the submission of the applicant's rehabilitation loan application and dividing this sum by 365.

i. One point shall be awarded for a system having ***usable*** interconnections that can ***[supply]* *augment*** between 71 through 80 percent of the present daily demand for the service area;

ii. Two points shall be awarded for a system having ***usable*** interconnections that can ***[supply]* *augment*** between 61 through 70 percent of the present daily demand for the service area;

iii. Three points shall be awarded for a system having ***usable*** interconnections that can ***[supply]* *augment*** between 41 through 60 percent of the present daily demand for the service area;

iv. Four points shall be awarded for a system having ***usable*** interconnections that can ***[supply]* *augment*** between 21 and 40 percent of the present daily demand for the service area;

v. Five points shall be awarded for a system having ***usable*** interconnections that can ***[supply]* *augment*** less than or equal to 20 percent of the present daily demand for the service area;

vi. Six points shall be awarded for a system having no ***usable*** interconnections with any other water supply system.

8. Priority points shall be awarded to systems serving a greater number of residents in proportion to ***net* water *used]* *usage***.

The net water usage shall be calculated by subtracting the unaccounted for water usage from the present daily demand, as calculated in (f) 7 above. ***[This shall be done in accordance with the ratio of present daily demand, as calculated in (f)7 above, to**

residential population served by the water supply system.]* In the instance of systems with a large seasonal variation in the number of residents, the residential population figure shall be determined pursuant to (a)4 above.

i.-vi. (No change.)

9. Priority points shall be awarded for the leakage and other unaccountable water losses from the transmission system ***to be eliminated as part of the eligible project scope which shall be*** expressed as a percentage of the present daily demand, as calculated in (f)7 above.

i. Two points shall be awarded for ***[a system experiencing]* *the elimination of* water losses *of* between ***[nine]* *five*** through **[12]* *10*** percent of the present daily demand ***included as part of the eligible project scope***.**

ii. Seven points shall be awarded for ***[a system experiencing]* *the elimination of* water losses *of* between **[13]* *11*** through 16 percent of the present daily demand ***included as a part of the eligible project scope***.**

iii. Twelve points shall be awarded for ***[a system experiencing]* *the elimination of* water losses *of* between 17 through 20 percent of the present daily demand ***included as a part of the eligible project scope***.**

iv. Fourteen points shall be awarded for ***[a system experiencing]* *the elimination of* water losses *of* between 21 through 24 percent of the present daily demand ***included as part of the eligible project scope***.**

v. Sixteen points shall be awarded for ***[a system experiencing]* *the elimination of* water losses *of* between 25 through 28 percent of the present daily demand ***included as part of the eligible project scope***.**

vi. Eighteen points shall be awarded for ***[a system experiencing]* *the elimination of* water losses *of* between 29 through 32 percent of the present daily demand ***included as part of the eligible project scope***.**

vii. Twenty points shall be awarded for ***[a system experiencing]* *the elimination of* water losses *of* 33 percent or more of the present daily demand ***included as a part of the eligible project scope***.**

10. (No change from proposal.)

(g)-(m) (No change from proposal.)

HEALTH

(b)

HEALTH PLANNING AND RESOURCE DEVELOPMENT

Standards for Doctors' Offices Owned and/or Sponsored by the Serving Health Care Facilities

General Requirements

Adopted Amendment: N.J.A.C. 8:31-22.1

Proposed: November 16, 1981 at 13 N.J.R. 807(a).

Adopted: July 30, 1982 by Shirley A. Mayer, M.D.,
M.P.H., Commissioner, Department of Health (with
approval of Health Care Administration Board.)

Filed: August 3, 1982 as R.1982 d.273, **without change.**

Authority: N.J.S.A. 26:2H-1 and 26:2H-5.

Effective Date: August 16, 1982.

(a)

HEALTH PLANNING AND RESOURCE DEVELOPMENT

Standards for Parking Garages Owned and/or Sponsored by Health Care Facilities General Requirements

Adopted Amendment: N.J.A.C. 8:31-23.1

Proposed: November 16, 1981 at 13 N.J.R. 807(b).
Adopted: July 30, 1982 by Shirley A. Mayer, M.D.,
M.P.H., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 3, 1982 as R.1982 d.274, **without change**.

Authority: N.J.S.A. 26:2H-1 and 26:2H-5.

Effective Date: August 16, 1982.

(b)

HEALTH PLANNING AND RESOURCE DEVELOPMENT

Design and Construction of Interns', Residents' and Nurses' Housing General Requirements

Adopted Amendment: N.J.A.C. 8:31-24.1

Proposed: November 16, 1981 at 13 N.J.R. 808(a).
Adopted: July 30, 1982 by Shirley A. Mayer, M.D.,
M.P.H., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 3, 1982 as R.1982 d.275, **without change**.

Authority: N.J.S.A. 26:2H-1 and 26:2H-5.

Effective Date: August 16, 1982.

(c)

HEALTH PLANNING AND RESOURCE DEVELOPMENT

Standards for Licensure of Long Term Care Facilities Construction

Adopted Amendment: N.J.A.C. 8:39-1.33

Proposed: November 16, 1981 at 13 N.J.R. 809(a).
Adopted: July 30, 1982 by Shirley A. Mayer, M.D.,
M.P.H., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 3, 1982 as R.1982 d.276, **without change**.

Authority: N.J.S.A. 26:2H-1 and 26:2H-5.

Effective Date: August 16, 1982.

(d)

HEALTH PLANNING AND RESOURCE DEVELOPMENT

Standards for Licensure of Long Term Care Facilities Additional Requirements

Adopted Amendment: N.J.A.C. 8:39-1.34

Proposed: November 16, 1981 at 13 N.J.R. 809(b).
Adopted: July 30, 1982 by Shirley A. Mayer, M.D.,
M.P.H., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 3, 1982 as R.1982 d.277, **without change**.

Authority: N.J.S.A. 26:2H-1 and 26:2H-5.

Effective Date: August 16, 1982.

(e)

HEALTH PLANNING AND RESOURCE DEVELOPMENT

Standards for Ambulatory Care Facilities Construction

Adopted Amendment: N.J.A.C. 8:43A-2.1
Adopted New Rule: N.J.A.C. 8:43A-2.2

Proposed: November 16, 1981 at 13 N.J.R. 810(a).
Adopted: July 30, 1982 by Shirley A. Mayer, M.D.,
M.P.H., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 3, 1982 as R.1982 d.278, **without change**.

Authority: N.J.S.A. 26:2H-1 and 26:2H-5.

Effective Date: August 16, 1982.

(f)

HEALTH PLANNING AND RESOURCE DEVELOPMENT

Standards for Hospital Facilities Construction

Adopted Amendment: N.J.A.C. 8:43B-3.1
Adopted New Rule: N.J.A.C. 8:43B-3.1A

Proposed: November 16, 1981 at 13 N.J.R. 811(a).
Adopted: July 30, 1982 by Shirley A. Mayer, M.D.,
M.P.H., Commissioner, Department of Health (with
approval of Health Care Administration Board).

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INSURANCE

Filed: August 3, 1982 as R.1982 d.279, **without change.**

(c)

Authority: N.J.S.A. 26:2H-1 and 26:2H-5.

Effective Date: August 16, 1982.

(a)

HEALTH PLANNING AND RESOURCE DEVELOPMENT

Standards for Hospital Facilities Construction

Adopted New Rules: N.J.A.C. 8:43B-15.12A
Adopted Amendments: N.J.A.C. 8:43B-3.15.12

Proposed: November 16, 1981 at 13 N.J.R. 812(a).
Adopted: July 30, 1982 by Shirley A. Mayer, M.D.,
M.P.H., Commissioner, Department of Health (with
approval of Health Care Administration Board).
Filed: August 3, 1982 as R.1982 d.280, **without change.**

Authority: N.J.S.A. 26:2H-1 and 26:2H-5.

Effective Date: August 16, 1982.

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual
Recipient Hearing for Special Status ID Card

Adopted Amendment: N.J.A.C. 10:49-1.2

Proposed: May 3, 1982 at 14 N.J.R. 418(a).
Adopted: July 21, 1982 by George J. Albanese,
Commissioner, Department of Human Services.
Filed: July 23, 1982 as R.1982 d.261, **without change.**

Authority: N.J.S.A. 30:4D-7, 7b and 7e.

Effective Date: August 16, 1982.
Operative Date: September 1, 1982.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual
Authorization for Level III (Skilled Nursing) Care

Adopted Amendment: N.J.A.C. 10:63-1.6

Proposed: May 3, 1982 at 14 N.J.R. 462(a).
Adopted: July 21, 1982 by George J. Albanese,
Commissioner, Department of Human Services.
Filed: July 23, 1982 as R.1982 d.261, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5.)

Authority: N.J.S.A. 30:4D-6a4(a) and 7 and 7b.

Effective Date: August 16, 1982.
Operative Date: September 1, 1982.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

- 10:63-1.6 Authorization process
- (a)-(d) (No change from proposal.)
- (e) (No change from proposal.)
- 1.-2. (No change from proposal.)
- 3. The maximum durations for a single authorization for long-term care are as follows:
 - i. (No change from proposal.)
 - *ii. Level IV - [9] 12 months***
 - iii. (No change from proposal.)
 - (f)-(k) (No change from proposal.)

INSURANCE

(d)

INSURANCE GROUP

Automobile Insurance Plan
Automobile Repair Reform Act

Adopted Amendments: N.J.A.C. 11:3-7.3 and 7.7

Proposed: June 7, 1982 at 14 N.J.R. 543(b).
Adopted: July 19, 1982 by Joseph F. Murphy,
Commissioner, Department of Insurance.
Filed: July 21, 1982 as R.1982 d.246, **without change.**

Authority: N.J.S.A. 17:1C-6e and 39:6A-19.

Effective Date: August 16, 1982.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Vehicle Inspection Inspection Period of Passenger Vehicles and Certain Commercial Vehicles

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 13:20-7.3 and 7.4

Emergency Amendment Adopted: July 23, 1982 by Clifford W. Snedeker, Director, Division of Motor Vehicles

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): July 23, 1982

Emergency Amendment Filed: August 2, 1982 as R.1982 d.267

Authority: N.J.S.A. 39:8-2.

Emergency Amendment Effective Date: August 2, 1982.
Emergency Amendment Expiration Date: October 1, 1982.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before August 15, 1982. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery Street
Trenton, NJ 08666

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

This proposal is known as PRN 1982-335.

The agency emergency adoption and concurrent proposal follows:

Summary

The proposed amendment establishes a two year inspection period for passenger vehicles and commercial vehicles registered for not more than 6,000 lbs. Vehicles with registration plate numbers ending in an even number will be required to be inspected in even-numbered years; vehicles with registration plate numbers ending in an odd number will be required to be inspected in odd-numbered years. Vehicles with registration plates composed solely of letters will be required to be inspected in odd-numbered years.

Social Impact

The proposed amendment will alleviate the yearly inspection requirement and substitute for it a more thorough inspection performed once every two years.

Economic Impact

The proposed amendment will result in economic benefit to the State and its citizens. The reduced volume of inspection will result in savings to the State in personnel and equipment costs. The citizens of the State will incur savings of time and mileage.

Full text of the emergency adoption and concurrent proposal follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

13:20-7.3 [Period of commercial vehicle inspection](RESERVED)

[Pursuant to the authority granted in N.J.S.A. 39:8-2, all owners of commercial, farmer truck, trailer, taxi, livery and hearse-service wagons, whose registration year commences April 1 and ends the following March 31, must have their vehicles inspected between April 1 and December 31 of the same year. Any such vehicle being operated after December 31 which does not display a current and up to date inspection sticker shall be subject to enforcement action.]

13:20-7.4 Inspection period of passenger vehicles **and commercial vehicles registered for not more than 6,000 lbs.**

[The expiration of the windshield inspection sticker of each passenger vehicle shall be the last day of the month in which the vehicle registration expires. Each such vehicle shall be presented for inspection after registration has been renewed and prior to the expiration date shown on the windshield inspection sticker.]

(a) A certificate of approval shall be issued for passenger vehicles and commercial vehicles registered for not more than 6,000 lbs. when the mechanism, brakes and equipment of said motor vehicles have been inspected and found to be in proper and safe condition.

(b) A certificate of approval shall expire on the last day of the 24 calendar month following the calendar month in which such certificate of approval was issued.

(c) Motor vehicles with registration plate numbers ending with an even digit shall be inspected in even-numbered years. Motor vehicles with registration plate numbers ending with an odd digit shall be inspected in odd-numbered years. Vehicles with registration plates composed solely of letters shall be inspected in odd-numbered years.

(b)

BOARD OF MEDICAL EXAMINERS

General Administrative Regulations Pronouncement of Death

Notice of Correction: N.J.A.C. 13:35-6.5

An error appeared in the July 19, 1982 issue of the New Jersey Register at 14 N.J.R. 767(a) concerning pronouncement of death. N.J.A.C. 13:35-6.5(e) should have appeared as follows:

[(b)2.] *(e)* Where the probable death has occurred outside a licensed hospital and the attending or covering physician is known but cannot be reached after exercise of reasonable diligence, or no attending physician is known, then any physician, professional nurse [or certified emergency medical technician] or paramedic may proceed to the scene and make the determination and pronouncement of death. A written record shall be prepared as set forth in *[(b)1]* *(d)* above. Following pronouncement of death the information shall be promptly communicated to the physician for preparation of the death certificate and a copy of the report provided as soon as practicable. If no attending physician is known,

ADOPTIONS

the death shall be immediately reported to the County Medical Examiner.

(a)

STATE ATHELETIC COMMISSION

General Administrative Regulations Reservation of Dates for Conduct of Boxing Programs of New Jersey

Adopted Amendments: N.J.A.C. 13:46-18.15
Adopted Repeal: N.J.A.C. 13:46-18.12 and 18.18

Proposed: June 21, 1982 at 14 N.J.R. 635(b).
Adopted: July 28, 1982 by Jersey Joe Walcott, State Athletic Commissioner.
Filed: August 2, 1982 as R.1982 d.271, **without change**.

Authority: N.J.S.A. 5:2-5.

Effective Date: August 16, 1982.

(b)

BUREAU OF SECURITIES

Renewal Application for Renewal of Broker-Dealer Registration-Fingerprint Requirements

Adopted Amendment: N.J.A.C. 13:47A-5.2

Proposed: June 7, 1982 at 14 N.J.R. 551(a).
Adopted: July 21, 1982 by James McLelland Smith, Chief, Bureau of Securities
Filed: August 2, 1982 as R.1982 d.271, **without change**.

Authority: N.J.S.A. 49:3-67(a).

Effective Date: August 16, 1982.

(c)

BUREAU OF SECURITIES

Intrastate Offerings Exemption Restriction for Private Offering to Sophisticated Investors

Adopted Repeal: N.J.A.C. 13:47A-9.13

Proposed: June 7, 1982 at 552(a)
Adopted: July 21, 1982 by James McLelland Smith, Chief, Bureau of Securities.
Filed: July 29, 1982 as R.1982 d.266, **without change**.

Authority: N.J.S.A. 49:3-67(a).

TRANSPORTATION

Effective Date: August 16, 1982.

ENERGY

(d)

THE COMMISSIONER

Energy Conservation Used Oil Recycling

Adopted Amendments: N.J.A.C. 14A:3-11.3 and 11.5

Proposed: October 8, 1981 at 13 N.J.R. 681(a).
Adopted: July 20, 1982 by Leonard S. Coleman, Jr., Commissioner, Department of Energy.
Filed: July 23, 1982 as R.1982 d.262, **without change**.

Authority: N.J.S.A. 52:27F-2 and 11o, q, and w.

DEP Docket No.: 008-81-10.

Effective Date: August 16, 1982.

TRANSPORTATION

(e)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 3 and 5

Adopted Amendments: N.J.A.C. 16:28A-1.3 and 1.5

Proposed: June 7, 1982 at 14 N.J.R. 552(b).
Adopted: July 14, 1982 by David W. Gwynn, Chief Engineer, Transportation Operations and Local Aid.
Filed: July 21, 1982 as R.1982 d.247, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-139.

Effective Date: August 16, 1982.

(f)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route 24

Adopted Amendment: N.J.A.C. 16:28A-1.16

Proposed: June 7, 1982 at 14 N.J.R. 553(a).

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Adopted: July 14, 1982 by David W. Gwynn, Chief
Engineer, Transportation Operations and Local Aid.
Filed: July 21, 1982 as R.1982 d.248, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Effective Date: August 16, 1982.

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 27 and 49

Adopted Amendments: N.J.A.C. 16:28A-1.18 and 1.34

Proposed: June 7, 1982 at 14 N.J.R. 554(a).
Adopted: July 14, 1982 by David W. Gwynn, Chief
Engineer, Transportation Operations and Local Aid.
Filed: July 21, 1982 as R.1982 d.249, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and
39:4-139.

Effective Date: August 16, 1982.

(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 29 and US 30

Adopted Amendments: N.J.A.C. 16:28A-1.20 and 1.21

Proposed: June 7, 1982 at 14 N.J.R. 55(b).
Adopted: July 14, 1982 by David W. Gwynn, Chief
Engineer, Transportation Operations and Local Aid.
Filed: July 21, 1982 as R.1982 d.250, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and
39:4-139.

Effective Date: August 16, 1982.

(c)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 31, 31-57 and 32

Adopted New Rules: N.J.A.C. 16:28A-1.72 and 1.73 Adopted Amendment: N.J.A.C. 16:28A-1.22

Proposed: June 7, 1982 at 14 N.J.R. 555(a).
Adopted: July 14, 1982 by David W. Gwynn, Chief
Engineer, Transportation Operations and Local Aid.
Filed: July 21, 1982 as R.1982 d.251, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and
39:4-139.

Effective Date: August 16, 1982.

(d)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes US 202-206 202-31

Adopted Amendments: N.J.A.C. 16:28A-1.56 and 1.63

Proposed: June 7, 1982 at 14 N.J.R. 556(a).
Adopted: July 14, 1982 by David W. Gwynn, Chief
Engineer, Transportation Operations and Local Aid.
Filed: July 21, 1982 as R.1982 d.252, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and
39:4-139.

Effective Date: August 16, 1982.

TREASURY-TAXATION

(e)

DIVISION OF TAXATION

Cigarette Tax Smuggling Unstamped Cigarettes

Adopted Amendment: N.J.A.C. 18:5-12.5

Proposed: April 5, 1982 at 14 N.J.R. 331(a).
Adopted: July 22, 1982 by Sidney Glaser, Director, Division
of Taxation.
Filed: July 22, 1982 as R.1982 d.256, **without change.**

Authority: N.J.S.A. 54:40A-20 and P.L. 1981, c.361.

Effective Date: August 16, 1982.

(a)

DIVISION OF TAXATION

**Motor Fuels Tax
Retail Sales of Motor Fuels; Signs for Blending
Pumps**

Adopted Amendment: N.J.A.C. 18:19-2.2

Proposed: April 5, 1982 at 14 N.J.R. 331(b).
Adopted: July 22, 1982 by Sidney Glaser, Director, Division
of Taxation.
Filed: July 22, 1982 as R.1982 d.257, **without change**.

Authority: N.J.S.A. 56:6-6 and P.L. 1981 c.230.

Effective Date: August 16, 1982.

(b)

DIVISION OF TAXATION

**Gross Income Tax
Exclusion of Interest on All-Savers
Certificates**

Adopted New Rule: N.J.A.C. 18:35-1.16

Proposed: April 5, 1982 at 14 N.J.R. 332(a).
Adopted: July 22, 1982 by Sidney Glaser, Director, Division
of Taxation.
Filed: July 22, 1982 as R.1982 d.258, **without change**.

Authority: N.J.S.A. 54A:10-9.

Effective Date: August 16, 1982.

MISCELLANEOUS NOTICES

ADMINISTRATIVE LAW

ENERGY

(a)

(c)

OFFICE OF ADMINISTRATIVE LAW

BOARD OF PUBLIC UTILITIES

Notice to Our Readers

Termination of Services Diversion of Services to Third Parties Petition of Rulemaking

Beginning with the September 7, 1982 Register, the agency's reasons for any changes to a proposed rule made upon adoption of the rule will appear as part of the notice of changes and adoption. A summary by the agency of comments received with respect to the proposal and of its responses to those comments will also appear with the notice of adoption.

Petitioner: Dorothy Edgerton

The publication of this material is in compliance with N.J.S.A. 52:14B-4(a)(4), as implemented by N.J.A.C. 1:30-4.1(a)5 and 6.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that the following summary of a petition for rulemaking was received by the Office of Administrative Law on June 7, 1982, pursuant to the provisions of N.J.S.A. 52:14B-4(f).

ENVIRONMENTAL PROTECTION

"Pursuant to the Laws of 1981, Chapter 27, Section 11(f)(3), the Board of Public Utilities hereby files notice with the Office of Administrative Law concerning above petitioner's request that the Board:

(b)

promulgate a rule that when respondent knows or has reason to know that services billed to a user have been diverted to the use of a third party or parties, said user's service may not be terminated on account of failure to pay for services so billed and respondent must adjust the user's bill to reflect actual usage.

THE COMMISSIONER

The Board's staff is presently looking into this matter."

State Certifications of Draft NPDES Permits

Public Notice

Robert E. Hughey, Commissioner of the Department of Environmental Protection, pursuant to the "New Jersey Water Pollution Control Act," N.J.S.A. 58:10A-1 et seq., is authorized to assess compliance of a surface water discharge with State law pertaining to discharges to the waters of the State. The Department is requested by the United States Environmental Protection Agency, as required by section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., to certify that a discharge, as described in a draft National Pollutant Discharge Elimination System permit, will not violate the requirements of State law.

This petition for rulemaking was published in the July 6, 1982 issue of the New Jersey Register at 14 N.J.R. 702(a). At the request of several interested parties, the Board of Public Utilities extended the deadline to submit public comments from August 5, 1982 to October 5, 1982. Therefore,

The Department publishes public notice of certifications in the DEP Bulletin. Copies of the Bulletin may be obtained by calling (609) 292-3178 or writing to the Documents Distribution Center, P.O. Box 1390, Trenton, New Jersey 08625.

Interested persons may now submit in writing, data, views or arguments relevant to the petition for rulemaking on or before October 5, 1982. These submissions, and responses, should be addressed to:

Jeanne M. Fox
Regulatory Officer
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between August 6, 1981 and August 2, 1982, and which have not been adopted and filed by August 2, 1982. The index does not contain rules proposed in this Register and listed in the *Table of Rules in This Issue*. These proposals will appear in the next *Index of Proposed Rules*.

A proposed rule listed in this index may be adopted no later than one year from the date the proposal was originally published in the Register. Failure to timely adopt the proposed rule requires the proposing agency to re-submit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) as implemented by the Rules for Agency Rulemaking of the Office of Administrative Law (N.J.A.C. 1:30).

The *Index of Proposed Rules* appears in the second issue of each month, complementing the *Index of Adopted Rules* which

appears in the first Register of each month. Together, these indices make available for a subscriber to the Code and Register all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activity from the initial proposal through final promulgation.

The proposed rules are listed below in order of their Code citation. Accompanying the Code citation for each proposal is a brief description of its contents, the date of its publication in the Register, and its Register citation.

The full text of the proposed rule will generally appear in the Register. If the full text of the proposed rule was not printed in the Register, it is available for a fee from:

Administrative Filings
CN 301
Trenton, New Jersey 08625

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
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1:1-3.11	Succession of parties in contested cases	6-21-82	14 N.J.R. 606(b)
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1:1-9.7	Interlocutory review	8-2-82	14 N.J.R. 778(a)
1:1-14.1	Consolidation of cases	7-6-82	14 N.J.R. 674(b)
1:1-16.5	Substantiation of final decisions	6-21-82	14 N.J.R. 608(a)
1:1-17.3	Return of cases	1-4-82	14 N.J.R. 4(b)
1:30	Agency rulemaking	8-2-82	14 N.J.R. 780(a)
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3:6-9	Super NOW deposit accounts	8-2-82	14 N.J.R. 786(a)
3:28-5.1-5.3	Mutual savings and loan: Investment restatement accounting	7-6-82	14 N.J.R. 678(a)
3:38-1	Licensing of mortgage bankers and brokers (with emergency adoption)	6-7-82	14 N.J.R. 571(a)
3:38-2,3,4,5,6	Mortgage bankers and brokers: Rules of operation	6-7-82	14 N.J.R. 493(a)
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4:1-16.1-16.5	Layoffs and demotions	2-16-82	14 N.J.R. 184(a)
4:1-16.1-16.5	Senate Concurrent Resolution: Layoffs and demotions	2-16-82	14 N.J.R. 298(a)
4:1-17.16	Advancing of sick leave (State)	4-5-82	14 N.J.R. 299(a)
4:1-24.1, 24.3-24.12	Layoffs and demotions	2-16-82	14 N.J.R. 184(a)
4:1-24.1, 24.3-24.12	Senate Concurrent Resolution: Layoffs and demotions	2-16-82	14 N.J.R. 298(a)
4:2-2.1	Repeal rule on veterans' age reduction	5-17-82	14 N.J.R. 455(a)
4:2-7.1	Compensation for NL4 designated titles	2-16-82	14 N.J.R. 184(a)
4:2-16.1, 16.2	Senate Concurrent Resolution: Layoffs and demotions	2-16-82	14 N.J.R. 298(a)
4:2-17.14	Repeal: Credit for sick leave	4-5-82	14 N.J.R. 299(a)
4:3-2.1	Repeal rule on veterans' age reduction	5-17-82	14 N.J.R. 455(a)
4:2-2.1	Repeal rule on veterans' age reduction	5-17-82	14 N.J.R. 455(a)
4:2-7.1	Compensation for NL4 designated titles	2-16-82	14 N.J.R. 184(a)
4:2-16.1, 16.2	Senate Concurrent Resolution: Layoffs and demotions	2-16-82	14 N.J.R. 298(a)
4:2-17.14	Repeal: Credit for sick leave	4-5-82	14 N.J.R. 299(a)
4:3-2.1	Repeal rule on veterans' age reduction	5-17-82	14 N.J.R. 455(a)
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4:3-16.1, 16.2	Senate Concurrent Resolution: Layoffs and demotions	2-16-82	14 N.J.R. 298(a)

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5:27-10.6	Boarding houses: Self-administration of medicine	6-7-82	14 N.J.R. 499(a)
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5:30-18	Local funds in interest hearing accounts	8-6-81	13 N.J.R. 477(a)
5:80-2	Housing Finance Agency project conversions	4-5-82	14 N.J.R. 301(b)
5:90	Repeal Urban Loan Authority rules	6-7-82	14 N.J.R. 558(a)
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6:11-10.2, 10.4, 10.7-10.9	Administrative certification	6-21-82	14 N.J.R. 614(a)
6:28-5.10, 5.11, 6.10, 6.11	Approval of auxiliary services for private school students	6-21-82	14 N.J.R. 617(a)
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7:8	Storm water management	12-21-81	13 N.J.R. 916(a)
7:9-10.2-10.6, 10.9	Pinelands and coastal area sewerage approval	6-7-82	14 N.J.R. 504(a)
7:11-2, -4	Rate Schedule: Water from Delaware and Raritan, Spruce Run/Round Valley	7-6-82	14 N.J.R. 681(a)
7:13-1.11	Notice of flood hazard delineations	12-21-81	13 N.J.R. 950(a)
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7:13-1.11	Floodway delineations along Big Timber Creek, Delaware Basin	6-7-82	14 N.J.R. 505(a)
7:13-1.11	Floodway delineations along Pond Run, Mercer County	6-7-82	14 N.J.R. 506(a)
7:13-1.11	Floodway delineations along Cedar Creek, Lacey Twp.	7-6-82	14 N.J.R. 683(a)
7:13-1.11	Floodway delineations within Bass River Basin	7-6-82	14 N.J.R. 683(b)
7:13-1.11	Floodway delineations within Atlantic Basin	7-19-82	14 N.J.R. 736(a)
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7:14A-1.8, 1.9	Fee schedule for NJPDES permittees	7-6-82	14 N.J.R. 684(a)
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8:71	Additions to generic drug list (see 14 N.J.R. 836(a))	4-19-82	14 N.J.R. 369(a)
8:71	Additions to generic drug list	7-6-82	14 N.J.R. 690(a)

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10:51-1.2	Non-legend device addition	4-5-82	14 N.J.R. 320(a)
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10:56-1.14, 1.15, 3.4	Limitation on diagnostic dental services	12-7-81	13 N.J.R. 875(a)
10:63-1.4	Long-term care consultation and services	11-2-81	13 N.J.R. 740(a)
10:63-1.16	Long-term care of psychiatric patients	11-16-81	13 N.J.R. 813(a)
10:63-1.16	Agency response to petition: Long-term care of psychiatric patients	4-5-82	14 N.J.R. 321(a)
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10:63-3.10	LTC: Capital Facilities Allowance rate	7-19-82	14 N.J.R. 743(a)
10:63-3.20	Long-term care facilities: Reimbursement appeals	3-15-82	14 N.J.R. 269(a)
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10:81-6.17, 7.18	PAM: Replacement of checks	4-19-82	14 N.J.R. 373(a)
10:81-7.22	PAM: Funeral and burial contributions	5-17-82	14 N.J.R. 462(b)
10:82-3.8	ASH: Relatives as a resource	8-2-82	14 N.J.R. 814(b)
10:82-5.10	ASH: Return of child from foster care placement	7-6-82	14 N.J.R. 698(a)
10:85-3.1	GAM: Eligibility of young people	8-2-82	14 N.J.R. 815(a)
10:85-3.1, 3.3	GAM: AFDC ineligible	12-21-81	13 N.J.R. 926(a)
10:85-3.4	GAM: AFDC ineligible	12-21-81	13 N.J.R. 926(a)
10:85-4.8	GAM: Funeral and burial contributions	5-17-82	14 N.J.R. 463(a)
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10:94-5.4, 5.5, 5.6	Medicaid Only computation amounts (with Emergency Adoption)	7-19-82	14 N.J.R. 758(a)
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10:100-3.6	Special Payments Handbook: Funeral contributions	5-17-82	14 N.J.R. 463(b)
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10:121-2	Adoption subsidy	7-19-82	14 N.J.R. 746(a)
10:122-4.1	Staffing of child care centers	8-6-81	13 N.J.R. 516(b)
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10:122-4.1	Head and group teachers in child care centers	3-1-82	14 N.J.R. 223(a)
10:122-4.3-4.5	Staffing of child care centers	8-6-81	13 N.J.R. 516(b)
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10:131	Adoption assistance and child care welfare	7-19-82	14 N.J.R. 744(a)
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13:21-8.10	Vision standards for motor vehicle drivers	7-6-82	14 N.J.R. 700(a)
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13:29-1.6	CPA qualifying requirements	7-19-82	14 N.J.R. 749(b)
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13:30-6.3	Oral hygiene schools and advisory council provision	2-1-82	14 N.J.R. 135(a)
13:30-6.6	Repeal dormitory requirement for oral hygiene schools	2-1-82	14 N.J.R. 136(a)
13:30-6.9(a)	Oral hygiene schools: Admissions	12-7-81	13 N.J.R. 880(a)
13:30-8.7	Dental personnel law test requirement	1-18-82	14 N.J.R. 89(b)
13:32-1.8	Pressure seal on plumbing permit applications	7-19-82	14 N.J.R. 750(a)
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13:35-9	Certified Nurse Midwife and lay midwife practice	6-21-82	14 N.J.R. 632(b)
13:35-11	In-State clinical training by foreign medical schools	6-7-82	14 N.J.R. 548(a)
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13:37-9.2	Practical nursing licensure by examination	7-6-82	14 N.J.R. 701(a)
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13:44A-7.1	Uniform rule petitions to professional boards	10-8-81	13 N.J.R. 664(b)
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13:44A-9	Licensing boards: Uniform complaint procedures	11-16-81	13 N.J.R. 817(a)
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13:46-1.2-1.4	Weights and classes: Recodify as subchapter 1A	7-19-82	14 N.J.R. 751(b)
13:46-4	Boxing and wrestling programs: Licenses and permits	7-19-82	14 N.J.R. 751(b)
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16:28A-1.13, 1.27	Parking on US22 and Route 38	7-19-82	14 N.J.R. 753(a)
16:28A-1.21	Parking on US30 in Atlantic City	8-2-82	14 N.J.R. 825(b)
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16:28A-1.50, 1.51	Parking on Routes 166 and 168	7-6-82	14 N.J.R. 702(b)
16:28A-1.68, 1.70	Parking on Routes 93 and 439	7-6-82	14 N.J.R. 702(b)
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16:30-3.6	HOV lanes on Parkway (with Emergency Repeal)	6-21-82	14 N.J.R. 662(a)
16:31-1.18	Turns on Route 31 in Hunterdon County	8-2-82	14 N.J.R. 826(a)
16:53-2	Autobus specifications	11-16-81	13 N.J.R. 834(a)
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