

NEW JERSEY



REGISTER

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF DAIRY INDUSTRY

Notice of Intent

Proposed Amendments: N.J.A.C. 2:52-2.1, 2.2, 3.1, 3.2 and 2:53-4.1 and 4.2

Authorized By: Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Woodson W. Moffett, Jr., Director
Division of Dairy Industry
New Jersey Department of Agriculture
CN 322
Trenton, NJ 08625

The State Board of Agriculture thereafter may adopt the proposal without further notice. The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-411.

The agency proposal follows:

Summary

The proposed amendments simplify the notice requirements of the Division of Dairy Industry by removing ambiguous language and by standardizing the procedure for providing notice. The term "subdealer" has been removed to comply with recent amendments changing definitions in the Milk Control Act, N.J.S.A. 4:12A-1 et seq.

Social Impact

The proposed amendments will benefit all licenses of the Division of Dairy Industry by providing a simplified standardized procedure for all notice filing.

Economic Impact

Proposed amendments will simplify administration of the Milk Control Act by providing a standard procedure to be followed by all licensees of the division when giving notice concerning changes in milk suppliers.

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

SUBCHAPTER 2. DEALER [AND SUBDEALER] NOTICE OF INTENT TO SERVE UNLICENSED STORE

2:52-2.1 Notice of intent

(a) A dealer [or subdealer] licensee may begin selling milk and milk products to an unlicensed store (other than a governmental agency) upon approval by the Director **as follows**:

[1. With a two week notice by the store to the present supplier or his agent and telephone notification by the proposed new supplier to the Division of Dairy Industry if no money is owed by the unlicensed store for milk and milk products purchased from the present supplier(s). Provided, however, that the new supplier shall mail a report of such service to the Division of Dairy Industry on forms provided for that purpose within five days thereafter.]

NEW JERSEY REGISTER

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[2.] 1. With a two-week notice to the present supplier and to the Division of Dairy Industry [if money is owed by the unlicensed store for milk and fluid milk products purchased from the present supplier]. Such notice shall be filed by the proposed new supplier on forms provided for that purpose.

[3.] 2. Without notice, if the Director finds after investigation, that the supplier(s) is failing to provide adequate service or to supply products desired by the store or is supplying milk and milk products which do not meet minimum standards of the appropriate health authority.

3. **Without notice, if such change is mutually agreeable to all parties.**

(b) Approval to serve the unlicensed store may be denied if the Director determines that the offer violates the Milk Control Act or rules and regulations issued pursuant thereto. Also until the store pays all indebtedness, less any legal rebates and discounts earned, for milk and fluid milk products purchased from the previous supplier(s) approval to change supplier(s) shall be withheld.

2:52-2.2 Commencement of the two-week period and approval

The two-week period referred to in N.J.A.C. 2:52-2.1(a) [2] 1 shall commence upon receipt of the form in the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two-week period.

SUBCHAPTER 3. DEALER [AND SUBDEALER] NOTICE OF INTENT TO CHANGE SOURCE OF SUPPLY

2:52-3.1 Change in source of supply

(a) A dealer [or subdealer] may change his source of supply or engage an additional source of supply of milk and milk products upon approval by the Director **as follows:**

[1. With a two-week notice by the dealer or subdealer to the present supplier or his agent and telephone notification by the proposed new supplier to the Division of Dairy Industry if no money is owed by the dealer or subdealer for milk and milk products purchased from the present supplier(s). Provided, however, that the dealer or subdealer making the change shall mail a report of such change to the Division of Dairy Industry on forms provided for that purpose within five days thereafter.

[2.] 1. With a two week notice to the present supplier(s) and to the Division of Dairy Industry [if money is owed by the dealer or subdealer for milk and milk products purchased from the present supplier(s)]. Such notice shall be filed by the dealer [or subdealer] making the change on forms provided for that purpose.

[3.] 2. Without notice if the Director finds after investigation that the supplier(s) is failing to provide adequate service or to supply products desired by the dealer [or subdealer] requesting the change or is supplying milk and milk products which do not meet minimum standards of the appropriate health authority.

3. **Without notice, if such change is mutually agreeable to all parties.**

(b) Approval to change supplier(s) may be denied if the Director determines that the offer violates the Milk Control

Act or rules and regulations issued pursuant thereto. Also, until the dealer [or subdealer] pays all indebtedness, less any legal rebates and discounts earned, for milk and fluid milk products purchased from the previous supplier(s) approval to change supplier(s) shall be withheld.

2:52-3.2 Commencement of the two-week period and approval

The two-week period referred to in N.J.A.C. 2:52-3.1(a) [2] 1 shall commence upon receipt of the form at the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two-week period.

SUBCHAPTER 4. NOTICE OF INTENT TO CHANGE SOURCE OF SUPPLY

2:53-4.1 Notice of intent

(a) A licensed store may change source of supply or engage an additional supply of milk and milk products upon approval by the Director **as follows:**

[1. With a two-week notice by the store to the present supplier or his agent and telephone notification by the proposed new supplier to the Division of Dairy Industry if no money is owed by the store for milk and milk products purchased from the present supplier(s). Provided, however, that the store shall mail a report of such change to the Division of Dairy Industry on forms provided for that purpose within five days thereafter.]

[2.] 1. With a two week notice to the present supplier to the Division of Dairy Industry [if money is owed by the store for milk and milk products purchased from the present supplier(s)]. Such notice shall be filed by the store on forms provided for that purpose.

[3.] 2. Without notice, if the Director finds after investigation, that the supplier(s) is failing to provide adequate service or to supply products desired by the store or is supplying milk and milk products which do not meet minimum standards of the appropriate health authority.

[4.] 3. Without notice, if such change is mutually agreeable to all parties [provided that the new supplier shall notify the director of the change within five days thereafter].

(b) Approval to change supplier(s) may be denied if the Director determines that the offer violates the Milk Control Act or rules and regulations issued pursuant thereto. Also until the store pays all indebtedness, less any legal rebates and discounts earned, for milk and fluid milk products purchased from the previous supplier(s) approval to change supplier(s) shall be withheld.

2:53-4.2 Commencement of the two-week period and approval

The two week period referred to in N.J.A.C. 2:53-4.1(a) [2] 1 shall commence upon receipt of the form in the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two week period.

(a)

DIVISION OF DAIRY INDUSTRY

Sales Below Cost

Proposed Amendments: N.J.A.C. 2:53-6.1, 6.2, 6.3, and 2:53-3.2

Authorized By: Arthur R. Brown, Jr., Secretary, Department of Agriculture. Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Woodson W. Moffett, Jr., Director
Division of Dairy Industry
New Jersey Department of Agriculture
CN 332
Trenton, NJ 08625

The State Board of Agriculture thereafter may adopt the proposal without further notice. The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-412.

The agency proposal follows:

Summary

The proposed amendments clarify cost accounting procedures to be followed by the Division of Dairy Industry in computing the cost of milk and milk products; clarify the conditions under which milk dealers may sell milk below cost to meet competition; and provides opportunity to pass to consumers the benefit of low cost delivery methods. The terms "subdealer" and "processor" have been removed to comply with the recent amendments changing definitions in the Milk Control Act, N.J.S.A. 4:12A-1 et seq.

Social Impact

The proposed amendments will benefit all licensees of the Division of Dairy Industry by providing clear guidelines for determining the cost of milk and milk products. Consumers are impacted because they will benefit from potential savings on milk purchases.

Economic Impact

The proposed amendments will simplify administration of the Milk Control Act by providing clear standards to be followed by the division in determining cost of milk and milk products sold in New Jersey.

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

SUBCHAPTER 6. SALES BELOW COST: [PROCESSOR,] DEALER [OR SUBDEALER]

2:52-6.1 Sales below cost prohibited

It shall be unlawful and a violation of these regulations for any [processor] dealer [or subdealer] licensee to directly or indirectly be a party to, or assist in, any transaction to sell or offer [for sale] to sell milk and milk products within the State

of New Jersey, or for sale in the State of New Jersey at less than the cost thereof as hereinafter defined; but nothing in this regulation shall prevent a [processor] dealer [or subdealer] from defensively meeting the price or offer of a competitor for a product or products of like quality and nature in similar quantities; [and] but nothing in this [subsection] section shall prohibit bulk, distress or business-closing sale if prior notice of such sale has been filed with the director of the Division of Dairy Industry; provided however that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

2:52-6.2 Cost defined

The term "cost" as used herein shall include, but not be limited to, the basic cost of raw or reconstituted milk or derivatives thereof as determined in accordance with the joint State-Federal orders administered by the Division of Dairy Industry and the United States Department of Agriculture in the State of New Jersey; the cost of any added ingredients; and all other costs associated with the business of the [processor] dealer [or subdealer set forth in accordance with general accounting principles allocated proportionately to each unit of products sold, including], for example, but not limited to, the cost of material, labor, salaries of executives and officers, the cost of receiving, cooling, processing, manufacturing, storing and distributing the products sold; [such] rent, depreciation, selling expense, maintenance charges, delivery expense, license fees, taxes, insurance, advertising, advertising allowances, gifts, free service and all other costs as may be incurred, allocated proportionately to each unit of product sold in accordance with generally accepted cost accounting principles.

2:52-6.3 Certain costs to be averaged

(a) In computing cost as used herein, all costs of doing business with the exception of raw products and ingredient costs shall be based on average costs for the [processor,] dealer [or subdealer] in question during the previous 12 months, adjusted to appropriately reflect any significant changes in costs of operation in the averaging period or such shorter time as the licensee may have been in business.

(b) In determining cost for a specific account, the value of any gifts and free services must be included in cost to be averaged for the 12 month period, except where a written contract for a specified term exists between the dealer and the recipient customer, the value of such gifts and free services may be amortized over the remaining term of the contract.

(c) All costs of delivery shall be based on average costs for the dealer in question during the previous 12 months and allocated proportionately to each unit of product delivered except where specific delivery cost records are maintained for each method and size of delivery, the actual direct cost of the delivery shall be the basis of the allocation and shall be prorated to each unit of product included in the delivery.

SUBCHAPTER 3. SALES BELOW COST; STORES

...

2:53-3.2 Cost defined

The term "cost" as used herein shall include the net invoice cost of the milk and milk products plus all other costs directly or indirectly related to the sale of the milk and milk products. Such cost shall be determined in accordance with generally accepted cost accounting principles and be allocated propor-

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tionately to each unit of product sold and shall include without limitation all salaries of executives and officers, all costs of labor, rent, depreciation, selling, maintenance, delivery, license fees, taxes, insurance and all other costs as may be incurred by the store.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Private Enforcing Agencies; Premanufactured Construction; Fees

Proposed Amendments: N.J.A.C. 5:23-4.12, 4.22 and 4.25

Authorized By: John P. Renna, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

At the close of the period for comments, the Department of Community Affairs may adopt this proposal, with minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice in the Register.

This proposal is known as PRN 1984-419.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 5:23-4.12 will delete the requirement that private agencies' applications for approval include information concerning the salaries and other compensation of principals, directors and managers. The amendments to N.J.A.C. 5:23-4.22 and 4.25 will require a single Department insignia of certification for each one- or two-unit premanufactured dwelling, while all other premanufactured construction shall be required to have one insignia for each module or box.

Social Impact

The proposed amendment to N.J.A.C. 5:23-4.12 will impact on principals, directors and managers who no longer will be required to provide information concerning salaries and compensation.

The amended requirements as to Department insignia will facilitate proper identification of premanufactured units and any relocation of them that might be necessary.

Economic Impact

The proposed amendments do not affect premanufactured construction fees and will therefore not impose an economic impact.

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

5:23-4.12 Private enforcing agencies—establishment

(a) Private on-site inspection and plan review agencies:

1.-3. (No change.)

4. The application shall contain information relating to:

i.-ii. (No change.)

iii. The range of salaries and other compensation of **all** of the [personnel of the applicant, including all principals, management, directors,] inspectors and other technical personnel of the applicant.

iv.-vii. (No change.)

5.-7. (No change.)

(b) Private inplant inspection agencies:

1.-3. (No change.)

4. The application shall contain information relating to:

i.-ii. (No change.)

iii. The range of salaries and other compensation of **all** of the [personnel of the applicant, including all principals, management, directors] inspectors and other technical personnel of the applicant.

iv.-ix. (No change.)

5.-6. (No change.)

5:23-4.22 Premanufactured construction fees

(a) Premanufactured insignia of certification fee: Each inspection agency requesting the department to issue **an** insignia of certification for premanufactured construction shall pay a fee of \$100.00 for each **insignia**.

(b) Premanufactured component insignia of certification fee: Each **inspection** agency requesting the department to issue **a component** insignia of certification for premanufactured components shall pay a fee of \$50.00 for each component **insignia** [which will bear insignia of certification].

[(c) In the case of premanufactured building elements such as, without limitation, wall panels, trusses and pre-stressed concrete wall units, the fee for each element shall be \$12.50. For such building elements inspected and grouped in one lot of not more than 25 elements, the fee shall be \$12.50 for each lot.]

5:23-4.25 Premanufactured construction

(a)-(j) (No change.)

(k) [Each certified] **Certified** premanufactured [structure and assembly] **construction** shall bear an insignia of certification. Such insignia of certification shall be furnished by the department to the inplant inspection agency under the procedures outlined in this section.

1. The manufacturer shall permanently locate the insignia of certification in a readily accessible and visible location identified in the premanufactured system documentation.

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2. Each insignia of certification shall bear an indestructible serial number furnished by the department [and shall be impossible to remove] **which cannot be removed** without destroying it.

3. If the size, shape or other physical characteristic of the premanufactured component makes impractical the use of such insignia of certification, the department may specify such alternative forms of insignia as may be appropriate. [Only one department insignia shall be required for premanufactured construction which is comprised of two or more modules. However, each such module shall be properly identified by manufacturer's serial number and inplant inspection agency's insignia serial number.]

4. **Only one department insignia shall be required for one- and two-family dwelling premanufactured construction even if the construction is comprised of two or more modules (boxes). However, each module (box) shall be properly identified by the manufacturer's serial number and the inplant inspection agency's insignia number.**

5. **All premanufactured construction other than one- and two-family dwellings shall require a department insignia as follows:**

i. **For one module (box) construction, one premanufactured construction insignia of certification shall be required.**

ii. **For multimodule (multibox) construction, each module (box) shall require a premanufactured component insignia of certification.**

iii. **For premanufactured building elements such as, but not limited to, wall panels, trusses or pre-stressed concrete wall units, each element shall require a component insignia. For elements inspected and grouped in one lot of not more than 25 elements, one component insignia shall be required for each lot.**

(l)-(r) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Planned Real Estate Development Full Disclosure Regulations

Proposed Amendments: N.J.A.C. 5:26-1.1, 1.3, 1.4, 3.1, 4.3, 9.3, 11.3

Authorized By: William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.

Authority: N.J.S.A. 45:22A-35.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625-0804

At the close of the period for comments, the Department of Community Affairs may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-410.

The agency proposal follows:

Summary

The proposed amendments add the words "and Development" to all references to the Division of Housing in the current text of the Planned Real Estate Full Disclosure Regulations; add the requirement that copies of all necessary governmental approvals be included in the application for registration; and make it clear that only the person to whom an order would be issued, namely a developer or an applicant for registration, has standing to request an administrative hearing to contest that order. A period of ten business days is established for the filing of hearing requests.

Social Impact

The proposed amendments will clarify the current rules by specifying who is entitled to a hearing. The present practice of the Division is to recognize only the persons to whom orders are directed as having standing to contest those orders through the administrative hearing process.

Economic Impact

The proposed amendments will not have an economic impact on either the Division nor on the developers or registration applicants since the changes simply reflect current practice.

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

5:26-1.1 Introduction

The Planned Real Estate Full Disclosure Act (Chapter 419, P.L. 1977, N.J.S.A. 45:22A-21 et seq.) is effective November 22, 1978. The regulations contained in this chapter have been adopted to enable the Division of Housing **and Development** to implement the Act [as of that date] and to enable owners of property affected to more easily and more fully comply with the requirements of the Act.

5:26-1.3 Definitions

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

.....
"Agency" means the Division of Housing **and Development** of the State Department of Community Affairs.

.....
"Director" means the Director, Division of Housing **and Development**, Department of Community Affairs.

.....
"Division" means the Division of Housing **and Development**, Department of Community Affairs.

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5:26-1.4 Administration

The Act shall be administered by the Division of Housing and Development of the State Department of Community Affairs, through the Bureau of Construction Code Enforcement. All correspondence and inquiries may be addressed to the [Director, Division of Housing and Urban Renewal, Department of Community Affairs] **Bureau of Construction Code Enforcement, CN 805, Trenton, New Jersey 08625.**

5:26-3.1 Contents of application for registration

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

1.-19. (No change.)

20. A statement as to the status of compliance with all the requirements of all laws, ordinances, regulations of governmental agencies having jurisdiction over the premises, including but not limited to any permits required by the Department of Environmental Protection, **together with copies of all necessary Federal, State, county and municipal approvals;**

21.-27. (No change.)

5:23-4.3 Form

(a) The public offering statement shall be in the following form:

1. A front cover shall contain the name and address of the developer, the name and location of the planned real estate development or retirement community, the effective date of the offering statement, which shall be the date of registration by the Agency, and shall contain the following statement in 10-point bold face type:

**NOTICE TO PURCHASERS
THIS PUBLIC OFFERING STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY. PURCHASERS SHOULD ASCERTAIN FOR THEMSELVES THAT THE PROPERTY OFFERED MEETS THEIR PERSONAL REQUIREMENTS. THE NEW JERSEY DIVISION OF HOUSING AND DEVELOPMENT HAS NEITHER APPROVED NOR DISAPPROVED THE MERITS OF THIS OFFERING. BE SURE TO READ CAREFULLY ALL DOCUMENTS BEFORE YOU SIGN THEM.**

2.-5. (No change.)

5:26-9.3 Public Offering Statement

(a) Simultaneously with the filing of an application for registration with the Agency, the developer shall serve upon all tenants in the building a copy of the proposed Public Offering Statement and file an affidavit of service with the Agency within 10 days.

1. The proposed Public Offering Statement that is given to the tenants shall contain the following statement on the first page:

THIS IS THE PROPOSED PUBLIC OFFERING STATEMENT SUBMITTED TO THE DIVISION OF HOUSING AND DEVELOPMENT, DEPARTMENT OF COMMUNITY AFFAIRS, IN AN APPLICATION FOR REGISTRATION TO CONVERT THE BUILDING TO A CONDOMINIUM OR CO-OPERATIVE. THIS STATEMENT IS SUBJECT TO CHANGE. THE DEPARTMENT OF COMMUNITY AFFAIRS WILL ACCEPT WRITTEN COMMENTS FOR A PERIOD OF 45 DAYS CONCERNING THIS STATEMENT ADDRESSED TO:

ENVIRONMENTAL PROTECTION

Department of Community Affairs
Planned Real Estate Development Section
Bureau of Construction Code Enforcement
CN 805
Trenton, NJ 08625

THIS DOCUMENT IS NOT THE NOTICE OF INTENTION TO CONVERT AND FULL PLAN OF CONVERSION REQUIRED UNDER THE NEW JERSEY STATUTE GOVERNING REMOVAL OF TENANTE (N.J.S.A. 2A:18-61.1 et seq.).

5:26-11.3 Rights to a hearing

Any [person] **developer or applicant for registration** aggrieved by an order of the Agency issued under the Act or these regulations shall be entitled to a hearing **before the Office of Administrative Law** as provided by law, provided a written request for such hearing is filed within [the time provided by these regulations or as provided by law] **ten business days of receipt of the order complained of.**

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

**Endangered, Nongame and Exotic Wildlife
Endangered and Nongame Species Advisory
Committee**

Proposed New Rule: N.J.A.C. 7:25-4.19

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3(f), 13:1D-9(h), and 23:2A-7(e).
DEP Docket No. 051-84-07.

Interested persons may submit in writing data, views, or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Howard Geduldig
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, N.J. 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 1984-440.

ENVIRONMENTAL PROTECTION

PROPOSALS

The agency proposal follows:

Summary

The proposed new rule establishes the composition of the Endangered and Nongame Species Advisory Committee provided for by N.J.S.A. 23:2A-7(e). The new criteria for membership, establishes numerical make-up, quorum and length of term of the committee members. Duties of the committee members are also enumerated.

Social Impact

In establishing standards for composition and orderly succession of membership of the advisory committee, it is contemplated that the proposed new rule will better enable the Commissioner to carry out the legislative intent embodied in The Endangered and Nongame Species Conservation Act.

Economic Impact

No direct economic impact upon the department or the public is contemplated as a result of the proposed new rule since it simply establishes the makeup and organization of the committee.

Environmental Impact

By adding a degree of certainty to the method of member selection, length of term, and succession, as well as describing their duties, it is contemplated that a more dedicated and environmentally knowledgeable membership will serve on the committee. Such result should yield only the most positive environmental impact.

Full text of the proposed new rule follows.

7:24-4.19 Endangered and Nongame Species Advisory Committee

(a) The Endangered and Nongame Species Advisory Committee (committee) shall consist of 11 members appointed by the Commissioner. Prior to the making of any said appointments, the Commissioner shall consult with the committee as to their recommendations.

1. Members shall be reflective of various public groups concerned with, and supportive of, the endangered and nongame species program established by P.L. 1973, c.309, codified at N.J.S.A. 23:2A-1 to -13, and shall possess special knowledge, expertise, and/or interest relating to endangered and nongame species of New Jersey. Member affiliation shall be as follows:

Affiliation	Number of Members
i. Academic/research communities	4
ii. Public health/veterinary medicine	1
iii. Qualified non-profit organization (as defined by the Internal Revenue Code at §501(c)(3)) with strong interest in promoting the non-consumptive use of wildlife	3
iv. Public at large (that is, not in the capacity of an organizational representative)	3

2. Of the 11 members to be appointed by the commissioner, initially, two shall be appointed for a term of one year, three for a term of two years, three for a term of three years, and three for a term of four years. Thereafter, all appoint-

ments shall be made for terms of four years. All appointed members shall serve, after the expiration of their terms, until their respective successors are appointed. Any vacancy occurring in the appointed membership of the committee, by expiration of term or otherwise, shall be filled by the Commissioner in the identical manner as the original appointment, for the unexpired term only, notwithstanding that the previous incumbent may have held over and continued in office as aforesaid.

3. No person shall be appointed to the committee for more than two consecutive four-year terms, and no person, once appointed to the committee for a three-year term, shall be appointed to the committee to consecutively serve for more than one four-year term.

4. The Commissioner may remove any member of the committee for cause upon notice and opportunity to be heard.

5. The committee shall select its chairperson from its membership, subject to the approval of the Commissioner, for a term of four years, and consecutive terms shall be permitted.

(b) The committee shall advise and assist the Commissioner in matters related to the intent of "The Endangered and Nongame Species Act," P.L. 1973, c.309, codified at N.J.S.A. 23:2A-1 to -13. Notwithstanding subsequent departmental action, the Commissioner shall respond in writing to all reasonable written comments on policy received from the committee.

(c) The committee shall transmit its business during regular meetings, held once each month, at a time and place designated by the committee. Adequate notice, as defined under the "Open Public Meetings Law," P.L. 1975, c.231, codified at N.J.S.A. 10:4-6 to -21, shall be given to the Secretary of State. Six members present shall constitute a quorum.

(d) Members of the committee shall serve without compensation, but shall be reimbursed for expenses actually incurred in attending committee meetings and in the performance of their duties as members thereof.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

**Fish and Game Council
1985-86 Fish Code**

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

Authorized by: Fish and Game Council, Anthony Di-Giovanni, Chairman.

Authority: N.J.S.A. 13:1B-30 et seq. and N.J.S.A. 23:1-1 et seq.

DEP Docket No: 049-84-07.

A public hearing concerning proposal will be held on September 11, 1984 at 8:00 P.M. at:

Division of Fish, Game and Wildlife
363 Pennington Avenue
Trenton, N.J. 08625

PROPOSALS

Interested persons may submit in writing, data views or arguments relevant to the proposed amendment on or before September 11, 1984. 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
Department of Environmental Protection
CN 400
Trenton, N.J. 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 1984-441.

The agency proposal follows:

Summary

The proposed 1985-86 Fish Code states when, by what means, at which location, in what numbers and at what sizes fish may be pursued, caught, killed or possessed.

The proposed code includes the following revisions to the previous code:

1. New Jersey's trout season traditionally opens on the first Saturday following the sixth of April, which in 1985 is April 13.

2. Stocking dates are adjusted to correspond with the 1985 calendar.

3. The following waters were added to the trout-stocked waters list:

Burlington County: Rancocas Creek, Southwest Branch, Medford

Essex County: Diamond Mill Pond, Millburn

Mercer County: Colonial Lake, Lawrence Township

Ocean County: Lake Shenandoah, Lakewood

4. The Delaware-Raritan Canal and the Delaware-Raritan Feeder Canal (Hunterdon and Mercer Counties), except for that portion of the feeder canal, in Hunterdon County, extending from Bulls Island to the Prallsville Lock, will be dropped from the trout-stocked waters list. These waters will be reinstated when the canal renovation is completed.

5. Two waters in Morris County will be deleted from the trout-stocked waters list. ABC Pond, Ledgewood, is being covered over by fill and is no longer fishable. Budd Lake, Mt. Olive, will be managed instead for a northern pike fishery which would be in direct conflict with trout stocking. The trout stocking in Budd Lake has not attracted sufficient use to justify its continuance.

6. The Natural Trout Fishing Area on Van Campens Brook (Warren and Sussex Counties) will be extended to cover the entire stream.

7. The size limit and bag limit for lake trout have been revised to increase the harvest of a dominant age class of smaller (18 to 22 inches) trout which is having an adverse impact upon the general growth of the total population. The revised regulations allow for the taking of one lake trout larger than 28 inches and one lake trout between 18 and 22 inches in length.

8. The size limit on tiger muskies has been increased from 24 to 30 inches to protect look-alike sub-legal muskellunge which currently have a 30-inch size limit.

9. The size limit on striped bass has been increased from 18 to 26 inches and the bag limit reduced to four fish in those waters where it currently stands at five. This is part of a

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coordinated effort along the entire Atlantic Coast to achieve a 55 percent reduction in the total mortality of striped bass in an attempt to halt the population decline of this important sportfish.

Social Impact

The removal of certain waters from the trout-stocked waters list will create some local inconveniences for those trout fishermen that had habitually fished these waters. This loss will be somewhat offset by the addition of other waters to the list.

The revised regulations covering the take of lake trout from Round Valley Reservoir will allow for a greater harvest of this species and thereby increase angler satisfaction. There had been an increasing disenchantment among fishermen at the reservoir who, although catching multiple numbers of lake trout, had to release their entire catch and return home empty-handed.

The 26-inch size limit on striped bass will eliminate the fishery for this species, in such areas as the Delaware River where the fishery was based on smaller bass.

Economic Impact

The Division foresees no specific, significant economic impact or detriment arising from the proposal since the amendments are primarily an annual review of the existing Fish Code.

Environmental Impact

The Fish Code has been established to promote the greatest recreational use of the State's freshwater fisheries without endangering the future of that resource. In the opinion of the Division, the proposed 1985-86 Code accomplishes that objective.

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

SUBCHAPTER 6. [1984-85] 1985-86 FISH CODE

7:25-6.0 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 [1983-84] 1984-85 Fish Code. Codification of this Code in the N.J.A.C. publication 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 has been reserved for the Fish Code.

7:25-6.1 Trout Season and Angling in Trout-Stocked Waters Authority: N.J.S.A. 23:5-1

(a) The trout season for [1984] 1985 shall commence 12:01 a.m. January 1, [1984] 1985 and extend to midnight March

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[18, 1984] **24, 1985**. The trout season shall re-open at 8:00 a.m. Saturday, April [7, 1984] **13, 1985** and extend to include March [17, 1985] **23, 1986**. (See separate regulations for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania, Round Valley Reservoir, Musconetcong River "No Kill" Area and the Van Campens Brook Natural Trout Fishing Area.)

(b) It shall be unlawful to fish for any species of fish between **midnight** [18th] on March 24, 1985 and 8:00 a.m. on April [7, 1984] **13, 1985** in ponds, lakes or those portions of streams that are listed herein for stocking during [1984] **1985**.

(c) 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.

(d) 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 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River - [April 13, 20, 27; May 4, 11, 18, 25] **April 19, 26; May 3, 10, 17, 24, 31**.

2. Black River - Route 206, Chester to Dam at lower end of Hacklebarney State Park - [April 12, 19, 26; May 3, 10, 27, 24.] **April 18, 25; May 2, 9, 16, 23, 30**.

3. Manasquan River - Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area - [April 9, 16, 23, 30; May 7, 14, 21.] **April 15, 22, 29; May 6, 13, 20, 27**.

4. Metedeconk River, N. Br. - Aldrich Road Bridge to Ridge Avenue - [April 9, 16, 23, 30; May 7, 14, 21.] **April 15, 22, 29; May 6, 13, 20, 27**.

5. Metedeconk River, S. Br. - Bennets Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood - [April 9, 16, 23, 30; May 7, 14, 21.] **April 15, 22, 29; May 6, 13, 20, 27**.

6. Musconetcong River - Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong - [April 13, 20, 27; May 4, 11, 18, 25.] **April 19, 26; May 3, 10, 17, 24, 31**.

7. Paulinskill River - Limecrest Railroad Spur Bridge, Sparta Township, to Columbia Lake dam - [April 12, 19, 26; May 3, 10, 17, 24.] **April 18, 25; May 2, 9, 16, 23, 30**.

8. Pequest River - Source to Delaware River - [April 13, 20, 27; May 4, 11, 18, 25.] **April 19, 26; May 3, 10, 17, 24, 31**.

9. Pohatcong Creek - Route 31 to Delaware River - [April 10, 17, 24; May 1, 8, 15, 22.] **April 16, 23, 30; May 7, 14, 21, 28**.

10. Ramapo River - State line to Pompton Lake - [April 12, 19, 26; May 3, 10, 17.] **April 18, 25; May 2, 9, 16, 23, 30**.

11. Raritan River, N. Br. - Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River - [April 11, 18, 25; May 2, 9, 16, 23.] **April 17, 24; May 1, 8, 15, 22, 29**.

12. Raritan River, S. Br. - Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River - [April 10, 17, 24; May 1, 8, 15, 22.] **April 16, 23, 30; May 7, 14, 21, 28**.

13. Rockaway River - [Holland Mt. Road Bridge, Milton] **Longwood Lake dam** to Jersey City Reservoir in Boonton - [April 9, 16, 23, 30; May 7, 14, 21.] **April 15, 22, 29; May 6, 13, 20, 27**.

14. Toms River - Ocean County Route 528 Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571 - [April 9, 16, 23, 30; May 7, 14, 21.] **April 15, 22, 29; May 6, 13, 20, 27**.

15. Wallkill River - W. Mt. Road to Route 23, Hamburg - [April 9, 16, 23, 30; May 7, 14, 21.] **April 15, 22, 29; May 6, 13, 20, 27**.

16. Wanaque River - Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez - [April 13, 20, 27; May 4, 11, 18, 25.] **April 19, 26; May 3, 10, 17, 24, 31**.

(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. Figure in parenthesis indicates the anticipated number of stockings to be carried out from April [9] **15** through May [25] **31**. (Note: The Division reserves the right to suspend stocking when emergency conditions prevail.)

1. Atlantic County

Birch Grove Park Pond - Northfield - (3)

Hammonton Lake - Hammonton - (3)

2. Bergen County

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

Hohokus Brook - [Allendale Avenue] **Forest Road** to Whites Pond - (1)

Indian Lake - Little Ferry - (4)

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

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

Tienekill Creek - Closter, entire length - (1)

Whites Pond - Waldwick - (2)

3. Burlington County

Crystal Lake - Willingboro - (3)

Rancocas Creek, Southwest Branch - Medford, Mill Street Park to Branch St. Bridge - (3)

Sylvan Lake - Burlington - (2)

4. Camden County

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

Grenloch Lake - Turnersville - (2)

Hopkins Pond - Haddonfield - (3)

5. Cape May County

Dennisville Lake - Dennisville - (2)

6. Cumberland County

Cohansey River - Dam at Seeley's Pond to Powerline above Sunset Lake, Bridgeton - (3)

Giampietro Park Lake - Vineland - (3)

Mary Elmer Lake - Bridgeton - (3)

Maurice River - Willow Grove Lake dam to Sherman Avenue, Vineland - (3)

Shaw's Mill Pond - Newport - (3)

7. Essex County

Branch Brook Park Lake - Newark - (4)

Diamond Mill Pond - Millburn - (4)

Verona Park Lake - Verona - (4)

8. Gloucester County

Greenwich Lake - Gibbstown - (4)

Harrisonville Lake - Harrisonville - (3)

Iona Lake - Iona - (3)

Mullica Hill Pond - Mullica Hill - (2)

Raccoon Creek - Ewan Lake dam to [Harrisonville - Gibbstown Road Bridge] **Mullica Hill Pond** - (2)

Swedesboro Lake - Swedesboro - (3)

9. Hudson County

[James J. Braddock Park] **Woodcliff Lake** - North Bergen, **James J. Braddock Park** - (4)

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- 10. Hunterdon County
 - Alexandria Brook - Milford, entire length - (2)
 - Alexauken Creek - Mt. Airy, entire length - (2)
 - Amwell Lake - Linvale - (4)
 - Beaver Brook - Annandale, entire length - (2)
 - Capoolong Creek - Pittstown, entire length - (6)
 - Delaware - Raritan Feeder Canal - [Raven Rock to Hunterdon County Line] **Bulls Island to Prallsville Lock** - (6)
 - Everittstown Brook - Everittstown, entire length - (2)
 - Frenchtown Brook - Frenchtown, entire length - (1)
 - Hakihohake Creek - Milford, entire length - (2)
 - Little York Brook - Little York, entire length - (2)
 - Lockatong Creek - Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal - (3)
 - Milford Brook - Milford, entire length - (1)
 - Mt. Pleasant Brook - Mt. Pleasant, entire length - (0)
 - Mulhockaway Creek - Pattenburg, source to Spruce Run Reservoir - (2)
 - Neshanic River - Kuhl Road to Hunterdon County Route 514 (1)
 - Prescott Brook - Clinton Township, entire length - (1)
 - Rockaway Creek, N/B - Tewksbury and Readington Township, entire length - (4)
 - Rockaway Creek, S/B - Lebanon to Whitehouse, entire length (3)
 - Round Valley Reservoir - Lebanon - (1)
 - Spring Mills Brook - Spring Mills, entire length - (0)
 - Spruce Run - Glen Gardner and Lebanon Township, entire length - (3)
 - Spruce Run Reservoir - Clinton - (5)
 - Sydney Brook - Sydney, entire length - (0)
 - Tetertown Brook - Tetertown, entire length - (0)
 - Wickecheoke Creek - Covered Bridge, Sergeantsville to Delaware River - (1)
- 11. Mercer County
 - Assunpink Creek - **Assunpink Site 5 dam upstream of** Rt. 130 Bridge to Carnegie Road, Hamilton Township - (4)
 - Colonial Lake - Lawrence Township** - (2)
 - [Delaware-Raritan Canal - U.S. 1 to Alexander St., Princeton (4)]
 - [Delaware - Raritan Feeder Canal - Hunterdon County Line to Upper Ferry Road Bridge - (6)]
 - Rosedale Lake - Rosedale - (4)
 - Stony Brook - Woodsville to Port Mercer - (4)
- 12. Middlesex County
 - Farrington Lake - North Brunswick - (4)
 - Ireland Brook - Farrington Lake to point 500 ft. upstream of Riva Avenue - (0)
 - Lawrence Brook - Dam at Farrington Lake to 2nd RR Bridge (Raritan Railroad) below Main St. Milltown - (5)
 - Roosevelt Park Pond - Edison Township - (4)
- 13. Monmouth County
 - Big Brook - Clover Hill, Route 34 to Swimming River Reservoir - (2)
 - Englishtown Mill Pond - Englishtown - (2)
 - Garvey's Pond - Navesink - (2)
 - Hockhocks Brook - Hockhocks Road to Garden State Parkway bridge (northbound) - (3)
 - Holmdel Park Pond - Holmdel - (2)
 - Hop Brook - Holmdel, Route 520 to Swimming River Reservoir** (2)
 - Mingamahone Brook - Farmingdale, Hurley Pond Road to Manasquan River - (1)
 - Mohawk Pond - Red Bank - (1)

- Pine Brook - Tinton Falls, Jersey Central Railroad to Hockhocks Brook - (2)
- [Ramanessan (Hop) Brook - Holmdel, Route 520 to Swimming River Reservoir - (2)]
- Shark River - Hamilton, Route 33 to Remsen Mill Road - (3)
- Spring Lake - Spring Lake - (2)
- Takanassee Lake - Long Branch - (2)
- Topenemus Lake - Freehold - (2)
- Willow Brook - Holmdel, Route 520 to Swimming River Reservoir - (2)
- Yellow Brook - [Colts Neck, Route 34 to Swimming River Reservoir] **Heyers Mill Toad to Muhlenbrink Rd., Atlantic Township** - (3)
- 14. Morris County
 - [A.B.C. Pond - Succasunna - (2)]
 - Beaver Brook - Rockaway, entire length - [(2)] (3)
 - [Budd Lake - Budd Lake, Mt. Olive - (2)]
 - Burnett Brook - Ralston, entire length - (2)
 - Burnham Park Pond - Morristown - (1)
 - Den Brook - Union Hill, entire length - (1)
 - Drakes Brook - Flanders, entire length - (1)
 - Flanders Brook - Mt. Olive, entire length - (3)
 - Hibernia Brook - Hibernia, entire length - (4)
 - India Brook - Mt. Freedom to Rt. 24, Ralston, entire length - (2)
 - India Brook Impoundment - Colemans Hollow - (2)
 - Lake Hopatcong - Lake Hopatcong - (2)
 - Lake Musconetcong - Netcong - (2)
 - Ledgewood Brook - Ledgewood - (2)
 - Mill Brook - Center Grove, entire length - [(4)] (2)
 - Mt. Hope Pond - Mt. Hope - (2)
 - Passaic River - White Bridge to Dead River - (6)
 - Pompton River - Pequannock Township (see Passaic Co.) - (6)
 - Reservoir Brook - Brookside, entire length - (1)
 - Rhinehart's Brook - Hacklebarney State Park, entire length (2)
 - Russia Brook - Jefferson Township, Ridge Road to Lake Swannanoa** - (2)
 - Speedwell Lake - Morristown - (2)
 - Trout Brook - Hacklebarney State Park, entire length - (2)
 - Washington Valley Brook - Morristown, entire length - (3)
- 15. Ocean County
 - Lake Shenandoah - Lakewood, Ocean County Park** - (3)
 - Prospertown Lake - Prospertown - (2)
- 16. Passaic County
 - Barbour's Pond - West Paterson - (2)
 - Belcher's Creek - West Milford, entire length - (0)
 - Cooley's Brook - West Milford, entire length - (0)
 - Greenwood Lake - West Milford - (3)
 - Oldham Pond - North Haledon - (2)
 - Pequannock River - Route 23, Smoke Rise to North Main Street, Butler - (3)
 - Pompton Lake - Pompton Lakes - (2)
 - Pompton River - Pompton Lake to Newark - Paterson Turnpike (6)
 - Ringwood Brook - State line to Sally's Pond, Ringwood Park - (4)
 - Sheppard's Lake - Thunder Mountain, Ringwood Borough - (3)
- 17. Salem County
 - Schadler's Sand Wash Pond - Pennsgrove - (3)

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Harrisonville Lake - Harrisonville - (3)
 Maurice River - Willow Grove Lake Dam to Sherman Avenue, Vineland - (3)
 18. Somerset County
 Harrison Brook - Liberty Corner, entire length - (3)
 Lamington River - Rt. 523 (Lamington Road) at Burnt Mills to Jct. with North Branch of Raritan River - (6)
 Passaic River - White Bridge to Dead River - (6)
 Peapack Brook - Peapack, entire length - (5)
 Raritan River - Jct. of Raritan River N/Br and S/Br to dam at Edgewater Road - (4)
 Rock Brook - Zion, entire length - (2)
 Middle Brook; E/Br. - Martinsville, entire length - (2)
 19. Sussex County
 Alm's House Brook - Myrtle Grove, Hampton Township, entire length - (2)
 Andover Junction Brook - Andover, entire length - (3)
 Beaver Run Brook - Beaver Run, entire length - (1)
 Bier's Kill - Shaytown, entire length - (2)
 Big Flat Brook, Upper - Saw Mill Lake, High Point State Park to 100 ft. above Steam Mill Bridge on Crigger Road - (1)
 Clove River - Junction of Route 23 and Mt. Salem Road to Route 565 bridge - (3)
 Cranberry Lake - Byram Township - (2)
 Culver's Lake Brook - Frankford Township, entire length - (2)
 Dragon Brook - Cranberry Lake, Byram Township, entire length - (3)
 Dry Brook - Branchville, entire length - (0)
 Franklin Pond Creek - Hamburg Mt. W.M.A., entire length - [(2)] (3)
 Glenwood Brook - Lake Glenwood to Stateline - (1)
 Hardystonville Brook - Hardystonville, entire length - (1)
 Iliff Lake - Andover Township - (3)
 Kymer's Brook - Andover, entire length - (2)
 Lake Musconetcong - Netcong - (2)
 Lake Hopatcong - Lake Hopatcong - (2)
 Lake Ocquittunk - Stokes State Forest - (6)
 Little Flat Brook - Sandyston Township, entire length - (3)
 Little Swartwood Lake - Swartwood - (2)
 Lubbers Run - Byram Township, entire length - (3)
 Neldon Brook - Swartwood, entire length - (2)
 North Church Brook - Monroe, entire length - (1)
 Papakating Creek - Plains Road bridge to Route 565 Lewisburg - (2)
 Papakating Creek, W. Br. - Libertyville, entire length - (2)
 Parker Brook - Stokes State Forest, entire length - (1)
 Pond Brook - Middleville, entire length - (2)
 Roy Spring Brook - Stillwater, entire length - (2)
 Saw Mill Lake - High Point State Park - (6)
 Shimers Brook - Montague Township, entire length - (1)
 Sparta Junction Brook - Sparta Junction, entire length - (3)
 Stony Brook - Stokes State Forest, entire length - (2)
 Stony Lake - Stokes State Forest - [(1)] (3)
 Swartwood Lake - Swartwood - [(2)] (3)
 Trout Brook - Middleville, entire length - (2)
 Tuttle's Corner Brook - Tuttle's Corner, entire length - (2)
 Wawayanda Lake - Highland Lakes - (3)
 20. Union County
 Green Brook - Route 527, **Berkely Heights** to Route 22, **Scotch Plains** - (2)
 Lower Echo Park Pond - Mountainside - (2)
 Milton Lake - Madison Hill Road Bridge to Milton Lake Dam, Rahway - (2)

Rahway River - Morris Ave. (Route [24]) 524 to St. George Ave. (Route 27), Rahway - (4)
 Seeleys Pond - [Watchung Reservation] **Berkely Heights** - (2)
 21. Warren County
 Barker's Mill Brook - Vienna, entire length - (2)
 Bear Creek - Southtown, entire length - (2)
 Beaver Brook - Silver Lake Dam to Pequest River - (2)
 Blair Creek - Hardwick Center to Blair Lake - (2)
 Blair Lake - Blairstown - [(2)] (0)
 Buckhorn Creek - Roxburg, entire length - (2)
 Dark Moon Brook - Johnsonburg, entire length - (1)
 Delawanna Brook - Delaware Lake to Delaware River - (1)
 Dunnfield Creek - Delaware Water Gap National Recreation Area, entire length - (3)
 Furnace Brook - Oxford, entire length - (2)
Furnace Lake - Oxford - (5)
 Honey Run - Swayze's Mill Road to Route 519, Hope Township - (2)
 Jacksonburg Creek - Jacksonburg, entire length - (3)
 Johnsonburg Creek - Johnsonburg, entire length - (1)
 Lopatcong Creek - Route 519 to South Main Street, Phillipsburg - (3)
 Merrill Creek - Stewartville, entire length - (2)
 Mountain Lake - Buttzville - (5)
 Muddy Run - Hope Township, entire length - (2)
 [Oxford Furnace Lake - Oxford - (4)]
 Pohatcong Creek - Mt. Bethel to Route 31 - (2)
 Pophandusing Creek - Oxford Road, Hazen to Delaware River - (2)
 Roaring Rock Brook - Brass Castle, entire length - (2)
 Silver Lake - Hope - (5)
 Trout Brook - Hackettstown, entire length - (3)
 Trout Brook - Hope, entire length - (2)
 Yards Creek - Mount Vernon to Paulinville 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 in one day more than 6 in the aggregate of brook trout, brown trout, rainbow trout or hybrids thereof during the period extending from 8:00 a.m. April 7, 1984 until midnight May 31, 1984, or more than 4 of these species during the periods of January 1, 1984 to midnight March 18, 1984 and June 1, 1984 through midnight March 17, 1985 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

7:25-6.2 Fly-Fishing Waters
 Authority: N.J.S.A. 13:1B-31, 23:5-10, 23:5-11, 23:5-17

(a) From and after 5:00 a.m. on Monday April [16, 1984] **22, 1985** to and including November 30, [1984] **1985** 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 4 miles, except that portion known as the Blewett Tract, regulated below (see b.1).

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2. South Branch of the Raritan River, Hunterdon County - the stretch of water known as the "Ken Lockwood Gorge", a distance of approximately 2½ miles.

(b) Beginning January 1, [1984] **1985** to midnight March [18, 1983] **24, 1985** and from 8:00 a.m. on April [7, 1984] **13, 1985** to midnight, March [17, 1985] **23, 1986**, 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 days listed for stocking:

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

(c) 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's Mountain Road, extending downstream 1 mile to the 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) 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 6 trout may be killed daily during the April 7 through May 31 portion of the season; at other times the limit is four.

Any number of trout may be caught provided such trout are immediately returned to the water unharmed, except that 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, buck-tails, 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 flyfishing only is in effect. Authority: N.J.S.A. 23:5-11; 23:5-15.1.

7:25-6.3 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 stretch of water is hereby designated as a Natural Trout Fishing Area:

1. 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.] - **entire length**.

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

1. Van Campens Brook is open to fishing year-round. Authority: 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 ten inches in total length. 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.

7:25-6.4 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 5 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 2 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.

(d) [During the period] **The season for lake trout shall extend from 12:01 a.m. January 1, [1984] 1985 to midnight September 30, [1984] 1985, [one lake trout of legal size may be retained.]** Authority: N.J.S.A. 23:5-1, 23:5-10.]

(e) [The minimum size for lake trout shall be 24 inches.] **The legal size for lake trout shall be from 18 inches to 22 inches and in excess of 28 inches. The daily bag and possession limit shall be two, of which only one may be between 18 inches and 22 inches and only one may be in excess of 28 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 [brown or rainbow trout] fish, 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] **which has been mutilated so that its size at capture cannot be determined, or so that it 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.

7:25-6.5 Baitfish

(a) 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 2 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 1984, it is prohibited to net, trap or attempt to net or

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trap baitfish from March 18 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 4 feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than 2 inches in diameter. Authority: N.J.S.A. 23:5-11.

(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.

7:25-6.6 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 p.m. until the following Sunday at twelve 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 one hundred and fifty feet in length or a dip net not to exceed twenty four 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 seventy fathoms in length, whether singly or attached, for all species except striped bass. November first to April thirtieth.

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 first to April thirtieth.

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

iv. Drifting gill nets, the smallest mesh of which shall be five inches while being fished, and shall not exceed fifty fathoms in length, for all species excepting striped bass. March first to June fifteenth. 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 two p.m. until Sunday at twelve o'clock 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 one hundred feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than one and one-quarter 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 low 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 gill net the meshes of which are less than thirteen 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 two and one-half inches stretched measure while being fished, or any gill net the meshes of which shall be less than five and one-quarter inches stretched measure while being fished, provided that gill nets with a mesh not smaller than three inches may be used from March 1-June 10th 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 10th in each and every year, and March 1st next ensuing. Suckers may be taken with a seine only from October 15th in each and every year to March 15th 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 five hundred 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 thirty 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 three and one-half 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.

Seines with meshes not smaller than two and one-half 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 two p.m. until Sunday at twelve o'clock 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 one hundred feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than one and one-quarter 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

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net, the meshes of which shall be not less than thirteen 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 five and one-quarter 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 two and three-quarters inches stretched measure, while being fished, and not exceeding two hundred feet in length, from April 1 to November 30.

ii. A hauling seine, the meshes of which shall be not less than two and three-quarters inches stretched measure while being fished, and not exceeding seventy 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 five hundred feet of another net or within five hundred 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 thirty 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 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 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 on striped bass (*Morone saxatilis*) in and upstream of any impounded or inland lake or pond. The season for taking of striped bass from all other fresh waters is March 1 to December 31. (See Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate 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 9 inches in all waters except for Mountain Lake (Warren County), Parvin Lake (Salem County), Lake Musconetcong (Sussex County), Mercer Lake (Mercer County), and Lake Carasaljo including the South Branch of the Metedeconk River 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 5 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*) and tiger muskie (*Esox lucius* X *Esox masquinongy*). The daily bag and possession limit for these species shall be 2 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) The minimum length on walleye (*Stizostedion vitreum vitreum*) shall be 15 inches. Authority: N.J.S.A. 23:5-7.

(k) The minimum length for striped bass (*Morone saxatilis*) shall be [18] **26** inches and the daily bag and possession limit shall be two in lakes. For all other freshwaters, tidal and non-tidal, the minimum length shall be [15] **26** inches and the daily bag and possession limit shall be [five] **four** (see exception for the Delaware River). Authority: N.J.S.A. 23:5-7, 23:5-10.

7:25-6.9 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-stocked waters.)

(b) A person, while fishing through the ice, may use not more than 5 devices for the taking of fish. The types of devices that may be used are: (a) ice supported tip-ups or lines with one hook attached; (b) an artificial jigging lure with not more than one burr of 3 hooks that measure not more than ½ inch from point to point; (c) an artificial jigging lure with not more than 3 single hooks measuring not more than ½ inch from point to shaft; (d) an artificial jigging lure with a combination of the hook limitations described in (b) and (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

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with the name and address of the user and shall not be left unattended.

(c) 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 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, or walleye (*Stizostedion vitreum vitreum*), 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 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.

7:25-6.12 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. N.J.S.A. 23:5-11.

7:25-6.13 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.

In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following regulations for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York 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:

(a)	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

(b) 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.

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

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

(e) 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 Delaware River Between New Jersey and Pennsylvania

In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania 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.

(a)	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, & any hybrid thereof	No closed season	30" minimum	2
Northern pike	No closed season	24" minimum	2
Striped bass	March 1-Dec. 31	[15"] 26" minimum	[No limit] 4
Baitfish, Fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other freshwater species	No closed season	No minimum	No limit

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

(b) 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.

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

(d) 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 5 devices that will include tip-ups and not more than 2 rods and lines or 2 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.

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

(f) 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.

(g) 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.

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7:25-6.15 Fresh Tidal Tributaries of the Delaware River and Bay

(a) The minimum length on Atlantic sturgeon (*Acipenser oxyrinchus*) shall be 60" with no daily bag limit. Authority: N.J.S.A. 23:5-10, 13:1B-30, 13:1B-31.

7:25-6.16 Definitions

Unless the context clearly implies a differing usage, the following definitions shall apply in this code:

- (a) Code - The State Fish Code.
- (b) Division - The Division of Fish, Game and Wildlife.
- (c) Director - Director of the Division of Fish, Game and Wildlife.
- (d) Open Waters (All Sections except 6.8) - Those waters in which angling is permitted, particularly in reference to time.
- (e) Open Waters (Section 6.8) - Those waters not covered with ice.
- (f) Closures (Closed Waters) - Those waters in which angling is not permitted, particularly in reference to time (also Closed Season).
- (g) Snagging - Snagging shall mean the hooking of a fish, in other than inside the mouth, through the action of the fisherman.
- (h) Natural Bait - Natural bait shall mean any bait that in its live, preserved or original form would be consumed by fish.
- (i) Trout - The term "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*

(j) Baitfish - The term "baitfish" shall include the following species:

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

(k) Foodfish - The term "foodfish", for purposes of Section 7:25-6.6 only, means the following species.

- 1. Atlantic sturgeon *Acipenser oxyrinchus*
- 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.

(l) Warmwater Fish - The term "warmwater fish" shall include the following species and all hybrids and strains thereof:

- 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*

(m) Other fish species which are provided for by the provisions of this code, either directly or implied, are as follows:

- 1. Landlocked Atlantic salmon *Salmo salar*
- 2. Shortnose sturgeon *Acipenser brevirostrum*
- 3. Atlantic sturgeon *Acipenser oxyrinchus*
- 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*

(n) Size limit - size limit shall mean 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.

(o) Bag or possession limit - The total number of fish that are legally retainable. Most normally this is expressed on a daily basis.

(p) Unattended - User not available for questioning by officer at the time of inspection.

(q) Possession - refers to all fish, alive or dead, under the control of the fisherman .

ENVIRONMENTAL PROTECTION

PROPOSALS

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Defining Lines Upstream of Which License is Required to Fish With Handline, Rod and Line, or Long Bow and Arrow

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

Authorized By: Russell A. Cookingham, Division of Fish, Game and Wildlife.

Authority: N.J.S.A. 23:1-2, 23:3-1, and 23:9-1.

DEP Docket No. 048-84-07.

Interested persons may submit in writing any data, views or arguments relevant to the proposal on or before September 5, 1984. Submissions by interested parties and any inquiries about submissions and responses should be addressed to:

Russell A. Cookingham, Director
Division of Fish, Game and Wildlife
CN 400
Trenton, N.J. 08625

Any inquiries about the regulations can be made by calling Mr. Cookingham at (609) 292-9410.

The Division of Fish, Game and Wildlife thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The readoption becomes effective upon acceptance for filing by the Office of Administrative Law.

This proposal is known as PRN 1984-437.

The agency proposal follows:

Summary

N.J.S.A. 23:3-1 states, in part, that no person above the age of 14 may fish in the freshwaters of the State without a fishing license. This necessitates that the freshwaters of the State be distinguished from the State's salt waters and that the transition point between the two be defined. To determine this point all of the State's inland tidal streams were monitored to determine the upstream extent of salt water influence, taking account salinity levels, tides and stream flow. The so-called "license lines" are identical for both New Jersey residents and non-residents alike. (Prior statute recognized different limits for non-residents.)

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Division of Fish, Game and Wildlife proposes to readopt N.J.A.C. 7:26-16. Concerning the definition of lines upstream of which a fishing license is required. This rule was originally adopted and became effective on August 18, 1978; the rule expired on August 18, 1983. The proposed readoption is essential to continue in full force and effect the definitions of lines upon which N.J.S.A. 23:3-1 rely.

Social Impact

Making the license lines identical for both residents and non-residents eliminated one form of discrimination which made a distinction based on residency. Basing the license lines on scientific determinations has aided in the prosecution of

those violating these statutes and deterred court challenges. Readoption of these rules will facilitate continued compliance with N.J.S.A. 23:3-1 in a less discriminatory manner.

Economic Impact

The readoption continues the requirement of fishing licenses for many areas which were previously open to fishing without a license and, therefore, will continue the financial burden on those who previously fished these areas for free. The added license sales which have occurred as a result of these revised lines will continue to bring some increase in revenue to the Division of Fish, Game and Wildlife.

Full text of the rules being readopted can be found in the New Jersey Administrative Code at N.J.A.C. 7:25-16.1.

(b)

DIVISION OF WASTE MANAGEMENT

Hazardous Waste National Uniform Manifest System

Proposed Amendments: N.J.A.C. 7:26-7.3, 7.4, 7.5 and 7.6

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-6.

DEP Docket No. 050-84-07.

Interested persons may submit, in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

J. Mark McQuerrey
New Jersey Department of
Environmental Protection
Office of Regulatory Services
CN 402
Trenton, New Jersey 08625

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

This proposal is known as PRN 1984-439.

The agency proposal follows:

Summary

On March 20, 1984, the United States Environmental Protection Agency published final rules, establishing a National Uniform Hazardous Waste Manifest System (40 CFR 262). The manifest system is a program which tracks the shipment of hazardous waste from the point of generation to the point of final disposal. The manifest is a multi-copy transport document which is used for tracking the shipment of hazardous waste.

New Jersey is required by Federal law to use the uniform manifest system. Therefore, the Department hereby proposes

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to make the necessary amendments to the present hazardous waste manifest system rules to make them consistent with the Federal requirements.

Social Impact

Modifications to New Jersey's present hazardous waste manifest system to make it consistent with the national uniform system do not substantively affect the scope of the program. The proposed amendments simply conform to the State rules with Federal requirements. Hazardous waste facilities generators and haulers are impacted by these amendments in that they will have to comply with the latest requirements but such compliance will not substantially change their responsibilities.

Economic Impact

Industry compliance with the hazardous waste manifest requirements will be made easier and accordingly cheaper, as a result of New Jersey's participation in the uniform national system.

Environmental Impact

No adverse environmental impact is foreseen from the proposed amendments.

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

7:26-7.3 Hazardous waste manifest forms

(a) For the purpose of these rules, only the [following] **national uniform** manifest forms are to be used for hazardous waste shipments originating in or destined for New Jersey. **Manifests shall be obtained in accordance with the procedures set forth in 40 CFR 262.21.**

1. (No change.)
2. For shipments originating from a site in another state and destined for New Jersey, manifest forms shall be:
 - i. Those supplied by the Department[, or].
 - ii. **If the Department's forms are unavailable**, the manifest form approved for use by the state of origin which complies with all standards set forth in 40 CFR 262[, provided such form has been approved by the Department for use in New Jersey].

iii. **If the forms are unavailable from the Department and the state of origin, the manifest form may be obtained from any source.**

3. For shipments originating from a site in New Jersey and destined for a site in another state, manifest forms shall be:
 - i. Those supplied by the [Department, or] **consignment (destination) state.**

ii. [The manifest form approved for use by the state of destination which complies with all standards set out at 40 CFR 262, provided such form has been approved by the Department for use in New Jersey] **If the forms are not available from the consignment state, the generator shall use the manifest form supplied by the Department.**

iii. **If the forms are not available from the consignment state or the Department, forms may be obtained from any source.**

(b) [For the manifest form to be approved for use in New Jersey it must provide at least the number of copies which will provide the generator, each hauler and the owner or operator of the designated facility with one copy for their records, and one copy for the generator and owner or operator of the designated facility to forward to the states of origin and

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destination, as well as one copy to be returned to the generator by the designated facility.] **Manifest forms used for shipments to or from New Jersey must provide at least the number of copies which will allow distribution of one copy to the generator, each hauler and the owner/operator of the designated facility for their records. One copy shall be sent by the generator to both the States of waste origin and destination. One copy shall be sent by the owner or operator of the designated facility to the State of origin and destination, as well as one copy to be returned to the generator by the facility owner or operator. Photocopies may supplement manifest forms that do not provide the prescribed number of copies.**
(c)-(d) (No change.)

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8.1 et seq. are as follows:

1. (No change.)
2. A generator must not offer hazardous waste to a hazardous waste hauler or to an owner or operator of a hazardous waste treatment, storage or disposal facility who does not possess an EPA identification number, **except when the waste is destined for a facility in a state where that facility is not required to have an EPA identification number.**
3. (No change.)
4. A generator must provide the following information on the manifest form:

i. The [operator's] **generator's name, mailing address, site address, if different from the mailing address,** and phone number;

ii. (No change.)

iii. The hauler (or haulers) name, [address, and] phone numbers **and New Jersey registration number.**

iv.-vii. (No change.)

viii. Special handling instructions and any other information required on the form to be [shipped] **supplied** by the generator.

5. Before allowing the manifested waste to leave the generator's property, the generator must:

i.-iii. (No change.)

iv. **Make additional copies of the manifest form, if necessary to provide the required number of copies described in N.J.A.C. 7:26-7.3(b); and**

[iv.]v. (No change in test.)

6.-8. (No change.)

(b) (No change.)

(c) When shipping hazardous waste outside the United States, the generator must:

1. Notify the Administrator of the United States Environmental Protection Agency (USEPA) and the Department in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year;

i.-ii. (No change.)

iii. These notices must be sent to: Hazardous Waste Export, Division of Oceans and Regulatory Affairs (A-107), United States Environmental Protection Agency, Washington, D.C. 20460 and New Jersey State Department of Environmental Protection, [Bureau of Hazardous Waste, 32 E. Hanover Street.] **Division of Waste Management Manifest Section, CN 028, Trenton, New Jersey 08625.**

2.-3. (No change.)

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

(g) Annual reporting requirements are as follows:

1. The hazardous waste generator shall submit to the Department by March 1 of each year a report of [facility] **mani-**

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fest activities during the previous calendar year. The report shall be on forms approved by the Department and must include the following information:

i.-x. (No change.)

2. (No change.)

(h) Exception reporting requirements are as follows:

1. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial hauler must contact the hauler and/or the owner or operator of the designated facility to determine the status of the hazardous waste and the Department at 609-292-9877] **8341** to inform the Department of the situation.

2. (No change.)

3. The generator is responsible for assuring that the generator's State and the designated facility's State receive copies of the completed manifest, containing the handwritten signature of the owner or operator of the designated facility. The generator may provide photocopies to satisfy this requirement, if the manifest form provided by the destination State does not contain a sufficient number of copies.

[3.]4. (No change in text.)

7:26-7.5 Hazardous waste hauler responsibilities

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

(d) General requirements are as follows:

1. (No change.)

2. A hauler may not accept hazardous waste from a generator unless it is accompanied by a manifest, **properly completed with all information required by State and Federal law and rules** and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-7.4.

3. (No change.)

4. Before transporting the hazardous waste **and in accordance with instructions on the manifest**, the hauler must sign and date the manifest, acknowledging acceptance of the hazardous waste from the generator. The hauler must return a signed copy to the generator before leaving the generator's property.

5.-18. (No change.)

(e)-(h) (No change.)

7:26-7.6 Hazardous waste facility operator responsibilities

(a) General requirements are as follows:

1. (No change.)

2. Except as hereinafter provided, the facility operator shall only accept hazardous waste shipments which are properly labeled and marked in accordance with these rules, and which are accompanied by a properly completed manifest unless no manifest is required pursuant to N.J.A.C. 7:26-8.1 et seq. **All manifests for waste shipments destined for New Jersey must contain all elements of information listed in N.J.A.C. 7:26-7.4(a)4.**

3.-5. (No change.)

(b) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his/her agent, must:

1.-4. (No change.)

5. Forward the pertinent [portion] **copy** of the [approved] **uniform** manifest form to the Department **and to the generator's State agency** by the next business day; and

6. (No change.)

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

(a)

DIVISION OF WASTE MANAGEMENT

Hazardous Waste Incinerators

Proposed Amendment: N.J.A.C. 7:26-10.7

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-6.

DEP Docket No. 047-84-07.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

J. Mark McQuerrey
New Jersey Department of
Environmental Protection
Office of Regulatory Services
CN 402
Trenton, New Jersey 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 1984-438.

The agency proposal follows:

Summary

The regulations adopted by the United States Environmental Protection Agency under the Resources Conservation and Recovery Act contain a provision which describes a class of waste incinerator facilities which are exempt from certain requirements of the Federal hazardous waste facility rules (see 40 CFR 264.340(b)). New Jersey's comparable rule (N.J.A.C. 7:26-10.7(a)1) has been determined by the USEPA to be broader than the Federal rule. As such, Federal law requires that New Jersey make needed rule amendments to insure that this State's hazardous waste program is at least as strict as the program described in the Federal rules. The Department of Environmental Protection therefore proposes to adopt regulatory language identical to that set forth in the Federal rules.

Social Impact

Since the proposed amendment encompasses rule provisions which are already required by Federal rules, no additional social impact is foreseen.

Economic Impact

Uniformity for regulations throughout the nation enhances the ease of compliance for national companies, resulting in associated economic savings.

Environmental Impact

No adverse environmental impact is foreseen from the proposed amendments.

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

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7:26-10.7 Hazardous waste incinerators

(a) (No change.)

1. [If the Department finds, upon examination of the waste analysis included with Part B of the applicant's permit application, that the analysis of the waste to be burned includes none of the hazardous constituents listed in N.J.A.C. 7:26-8.16 then the Department may, in establishing the permit conditions, exempt the applicant from all requirements of this section except N.J.A.C. 7:26-10.7(b) and N.J.A.C. 7:26-10.7(1).] **After consideration of the waste analysis included with Part B of the permit application, the Department, when establishing permit conditions may exempt the applicant from all requirements of this section except (b) and (1) below if the following conditions are met:**

- i. **If the Department finds that the waste to be burned is:**
 - (1) **Listed as a hazardous waste in N.J.A.C. 7:26-8.13, 8.14 or 8.15 solely because it is ignitable, corrosive or both; or**
 - (2) **Listed as a hazardous waste in N.J.A.C. 7:26-8.13, 8.14 or 8.15 solely because it is reactive for characteristics other than those listed in N.J.A.C. 7:26-8.11(a)4 and 5 and will not be burned when other hazardous wastes are present in the combustion zone; or**
 - (3) **A hazardous waste solely because it possesses the characteristics of ignitibility, corrosivity or both, as determined by the test for characteristics of hazardous wastes under 40 CFR Part 261, Subpart C; or**
 - (4) **A hazardous waste solely because it possesses any of the reactivity characteristics described by N.J.A.C. 7:26-8.11(a)1, 2, 3, 6, 7 and 8 and will not be burned when other hazardous waste are present in the combustion zone; and**
 - ii. **If the waste analysis shows that the waste contains none of the hazardous constituents listed in N.J.A.C. 7:26-8.16, which would reasonably be expected to be in the waste.**
2. (No change.)
(b)-(m) (No change.)

Leonard D. Dileo
Director
Health Facilities Construction
CN 360
Trenton, NJ 08625

At the close of the period for comments, the Department of Health may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-442.

The agency proposal follows:

Summary

In accordance with the State Uniform Construction Code N.J.S.A. 52:27D-119 et seq. (P.L. 1975, c217), the Department of Health as the enforcing agency proposes to adopt by reference the Plan Review Fee Schedule as outlined in N.J.A.C. 5:23-4.20. The fee assessed upon health facilities construction project sponsors by the Department is necessary to meet its obligations as defined in N.J.A.C. 5:23-11(a). This agency has the responsibility for reviewing and approving all architectural and mechanical plans for all health facility construction projects. In accordance with the regulations, no health care facility will be issued a building permit in order to commence construction until stamped and approved plans are received from this agency.

Social Impact

The proposed amendment will protect the health, safety and welfare of the people by assuring that all health care facility construction is adequate and maintained according to nationally recognized standards.

Economic Impact

The economic impact will continue to be upon those initiating sponsors of health facility construction projects. There is no change or increase in the multiplier, therefore impact should remain the same.

The concurrent economic impact upon the Health Department will continue to be the same; program revenue will offset the appropriation allotted by the legislature for plans review functions.

Should the proposal not be adopted the State Health Department will either have to support these functions with its current operating budget, thereby creating a deficit, or regulations will have to be repealed.

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

8:31-30.1 Architectural and mechanical plan review fee

(a) The Department of Health will utilize 20 percent of the local municipality schedule in computing the plan review fee for health care facilities. The municipality will charge the balance of 80 percent for the other aspects of construction, i.e., inspections, permits, and the like.

(b) The sponsor will submit to the Department of Health a copy of the local ordinance establishing the fee schedule in order for the Department to make the necessary computations.]

HEALTH

(a)

HEALTH FACILITIES EVALUATION

Plan Review Fee Schedule

Proposed Amendment: N.J.A.C. 8:31-30.1

Authorized By: J. Richard Goldstein, M.D., Commissioner of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5, N.J.A.C. 5:23-2.28, N.J.A.C. 5:23-11(2) and 5:23-4.20(b).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses should be addressed to:

[(c)] (b) [If a municipality has not passed an ordinance establishing fees, the] The Department of Health will utilize the fee schedule outlined in N.J.A.C. 5:23-[1.8(d)3] 4.20 of the Uniform Construction Code.

[(d)] In each instance, whether or not the municipality has established a fee schedule, the Department's plan review fee shall be computed on the basis of the volume or cost of construction, the number of plumbing fixtures and stacks, and the number of electrical fixtures and devices, plus other special fees, in accordance with the provisions of N.J.A.C. 5:23-4.8(d), using a multiplier of 4.0.]

[(e)] (c) All fees paid to the Department of Health shall be non-refundable. All fees shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Supplier Manual Recycling of Durable Medical Equipment

Proposed Amendments: N.J.A.C. 10:59-1.2, 1.4, 1.9 and 1.12

Authorized By: George J. Albanese, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(12), 7 and 7b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions and responses, should be addressed to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rule-making procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-417.

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services currently has a rule that whenever durable medical equipment (DME) is purchased by the Division, the Medicaid recipient is granted a possessory interest so long as the recipient has a medical need for the equipment. When the recipient no longer

needs the equipment, possession and control will revert to the Division (N.J.A.C. 10:59-1.9(d)).

This proposal will enable the Division to recycle equipment that it owns. Upon being notified by the Medicaid recipient, the recipient's family, and/or the Medicaid provider, the Medicaid District Office (MDO) shall contact an appropriate DME recycling provider who will recover, refurbish and store the item if it is economically feasible to do so.

If the DME provider finds that more than minimal repairs are needed, prior authorization must be obtained from the MDO before making the repairs. If the equipment cannot be repaired, it may be discarded, but only after a Medicaid representative has inspected the item.

DME providers who participate in the recycling program have the responsibility to store, safeguard and maintain the equipment. These providers will be reimbursed following delivery of the equipment to the next recipient.

This policy does not apply to equipment that is rented.

Social Impact

The basic objective of the rule is to make durable medical equipment available to Medicaid recipients in a community setting. The equipment may be new or used, but it must be serviceable. In no instance will the Medicaid recipient be denied equipment so long as there is a medical need.

Providers of DME who wish to participate in the recycling program will be required to sign a separate provider agreement.

Economic Impact

The Division currently has the option of purchasing or renting durable medical equipment. If equipment is needed for a sufficient period of time, purchase is apt to be more economical than rental. By recycling the equipment that it owns, the Division anticipates some cost savings, but exact figures are not available at this time.

Medicaid providers who participate in the recycling program will be reimbursed in the amount of \$35.00, or the monthly rental fee for a new item of that type, whichever is greater.

There will be no cost to the Medicaid recipient. The recipient, or family, is obligated to contact the MDO when there is no longer any need for the equipment.

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

10:59-1.2 Definitions

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

"Medical equipment" (No change.)

"Medical supplies" (No change.)

"Recycling" means an item, purchased by the New Jersey Medicaid Program, that is no longer medically needed by the client, that as a minimum, will be sanitized and refurbished and/or repaired, if needed, by the DME provider and supplied to another recipient.

10:59-1.4 Provisions for participation

(a) (No change.)

(b) In order to participate in the recycling program, the provider must sign a separate Recycling Provider Agreement (FD-62R) and be approved by the New Jersey Medicaid Program.

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[(b)] (c) (No change in text.)

[(c)] (d) (No change in text.)

10:59-1.9 Purchase policy

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

(d) When durable medical equipment is authorized and purchased on behalf of a Medicaid recipient, ownership of such equipment will vest in the Division of Medical Assistance and Health Services. The recipient will be granted a possessory interest for as long as it is medically necessary (as approved by the Division) that the recipient requires use of the equipment. [When the recipient no longer needs such equipment, possession and control will revert to the Division. The recipient shall sign an agreement to this effect as part of the process of authorizing purchase of the equipment.]

(e) Whenever the Division of Medical Assistance and Health Services purchases durable medical equipment, actual notice of such purchase will be issued to both the Medicaid recipient and the Medicaid provider. When it is no longer medically necessary that the recipient needs such equipment, possession and control will revert to the Division. The recipient shall sign an agreement to this effect as part of the process of authorizing purchase of the equipment.

1. When the Division has been advised it is no longer medically necessary that the recipient requires the use of the durable medical equipment purchased by the New Jersey Medicaid Program, the equipment shall be recycled, if recycling is economically feasible. See N.J.A.C. 10:59-1.12, Recycling policy.

10:59-1.12 Recycling policy

(a) The New Jersey Medicaid Program shall recycle returned durable medical equipment items when the Program has determined that the cost of pickup, refurbishing and/or repair and delivery is more economical than purchase of a new item.

(b) When the New Jersey Medicaid Program is advised that a durable medical equipment item is available for recycling, the Medicaid District Office shall contact an appropriate DME recycling provider who can service the item and who will recover, refurbish and store the item.

1. When the DME provider examines the item and finds that more than minimal repairs are needed, he must obtain prior authorization from the Medicaid District Office before undertaking any repairs. See N.J.A.C. 10:59-1.11, Repair policy.

2. When, in the judgment of the New Jersey Medicaid Program, a durable medical equipment item cannot be repaired at reasonable cost, the item may be discarded after a representative of the Program has inspected the item.

(c) Reimbursement for repairs and recycling (i.e. pickup, refurbishing and delivery) shall be made following delivery of the item to the next recipient.

(d) Reimbursement for recycling (i.e. pickup, refurbishing and delivery) shall be based on one of the following standards, whichever is greater:

1. The monthly rental fee for a new item of that type; or
2. \$35.00.

(e) While the recycled equipment is in possession of the DME recycling provider, the DME recycling provider has the responsibility to store, safeguard and maintain the equipment.

(f) State institutions will have first priority on recycled durable medical equipment when specifically requested.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual Changes in Level of Care

Proposed Amendment: N.J.A.C. 10:63-1.6

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(4)(a), b(13) (14), 7 and
7b, 42 CFR 456.260, 360.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rule making procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-413.

The agency proposal follows:

Summary

This proposal establishes a time frame for long term care facilities (LTCF) that want to request a change in a Medicaid patient's condition during a period of authorization. The LTCF must submit a written statement signed by the attending physician within 30 days from the change in the patient's condition. The 30 day time frame is the same as the one for challenging a medical evaluation team decision concerning a newly authorized Medicaid patient.

The establishment of the 30 day time frame is designed to assist in implementing the federal regulations which require that a physician certify or recertify that an individual Medicaid patient is in need of skilled and/or intermediate nursing level of care (42 CFR 456.260, 360).

Social Impact

Patients in LTCFs should receive a level of care that is consistent with their condition. The attending physician who is treating the patient would be more knowledgeable about any change in the patient's condition and should notify the Medicaid District Office promptly, but not later than 30 days after the change has occurred.

Economic Impact

There is an indirect economic impact on LTCFs, because their per diem reimbursement is based on the patient's level of care. This proposal is not designed to deny payment; it is

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designed to insure the facility is reimbursed appropriately in conjunction with the care being provided.

There should be no significant economic impact on the Division, because a change in the patient's level of care usually means the Division will continue to reimburse the LTCF at the appropriate per diem rate.

Medicaid patients are required to contribute toward the cost of long term care from their available income (see N.J.A.C. 10:63-1.19).

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

10:63-1.6 Authorization process

(a)-(h) (No change.)

(i) It is recognized that certain level of care decisions made by the [LMAU] **Medicaid District Office** MET will occasion disagreement from the LTCF, the attending physician or the patient and/or patient sponsor. The disagreement may involve a challenge to a recent MET decision or a change in the patient's condition during a period of authorization. The procedures to be followed are as follows:

1. (No change.)

2. Change in a Medicaid patient's condition during a period of authorization.

i. A written statement signed by the attending physician which describes the medical reasons for a change in level of care must be submitted to the [MDO] **Medicaid District Office within thirty (30) days of the change in condition**. If the status of the patient is acute, the facility should discharge the patient to the hospital.

ii. (No change.)

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

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Pharmaceutical Assistance to the Aged and Disabled
Authorization to Release Information
Regarding Prescriptions**

Proposed Amendment: N.J.A.C. 10:69A-6.9

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:4D-20, 24.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions and responses, should be addressed to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rule-making procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-418.

The agency proposal follows:

Summary

The Division is proposing this rule to authorize prescribing practitioners to release information concerning prescriptions which have been paid by the Pharmaceutical Assistance for the Aged and Disabled Program (PAAD). In some instances it is necessary to verify that claims submitted to the PAAD program are consistent with authorized prescriptions.

The proposal does not really require prescribing practitioners to do anything new because they are already required to keep information about prescriptions they have written for their patients. The Division and/or State investigatory agencies sometimes need access to this information.

Social Impact

There should be very little social impact. The rule does not impact on the dispensing of the prescription, it impacts on follow-up inquiries.

Economic Impact

There is virtually no economic impact. The Division will continue to reimburse valid claims submitted by pharmaceutical providers. PAAD beneficiaries are still required to pay a \$2.00 co-payment (N.J.S.A. 30:4D-22(1)).

The rule does not impact on providers that can write prescriptions, but they are not being required to compile new data or information. The Division and other State agencies want limited access to the information about prescriptions they have written.

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

10:69A-6.9 Authorization

(a) By signing/marketing the certification and authorization statement on the application/renewal application form, the applicant/reapplicant authorizes:

1. The New Jersey Division of Medical Assistance and Health Services to verify any information on the form by contacting the Social Security Administration, the Internal Revenue Service, the New Jersey Division of Taxation, employers and others as the need arises;

2. Visitation and review by representatives of the Division's Bureau of Quality Control; [and]

3. Assignment of benefits to the State of New Jersey if he/she or his/her spouse has any other plan of assistance or insurance that covers, at least in part, the cost of prescription drugs; **and**

4. Prescribing practitioners to release information concerning prescriptions which have been paid by the PAAD program, to the New Jersey Division of Medical Assistance and Health Services or any law enforcement authority of this State charged with the investigation or prosecution of violations of the criminal provisions of the "Pharmaceutical Assistance to the Aged and Disabled Act" or the criminal laws of this State.

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(a)

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

**Pharmaceutical Assistance for the Aged and
Disabled (PAAD)
Recovery of Benefits Correctly Made**

**Proposed Repeal and New Rule: N.J.A.C.
10:69A-7.1**

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:4D-7.2a, 30:4D-20 and P.L.
1983, c.371.

Interested persons may submit in writing, data, views or
arguments relevant to the proposal on or before September 5,
1984. These submissions and any inquiries about submissions
and responses, should be addressed to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

At the close of the period for comments, the Department of
Human Services may adopt this proposal, with any minor
changes not in violation of the rule-making procedures at
N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of
adoption shall be published in the Register. The adopted rules
shall become effective upon publication of that notice of
adoption in the Register.

This proposal is known as PRN 1984-408.

The agency proposal follows:

Summary

This proposed new rule will delete the current text pertain-
ing to the recovery of benefits correctly made in the Pharma-
ceutical Assistance for the Aged and Disabled (PAAD) Pro-
gram due to a change in the law. An amendment to the New
Jersey Medical Assistance and Health Services Act (P.L.
1983, C.371, approved October 27, 1983) now prohibits the
recovery of benefits correctly made from a PAAD benefi-
ciary, or the estate of a deceased PAAD beneficiary.

The prohibition against recovery does not apply to benefits
incorrectly or illegally paid, or where there is a liable third
party payor. The most common instance of third party pay-
ment is from a private insurer such as Aetna or the Prudential
Insurance Company. In these three instances, the PAAD Pro-
gram is still entitled to recovery.

Social Impact

Aged and disabled individuals may be more willing to apply
for, and enroll in, the PAAD program because they will not
be required to make reimbursement.

Economic Impact

A PAAD beneficiary, or the estate of a deceased PAAD
beneficiary, will not be required to reimburse the PAAD
program for benefits correctly made.

It is estimated the PAAD program will lose approximately
\$1.5 million in potential recoveries in FY 1984.

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

10:69A-7.1 Recoveries for benefits correctly made
[(a) Payments correctly made on behalf of a PAAD benefi-
ciary are recoverable from the estate of a deceased benefi-
ciary, provided:

1. The beneficiary leaves no surviving spouse; and
2. The beneficiary leaves no surviving child; and
3. The amount to be recovered is in excess of \$500.00; and
4. The gross estate is in excess of \$3,000.

(b) The purposes of (a)2 above, and section 1 of P.L. 1981,
c.217, "child" shall be defined to mean a child under age 21
or who is blind or permanently and totally disabled.

(c) Rules contained in (a)3 and (a)4 above shall apply to
recoveries from the estates of PAAD beneficiaries who died
on or after July 20, 1981, the effective PAAD date of P.L.
1981, c.217.]

**Pursuant to P.L. 1983, C. 371, no encumbrance or recovery
of any kind shall be imposed or sought from the estate of a
qualified applicant or an eligible person after his death be-
cause of assistance paid, or to be paid, on his behalf under the
PAAD program, except for assistance incorrectly or illegally
paid, or for third party liability recovery sought under the
New Jersey Medical Assistance and Health Services Act (P.L.
1968, C. 413, codified as N.J.S.A. 30:4D-1 et seq.)**

(b)

DIVISION OF PUBLIC WELFARE

**Public Assistance Manual
Complaints, Hearings and Administrative
Reviews**

**Proposed Repeal and New Rule: N.J.A.C.
10:81-6**

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 44:7-6 and 44:10-3, 45 CFR
205.10.

Interested persons may submit in writing, data, views or
arguments relevant to proposal on or before September 5,
1984. These submissions, and any inquiries about submissions
and responses, should be addressed to:

Audrey Harris, 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 1984-416.

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The agency proposal follows:

Summary

In recognition of procedural changes in the fair hearing process over the past four years, it is deemed necessary to repeal this subchapter and address current developments in fair hearings applicable to the Aid to Families with Dependent Children (AFDC) program. The proposed new rule clarifies the role of the Office of Administrative Law (OAL) in the conduct of hearings in contested cases, recognizes rules of special applicability as an alternative processing procedure for AFDC hearing requests and enlarges the time frame for processing emergency fair hearing decisions.

Pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., all matters determined to constitute a contested case are subject to an administrative law hearing. However, hearing requests not deemed contested may not be subject to administrative resolution pursuant to regulations at N.J.A.C. 10:6-1. Alternative processing procedures, which include utilization of Special Rules of Applicability authorized at N.J.A.C. 1:10-17.1, would enable more expeditious resolution of contested cases and compliance with disposition time requirements.

Social Impact

Responsibility for administration of the fair hearing procedure is shared by county welfare agencies, the State Division of Public Welfare and the Office of Administrative Law. The proposed new rule will enable a better understanding of the respective activities of the parties involved.

The procedures constitute a deliberate effort to accelerate the fair hearing process. Thus, there will be a beneficial social impact as the result of more expeditious resolution of disputed determinations on eligibility and benefit entitlement.

Economic Impact

Implementation of the new rule would enable some reduction in processing time required by the Office of Administrative Law. However, the majority of hearing requests pertaining to the AFDC program are classified as contested cases and require administrative law hearings. No significant reduction would occur in the number of cases referred to the Office of Administrative Law and no substantial change can be expected in administrative costs attributed to AFDC hearing activity.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 10:81-6.

Full text of the proposed new rule follows.

SUBCHAPTER 6. COMPLAINTS, HEARINGS AND ADMINISTRATIVE REVIEWS

10:81-6.1 Definitions

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

“Administrative Hearings” are hearings concerning either contested cases or non-contested cases, which have been determined by the Director of the Division of Public Welfare (DPW) in accordance with N.J.A.C. 1:1-1 et seq. to be appropriately heard in the Office of Administrative Law (See N.J.A.C. 10:6).

“Administrative Law Judge” (ALJ) means the person from the Office of Administrative Law (OAL) who conducts the

hearing and who writes an initial decision which may be reviewed by the Director of the Division of Public Welfare.

“Administrative Review” means a review of a disputed matter which has been determined by the Director of DPW not to constitute a contested case and therefore remains in the Division for review. At the discretion of the Director an Administrative review may be conducted as a procedure at which parties appear and are heard or it may be a paper review. (See N.J.A.C. 10:6-2).

“Administrative Review Official” is a representative of the State, Department of Human Services assigned to conduct an administrative review.

“CFR” is the acronym for Code of Federal Regulations.

“Contested Case” means a dispute that is heard by an Administrative Law Judge. (For statutory definition see N.J.S.A. 52:14B-2(b), see also N.J.A.C. 1:1-1.5, 1.6).

“Fair Hearing” means a formal or informal procedure through which a public assistance client may protest an adverse action or decision of the county welfare agency (CWA) regarding eligibility, amount or manner of granting assistance. Fair hearing is a general term which includes administrative hearing and administrative review.

“Initial decision” means the decision of an Administrative Law Judge that is sent to the Director of the Division of Public Welfare, who may accept, reject or modify it within 45 days.

10:81-6.2 Right to fair hearing and administrative review

(a) It is the right of every applicant or recipient adversely affected by an action by a county welfare agency (CWA) to request a fair hearing in a manner established by the rules in this subchapter and by the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1-1.1 et seq.). These rules have been established pursuant to Federal regulations (45 CFR 205.10) and the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

(b) Agency action which adversely affects an applicant or recipient includes:

1. Any action, inaction, refusal of action, or unduly delayed action with respect to program eligibility, including denial, termination or suspension of benefits, adjustment in the level of benefits or condition of payment of benefits with respect to designation of a protective payee or work requirements. (45 CFR 205.10(a), (5)).

(c) No fair hearing will be granted when either State or Federal law require automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation. (45 CFR 205.10(a), (5)).

(d) The notification of the right to a fair hearing shall be incorporated in or attached to each adverse action notice (denial, termination, reduction, suspension). The notice shall include explanation on how to request a fair hearing, time limits on requesting a hearing, the right to examine evidence and the circumstances under which benefits are continued unreduced.

10:81-6.3 Responsibilities of the CWA in processing hearing requests

(a) To assure orderly and expeditious processing of complaints and hearing requests, each CWA will designate a liaison between the county and State Division whose duties shall include but not be limited to:

1. Informing Bureau of Administrative Review and Appeals (BARA) by telephone on the same day an oral or written

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request for a hearing is received, providing the following information:

- i. Case number, name, address;
- ii. Date request received;
- iii. Nature of contested action;
- iv. Date of action;
- v. Reason for action.

2. Establishing a system to assure that every written request for a hearing received in the CWA office is stamped with the date of receipt and forwarded to BARA within one work day of the date;

3. Reviewing incoming requests for possible corrective action prior to hearing;

4. Identifying and arranging for participation of staff individuals who are essential to a hearing, and assembling all records relevant to a hearing and arranging for an interpreter when the client is non-English speaking;

5. Contacting the applicant/recipient or his or her legal or authorized representative not less than two days prior to a hearing to confirm attendance and arranging for transportation when required by program regulations;

6. Submitting special reports on hearing requests prior to the hearing date, when requested by BARA:

7. Submitting reports on implementation of fair hearing decisions as soon as such action is taken; and

8. Serving as the single individual in the CWA to be contacted regarding matters relating to hearings and the monitoring system.

(b) To inform the applicant/recipient who is requesting a hearing and elects to receive continued assistance that the ALJ may find him or her not entitled to all or a portion of assistance granted during the pendency of the hearing and that, in such event, repayment will be required of the amount of benefits received from the effective date of the proposed adverse action to the date of the scheduled hearing.

1. The applicant/recipient shall also be advised that if he or she elects not to receive continued assistance and the hearing decision is favorable to the client, assistance will be reinstated retroactive to when it was suspended, reduced or terminated.

10:81-6.4 Responsibilities of the Division of Public Welfare

(a) Each request for a fair hearing shall be registered by BARA on the date the request is received.

(b) Requests initially received in BARA will be transmitted by telephone to the CWA on the date received.

(c) To the maximum extent feasible, BARA will transmit each contested case to OAL within five work days of the receipt of the request.

(d) Written determination on entitlement to receive assistance at an unreduced level shall be included in the OAL transmittal and sent to the applicant/recipient and the CWA.

10:81-6.5 Responsibilities of the Office of Administrative Law upon transmittal of a contested case from the DPW (45 CFR 205.10 and N.J.A.C. 1:1-1 et seq.)

(a) The Office of Administrative Law shall schedule the hearing and shall send any necessary notices to the parties.

(b) The hearing shall be conducted by an administrative law judge who shall issue an initial decision.

10:81-6.6 Administrative hearings and administrative reviews

(a) Requests on matters which constitute a contested case (as defined by N.J.A.C. 1:1-1 and consistent with case law) shall be handled in accordance with the Department of Hu-

man Services (DHS) Rule on "Administrative Hearings and Administrative Reviews" at N.J.A.C. 10:6-1.1.

(b) Requests on matters which do not constitute a contested case (as defined by N.J.A.C. 1:1-1 and consistent with case law) shall be handled in accord with the DHS Rule on "Administrative Hearings and Administrative Reviews" at N.J.A.C. 10:6-1.2.

10:81-6.7 Complaints and adjustment procedures

(a) Prompt and courteous attention will be given to all complaints, whether or not such complaints constitute requests for fair hearing and whether or not they are directed to the CWA or the State Division of Public Welfare (State Division). All complaints received shall be acknowledged promptly and, if it is not apparent from the complaint that a fair hearing request has been made, the acknowledgement shall inform the recipient of his or her right to a fair hearing.

(b) Informal efforts to effect an adjustment may be made through field contacts, office interviews with supervisory personnel, consultation with the State Field Representative, and so forth. In no event, however, are such informal efforts to be considered as prerequisite to a fair hearing, and in no event do they delay, interfere with or otherwise impede the processing of a fair hearing whenever a request for such is made. Agency emphasis must be on helping the client to prepare and submit his or her request for a fair hearing.

(c) Any clear expression (oral or written) by a client (or person acting for him or her, such as his or her legal representative or relative) to the effect that the client wants the opportunity to present his or her case to a higher authority constitutes a request for a fair hearing.

(d) A request for a fair hearing may be either oral or in writing and addressed to the CWA or to the State Division. Oral requests for fair hearing shall be immediately reduced to a written record by the staff person to whom the request is made. No special form of statement or manner of expression is required so long as the request identifies the nature of the complaint and the relief sought. Requests made to the CWA shall be immediately transmitted to the BARA, and in no event later than one work day after receipt of the request.

(e) Upon receipt of any request for a fair hearing, a determination shall be made by BARA on the appropriateness of an Administrative Hearing or Administrative Review (N.J.A.C. 10:6-1.2). If the matter is deemed contested, BARA will send an acknowledgement of the request to the client, along with a copy of the statement entitled "How a Fair Hearing is Conducted", together with a Notice of Status of Continuing Benefits Following Request for a Fair Hearing (Form PA-850). All contested cases will be promptly forwarded to the OAL for a hearing before an ALJ.

10:81-6.8 Time limitations on entitlement to fair hearings

If the request for fair hearing relates to an agency action or lack of action that occurred more than three months (90 calendar days) prior to the date of the request, there shall be no entitlement to a hearing on such action or lack of action, unless extraordinary and extenuating circumstances exist as determined by the Division of Public Welfare. (45 CFR 205.10(a), (5), (iii))

10:81-6.9 Eligibility for continued benefits

(a) When a request is made for fair hearing within 15 days from the date of mailing of a notice of termination, suspension or reduction, (within 10 days when the adverse action involve monthly reporting/retrospective budgeting) benefits

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shall be continued at an unreduced level until the scheduled date of the administrative hearing or the date of the administrative review unless the recipient waives such entitlement or requests postponement of the scheduled hearing or review date. In the event the recipient elects to receive continued benefits, they will be continued unreduced pending a final decision if the ALJ or the administrative review official determines that the issue is one of fact rather than law or policy. (45 CFR 205.10(a), (7))

(b) An adjournment of a hearing at the request of an applicant/recipient shall not prolong continuation of benefits at an unreduced level, unless the adjournment is due to: delay caused by the State Division, OAL or the CWA; unavoidable causes, such as an illness on the part of the applicant/recipient or the failure of the CWA to provide assistance for transportation when such assistance is required by regulations. Adjournment at the request of the CWA or by the ALJ shall not affect continued benefits.

(c) The ALJ or the administrative review official will promptly inform the recipient in writing whether or not benefits will be continued unreduced pending a final decision. (45 CFR 205.10(a), (6), (ii))

10:81-6.10 Access to discovery of information in contested cases

The CWA shall provide the applicant/recipient and/or his or her authorized representative opportunity to review the entire case file or documents and records to be used in the administrative hearing. Such materials shall be made available at a reasonable time before the scheduled hearing date as well as during the hearing. (45 CFR 205.10(a), (13))

10:81-6.11 Representation at hearings

(a) An applicant or recipient may appear at a proceeding pro se (without legal representation), be represented by an attorney or be assisted in presentation by a relative, friend, or other spokesperson pursuant to N.J.A.C. 1:1-3.12 and 45 CFR 205.10. CWA staff shall help persons make use of any legal services available in the community that can provide legal representation at the fair hearing.

(b) The CWA representative must have knowledge of the matter at issue and must be able to present the agency case, supplying the ALJ with that information needed to substantiate the agency action. If the CWA representative feels that he or she must be an advocate of the client and is unable to represent the agency, then another CWA staff person must appear at the hearing to fulfill the above identified role.

(c) In hearings involving a determination by any component of the DPW (that is, determinations by the Bureau of Medical Affairs or the Bureau of Employment and Training) the matter at issue shall be presented by the appropriate staff representative(s) of the DPW.

10:81-6.12 Disposition of hearing request through withdrawal, abandonment or settlement

(a) Prior to transmittal to the OAL, if a party desires that a hearing request be withdrawn, that party shall notify the CWA or the DPW in writing of the withdrawal request. The DPW shall in turn acknowledge, in writing, receipt of the withdrawal request. No CWA shall deny or dismiss a request for a fair hearing. The determinations on the validity of each hearing request shall be made by the DPW including any determination on the appropriateness of processing hearing requests pursuant to N.J.A.C. 10:6-1.2 which authorize "Administrative Reviews and Administrative Hearings".

(b) The filing of a request for a fair hearing shall not of itself preclude continued effort to accomplish corrective action, settlement, adjustment or any other agreement through informal procedures. Any withdrawal or abandonment or any settlement or agreement reached, subsequent to the transmittal of the case to the OAL, shall be processed according to N.J.A.C. 1:1-1 including any Rules of Special Applicability which may apply to disposition by settlement or withdrawal.

(c) If an applicant/recipient or his or her representative fails to appear for a scheduled hearing without giving proper notice, a notice of abandonment shall be sent.

10:81-6.13 Adjournments

Any adjournment requested by an applicant or recipient and granted by the OAL may not operate to extend the deadlines for a final decision and final agency implementation of the final decision.

10:81-6.14 Hearings involving medical issues

(a) If the hearing involves medical issues, requiring a diagnosis or a report from an examining physician, or concerning a determination by the State Medical Review Team (MRT), the ALJ may issue an order requiring a medical assessment by someone other than the person who made the original medical determination. (45 CFR 2065.10(a), (10))

(b) The CWA shall pay for this medical assessment which shall be obtained at reasonable expense.

10:81-6.15 Decision by Director, Division of Public Welfare

(a) A final administrative hearing decision will be rendered by the Director of the DPW. The applicant/recipient, his or her representative and the CWA shall be notified by mail of any decision or order.

1. Unless otherwise indicated the decision shall be effective on the date of issuance.

(b) An official and complete record of each administrative hearing will be maintained in the files of the DPW for at least one year after the date the final decision is rendered. During this one year period, the applicant/recipient or his or her legal representative may review, upon appointment, all or any part of the official and complete record of his or her administrative hearing.

(c) A decision requiring action by the CWA may apply either prospectively with regard to future action by the CWA or retroactively to the date an incorrect action was taken. If the decision results from mutual agreement of the parties at the hearing and disposition by settlement and withdrawal, the terms of settlement will be binding upon the parties.

(d) The DPW will compile a monthly synopsis of all decisions. Copies of administrative hearing decisions, edited to insure client confidentiality, will be available for perusal at the DPW for a period of one year.

1. Administrative hearing decisions shall be retained by the DPW for a period of three years.

(e) The DPW will take such steps as may be necessary to assure that the decision has been carried out. Corrective or remedial measures ordered by the hearing decision, unless otherwise directed in the decision, will be implemented by the CWA immediately upon receipt of the decision.

(f) Final administrative agency action on Administrative hearing decisions shall be implemented by the CWA within 90 days of the date of the request. (45 CFR 205.10(a), (16))

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10:81-6.16 Emergency fair hearing

(a) An emergency fair hearing for purposes of expediting the fair hearing procedure will be scheduled when:

1. The fair hearing request results from denial by the CWA of a request for emergency assistance made in accordance with the provisions of N.J.A.C. 10:82-5.10(c) or replacement of a lost or stolen check has been declined by the CWA in accordance with N.J.A.C. 10:81-7.18, and the recipient family contends they are without funds or resources; and

2. The State Division determines that there exists a threat to the health and physical safety of the recipient family sufficiently compelling and imminent to require acceleration of the fair hearing procedure.

(b) When it is determined that a request for hearing should be scheduled as an emergency fair hearing;

1. BARA shall transmit the case to the OAL on the same business day as the request is received, or as soon as reasonably possible thereafter;

2. The OAL shall give notice, as soon as reasonably possible, of the time, date and place of the hearing to BARA who will inform the CWA, the petitioning applicant/recipient or the petitioner's representative by telephone.

(c) The ALJ shall issue an initial decision.

1. The petitioning applicant/recipient, his or her representative or the CWA may, by telephone, make exception or objection to the initial decision, to the DPW.

2. The Director shall accept, reject or modify the initial decision no later than four business days following the date of the initial decision. On the same date BARA shall notify the CWA, by telephone, of the decision by the director. The CWA shall immediately inform the petitioner or the petitioner's representative of the director's decision and any relief ordered shall be provided on the day notice of the decision is received.

(a)

DIVISION OF PUBLIC WELFARE

**Assistance Standards Handbook
Recovery of Overpayments**

Proposed Amendment: N.J.A.C. 10:82-2.19

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 44:7-6 and 44:10-3, and 45 CFR
233.20(a)(13)(i)(B) and (D).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and inquiries about submissions and responses, should be addressed to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor

changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-428.

The agency proposal follows:

Summary

Current regulations at N.J.A.C. 10:82-2.19(a)4 governing recovery state that where an overpayment is occasioned by an adult unit member who is no longer eligible, recovery shall be sought from that individual. The United States Department of Health and Human Services, Office of Family Assistance (OFA), has advised that this State regulation is inconsistent with the Federal policy found at 45 CFR 233.20(a)(13)(i)(B) and has directed that State regulations be amended to meet Federal requirements. Therefore, the Department is revising the rule at N.J.A.C. 10:82-2.19(a)4 to specifically conform to the aforementioned Federal policy. The amended rule provides that recovery be sought from remaining members of the overpaid eligible unit, or any eligible unit of which a member of the overpaid unit subsequently becomes a member, or any individual members of the overpaid assistance unit, whether or not currently recipients.

N.J.A.C. 10:82-2.19(a)5 is being amended to delete language regarding recovery of overpayments caused by administrative error as the current rules at N.J.A.C. 10:82-2.19 and the aforementioned amendment to this section are equally applicable to overpayments caused by administration action or inaction. A further amendment to this paragraph incorporates into administrative code the existing procedure of county welfare agencies (CWAs) that, in cases having both an overpayment and an underpayment, one may be offset against the other in correcting the payment. This policy is provided for at 45 CFR 233.20(a)(13)(i)(D).

N.J.A.C. 10:82-2.19(a)6 is being amended to indicate that recovery by the CWA through a court of appropriate jurisdiction shall be pursued if the family refuses to voluntarily repay the overpayment. This amendment simply clarifies that recovery through court action is not mandatory if the family voluntarily repays the overpayment.

Social Impact

Under existing regulations, when the adult eligible unit member responsible for the overpayment is no longer eligible, recovery action by reduction of the assistance payment to the remaining members of the eligible unit is precluded. CWAs are required to seek repayment from the responsible individual, through appropriate court action if necessary.

This amendment allows CWAs to make a choice in such a situation. The CWA may recover from the remaining members of the overpaid eligible unit, or from any eligible unit of which a member of the overpaid unit subsequently becomes a member, or from any individual members of the overpaid assistance unit whether or not currently recipients.

The amended rule allowing that recovery may be made from any of the aforementioned sources is based on the Federal interpretation that all members of the overpaid eligible unit benefited from the overpayment, hence recovery from any or all of the overpaid members is appropriate. Additionally, this amendment eliminates the requirement of assigning responsibility for the overpayment to a specific unit member. This change may be considered to have an adverse social

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impact on certain clients in that recovery may be sought from any member of the overpaid unit, regardless of whether or not the individual was responsible for the overpayment.

The remaining amendments provide policy clarification and have no social impact on clients or CWAs.

Economic Impact

The amended rule which provides for greater flexibility in the methods of recovery should result in a positive economic impact on program administration by facilitating the recovery of overpayments. Since Federal rules at 45 CFR 233.20(a)(13)(i)(E) and N.J.A.C. 10:82-2.19(a)7 presently require that prompt action must be taken to recover all overpayments, these changes have no significant adverse economic impact on the Department or CWAs administering the program. However, since the amended rule provides that recovery can be sought from any remaining members of an overpaid assistance unit, regardless of the fact that the individual responsible for the overpayment is no longer a member of the unit, or recovery can be sought from another eligible unit of which a member of the overpaid unit subsequently becomes a member, certain recipients may be adversely impacted. In both circumstances recovery of the overpayment may be accomplished by reducing the amount of the assistance payment resulting in some adverse economic impact on recipients. However, it should be noted that recovery is limited to 10 percent of the appropriate allowance standard and if recovery at the 10 percent rate would be detrimental to the well-being of the dependent children, recovery may be reduced to the minimum rate of five percent.

The policy clarifications contained in the remaining amendments should not have any significant economic impact.

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

10:82-2.19 Overpayments and underpayments

(a) Upon discovery of an overpayment, the CWA shall take action as outlined in (a) of this section. The CWA shall seek recovery of all overpayments regardless of fault including overpayments caused by administrative action or inaction.

1.-3. (No change.)

4. [If an adult eligible unit member responsible for an overpayment is no longer eligible or becomes a member of another assistance unit, recovery shall be sought from that individual. When two adults are responsible for an overpayment and one or both are no longer eligible, a proportionate share of the overpayment shall be assigned to each individual and recovery sought. In the event that a dependent child is responsible for the overpayment, recovery shall be sought from all members of the eligible unit.]

In the circumstance of an overpayment to an eligible unit of which the individual responsible for the overpayment is no longer an eligible member, the CWA shall recover the overpayment from:

- i. **The eligible unit which was overpaid; or**
- ii. **Any eligible unit of which a member of the overpaid eligible unit subsequently becomes a member; or**
- iii. **Any individual members of the overpaid eligible unit whether or not currently a recipient.**

5. [For cases of overpayment caused by administrative error, recovery shall be sought from all members of the eligible unit.]

For cases which have both an underpayment and an overpayment, the CWA may offset one against the other in correcting the payment.

6. Overpayments to an eligible unit which is no longer receiving AFDC, shall be recovered by the CWA through a court of appropriate jurisdiction **if the family refuses to voluntarily repay the overpayment.**

7.-9. (No change.)

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

(a)

DIVISION OF PUBLIC WELFARE

**General Assistance Manual
Unearned Income**

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 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-427.

The agency proposal follows:

Summary

General Assistance recipients are always expected to maximize current income. In a study of a sample of cases with unearned income, it was noted that recipients and staff alike tend to view unearned income, especially pensions, as fixed except perhaps for blanket changes such as cost-of-living increases. Some pensions, however, do have elements which are variable at the option of the recipients. Certain private pension plans, for example, contain provisions for the recipient's option as to whether income taxes are to be withheld. This proposal will not, if adopted, represent any change in policy. It will, however, serve to remind field staff and to explain to recipients that the maximization policy is fully applicable.

Social Impact

This change could serve to increase the current buying power of some people, in a way that had been unknown to

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them, thereby allowing them to cope better with the demands upon them.

Economic Impact

The income to which this provision applies is largely that from pension plans which contain revocable deduction options for savings or the withholding of taxes. A discontinuance of savings is a change in the time of expenditure of funds but not of amount. Except for small amounts of interest, the economic impacts offset each other. A discontinuance of withholding taxes for a person with income low enough to be eligible for public assistance means only a change in the amount of a later refund. Again, the impacts are offsetting. There will be a small immediate benefit to the public treasury by a reduction in public assistance payments. A part of this benefit will be retained when the recipient dies or when the case is closed for some other reason. As long as the case remains open, the offsetting elements will apply periodically to the public treasury as well as to the recipients.

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

10:85-3.3 Financial eligibility

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

(e) Rules concerning unearned income are:

1. Definition: Unearned income includes net income from roomers, roomer-boarders (except as in (c)2ii above), table-boarders, rental of apartments or housekeeping units, returns from capital investments such as dividends and interest, benefits and pensions, annuities, contributions from relatives or others, compensation payment and so forth.

i. All unearned income which is actually being received during the period for which assistance is being provided shall be counted in determining eligibility and in computing the grant. **When available unearned income can be increased by action of an applicant/recipient, e.g., terminate a voluntary tax deduction, the applicant/recipient must, as a condition of eligibility, take such action.**

ii. (No change.)

2.-5. (No change.)

(f) (No change.) (See current proposal at 16 N.J.R. 683(a) April 2, 1984.)

(g) (No change.)

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(a)

DIVISION OF WORKPLACE STANDARDS

**Safety and Health Standards for Public Employees
Providing Safe and Healthful Workplaces for Public Employees**

Proposed New Rules: N.J.A.C. 12:100

Authorized By: Roger A. Bodman, Commissioner, Department of Labor.
Authority: N.J.S.A. 34:6A-25 et seq., specifically 34:6A-30.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before September 5, 1984. These submissions and any inquiries about submissions and responses, should be addressed to:

William J. Clark, Director
Division of Workplace Standards
New Jersey Department of Labor
CN 054
Trenton, New Jersey 08625-0054

The Department of Labor 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 1984-420.

The agency proposal follows:

Summary

The proposed new rules provide safety and health standards which will be applied at all workplaces where public employees are employed. The rules represent compliance with N.J.S.A. 34:6A-30 of the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., which requires adoption of the applicable Federal standards adopted by the Secretary of Labor under the Federal Occupational Safety and Health Act of 1970. These rules encompass only technical standards relating to employee safety and health.

The chapter consists of seven subchapters. Subchapter 1 is rules relating to purpose, scope, and general provisions. Subchapter 2 covers definitions. Subchapter 3 addresses administration of the safety and health standards. Subchapter 4 contains the standards for general operations. Subchapter 5 contains the standards for construction operations. Subchapter 6 contains the standards for agricultural operations. Subchapter 7 addresses the availability of standards and publications referred to in this chapter.

Social Impact

Implementation of the rules will reduce personal injuries and illnesses occurring among public workers. The rules will satisfy a primary public concern for the safety and health of public employees by providing safety and health standards which are at least as effective as those enforced in the private sector. The application of the rules will improve working conditions and enhance the welfare and morale of the public employee.

Economic Impact

The application of the rules will result in less lost time, better maintenance of work schedules because of fewer interruptions, increased productivity, decreased medical expenses and decreased worker compensation expenses. Though compliance with the rules does impose some expense (not now quantifiable) on governmental agencies, it is anticipated that the positive results will far outweigh the costs.

Full text of the proposed new rules follows.

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CHAPTER 100 SAFETY AND HEALTH STANDARDS FOR PUBLIC EMPLOYEES

SUBCHAPTER 1. GENERAL PROVISIONS

12:100-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:100, Safety and Health Standards for Public Employees.

12:100-1.2 Authority

These rules are promulgated pursuant to the authority of the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

12:100-1.3 Purpose

The purpose of this chapter is to protect employees in the public sector by providing standards, which are at least as effective as the standards promulgated under Section 6 of the Federal Occupational Safety and Health Act of 1970, 29 USC 651 et seq.

12:100-1.4 Scope

This chapter shall apply to all employers, employees, and agencies subject to N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act.

12:100-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:100-7.

12:100-1.6 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

SUBCHAPTER 2. DEFINITIONS

12:100-2.1 Definitions

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

“Act” means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

“Approved” means acceptable to the Commissioner of Labor.

“CFR” means Code of Federal Regulations in effect on the effective date of this chapter.

“Commissioner” means the Commissioner of Labor or his designee.

“Division of Workplace Standards” means the Division of Workplace Standards of the New Jersey Department of Labor, CN 054, Trenton, New Jersey 08625-0054.

“Employee” means any public employee, any person holding a position by appointment or employment in the service of an “employer” as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under the Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. shall be excluded from the coverage of the Act.

“Employer” means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or

2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

“N.J.A.C.” means New Jersey Administrative Code.

“N.J.S.A.” means New Jersey Statutes Annotated.

“Shall” means a mandatory requirement.

“Serious injury” means any injury which requires treatment beyond first aid.

SUBCHAPTER 3. ADMINISTRATION

12:100-3.1 Scope of subchapter

This subchapter shall apply to the administration of the safety and health standards mandated by this chapter.

12:100-3.2 Compliance

(a) Every employer shall comply with the provisions of this chapter.

(b) Every employee shall comply with the provisions of this chapter as they pertain to him or her.

(c) When an employer has provided personal protection equipment in accordance with this chapter, the employee shall utilize such equipment when the hazard for which the equipment was provided exists.

(d) Every employer shall provide a reasonable safeguard against any recognized hazard which could cause serious injury to the employees.

(e) Every employer shall take all prudent measures to comply with written recommendations made by the commissioner, the Commissioner of Community Affairs or the Commissioner of Health to reduce the risk of exposure to unsafe or unhealthy conditions which have been shown to be detrimental to employee health or safety. This provision shall apply for hazards not specifically covered by a standard in this chapter or a standard referenced in this chapter.

12:100-3.3 Interface of state agencies

(a) The New Jersey Department of Labor shall inspect under the provisions of this chapter where the provisions relate to safety issues in accordance with N.J.S.A. 34:6A-35.

(b) The New Jersey Department of Health shall inspect under the provisions of this chapter where the provisions relate to health issues in accordance with N.J.S.A. 34:6A-37 and 34:6A-38.

(c) The New Jersey Department of Community Affairs shall inspect under the provisions of this chapter where the provisions relate to building safety, structural safety, and fire safety in accordance with N.J.S.A. 34:6A-38.

(d) The provisions of (a) through (c) above shall not be construed to diminish the primary responsibility of the Commissioner of Labor for administering and enforcing the State plan in accordance with N.J.S.A. 34:6A-29.

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SUBCHAPTER 4. GENERAL STANDARDS

12:100-4.1 Scope of subchapter

This subchapter shall apply to general industry safety and health standards adopted by reference.

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, are adopted as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:

1. Subpart C—General Safety and Health Provisions;
2. Subpart D—Walking-Working Surfaces;
3. Subpart E—Means of Egress;
4. Subpart F—Powered Platforms, Man Lifts, and Vehicle-Mounted Work Platforms;
5. Subpart G—Occupational Health and Environmental Control;
6. Subpart H—Hazardous Materials;
7. Subpart I—Personal Protective Equipment;
8. Subpart J—General Environmental Controls;
9. Subpart L—Fire Protection;
10. Subpart M—Compressed Gas and Compressed Air Equipment;
11. Subpart N—Materials Handling and Storage;
12. Subpart O—Machinery and Machine Guarding;
13. Subpart P—Hand and Portable Powered Tools and Other Hand-Held Equipment;
14. Subpart Q—Welding, Cutting, and Brazing;
15. Subpart R—Special Industries;
16. Subpart S—Electrical;
17. Subpart T—Commercial Diving Operations; and
18. Subpart Z—Toxic and Hazardous Substances.

(b) Only standards relating to employee safety and health (that is, substantive rules) are adopted by any incorporation by reference as prescribed in (a) above.

12:100-4.3 Compliance with referenced standards

(a) The standards contained in N.J.A.C. 12:100-4.2 shall apply according to the provisions thereof.

(b) Each employer shall protect his employees by complying with the standards prescribed in N.J.A.C. 12:100-4.2.

SUBCHAPTER 5. CONSTRUCTION STANDARDS

12:100-5.1 Scope of subchapter

This subchapter shall apply to construction safety and health standards adopted by reference.

12:100-5.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1926, Construction Industry Standards, are adopted as occupational safety and health standards for the protection of public employees engaged in construction operations and shall include:

1. Subpart C—General Safety and Health Provisions;
2. Subpart D—Occupational Health and Environmental Controls;
3. Subpart E—Personal Protective and Life Saving Equipment;
4. Subpart F—Fire Protection and Prevention;
5. Subpart G—Signs, Signals, and Barricades;
6. Subpart H—Materials Handling, Storage, Use, and Disposal;
7. Subpart I—Tools—Hand and Power;

8. Subpart J—Welding and Cutting;
9. Subpart K—Electrical;
10. Subpart L—Ladders and Scaffolding;
11. Subpart M—Floors and Wall Openings, and Stairways;
12. Subpart N—Cranes, Derricks, Hoists, Elevators, and Conveyors;
13. Subpart O—Motor Vehicles, Mechanized Equipment, and Marine Operations;
14. Subpart P—Excavations, Trenching, and Shoring;
15. Subpart Q—Concrete, Concrete Forms, and Shoring;
16. Subpart R—Steel Erection;
17. Subpart S—Tunnels and Shafts, Caissons, Cofferdams, and Compressed Air;
18. Subpart T—Demolition;
19. Subpart U—Blasting and Use of Explosives;
20. Subpart V—Power and Transmission and Distribution;
21. Subpart W—Rollover Protective Structures; Overhead Protection; and
22. Appendix—General Industry Standards Identified as Applicable to Construction.

(b) Only standards relating to employee safety and health (that is, substantive rules) are adopted by any incorporation by reference as prescribed in (a) above.

12:100-5.3 Compliance with referenced standards

(a) The standards contained in N.J.A.C. 12:100-5.2 shall apply according to the provisions thereof.

(b) Each employer shall protect his employees by complying with the standards prescribed in N.J.A.C. 12:100-5.2.

SUBCHAPTER 6. AGRICULTURAL STANDARDS

12:100-6.1 Scope of subchapter

This subchapter will apply to agricultural safety and health standards adopted by reference.

12:100-6.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1928, Agriculture are adopted as occupational safety and health standards for the protection of public employees engaged in agricultural operations and shall include:

1. Subpart B—Applicability of Standards;
2. Subpart C—Roll-Over Protective Structures;
3. Subpart D—Safety for Agricultural Equipment; and
4. Subpart I—Toxic and Hazardous Substances.

(b) Only standards relating to employee safety and health (that is, substantive rules) are adopted by any incorporation by reference as prescribed in (a) above.

12:100-6.3 Compliance with referenced standards

(a) The standards contained in N.J.A.C. 12:100-6.2 shall apply according to the provisions thereof.

(b) Each employer shall protect his employees by complying with the standards prescribed in N.J.A.C. 12:100-6.2.

SUBCHAPTER 7. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:100-7.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1. 29 CFR Part 1910, General Industry Standards,
2. 29 CFR Part 1926, Construction Industry Standards,

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- 3. 29 CFR Part 1928, Agriculture, and
- 4. N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act.

12:100-7.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following Office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
36 West State Street, Room 313
Trenton, New Jersey

12:100-7.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:100-7.1.

- CFR Code of Federal Regulations
Copies available from:
Superintendent of Documents
Government Printing Office
Washington, D.C. 20402
- NJSA New Jersey Statutes Annotated
Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 054
Trenton, New Jersey 08625-0054

OFFICE OF ADMINISTRATIVE LAW NOTE: The Department of Labor submitted as part of this proposal copies of 29 CFR Part 1910, 29 CFR Part 1926 and 29 CFR Part 1928 which are incorporated into the rule by reference. These documents may be inspected at the Office of Administrative Law, 88 East State Street, Trenton, New Jersey.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

**Licensing Service
Licensed Motor Vehicle Dealers**

Proposed Readoption: N.J.A.C. 13:21-15

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.
Authority: N.J.S.A. 39:10-4, 39:10-19 and 39:10-20.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5,

1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, New Jersey 08666

The Division of Motor Vehicles thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The readoption becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption.

This proposal is known as PRN 1984-431.

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:21-15.1 through 13:21-15.5 concerning licensed motor vehicle dealers. These rules were initially filed and became effective January 1, 1973. These rules were subsequently amended on January 8, 1976 and September 20, 1979. The rules, which would otherwise expire on September 18, 1984, are proposed for readoption in accordance with Executive Order 66(1978).

The rules proposed for readoption implement those provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:10-19 and 39:10-20) pertaining to the licensing of motor vehicle dealers.

N.J.A.C. 13:21-15.1 (General provisions) provides that (1) the application for a dealer license be verified by oath or affirmation, (2) an initial applicant submit two fingerprint cards with the initial application, (3) an applicant may be examined to determine his knowledge of pertinent motor vehicle laws prior to the issuance of the dealer license, (4) all title papers of a dealer be executed in the name of the dealer, (5) an applicant disclose trade or business names intended to be used by the applicant other than the name in which the application is made and (6) an applicant submit photographs and/or plans of the proposed business location with the initial application.

N.J.A.C. 13:21-15.2 (Proper person) provides that an applicant for a motor vehicle dealer license is a proper person if he (1) is at least 18 years of age and has legal capacity to contract, to be sued and to be liable for debts, (2) is of sufficient good character, (3) has not been convicted of a crime arising out of fraud or misrepresentation in the sale or financing of a motor vehicle and (4) submits, within ten days after the preliminary approval of his application, proof of liability insurance coverage for all motor vehicles owned or operated by the dealer.

N.J.A.C. 13:21-15.3 (Established place of business) provides that (1) an applicant for a dealer license shall submit satisfactory evidence that he has a business location where motor vehicles can be displayed and books, records, files and titles can be maintained, (2) the place of business shall display an exterior sign complying with local ordinance and permanently affixed to the land or building; said sign shall reflect the dealer name or trade name disclosed on the application form, (3) a business location shall not be approved if there are two or more dealer licenses issued for the same location, except where there is common identity of ownership or where an affiliated motor vehicle leasing company is also licensed as a motor vehicle dealer, and (4) a motor vehicle dealer must notify the Dealer License Section prior to changing his business location or opening a branch location.

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N.J.A.C. 13:21-15.4 (Grounds for rejection or suspension or revocation of a dealer license) provides for the denial of an application and the suspension or revocation of a motor vehicle dealer license if (1) an applicant or licensee is not a proper person, (2) an applicant or licensee makes willful misrepresentations or omissions in an application for a dealer license, (3) an applicant's prior motor vehicle dealer license has been revoked or suspended and has not been reinstated, (4) an applicant or licensee willfully fails to comply with the provisions of the motor vehicle dealer regulations, (5) an applicant or licensee attempts to obtain or obtains a motor vehicle dealer license for one who is not a proper person, (6) a licensee fails to comply with statutory provisions pertaining to used motor vehicles meeting State inspection standards, (7) a licensee has engaged in the act of altering the true reading of an odometer and (8) a licensee fails to maintain the statutory and regulatory requirements set forth for licensure.

N.J.A.C. 13:21-15.5 (Hearing) provides that an opportunity for an administrative hearing must be granted prior to the denial of an application for a dealer license or the revocation or suspension of a dealer license.

The Division of Motor Vehicles has reviewed the rules in accordance with Executive Order 66 and has determined that they are "necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were promulgated." The rules provide explicit standards which are imposed on motor vehicle dealers for the administration of the motor vehicle dealer licensing law. The rules protect the public interest in that only properly qualified persons are licensed as motor vehicle dealers. The rules proposed for readoption will continue to serve the public interest by maintaining strict licensing standards.

Social Impact

The Division of Motor Vehicles, pursuant to N.J.S.A. 39:10-19, is responsible for the licensing of 4,166 motor vehicle dealers as of May 1, 1984. The rules proposed for readoption have a beneficial social impact in that explicit standards are provided for the qualifications of these dealers. Continued effectiveness of the rules is necessary in order to assure that only those persons who meet the requirements of the rules and the law are qualified as proper persons under the law to be licensed and act as motor vehicle dealers.

Economic Impact

There is an economic impact on the State in that the Division of Motor Vehicles is responsible for the administration and enforcement of the statutes relating to dealer licensing and thereby incurs administrative expenses in administering the licensing law. However, these administrative expenses are offset by statutory licensing fees imposed on the motor vehicle dealers. From January 1, 1979 to May 1, 1984, the Division of Motor Vehicles has collected \$7,917,940 in licensing revenues.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:21-15.

(a)

DIVISION OF MOTOR VEHICLES

Emergency Vehicle Equipment Flashing Amber Light Permit

Proposed Readoption with Amendment: N.J.A.C. 13:24-4

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:3-43 and 39:3-50.

Interested persons may submit in writing, data, views, or arguments relevant to the proposed rule on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, New Jersey 08666

The Division of Motor Vehicles thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The readoption becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption. The amendment to the readoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-426.

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:24-4.1 through 13:24-4.5 concerning flashing amber light permits. These rules were initially filed and became effective prior to September 1, 1969. The rules were subsequently amended on September 20, 1979 and November 5, 1980. The rule, which would otherwise expire on September 18, 1984, are proposed for readoption in accordance with Executive Order 66(1978).

The rules implement those provisions of the Motor Vehicle and Traffic Law (N.J.S.A. 39:3-43 and 39:3-50) pertaining to the approval of motor vehicle equipment and the issuance of emergency vehicle equipment permits. N.J.A.C. 13:24-4.1 (Vehicles eligible) specifies the types of vehicles for which flashing amber light permits may be issued. These vehicles include wreckers, service vehicles and vehicles used for snow removal. This section also specifies when flashing amber lights may be exhibited by these vehicles. Wreckers may exhibit flashing amber lights at the scene of an accident or breakdown and while towing the disabled vehicle to a place of storage or repair. Service vehicles may exhibit emergency lights when stopped on a service call in a location where such lights are necessary for the protection of the public or service personnel. Snow removal vehicles may exhibit emergency lights when engaged in plowing and sanding operations.

N.J.A.C. 13:24-4.2 (Application procedure) provides that application for a flashing amber light permit shall be made in writing to the Emergency Light Unit of the Division of Motor Vehicles. The application must be signed by the chief of police of the municipality in which the motor vehicle is registered. N.J.A.C. 13:24-4.3 (Exhibition) provides that a permit shall be exhibited by the operator of the vehicle upon the request of any proper authority. N.J.A.C. 13:24-4.4 (Revocation) provides that misuse of the permit shall be considered grounds for revocation. N.J.A.C. 13:24-4.5 (Termination of employment) provides the flashing amber light permit is invalidated upon the termination of the employment or service for which the permit was issued. This section also requires that the permit be returned to the Division of Motor Vehicles upon the termination of the employment or service.

The Division of Motor Vehicles has reviewed the rules in accordance with Executive Order 66 and has determined that they are "necessary, adequate, reasonable, efficient, understandable and responsive for the purposes for which [it was] promulgated". The rules promote highway safety by assuring that specified vehicles maintain flashing amber light equipment. The rules provide an efficient procedure for the administration and enforcement of those provisions of the Motor Vehicle and Traffic Law relating to the issuance of emergency vehicle equipment permits.

Social Impact

The rules proposed for readoption promote the public interest in matters relating to highway safety by providing for the use of flashing amber lights on wreckers, service vehicles and vehicles engaged in snow plowing and sanding operations. The use of the flashing amber lights on said vehicles alerts other motorists of the location of these vehicles on the highway and reduces the possibility for accidents, crashes and resulting injuries and property damage.

Economic Impact

The readoption has no economic impact on the general public. There is an economic impact on the State in administrative expenses in funding the operation of the Division of Motor Vehicles' Emergency Light Unit but the cost is not readily quantifiable.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:24-4.

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

13:24-4.5 Termination of employment

Termination of the type employment or service for which the permit was issued automatically and immediately invalidates the authority for such a light, and the permit is to be returned to the [Office of the Chief Inspector] **Emergency Light Unit**.

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF EXAMINERS OF
OPHTHALMIC DISPENSERS AND
OPHTHALMIC TECHNICIANS**

**Use of Trade or Corporate Names; Fee
Schedule Equipment; Minimum Optical
Equipment**

**Proposed Repeal: N.J.A.C. 13:33-1.28
Proposed Amendments: N.J.A.C 13:33-1.41,
2.1 and 2.2**

Authorized By: State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, J. Leo Kymer, President.

Authority: N.J.S.A. 52:17B-41.9, 41.9a, 41.9b and 41.13.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

J. Leo Kymer, President
Board of Examiners of Ophthalmic Dispensers
and Ophthalmic Technicians
1100 Raymond Boulevard, Room 503
Newark, New Jersey 07102

The Board of Ophthalmic Dispensers and Ophthalmic Technicians 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 1984-434.

The agency proposal follows:

Summary

The repeal of N.J.A.C. 13:33-1.28 will remove a rule which prevented dispensers from practicing in other than their own names. The rule has previously been invalidated by a holding of the Supreme Court of New Jersey and accordingly the repeal merely conforms the regulation to existing law.

The amendment of N.J.A.C. 13:33-1.41 is proposed to remove the word "Biennial" which currently describes permit renewals under (a)6. The effect of this deletion will be the correction of the current misnomer and a more accurate description of the permit. Pursuant to N.J.S.A. 52:17B-41.9a and N.J.A.C. 13:33-1.15 the permit, practically, must have a three year duration. The word "Biennial" was inadvertently inserted in the initial proposal and was not noticed for correction when the rule was adopted a few months ago (see 16 N.J.R. 215(a), 16 N.J.R. 738(b)). The deletion is proposed in

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order to avoid the possibility of any confusion resulting from the inaccurate title.

The proposed amendments to N.J.A.C. 13:33-2.1 and 2.2 represent an updating of the current rules on minimum equipment. The Board has arrived at what it feels are more realistic equipment requirements based upon a careful re-evaluation of the nature of the services rendered at an ophthalmic establishment. The proposed amendments distinguish between those locations where apprentices are registered and/or where fabricating is done on the premises and those locations in which neither of these conditions is present. The amendments would likewise establish the minimum equipment to reflect that which is necessary to perform the functions inherent in each type of establishment. In doing this, the Board has omitted some equipment currently required for every optical establishment, specifically a lens measure and edging equipment which are unnecessary if there is no apprentice training or fabricating done on the premises. These two pieces of equipment will still be required where fabricating or training occurs.

The one aspect of the proposed amendment which differs in its nature from the current version is contained in N.J.A.C. 13:33-2.2(a)6. This provision will create an additional requirement for those optical establishments where apprentices are not registered and fabricating is not done on premises. In such location a sign must be maintained in a conspicuous location stating that fabricating is not part of the services offered at that establishment.

Social Impact

The social impact of the major amendments proposed for N.J.A.C. 13:33-2.1 and 2.2, (although minimal if felt at all) could only be positive in that licensees will be recognized as operating out of a clearly defined type of establishment. The public will be more informed as to what services they may expect at a particular establishment. Consumers will have the opportunity to make an easier choice of the type of optical service they require. In addition, the purging of irrelevant or obsolete requirements from a regulated field such as this where enforcement and sanctions may result, is seen by the Board as leading to a positive effect upon the attitude of licensees. They may be inclined to view with more credibility the rules and regulations guiding their field.

Economic Impact

For the reasons already set forth in the summary and social impact statements, there will be no economic impact associated with the repeal of N.J.A.C. 13:33-1.28 or the amendment of N.J.A.C. 13:33-1.41.

The Board anticipates only positive economic ramifications resulting from the amendments to N.J.A.C. 13:33-2.1 and 2.2. Licensees will not be forced to bear the expense of the purchase and upkeep of equipment which bears no functional relationship to their optical operation. Moreover, the public will not be placed in the position of possibly having to bear overhead costs associated with the purchase of special equipment when their needs in going to a specific establishment are met without such equipment's use.

The items added by these regulations, that is, drop ball tester and lens hardening equipment, will not have economic impact in that they are only required in those establishments where fabricating or training is done. In order to conform to F.D.A. requirements, such establishments already possess these items.

There will be minimal economic impact associated with the requirement of the origin in those applicable cases.

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

13:33-1.28 [Use of trade or corporate names] (Reserved)

[(a) On and after February 16, 1955, no persons licensed to practice as an ophthalmic dispenser may practice as such other than under their own name.

(b) The use of trade names or corporate names by an ophthalmic dispenser is specifically prohibited.

(c) This regulation will have no effect on those ophthalmic dispensers using a trade name or a corporate name prior to February 16, 1955.]

13:33-1.41 Fee schedule

(a) (No change.)

1.-5. (No change.)

6. [Biennial] Permit renewal:

i.-ii. (No change.)

7.-9. (No change.)

SUBCHAPTER 2. EQUIPMENT

13:33-2.1 Minimum optical equipment in establishments where apprentices are registered and/or where fabricating is done on the premises

[(a) In order that ophthalmic dispenser and ophthalmic technician apprentices shall be enabled to acquire experience in the producing and reproducing of ophthalmic lenses, and mounting the same to supporting materials, and in establishments wherein fabricating is done on the premises, in accordance with the provisions of N.J.S.A. 52:17B-41.9,] [a]All optical establishments where apprentices are registered or **where fabricating is done on the premises**, shall be equipped with a minimum of optical equipment as follows: (NOTE: For the purpose of this rule, fabricating shall be construed to mean the producing and reproducing of lenses and mounting the same to supporting materials.)

1. [Fitting table with two chairs or stools;] **One set of hand tools consisting of files, screwdrivers, pliers, hammers/anvils or hand press, reamers, taps, calipers and millimeter ruler;**

2. [One mirror;] **One automatic lens analyzer (lensometer, vertometer, or any other automatic electronic equipment to measure the power of a lens and lens clock.**

3. [One set of hand tools consisting of files, screwdrivers, pliers, hammers, anvils, reamers, tapes, and other small tools;] **Hand or automatic protractor for marking up lenses;**

4. [One lensometer or vertometer or similar instrument;] **One colmascope or similar instrument, lens hardening equipment, drop ball tester;**

5. [One colmascope or similar instrument:] **One frame heater;**

6. [One frame heater;] **One automatic edger and hand finishing stone; and**

7. [One lens measure;] **One set of samples of frames and mountings, minimum 25, including zyl, rimless and metal rims.**

[8. Edging equipment; and

9. One set of samples of frames and mounting, minimum 25.])

13:33-2.2 Optical equipment required for practice of ophthalmic dispensing **in establishments where no fabricating is done on premises and where no apprentices are registered**

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[(a) In order that a licensed ophthalmic dispenser shall practice ophthalmic dispensing within the meaning of the provisions of N.J.S.A. 52:17B-41.5,] [a]All optical establishments where ophthalmic dispensers practice **and where no fabricating is done on the premises and no apprentices are registered**, shall be equipped with a minimum of optical equipment as follows:

1. [One fitting table with two chairs or stools;] **One set of hand tools consisting of files, screwdrivers, pliers, hammers/anvils or hand press, reamers, taps, calipers and a millimeter ruler;**
2. [One mirror;] **One automatic lens analyzer (lensometer, vertometer, or any other automatic electronic equipment to measure the power of a lens) and lens clock;**
3. [One set of hand tools consisting of files, screwdrivers, pliers, hammers, anvils, reamers, taps and other such small tools;] **One colmascope or similar instrument;**
4. [One lensometer or vertometer or similar instrument;] **One frame heater;**
5. [One colmascope or similar instrument;] **One set of samples of frames and mountings, minimum 25, including zyl, rimless and metal rims.**
6. [One frame heater;] **A sign in a conspicuous location stating "No laboratory on the premises".**
- [7. One lens measure;
8. Edging equipment;
9. One set of samples of frames and mountings, minimum 25.]

(a)

**LAW AND PUBLIC SAFETY
BOARD OF MEDICAL EXAMINERS**

Termination of Pregnancy

Proposed Amendment: N.J.A.C. 13:35-4.2

Authorized By: Board of Medical Examiners, Edwin H. Albano, M.D., President.
Authority: N.J.S.A. 45:9-2.

Interested persons may submit in writing data, views or arguments relevant to the proposals on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Charles A. Janousek
Executive Secretary
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

The Board of Medical Examiners 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 1984-430.

The agency proposal follows:

Summary

A petition was submitted by medical practitioners requesting modification of the Board's rule specifying the circumstances under which a medical practitioner could perform certain types of termination of pregnancy. Notice of the petition was published at 16 N.J.R. 262. A Medical Board Committee was appointed to study the matter and to review supporting documentation submitted by the petitioner. Additional independent research done by the Committee has satisfied the Medical Board that the present rule should be modified to permit specific types of termination of pregnancy at more advanced stages, as long as the procedures are done in licensed health care facilities. Further, the proposed amendment would require that facilities performing terminations of pregnancy during the second trimester must have a medical director and a credentials committee which evaluates and determines the ability of the operating physician to conduct the various types of termination procedures, to be consistent with the health, safety and welfare of the public.

Social Impact

The proposed amendment would make the dilatation and evacuation procedure available to women through the 18th week of pregnancy (as commonly computed) rather than 16 weeks as under the present rule. The procedure could be done at this stage in a licensed health care facility, rather than only in a licensed hospital. However, since risk to the patient rises with each advancing week of pregnancy during the second trimester, the rule would require that physicians performing the various procedures available for terminations of pregnancy be reviewed by a medical director and credentials committee within the licensed health care facility itself, to assure that operating physicians have practice privileges relating to the complexity of the procedure and commensurate with an assessment of the training, experience and skills of each physician. That list of privileges would have to be preserved in the files of the facility and would have to be reviewed at least biennially, to assure the safety of the public. The proposed amendment appears consistent with accepted standards of practice in the specialty of obstetrics and gynecology.

Economic Impact

No economic impact is expected for the management of the licensed health care facility, as all decisions will continue to be made within the facility itself and no additional personnel need be hired other than to provide for such additional responsibilities as the facility elects to assume. Substantial economic benefits may be anticipated for the patient, as fees for these services are generally lower in a non-hospital facility.

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

13:35-4.2 Termination of Pregnancy

(a) The termination of pregnancy is a procedure which may be performed only by a physician licensed to practice medicine and surgery in the State of New Jersey.

(b) Beyond the first trimester and within a period of gestation not exceeding [16 menstrual weeks and/or 14 gestational weeks' size] **18 weeks from the first day of the last menstrual period or 16 weeks' gestational size** as determined by a physician, termination of pregnancy using the dilatation and evacuation procedure shall be performed either in a licensed hospital or a licensed health-care facility, and if any other procedure is used the termination of pregnancy shall be performed in a licensed hospital.

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(c) Any licensed health care facility performing procedures for termination of pregnancy after the 14th week from the first day of the last menstrual period or 12 weeks' gestational size must have a Medical Director and a Credentials Committee. Said Committee shall grant to operating physicians practice privileges relating to complexity of the procedure and commensurate with an assessment of the training, experience and skills of each physician for the health, safety and welfare of the public. A list of the privileges of each physician shall contain the effective date of each privilege conferred, shall be reviewed at least biennially, and shall be preserved in the files of the facility.

[c] (d) Termination of pregnancy by any procedure on patients with a gestation exceeding [16 menstrual weeks and/or 14 gestational weeks' size] 18 weeks from the first day of the last menstrual period or 16 weeks' gestational size as determined by a physician, shall be performed only in a licensed hospital.

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS

Delegation of Physical Modalities to Unlicensed Physician Aides

Proposed New Rule: N.J.A.C. 13:35-6.14

Authorized By: New Jersey State Board of Medical Examiners, Edward W. Luka, M.D., President.
Authority: N.J.S.A. 45:9-2 and 45:9-16.

Interested persons may submit in writing, data, views or arguments relevant to the proposed action on or before September 5, 1984. These submissions and any inquiries about submissions and responses, should be addressed to:

Charles A. Janousek
Executive Secretary
New Jersey State Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

The New Jersey State Board of Medical Examiners thereafter may adopt this proposal without further notice. (See N.J.A.C. 1:30-3.5). The adopted rules become effective upon publication in the Register of a Notice of Adoption.

This proposal is known as PRN 1984-432.

The agency proposal follows:

Summary

In recent years, there has been growing confusion among practicing physicians with regard to the propriety and legality of delegating to unlicensed physicians' aides the task of carrying out instructions to apply or administer certain non-pharmacologic therapeutic modalities. The proposed new rule is designed to alleviate that confusion by identifying those modalities which physicians can and should be able to direct their assistants to administer without endangering their patients or

rendering themselves open to a charge of misconduct, pursuant to N.J.S.A. 45:9-16(g) which provides that the Board may take disciplinary action against a physician who "has been guilty of employing unlicensed persons to perform work which, under this chapter (N.J.S.A. 45:9-1 et seq.) can legally be done only by persons licensed to practice medicine and surgery or chiropractic in this State."

Specifically, the Board has preliminarily concluded that the ministerial task of applying certain modalities, after a medical judgment has been made that that particular modality, in prescribed dosages, is indicated, can be delegated to office personnel so long as safeguards are followed. The modalities identified are heat, diathermy, cold, ultrasound, ultraviolet rays, cold quartz rays and electromagnetic rays. Because of advances in technology and the current state of the art of the equipment involved, it is felt that the administration of these treatment modalities can safely be performed by unlicensed personnel. In fact, it would appear that in many physicians' offices medical assistants currently are administering these modalities under the supervision of physicians without problem.

Those modalities which do involve risks or require particular expertise in their administration are clearly recognized in this proposed regulation to be non-delegable. Aides may not be directed to conduct rehabilitative exercise programs, since the conduct of such programs is best left to persons having more formalized training. Similarly excluded are traction and T.E.N.S. (trans-cutaneous electrical nerve stimulation.)

The proposed regulation however does make it clear that the delegating physician retains certain obligations to the patient. If the condition presented would appear to require prolonged treatment by persons with speciality training, referral to licensed physical therapists, physiatrists and/or orthopedists should be made. If, however, the physician determines that the patient would benefit from continued treatment in the office, he or she must determine the appropriateness of the modality and delineate a precise treatment regimen. Further, the physician must assure that the aide carrying out the instructions is capable of utilizing the modality technique, as well as understanding its therapeutic impact. The physician's instructions should be documented on the patient's chart and signed by both the physician and the assistant. The physician must remain available on the premises at all times that the aide is carrying out instructions relating to these modalities.

Before any additional treatments are administered by an aide at a follow-up visit, the physician must evaluate the patient to determine whether continued treatment is appropriate. The charge to be made for this limited evaluation by the physician should reasonably reflect the service which the physician is actually providing to the patient and should be determined in consideration of the Board's rule prohibiting excessive fees. N.J.A.C. 13:35-6.11(b) and (c). When billings are made to third party payors, specific reference must be made to the physical modality applied rather than a generic charge for physical therapy.

For the purpose of the regulation "physician" and "doctor" are defined to include holders of plenary licensure (M.D.'s and D.O.'s) as well as podiatrists and chiropractors. However, it must be recognized that podiatrists and chiropractors may only permit their assistants to carry out instructions which are in furtherance of the scope of their limited practice. Podiatrists may lawfully employ manipulative and physio-therapeutic means in the treatment of ailments of the human foot. N.J.S.A. 45:5-7. To the extent that a licensed podiatrist has determined that one of the enumerated modali-

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ties would be of benefit to a patient in the treatment of a foot ailment he or she may direct an unlicensed aide to carry out that instruction. Similarly, if a chiropractor determines that the application of an enumerated physical modality would facilitate the adjustment of the articulations of the spinal column, he or she can direct an assistant to perform the ministerial task of applying the modality. N.J.S.A. 45:9-14.

In sum, while the act of determining the appropriateness of the modality is the practice of medicine, the actual application of these identified therapeutic modalities does not pose significant risks to patients, or involve specialized training or expertise. Accordingly, the ministerial task of following through on a doctor's instruction to apply these modalities will not be deemed to be the practice of medicine, so long as the delegating doctor has followed the mandates of the regulation.

Social Impact

The proposed new rule should result in an increase in physician productivity, freeing doctors to spend their time on activities requiring greater medical expertise than that which is required to apply or administer the identified modalities. Patients should also realize an advantage in that they may have more of their medical needs met at the doctor's office, saving them from traveling to another location. The regulation is not expected to diminish the demand for services of other health care professionals since it is contemplated that individuals requiring long-term therapy or suffering from conditions which would benefit from a wide range of modalities will be referred to physical therapists, physiatrists or orthopedists.

Economic Impact

While health care professionals presently authorized to administer the identified modalities may experience some diminution in their patient population, such a diminution is not expected to be large. In fact, it is believed that physicians are presently offering these therapeutic modalities, as well as others explicitly excluded by this regulation, in their offices. This regulation expressly delineates the modalities that may not be delegated to unlicensed personnel and thus may cause some additional demand for physical therapists and physiatrists.

Certainly, it is expected that the regulation will result in a savings to patients, since the charges which will be made for the application of the enumerated modalities are to be calculated based on the level of experience of the person to whom the task has been delegated. Since the administration of these modalities involves little expertise, persons to whom these tasks may be delegated will not be garnering the same salaries as more highly skilled health care professionals might. It is expected that this savings will be passed along to the consumer.

Full text of the proposed new rule follows.

13:35-6.14 Delegation of physical modalities to unlicensed physician aides

(a) "Physician" or "doctor," for the purpose of this section, shall mean a doctor of medicine (M.D.), a doctor of osteopathic medicine (D.O.), a doctor of podiatric medicine (D.P.M.), and a doctor of chiropractic (D.C.).

(b) A physician may direct his or her unlicensed employee to administer to the doctor's patients certain physical modalities in the limited circumstances set forth in this section, without being in violation of the pertinent professional prac-

tice act implemented by the Board, to the extent such conduct is permissible under any other pertinent law or rule administered by the Board or any other State agency.

(c) Physical modalities, for the purpose of this section, shall be limited to heat, diathermy, cold, ultrasound, ultraviolet rays, cold quartz rays and electro-magnetic rays. The aide shall not be permitted to do any rehabilitative exercise programs. No other modalities including T.E.N.S. or traction shall be performed by the unlicensed physician's aide.

(d) A physician may direct the administration of the physical modality by the unlicensed assistant only where the following conditions are satisfied:

1. The doctor shall examine the patient to ascertain the nature of the trauma or disease; to determine whether the application of a physical modality will encourage the alleviation of pain and promotion of healing; to assess the risks of the modality for a given patient and the diagnosed injury or disease and to decide that the anticipated benefits are likely to outweigh those risks.

2. The doctor shall determine all components of the precise treatment to be given at the present therapy session, including type of modality to be used, extent of area to which it shall be applied, dosage or wattage, etc., length of treatment, and any other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body or of static placement of the applicator. This information shall be written on the patient's chart and made available at all times to the assistant carrying out the instructions.

3. The doctor shall ascertain a satisfactory level of education, competence and comprehension of the particular assistant to whom instruction has been given by the doctor as to modalities used in that office. The doctor shall prepare and maintain a written document certifying as to the instructions given to each assistant, and both doctor and assistant shall sign it.

4. The doctor shall see the patient prior to any subsequent scheduled application of the modality to ascertain that continued treatment is appropriate and that no contraindications to treatment have become apparent.

5. The doctor shall remain on the premises at all times that treatment orders are being carried out by the assistant and shall be within reasonable proximity to the treatment room and available in the event of emergency.

(e) A physician shall have due regard for the specialized training and experience of registered physical therapists, and of physiatrists and orthopedists. Injuries or diseases requiring prolonged treatment, if not administered personally by the doctor, shall normally be referred to a licensed physical therapist, to a physiatrist, orthopedist or other appropriate health care provider.

(f) A bill rendered for the limited consultation set forth in (d)4 above shall not exceed a sum which reasonably reflects the actual level of service, supervision and responsibility personally rendered by the doctor, and consistent with the factors listed in the rule prohibiting excessive fees, N.J.A.C. 13:35-6.11(b) and (c).

(g) On a health insurance claim form pertaining to such service and requiring certification by the doctor, the doctor shall specify the modality applied and shall not generically identify physical therapy.

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(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING**

Nurse Anesthetists

**Proposed New Rules: N.J.A.C. 13:37-13.1
and 13.2**

Authorized By: New Jersey State Board of Nursing, Dr.
Kathleen M. Dirschel, President
Authority: N.J.S.A. 45:11-23; and 45:11-24(d)(9)
(12)(17)(18)(19).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984, these submissions, and any inquiries about submissions and responses, should be addressed to:

Sister Teresa Louise Harris
Executive Secretary
State Board of Nursing
Room 319
1100 Raymond Boulevard
Newark, NJ 07102

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

This proposal is known as PRN 1984-433.

The agency proposal follows:

Summary

The proposed new rules set forth the basic qualifications to practice as a nurse anesthetist in New Jersey. They require a nurse anesthetist to have: a current license to practice as a registered professional nurse; graduated from a program in nurse anesthesia accredited by the nationally-recognized accrediting body approved by the Board; passed the certifying examination administered by that authority and maintained the required certification criteria. The proposed regulation also provides that a nurse anesthetist may practice pending the results of the first scheduled certifying examination.

Social Impact

The social impact of this regulation will be favorable upon the public, the Board and its licensees. The regulations set forth the minimal professional standards necessary to practice as a nurse anesthetist in New Jersey. This will insure to the public that nurse anesthetists possess basic competency in their field and that only those nurses properly prepared and qualified may do so. The regulations will result in the application of uniform standards to employ nurse anesthetists and it will also allow nurse anesthetists to know what uniform standards will be used to employ them.

Economic Impact

The economic impact of the regulations will be minimal. The impact will involve only the one time payment of the current fee to take the certifying examination. The regulations impose no payment of fees to the Board nor will it result in

any additional costs to the consumers of these health care services.

Full text of the proposed new rules follow.

SUBCHAPTER 13. NURSE ANESTHETISTS

13:37-13.1 Qualifications to practice as a Nurse Anesthetist

(a) The qualifications to practice as a nurse anesthetist in this State shall be as follows:

1. Current licensure as a registered professional nurse in the State of New Jersey;
2. Graduation from a program in nurse anesthesia accredited by the nationally recognized accrediting body approved by the Board;
3. Passing of a certifying examination administered by the nationally recognized accrediting body approved by the Board;
4. Maintenance of the recertification requirements by the nationally recognized accrediting body approved by the Board.

13:37-13.2 Practice pending the results of the examination

(a) A nurse anesthetist who meets the requirements of N.J.A.C. 13:37-13.1(a) 1 and 2 may practice as a nurse anesthetist pending the results of the first scheduled certifying examination following completion of an approved program in nurse anesthesia.

(b) A nurse anesthetist who fails to apply and sit for or fails to pass the first scheduled certifying examination following completion of an approved program in nurse anesthesia shall not continue to practice after the date of said examination.

(b)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS**

**Responsible Charge of Engineering or Land
Surveying Work**

Proposed New Rule: N.J.A.C. 13:40-9

Authorized By: New Jersey Board of Professional Engineers and Land Surveyors, Marcia Forman, President.

Authority: N.J.S.A. 45:8-27 et seq.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before September 5, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

Rita Fielder, Executive Secretary
State Board of Professional Engineers
and Land Surveyors
1100 Raymond Boulevard, Room 319
Newark, New Jersey 07102

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The Board of Professional Engineers and Land Surveyors thereafter may adopt this proposal without further notice (See: N.J.A.C. 1:30-3.5). This adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-429.

The agency proposal follows:

Summary

The proposed new rule would elucidate the requirement that a licensee in responsible charge of an engineering or land surveying project provide adequate supervision of employees or other subordinates who render a significant amount of services in completion of the project. The new rule would also require the licensee to maintain such records as could reasonably establish that adequate supervision has been exercised on the project. Finally, the proposed rule would enumerate certain practices which would suggest that adequate supervision has not been exercised, including regular absence from the licensee's office other than for field work, failure to sufficiently inspect the work of employees or subordinates, and consistent unavailability for consultation or inspection when necessary.

A number of cases involving "absentee supervision" of employees by licensed professionals have been brought to the attention of the Board. Where the professional fails to adequately supervise preparation of a project and is unavailable to visit the site, if necessary, the final product may contain deficiencies not apparent through cursory review before filing. Moreover, absence of the professional in responsible charge of the project makes it difficult for the client to confer with the professional during preparation or after completion of the project. Finally, having the client deal solely with a technician, which may occur during "absentee supervision," can also result in an unlicensed employee working beyond his area of expertise.

Social Impact

The proposed new rule would alleviate the abuses inherent in "absentee supervision" by assuring adequate supervision by the licensed professional in responsible charge of the project. It would benefit consumers by assuring that the professional whose services and expertise he sought has substantial involvement in the preparation of the project. In this regard, the professional would be available to the consumer should problems or a need for modification of plans arise.

Although the proposed rule does not require the licensee to be present in the office for a specific amount of time, it recognizes that a licensee who is regularly and continuously absent from the office is not likely to have rendered adequate supervision. Thus, a licensee who operates a "satellite" office largely manned by technicians or who is consistently out of the State while a project is prepared in the principal office may have to modify his practice to assure that regular and effective supervision is provided.

Economic Impact

The economic impact on the professional whose firm currently practices "absentee supervision" may be significant in restricting overly broad delegation of responsibility. The consumer will ultimately benefit, however, by being assured that adequate review by the licensee has gone into all work prepared by others, thereby being assured of getting the professional services for which she or he bargained.

Full text of the proposed new rule follows.

SUBCHAPTER 9. RESPONSIBLE CHARGE OF ENGINEERING OR LAND SURVEYING WORK

13:40-9.1 Supervision of subordinates; maintaining records of adequate supervision; acts reflecting inadequate supervision

(a) A licensee in responsible charge of an engineering or land surveying project shall render regular and effective supervision to those individuals performing services which directly and materially affect the quality and competence of engineering or land surveying work rendered by the licensee.

(b) A licensee shall maintain such records as are reasonably necessary to establish that the licensee exercised regular and effective supervision of an engineering or land surveying project of which he was in responsible charge.

(c) A licensee engaged in any of the following acts or practices shall be deemed not to have rendered the regular and effective supervision required herein:

1. The regular and continuous absence from principal office premises from which professional services are rendered; except for performance of field work or presence in a field office maintained exclusively for a specific project;

2. The failure to personally inspect or review the work of subordinates where necessary and appropriate;

3. The rendering of a limited, cursory or perfunctory review of plans or projects in lieu of an appropriate detailed review;

4. The failure to personally be available for consultation and inspection where circumstances require personal availability.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules; Jockey Fees

Proposed Amendment: N.J.A.C. 13:70-9.18

Authorized By: New Jersey Racing Commission,
Harold G. Handel, Executive Director.
Authority: N.J.S.A. 5:5-30.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Bruce H. Garland, Deputy Director
New Jersey Racing Commission
CN 088 Justice Complex
Trenton, New Jersey 08625

The New Jersey Racing 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 1984-435.

The agency proposal follows:

PROPOSALS

PUBLIC UTILITIES

Summary

The proposed amendment adjusts the fee scale for riders who finish second or third in a race with a purse between \$10,000 and \$14,900. Rather than providing the jockeys of the second and third place horses with percentage of the place and show purse, the jockey's fees will be a flat \$75.00 for finishing second and \$60.00 for finishing third.

Social Impact

While the amendment slightly decreases the amount of money a jockey would receive for second and third place finishes for races with purses between \$10,000 and \$14,900, it still provides for an increase over prior years as well as a \$10.00 increase over fees for races with purses between \$5,000 and \$9,900.

Economic Impact

There is no anticipated impact on State revenue. The proposed amendment would slightly decrease the overhead expenses incurred by thoroughbred horse owners. The economic impact on jockeys is discussed above in the Social Impact.

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

13:70-9.18 Jockey fees

(a) Jockey's fees in the absence of a contract shall be as follows:

Purse	Winning Mount	Second Mount	Third Mount	Losing Mount
\$10,000-14,900	10% of win purse	[5% of Place Purse] 75.00	[5% of Show Purse] 60.00	45.00
...				

PUBLIC UTILITIES

(a)

OFFICE OF CABLE TELEVISION

Landlord Compensation for Installation of Service

**Notice of Pre-Proposal of New Rule:
N.J.A.C. 14:18-14**

Authorized By: Bernard Morris, Director, Office of Cable Television.
Authority: N.J.S.A. 48:5A-10 and 49.

A public hearing to solicit comments prior to proposing a rule in this matter will be held as follows:

Wednesday, September 12, 1984
10:00 A.M.
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

Interested persons may submit in writing, data, views, or comments relevant to the topic on or before September 5, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

Bernard Morris, Director
Office of Cable Television
Board of Public Utilities
1100 Raymond Blvd.
Newark, NJ 07102

This is a Notice of Pre-Proposal for a rule (See N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

This pre-proposal is known as PPR 1984-3.

The agency pre-proposal follows:

N.J.S.A. 48:5A-49 forbids landlords from denying access to cable television companies or preventing installation of service to tenants. The constitutionality of this statute has been upheld in the case of Princeton Cablevision, d/b/a Storer Cable Communications v. Union Valley Corporation, et al., No. C-356-83 (Chancery Division). It was therein decided that landlords receive just compensation for the taking that occurs as a result of the installation of cable television facilities. This reasoning follows the United States Supreme Court decision in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S. Ct. 3164, 73 L.Ed.2d 868 (1982). On May 24, 1984 the Board of Public Utilities ordered that rulemaking proceedings be commenced by the Office of Cable Television and at least one public hearing be held to determine the value of the compensable taking pursuant to N.J.S.A. 48:5A-49.

In order to define the parameters of the proceeding and to facilitate review of all issues the Director of the Office of Cable Television invites all interested parties to submit comments related to the following:

1. Define and estimate the extent of the damage incurred as a result of the taking of property resulting from the installation of cable television facilities and the value of such taking.
2. What standard should be applied to determine the value of the taking of property and the degree of damage caused by the installation, operation or removal of cable television facilities for apartment complexes, condominium developments and mobile home parks?
3. What are the incidents and circumstances of cable television access in apartment complexes, condominium developments and mobile home parks?
4. Are the requirements of N.J.S.A. 48:5A-49 met regarding the protection of the safety, functions, appearance and value of the premises and the convenience, safety and well being of the tenants? How is each requirement satisfied during the installation and provision of cable television service?

Note: Comments should be concise and should contain sufficient substantive and/or empirical data for proper review and evaluation.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route 35 in Ocean Township, Monmouth County

Proposed Amendment: N.J.A.C. 16:28A-1.25

Authorized By: John P. Sheridan Jr., Commissioner,
Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and
39:4-199.

Interested persons may submit in writing data, views or
arguments relevant to the proposal on or before September 5,
1984. These submissions, and any inquiries about submissions
and responses, should be addressed to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

At the close of the period for comments the Department of
Transportation may adopt this proposal with minor changes
not in violation of the rulemaking procedures at N.J.A.C.
1:30-3.5. Upon adoption of this rule, a notice shall be pub-
lished in the Register. The adopted rule shall become effective
upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-422.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking bus
stop" zones along Route 35 in Ocean Township, Monmouth
County for the safe and efficient flow of traffic and the safe
on/off loading of passengers at established bus stops.

Based upon request from local officials, the Department's
Bureau of Traffic Engineering and Safety Programs con-
ducted a traffic investigation. The investigation proved that
the establishment of "no parking bus stop" zones were war-
ranted.

The Department therefore proposes amendment to
N.J.A.C. 16:28A-1.25 to add bus stops in compliance with
the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus
stop" zones along Route 35 in Ocean Township, Monmouth
County for the safe and efficient flow of traffic and the safe
on/off loading of passengers at established bus stops. Appro-
priate signs will be installed to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and
indirect costs for its workforce for mileage, personnel and
equipment requirements. The local officials will bear the costs
for the installation of signs. Motorists who violate the rules
will be assessed the appropriate fine.

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

16:28A-1.25 Route 35

(a) (No change.)

(b) The certain parts of State Highway Route 35 described
in this section shall be designated and established as "no
parking" zones where parking is prohibited at all times. In
accordance with the provisions of N.J.S.A. 39:4-199 permis-
sion is hereby granted to erect appropriate signs at the follow-
ing established bus stops:

1.-9. (No change.)

10. Along the northbound (easterly) side in Ocean Town-
ship, Monmouth County:

i. Far side bus stop:

(1) Deal Road — Beginning at the northerly curb line of
Deal Road and extending 100 feet northerly therefrom.

ii. Near side bus stop:

(1) West Park Avenue — Beginning at the southerly curb
line of West Park Avenue and extending 130 feet southerly
therefrom.

11. Along the southbound (westerly) side in Ocean Town-
ship, Monmouth County:

i. Far side bus stop:

(1) West Park Avenue — Beginning at the southerly curb
line of West Park Avenue and extending 100 feet southerly
therefrom.

ii. Near side bus stop:

(1) Deal Road — Beginning at the northerly curb line of
Deal Road and extending 105 feet northerly therefrom.

(c) (No change.)

(b)

TRANSPORTATION OPERATIONS

Miscellaneous Traffic Rules

Yield Intersection

Route U.S. 130 in North Brunswick

Proposed New Rule: N.J.A.C. 16:30-2.9

Authorized By: John P. Sheridan, Jr., Commissioner,
Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-140.

Interested persons may submit in writing data, views or
arguments relevant to the proposal on or before September 5,
1984. These submissions, and any inquiries about submissions
and responses, should be addressed to:

PROPOSALS

TRANSPORTATION

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

At the close of the period for comments the Department of Transportation may adopt this proposal with minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of this rule, a notice shall be published in the Register. The adopted rule shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-423.

The agency proposal follows:

Summary

The proposed new rule will establish yield intersections along Route U.S. 130 in North Brunswick Township, Middlesex County for the efficient flow of traffic and the enhancement of the safety and well-being of the populace.

Based upon request from local officials in the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of yield intersections were warranted.

The Department therefore proposes a new rule as N.J.A.C. 16:30-2.9 concerning yield intersections along Route U.S. 130.

Social Impact

The proposed new rule will establish yield intersections along Route U.S. 130 in New Brunswick Township, Middlesex County for the safe and efficient flow of traffic and the enhancement of the safety and well-being of the populace. Appropriate signs will be installed to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its workforce for mileage, personnel and equipment requirements. The local officials will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

Full text of the proposed new rule follows.

16:30-2.9 Route U.S. 130

(a) Under the provisions of N.J.S.A. 39:4-140 the certain part of Route U.S. 130 situated in the Township of North Brunswick, Middlesex County and described in this section shall be designated as a Yield Intersection.

1. Center median at Franklin Road:

i. YIELD signs shall be installed in the center median facing east and west movements at Franklin Road.,

2. Route U.S. 130 and Huff Road:

i. YIELD signs shall be installed in the center median facing northbound traffic at Huff Road.

(a)

TRANSPORTATION OPERATIONS

Turns

U.S. 130 in North Brunswick

Proposed New Rule: N.J.A.C. 16:31-1.22

Authorized By: John P. Sheridan Jr., Commissioner,
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-183.6.

Interested persons may submit in writing data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

At the close of the period for comments the Department of Transportation may adopt this proposal with minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of this rule, a notice shall be published in the Register. The adopted rule shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-421.

The agency proposal follows:

Summary

The proposed new rule will establish turning movements restrictions along Route U.S. 130 in North Brunswick Township, Middlesex County for the safe and efficient flow of traffic, the enhancement of safety, and the safety and well-being of the populace.

Based upon request from local officials, the Department's Bureau of Traffic Engineering and Safety Programs, conducted traffic investigations. The investigations proved that the establishment of "No "U" Turn" and "Right Turn Only" in the areas designated were warranted.

The Department therefore proposes a new rule as N.J.A.C. 16:31-1.22 concerning turning movements restrictions in compliance with the request from local officials and traffic investigations.

Social Impact

The proposed new rule will restrict turning movement to "No "U" turn" and "Right turn only" along route U.S. 130 in North Brunswick Township, Middlesex County in the areas designated for the safe and efficient flow of traffic, the enhancement of safety and the safety and well-being of the populace. Appropriate signs will be installed to advise the motoring public.

TRANSPORTATION

PROPOSALS

Economic Impact

The Department and local officials will incur direct and indirect costs for its workforce for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs. Motorists who violate the rules will be assessed the appropriate fine.

Full text of the proposed new rule follows.

16:31-1.22 Route U.S. 130

(a) Under the provisions of N.J.S.A. 39:4-183.6 turning movements of traffic on certain parts of Route U.S. 130 described in this section are regulated as follows:

1. No U Turn in North Brunswick Township, Middlesex County at the following locations:

- i. 160 feet north of mile post 80.0 both directions
 - ii. 840 feet north of mile post 80.0 northbound
 - iii. 3,380 feet north of mile post 80.0 both directions
 - iv. 3,900 feet north of mile post 80.0 both directions
 - v. 3,750 feet north of mile post 81.0 (Washington Pl.) northbound
 - vi. 4,070 feet north of mile post 81.0 northbound
 - vii. 610 feet north of mile post 82.0 (Old Georges Rd.—No. End) northbound
 - viii. 1,030 feet north of mile post 82.0 (Victory Rd.) northbound
 - ix. 2,190 feet north of mile post 82.0 northbound
 - x. 2,770 feet north of mile post 82.0 both directions
 - xi. 3,460 feet north of mile post 82.0 (Huff Rd.) southbound
 - xii. 4,780 feet north of mile post 82.0 (Farrington Blvd.) northbound
 - xiii. 5,100 feet north of mile post 82.0 (Otis Rd.) southbound
 - xiv. 1,320 feet north of mile post 83.0 southbound
2. Right turn only in North Brunswick Township, Middlesex County:
- i. From westbound on Victory Road to northbound on Route U.S. 130.

(a)

THE COMMISSIONER

Vehicles Exempted from the Table of Maximum Gross Weights

Proposed New Rule: N.J.A.C. 16:32-2

Authorized By: John P. Sheridan, Jr. Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:3-84 and 39:3-84.1.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, NJ 08625

The Department of Transportation 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 1984-424.
The agency proposal follows:

Summary

Section 2 of L. 1983, c. 349, approved September 22, 1983, applied the "federal bridge formula" to New Jersey's Interstate highways by incorporating a Table of Maximum Gross Weights at N.J.S.A. 39:3-84b(5). The bridge formula is a mathematical formula, sometimes expressed as a table, which uses axle weights and distance between axles to compute an adjusted gross weight for a vehicle. The formula is based on the engineering principle that a short, heavy vehicle produces more stress on a bridge than a vehicle of the same weight which is stretched out farther between axles. The effect of the bridge formula is to prohibit some short vehicles from loading up to the full 70,000 or 80,000 pounds they would normally be allowed for maximum gross weight. Federal law (23 U.S.C. 127) has, since 1975, required states to enforce the bridge formula on the Interstate highway system or face loss of Federal highway aid.

L. 1983, c. 374, approved October 31, 1983, authorized the Commissioner of Transportation to adopt regulations exempting certain specified vehicles from compliance with the Table of Maximum Gross Weights either permanently or temporarily.

The Federal Highway Administration (FHWA) has approved permanent exemptions in various states where the legislative history of the state's truck weight laws establishes "grandfather" rights for a specific vehicle. In New Jersey, vehicles registered "constructor" are exempted from the bridge formula by such a "grandfather" right, provided they are operated within 30 miles from the point established as a headquarters for the particular construction operation (N.J.S.A. 39:3-84.1a).

It has been determined that "special" trailers, such as those used for moving heavy equipment, are subject to the provisions of N.J.S.A. 39:4-26, 39:4-27, 39:3-82 and 39:3-84d (section 2 of L. 1983, c.349). Therefore, consistent with prior exemptions permitted under Federal law (23 U.S.C. 127) this category is being granted a permanent exemption under these proposed regulations.

It has also been determined that emergency equipment wreckers referred to in L. 1983, c.374 at N.J.S.A. 39:3-84.1c (10) need not be included in the present regulatory proposal. These vehicles have an existing exemption most recently reaffirmed at section 2 of L. 1983, c. 349 (N.J.S.A. 39:3-84c).

FHWA has also approved temporary exemptions from the bridge formula limits on grounds of economic hardship for certain categories of vehicles in various other states. It is the Department's understanding that FHWA intends these temporary exemptions to be "phase-out" periods for vehicles which cannot reasonably operate within the bridge formula limits.

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The exemptions proposed in N.J.A.C. 16:32-2.3 are temporary, expiring September 30, 1988. FHWA has informed the Department that adoption of these exemptions will not bring New Jersey into conflict with Federal law. Adoption of any additional exemptions would, in FHWA's view, bring New Jersey into a state of non-compliance, which would be grounds for sanctions.

The categories of vehicles registered in the State of New Jersey that would be given temporary exemptions under the proposed regulations are: (1) tandem-axle dump trucks, (2) five-axle dump trailers, (3) two-axle dump trucks, (4) tri-axle dump trucks, (5) four-axle dump trucks, (6) three-axle and four-axle ready-mix transit trucks, (7) five-axle bulk carriers, (8) two-axle, three-axle, four-axle and five-axle liquid bulk carriers, and (9) intermodal ocean containers.

Definitions of the various categories of vehicles and combinations of vehicles as well as specialized terminology have been incorporated in the regulations at N.J.A.C. 16:32-2.1, in order to avoid confusion by enforcement personnel and the affected carriers. Each category of vehicle is specifically defined and additional definitions are included for the technical terms "federal bridge formula," "tandem axle," and "dump truck and dump trailer." The definition for "bulk" and "liquid bulk carrier" is specifically referenced to the "Bulk Commodities Transportation Act" N.J.S.A. 39:5E-3 (L. 1977, c. 259). The definition for "intermodal ocean container" is drawn from Simon, "The Law of Shipping Containers" (1974) 5 J. Maritime Law 507, 513 as cited in *Sea Land Serv., Inc. v. County of Alameda*, 117 Cal. 2d 448, 528 P 2d 56, 58 (Calif. Supreme Court, 1974).

It should be noted that the following categories of vehicles authorized for exemption by L. 1983, c. 374 have not been approved for exemption by FHWA and are not given exemption in the proposed regulations:

(a) For permanent exemption:

(1) Vehicles registered as "solid waste" or combinations of vehicles of which the "solid waste" vehicle is the drawing vehicle as provided in N.J.S.A. 39:3-20.

(2) Vehicles not in excess of 73,280 pounds.

(b) For transitional exemption:

(1) Four-axle and five-axle flatbed tractor trailers,

(2) Solid waste rear-end loaders,

(3) Solid waste front-end loaders,

(4) Solid waste four-axle roll-offs,

(5) Four-axle and five-axle waste transfer tractor trailers, and

(6) Two-axle, three-axle, four-axle and five-axle general freight carriers.

Although these unapproved exemptions are not included in the proposed regulations, the Department welcomes public comments on them. These comments will be reviewed by the Department and brought to the attention of FHWA for their further review where appropriate.

The regulations would also revise the format of Chapter 32 of the New Jersey Administrative Code. Existing regulations (including amendments and additions adopted on June 18, 1984 at 16 N.J.R. 1620) are organized under a new Subchapter 1, "Designated Routes for Special Categories of Trucks." The proposed new regulations are placed in a new Subchapter 2, "Vehicles Exempted From the Table of Maximum Gross Weights." Chapter 32 is redesignated "Trucks."

Social Impact

These regulations provide for a transition period for owners and operators of certain types of short, heavy trucks or com-

binations of vehicles to comply with the Federal bridge formula as expressed in the "Table of Maximum Gross Weights." The transition period will help these owners and operators to adapt to the bridge formula requirement by purchasing new equipment or by reorganizing their operations to avoid the Interstate system. Therefore, these regulations will minimize disruption and hardship for many operators.

Economic Impact

As noted above, these regulations will help to alleviate hardship on many owners and operators of short, heavy trucks or combinations of vehicles by providing a transition period for compliance with the bridge formula. It is expected that these regulations will provide substantial relief to a number of small businesses and should help them to adapt to new weight limit rules with a minimum of disruption, cost and dislocation.

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

**CHAPTER 32
[DESIGNATED ROUTES FOR SPECIAL
CATEGORIES OF TRUCKS]
TRUCKS**

SUBCHAPTER 1. DESIGNATED ROUTES FOR SPECIAL CATEGORIES OF TRUCKS

16:32-1.1.-16:32-1.4 (No change.)

SUBCHAPTER 2. VEHICLES EXEMPTED FROM THE TABLE OF MAXIMUM GROSS WEIGHTS

16:32-2.1 Definition

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

"Federal bridge formula" shall mean the total gross weight, in pounds, imposed on the highway or other surface by any group of two or more consecutive axles of a vehicle or combination of vehicles, including load or contents, which shall not exceed that listed in the **TABLE OF MAXIMUM GROSS WEIGHT** as found at N.J.S.A. 39:3-84b(5) (Laws 1983, c. 349, §2).

"Tandem-axle" shall mean a combination of consecutive axles consisting of only two axles, where the distance between the axle centers is 40 inches or more but no more than 96 inches, as defined at N.J.S.A. 39:3-84b (Laws 1983 c. 349, §2).

"Bulk and liquid bulk carriers" shall mean only those vehicles or combinations of vehicles which are designed to carry or transport bulk commodities as described and defined in the "Bulk Commodities Transportation Act" (Laws 1977, c. 259) N.J.S.A. 39:5E-3.

"Dump truck or dump trailer" shall mean a vehicle or combination of vehicles designed to unload its cargo by elevating one end of the cargo body.

"Intermodal ocean container" shall mean a permanent reusable article of transport equipment durably constructed of metal or other permanent substance and equipped with doors for easy access to its interior, which is utilized on various modes of transport without the necessity of loading or unloading the contents within each time the mode of transport is changed.

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"Tandem-axle dump truck" shall mean a single vehicle dump truck with only three axles as follows: a single steering axle and a tandem drive or rear axle.

"Five axle dump trailer" shall mean a combination of vehicles consisting of a truck-tractor drawing unit and a semi-trailer dump trailer drawn unit with a total of only five axles for the entire combination.

"Two axle dump truck" shall mean a single vehicle dump truck with only two axles.

"Four axle dump truck and tri-axle dump truck" shall mean a single vehicle dump truck with only four axles as follows: a single steering axle and three drive or rear axles.

"Three axle and four axle ready-mix transit truck" shall mean a single vehicle designed solely for the purpose of transporting ready-mix construction materials with either: 1. three axles as follows: a single steering axle and a tandem rear or drive axle; or 2. with four axles as follows: a single steering axle and three rear or drive axles.

"Five axle bulk carrier and five axle liquid bulk carrier" shall mean a combination of vehicles consisting of a truck-tractor drawing unit and a semi-trailer bulk or liquid bulk drawn unit with a total of only five axles for the entire combination.

"Two axle liquid bulk carrier" shall mean a single liquid bulk carrier vehicle with only two axles.

"Three axle liquid bulk carrier" shall mean either a single liquid bulk carrier vehicle with three axles as follows: 1. a single steering axle and a tandem drive or rear axle; or 2. a combination of vehicles consisting of a truck-tractor drawing unit with two axles and a semi-trailer liquid bulk drawn unit with a single axle.

"Four axle liquid bulk carrier" shall mean either: 1. a single liquid bulk carrier vehicle with four axles as follows: a single steering axle and three rear or drive axles; or 2. a combination of vehicles consisting of truck-tractor drawing unit and a semi-trailer liquid bulk drawn unit with a total of only four axles for the entire combination.

16:32-2.2 Permanent exemptions

(a) Under authority granted by N.J.S.A. 39:3-84.1b, the following class of vehicles registered in the State of New Jersey, is exempted from compliance with the Table of Maximum Gross Weights, N.J.S.A. 39:3-84b (5), known as the "federal bridge formula":

1. Trailers and semitrailers operated under a permit granted under N.J.S.A. 39:4-26.

16:32-2.3 Temporary exemptions

(a) Under authority granted by N.J.S.A. 39:3-84.1b, the following classes of vehicles registered in the State of New Jersey are exempted from compliance with the Table of Maximum Gross Weights, N.J.S.A. 39:3-84b (5), known as the "federal bridge formula," until October 1, 1988:

1. Tandem-axle dump trucks;
2. Five-axle dump trailers;
3. Two-axle dump trucks;
4. Tri-axle dump trucks;
5. Four-axle dump trucks;
6. Three-axle and four-axle ready-mix transit trucks;
7. Five-axle bulk carriers;
8. Two-axle, three-axle, four-axle and five-axle liquid bulk carriers; and
9. Intermodal ocean containers.

TREASURY-GENERAL

(a)

STATE LOTTERY COMMISSION

Lottery Commission Rules
Deposit of Lottery Moneys

Proposed Amendment: N.J.A.C. 17:20-6.3

Authorized By: New Jersey Lottery Commission, Hazel Frank Gluck, Executive Director.
Authority: N.J.S.A. 5:9-7 b and f.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about the submissions and responses, should be addressed to:

Hazel Frank Gluck
Executive Director
New Jersey State Lottery Commission
CN 041
Trenton, New Jersey 08625

The Division of Lottery thereafter may adopt this proposal with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-407.

The agency proposal follows:

Summary

The proposed amendment would call for the accrual of interest on moneys payable to the Division of State Lottery from licensed Lottery ticket sales agents.

Social Impact

The proposed amendment would affect Lottery ticket sales agents, who presently number approximately 4,000. It would provide the Division of State Lottery with the remedies presently available to any creditor in the private sector, in that interest would run on obligations due to the Lottery from its agents. The strength of the Lottery as a revenue source for the State of New Jersey would be augmented thereby.

Economic Impact

Due to the fluctuating nature of Accounts Receivables at the Lottery, it is impossible to estimate the dollar impact of the proposed amendment. However, moneys received would augment the State Lottery Fund (N.J.S.A. 5:9-22) for the purposes set forth in the State Lottery Law.

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

17:20-6.3 Deposit of lottery moneys

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

(h) Net settlements due to the State Lottery shall bear interest at the legal rate from the date payment is due until it is

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received by the Lottery; however, the Director may establish grace periods for payment without the accrual of such interest.

(b) In order to prequalify in classification, prospective bidders shall submit annually or at least [five working] **twenty-one calendar** days prior to bid opening of a specific contract, the proof of the following:
1.-6. (No change.)
(c)-(h) (No change).

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(a)

NEW JERSEY TURNPIKE AUTHORITY

Procedure for Prequalifications and Award of Construction Contracts

Proposed Amendment: N.J.A.C. 19:9-2.7

Authorized By: New Jersey Turnpike Authority, William J. Flanagan, Executive Director.
Authority: N.J.S.A. 27:23-29.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William J. Flanagan, Executive Director
New Jersey Turnpike Authority
New Brunswick, New Jersey 08903

The New Jersey Turnpike 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 1984-409.

The agency proposal follows:

Summary

The proposed amendment will require prospective bidders to submit proofs at least twenty-one calendar days prior to bid opening of a specific contract.

Social Impact

The proposed amendment will give the New Jersey Turnpike Authority sufficient time to do an in-depth review of bidder qualifications and then officially notify such bidder of its determination before the bids are due.

Economic Impact

No economic impact will result from this amendment other than to save prospective bidders deemed unqualified the expense of submitting a bid that would otherwise not be accepted.

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

19:9-2.7 Procedure for prequalifications and award of construction contracts
(a) (No change.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls General Provisions

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.35 and 1.46

Authorized by: Casino Control Commission, Theron G. Schmidt, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a) and 70(i).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael A. Santaniello
Deputy Director—Operations
Casino Control Commission
Division of Financial Evaluation
& Control
Princeton Pike Office Park
Building No. 5, CN 208
Trenton, New Jersey 08625

At the close of the period for comments, the Casino Control Commission may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-444.

The agency proposal follows:

Summary

The proposed amendments to the regulations would permit the redemption of bus patron coupons by casino changepersons.

Social Impact

The proposed amendments in the regulations will service bus patrons in a more convenient and efficient manner, while still maintaining stringent internal control procedures to assure the continued integrity of the coupon redemption pro-

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gram. In utilizing slot changepersons to redeem the bus coupons, the long lines that at time hamper slot change booth operations may be eliminated or at least reduced. Furthermore, this new procedure establishes an expedient and more comfortable method of coupon redemption.

Economic Impact

The proposed amendments will have limited economic impact. The new procedures will not effect the gross revenue of the casino in any significant way. A possible positive economic impact stemming from the rule change may be an increase in tourism from the enhanced enjoyment of bus patrons. There are no negative impacts associated with the proposed in regulations.

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

19:45-1.1 Definitions

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

...

“Changeperson” means a person employed in the operation of a casino to possess an imprest inventory of a coin created from slot booth funds and used for the even exchange with slot machine patrons of **coupons**, coin, currency and slot tokens.

...

19:45-1.35 Accounting controls within the slot booths

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

(d) The slot booth inventory may be used to supply changepersons with an imprest inventory of coin, provided that such inventory shall only be used to exchange currency and coin, **and coupons** presented by a patron for an equivalent amount of currency and coin. **The exchange of coupons shall be in accordance with N.J.A.C. 19:45-1.46(i).**

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(h) (No change.)

(i) Coupons redeemable for cash or slot tokens shall only be redeemed by **changepersons** or at the slot change booths or the cashiers’ cage located on the casino floor. A **change-person**, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. **Cancellation of coupons by changepersons shall be in a manner that will permit subsequent identification of the individual who accepted and cancelled the coupon.** Redeemed coupons shall be maintained by the slot or general cashier and shall be exchanged with the Main or Master Coin Bank for a like amount of cash at the conclusion of gaming activity each day, at a minimum. **Changepersons shall exchange redeemed coupons with slot booths for a like amount of cash at the conclusion of each shift, at a minimum.**

(j)-(n) (No change.)

(a)

CASINO CONTROL COMMISSION

**Accounting and Internal Controls
Patron Credit; Tips**

Proposed Amendments: N.J.A.C.

**19:45-1.11, 1.19, 1.25, 1.26, 1.27, 1.28
and 1.29**

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g) and (1) and 5:12-101.

Interested persons may submit in writing, data, views, or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William H. Delaney, Director
Division of Financial Evaluation
& Control
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN 208
Trenton, NJ 08625

At the close of the period for comments, the Casino Control Commission may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-443.

The agency proposal follows:

Summary

The Casino Control Commission proposes to amend N.J.A.C. 19:45-1.11, 1.19, 1.25, 1.26, 1.27, 1.28 and 1.29. These amendments are being proposed based upon the Commission’s review and analysis of the proposals submitted by the Division of Gaming Enforcement and the State Commission of Investigation and comments received from the casino industry on the Division of Gaming Enforcement and State Commission of Investigation proposals.

Proposed amendments to N.J.A.C. 19:45-1.11 would require written communication between specific departments within the casino organization and the credit manager concerning information regarding casino patrons which may have an impact on determining the patrons’ credit worthiness. The proposed regulation would also require the credit department to report to the directors of security and surveillance, on a daily basis, the names of new credit applicants with approved credit limits.

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Proposed amendments to N.J.A.C. 19:45-1.19 would clarify the prohibition against supervisory personnel soliciting or accepting tips and against other casino employees soliciting a tip or gratuity from any player or patron who frequents the casino where the employee works. The current wording of this regulation is based upon the language contained in N.J.S.A. 5:12-101(o), which may be misinterpreted to allow a tip or gratuity to be received outside the physical location of the casino where the employee works. Concurrent with this proposal, the Commission is recommending an amendment to the statute.

Proposed amendments to N.J.A.C. 19:45-1.25 would require the casinos to document, in detail, the verification process for identifying patrons prior to allowing them to exchange checks at a gaming table. Additionally, the amendments would require the casinos to request a patron, possessing in excess of \$500.00 of chips, to apply all chips in their possession in reduction of their counter checks, before the patron either exchanges the chips for cash or leaves the casino.

Proposed amendments to N.J.A.C. 19:45-1.26 would require casinos to redeem checks on a "last in, first out" basis.

Proposed amendments to N.J.A.C. 19:45-1.27 would require the casinos to obtain and verify additional information regarding the patron's identification and credit worthiness. The verification process would have to be repeated every six months for each credit patron who has an approved credit limit. This proposal would document the credit decision process in greater detail and would make casino employees more accountable for their decisions.

Proposed amendments to N.J.A.C. 19:45-1.28 would require casino licensees to deposit gaming checks within reduced time periods from the date of issuance than they are presently allowed. The present time periods are established by Section 101 of the Act and the Commission is recommending a concurrent amendment to the statute.

Proposed amendments to N.J.A.C. 19:45-1.29 would require casino licensees to obtain sufficient documentation evidencing the uncollectibility of returned checks before they may be considered uncollectible for accounting purposes. In addition, these amendments would make clear that a casino may not deduct an uncollectible gaming check from gross revenues for gaming tax purposes if the check is uncollectible due to a violation of the Casino Control Act or the credit regulations.

Social Impact

The proposed amendments to N.J.A.C. 19:45-1.11 would allow specific departments within the casino licensee's organization to communicate to the credit department information regarding casino patrons. This information may have a material effect on determining the patron's credit worthiness, thus providing the credit department with additional information on which to base a credit decision. The impact on regulatory agencies would be minimal since the communication of information is from within the casino itself. The impact on patrons would be the possible prevention of unwarranted credit.

The proposed amendment to N.J.A.C. 19:45-1.19 would remove any ambiguity about the scope of the current prohibition against soliciting or accepting tips and gratuities by casino supervisory employees and against soliciting tips and gratuities by other casino employees. It should not have a significant social impact since it would only make clear that a prohibited solicitation or acceptance may not take place either inside or outside the casino where the employee works.

The proposed amendment to N.J.A.C. 19:45-1.25 would provide casinos and patrons greater protection by verifying the patron's identity before allowing him to exchange a counter check. The impact on casino patrons would be to afford them a stronger measure of protection from individuals who might fraudulently forge counter checks. The proposed amendments to N.J.A.C. 19:45-1.25(1) would combat the current problems associated with patrons "walking with chips" and would prevent patrons from utilizing casino funds for non-gaming purposes. The impact on the general public would be to curtail the financing of illegal activities or other activities which would be detrimental to society.

The proposed amendments to N.J.A.C. 19:45-1.26 would curtail the current problems associated with "rolling over the checks." It would also provide the casino with an earlier opportunity to more effectively evaluate the patron's ability to repay his debt. The impact on compulsive or problem gamblers would be to reduce the amount of monies that a patron could afford to lose since later checks would be redeemed first and earlier checks would be sent for deposit.

The proposed amendments to N.J.A.C. 19:45-1.27 would provide casinos with additional information on which to make a credit decision on the patron. The impact on regulatory agencies would be to provide these agencies with verified information regarding patrons and the casino's credit decisions which would aid them in criminal and administrative investigations. The impact on patrons would be to require them to disclose additional information which is not currently required. With this additional information, the casino will more accurately judge the ability of the patron to repay credit and can set the credit limit accordingly. The result should be that less patrons are overextended. The amendment would also deter credit frauds and scams since more information would be verified.

The proposed amendments to N.J.A.C. 19:45-1.28 would provide casinos with more timely information as to a patron's ability to pay, since checks would be deposited within reduced time periods. This would allow the casinos to effectively evaluate their credit decisions and, if necessary, adjust them accordingly. Additionally, if a crime was perpetrated, regulatory agencies would have earlier notification of such a crime since the depositing of checks would be on a more timely basis. The impact on patrons would be to reduce the total amount of monies that the patron could afford to lose since checks would be deposited sooner, thus reducing the patron's exposure.

N.J.A.C. 19:45-1.29 will have a minimal impact on the casinos, the regulatory agencies and the patrons because documentation on the uncollectibility of returned checks is currently obtained the majority of the time.

Economic Impact

The proposed amendments to N.J.A.C. 19:45-1.11 would require casinos to incur some additional costs for communication and documentation of information between various departments. Also, this proposed regulation might prevent the issuance of unwarranted credit, thus reducing the casino's exposure. The impact on both the regulatory agencies and the general public would be the impediment which the regulations create to use casino funds for non-gaming purposes.

The proposed amendment to N.J.A.C. 19:45-1.19 would reduce possible frauds perpetrated on the casinos thus increasing their gross revenue and the gross revenue tax collected. There is no economic impact on the regulatory agencies.

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The proposed amendments to N.J.A.C. 19:45-1.25 would enable casinos to improve their cash flow position and to reduce the amount of uncollectible checks from patrons "walking with chips." Since the casinos are currently required to verify the patron's identification prior to accepting a counter check, subsection (h) will impose a minimal burden on the industry. The impact of proposed subsection (h) on the casino patron would be to reduce any financial losses from individuals obtaining credit through fraudulent means on their credit accounts. The impact of proposed subsection (1) on the regulatory agencies and the patron public would be the prevention of casino funds from being used for non-gaming purposes. There would be little or no cost incurred by the casinos in requesting that a patron redeem chips for outstanding checks before the patron leaves the casino.

The proposed amendments to N.J.A.C. 19:45-1.26 would enable casinos to improve their cash flow position and to prevent the issuance of credit to patrons who are unworthy, since the disposition of checks would be known sooner. No additional expense would be incurred in complying with the shorter intervals. The impact on patrons would be that they would have to redeem on a "last in, first out" basis, causing earlier checks to be deposited. This would reduce their exposure and the "rolling over" of checks. The impact on regulatory agencies and the general public would be the reduction of casino funds utilized for non-gaming purposes.

The proposed amendments to N.J.A.C. 19:45-1.27 would impose upon the industry certain costs of compliance. Such costs would include: new credit application forms to allow for the recording of all required information; the costs associated with credit reference verifications; and the costs associated with establishing a method to review the reasonableness and accuracy of player rating forms. The casinos would also experience a potential cost savings because the extension of credit would be based on more verifiable information which may result in the denial of credit to patrons who are not credit worthy. The impact on the regulatory agencies would be some cost savings for investigations since much of the information which they need to prosecute patrons perpetrating a crime would now be readily available (address, employment, etc.). The impact on the general public would be minimal. However, banks, credit bureaus and casino credit clearing houses may experience additional demands for information regarding credit applicants and patrons. If these demands generate fees to the requested entity, additional revenues may be obtained by them.

The proposed amendments to N.J.A.C. 19:45-1.28 would improve the casinos' cash flow position and would provide them with a more timely evaluation of the patron's ability to pay his or her debt. This may prevent the issuance of additional unwarranted credit. The impact on the general public would be to reduce the exposure to "problem" or compulsive gamblers since checks would be deposited on a more timely basis. There is no economic impact on the regulatory agencies.

The proposed amendments to N.J.A.C. 19:45-1.29 would require collection efforts to continue until documentation of a check's uncollectibility is obtained. This may lead to more productive collection results. The clarification regarding the non-deductibility for gaming tax purposes of non-conforming or improperly processed patron checks may cause the casinos to report additional taxable tax revenues and, thus, increase the tax collected by the Commission. Otherwise, there is no economic impact on the agencies or the public.

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

19:45-1.11 Casino licensee's organization

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

(c) Each casino licensee shall, at a minimum, establish the following departments with respect to the casino operation:

1. (No change.)

i.-vii. (No change.)

viii. The communication in writing of any information regarding casino patrons to the credit manager which may be useful in determining a patron's credit worthiness.

2.-5. (No change.)

6. A credit department supervised by a credit manager who shall cooperate with, yet perform independently of, all other departments and shall report directly to the Vice President of Casino Operations or his equivalent. The credit manager shall be responsible for the credit function including, but not limited to, the following:

i.-iii. (No change.)

iv. The communication in writing of the names and addresses of casino patrons with newly approved credit limits to, at a minimum, the directors of security and surveillance on a daily basis in accordance with the casino licensee's normal business practice, (such practice must be submitted in writing to both the Commission and Division).

7. A security department supervised by a director of security who shall cooperate with, yet perform independently of, all other departments and shall report directly to the Chief Executive Officer or his equivalent. The director of security shall be responsible for the overall security of the establishment including, but not limited to, the following:

i.-viii. (No change.)

ix. The communication in writing of any information regarding casino patrons to the credit manager which may be useful in determining a patron's credit worthiness.

8.-9. (No change.)

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

19:45-1.19 Acceptance of tips or gratuities from patrons

(a) No casino key employee or [boxman, floorman,] **boxperson, floorperson**, or any other casino employee who serves in a supervisory position shall solicit or accept, and no other casino employee shall solicit, any tip or gratuity from any player or patron [at] of the casino where he is employed. The casino licensee shall not permit any practices prohibited by (a) of this section.

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

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

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

(h) For **each** Counter Check[s] exchanged at a gaming table, the casino clerk shall:

[1. Examine the patron's identification credentials or perform such other procedures as required by the Casino licensee to ensure the patron's identification.]

1. Verify the patron's identity by either:

i. Obtaining the patron's signature, on a form, which signature shall be compared to the signature on the patron's credit file. The casino clerk shall sign the form indicating that the signature of the patron on the form appears to agree with the signature on his credit file. Such form shall be attached to the accounting copy of the Counter Check exchanged by the

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patron prior to forwarding it to the accounting department in conformity with (m) below; or

ii. Obtaining the attestation of a casino supervisor as to the identity of the patron. The casino supervisor shall sign a form attesting to the patron's identity and shall record his license number thereon. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (m) below.

2. Determine the patron's remaining [check cashing] credit limit from the cashiers' cage.

3.-6. (No change.)

(i)-(k) (No change.)

(l) If the total amount of chips or plaques possessed by a patron exceeds \$500.00 [T]the casino licensee shall request the patron[s] to apply [any] all chips or plaques in [their] his possession [in reduction] to the redemption of Counter Checks exchanged for purposes of gaming prior to exchanging such chips or plaques for cash or prior to departing from the casino area.

(m) (No change.)

19:45-1.26 Procedure for redemption, consolidation or substitution of checks submitted by gaming patrons

(a) The drawer of a Counter [c]Check may redeem [the check] it by exchanging[:] cash, cash equivalents, gaming chips, plaques, or any combination of another check, cash, cash equivalents, gaming chips or plaques. If a drawer has more than one Counter Check outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated check shall always be redeemed first). If more than one check bears the same date, the drawer may choose the order in which he wishes to redeem the identically dated checks.

[1. Cash or cash equivalent;

2. Gaming chips and plaques; and

3. Any combination of another check, cash or cash equivalent, or gaming chips and plaques.]

(b)-(f) (No change.)

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

[(a) A log of all Counter Checks exchanged and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a daily basis, by check cashiers and such log shall include, at a minimum, the following:

1. The balance of the checks on hand in the cashiers' cage at the beginning of each shift;

2. For checks initially accepted and for checks received for consolidation, redemption or substitution:

i. The date of the check;

ii. The name of the drawer of the check;

iii. The amount of the check;

iv. The Counter Check serial number(s) for Counter Check(s) received; and

v. An indication as to whether the check was initially accepted or received in a redemption, consolidation or substitution.

3. For checks deposited, redeemed by patrons for cash or cash equivalents, gaming chips and plaques, or any combination thereof, consolidated or replaced:

i. The date on which the check was deposited, redeemed, consolidated or replaced:

ii. The name of the drawer of the check;

iii. The amount of the check;

iv. The Counter Check serial number(s) for Counter Check(s) deposited, redeemed, consolidated or replaced; and

v. An indication as to whether the check was deposited, redeemed, consolidated or replaced.

4. The balance of the checks on hand in the cashiers' cage at the end of each shift.

(b) A list of all Counter Checks on hand, and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a monthly basis, at a minimum, and shall include the following:

1. The date of the check;

2. The name of the drawer of the check;

3. The amount of the check; and

4. The Counter Check serial number(s) for Counter Check(s) received.

(c) At the end of gaming activity each day, at a minimum, the following procedures shall be performed:

1. The daily total of the amounts of checks initially recorded as described in (a)2 above shall be agreed to the daily total of Counter Checks issued;

2. The daily total of the checks indicated as deposited on the log required by (a)3 above shall be agreed by employees with no incompatible functions to the bank deposit slip corresponding to such checks; and

3. The balance required by (a)4 above shall be agreed to the total of the checks on hand in the cashiers' cage.

(d) A credit file for each patron shall be prepared manually or by computer, prior to issuance of a Counter Check to a patron by casino clerks and such file shall include, at a minimum, the following:

1. The name of the patron accompanied by the signature of the cage cashier indicating examination of identification credentials;

2. The address of the patron;

3. The name of the patron's bank;

4. The number of the patron's bank account;

5. Credit references accompanied by the signature of the credit department representative and the date indicating verification with either a recognized credit bureau, the patron's bank or another legal casino.

6. The patron's signature;

7. The type of identification credentials examined, accompanied by the signature of the cage cashier and the date, indicating that the signature on the credit file compares to the signature on the identification credentials presented by the patron;

8. The credit limit, and any changes thereto, approved by the signature of the Vice President of casino operations, or his equivalent, credit manager, the assistant credit manager, credit shift managers, or a credit committee which may approve credit as a group but whose members may not approve credit individually unless such person is included in the job positions referenced above. The casino manager, assistant casino manager, or casino shift manager may have input to the credit limit decision but shall not have approval authority;

9. The credit player rating based on a continuing evaluation of his amount and frequency of play subsequent to the patrons initial receipt of credit. The information for the credit player's rating shall be recorded on a player rating form by casino department supervisors and shall include, but not be limited to, the following:

i. Patron's name;

ii. Game and table number;

iii. Average bet;

iv. Approximate length of time played;

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- v. Rating as determined by supervisor;
- vi. Rater's signature and license number; and
- vii. Date of observations.

10. The date and amount of each Counter Check initially accepted from the patron;

11. The date and amount of each consolidation check accepted from the patron;

12. The date and amount of each redemption transaction;

13. The date and amount of each substitution transaction.

14. The date and amount of each check deposited; and

15. The details relating to returned checks.

(e) All information recorded on the Credit File shall be in accordance with the licensee's system of internal accounting control submitted to the Commission.]

(a) A credit file for each patron shall be prepared by casino clerks either manually or by computer prior to the casino licensee's approval of a patron's credit limit. All patron credit limits and changes thereto shall be supported by the information contained in the credit file. Such file shall include, at a minimum, the following information which shall be submitted by the patron in writing on a credit application form:

- 1. The patron's name;
- 2. The address of the patron's residence;
- 3. The number of years at that address;
- 4. The telephone number at the patron's residence;
- 5. Employment information including:

i. The name of the patron's employer, or an indication of self employment or retirement;

ii. Type of business;

iii. The patron's position;

iv. Number of years employed;

v. The patron's business address;

vi. The patron's business telephone number.

6. Banking information including:

i. The name and location of the patron's bank;

ii. The account number of the patron's personal checking account upon which the patron is individually authorized to draw and upon which all Counter Checks will be drawn. Checking accounts of sole proprietorships shall be considered as personal checking accounts. Partnership or corporate checking accounts shall not be considered personal checking accounts.

7. The credit limit requested by the patron;

8. The name of each casino where the patron has a casino credit limit and the amount of the credit limit and outstanding balance;

9. The amount and source and all other outstanding indebtedness;

10. The amount and source of income and assets sufficient to support the requested credit limit;

11. The patron's signature indicating acknowledgment of the following statement, which shall be included at the bottom of every credit application form containing the information required to be submitted by the patron pursuant to this subsection:

i. "I hereby authorize (insert name of the casino licensee) to conduct such investigations pertaining to the above information as it deems necessary for the approval of my credit application. I certify that I have reviewed all of the information provided above and that it is true and accurate. I am aware that I may be subject to criminal prosecution if any of the information provided by me is willfully false."

(b) A cage cashier shall record the following information in the credit file prior to the casino licensee's approval of a patron's credit limit:

1. A physical description of the patron which shall include, but not be limited to, the following:

i. Date of birth;

ii. Height;

iii. Weight;

iv. Hair color;

v. Eye color.

2. The type of identification credentials examined, containing the patron's signature, and the cage cashier's signature indicating that the signature of the patron in the credit file appears to agree with the signature on the identification credentials presented by the patron and that the physical description of the patron appears to agree with the patron's actual appearance. The cage cashier's signature shall be dated and time stamped.

(c) Prior to the casino licensee's approval of the patron's credit limit, a credit department representative shall:

1. Verify the address of the patron's residence and the telephone number at the patron's residence;

2. Verify the patron's current casino credit limits and outstanding balances which shall include, but not be limited to, the following:

i. The date the patron's credit account was established;

ii. The amount of the highest approved credit limit at each casino;

iii. The amount of the current approved credit limit at each casino; and

iv. The current balance and status of the patron's credit account at each casino including deposited checks that have not yet cleared the bank and derogatory information. ("Derogatory" is defined as patron credit accounts partially or completely uncollectible, checks returned unpaid by the patron's bank, settlements, liens, judgments, and any other credit problems of the patron);

3. Contact a consumer credit bureau and a casino credit bureau to determine whether the applicant has any liabilities or if there is any derogatory information concerning the applicant's credit history. Such contact shall be considered a verification of the outstanding indebtedness provided by the patron.

4. Verify the amount and source of income and assets sufficient to support the patron's requested credit limit;

5. Verify the patron's personal checking account information which shall include, but not be limited to, the following:

i. Type of account (personal or sole proprietorship);

ii. Account number;

iii. Date the account was opened;

iv. Average balance of the account for the last twelve months, if available (if this information is not available, then this shall be noted in the credit file);

v. Current balance in the account;

vi. Whether the patron can sign individually on the account;

vii. Name and title of the person supplying the information.

6. All verifications performed by the credit department together with any information received from the security and surveillance departments shall be recorded in the credit file and accompanied by the signature of the credit department representative who performed the required verifications. The signature of the credit department representative shall be dated and time stamped.

(d) The casino licensee's credit department may fulfill the requirements of (c) above as follows:

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1. The requirements of (c)1 above may be performed telephonically provided the casino licensee records the source of verification in the patron's credit file. A casino may also verify the patron's residence information through a credit bureau, bank or other licensed New Jersey casino as long as the source had verified the information within the previous six months.

2. The requirements of (c)2 through (c)5 above may be performed telephonically prior to the credit approval. The casino licensee shall obtain written verification of all information as soon as possible.

3. A casino licensee may verify the information required by (c)2 through (c)5 above with a credit bureau or other licensed New Jersey casino provided the information has been verified by the credit bureau or other licensed New Jersey casino within the previous six months. If a casino licensee utilizes such indirect verification methods, the casino licensee shall record in the credit file the date that the credit bureau or other licensed New Jersey casino obtained the information from the direct source of verification. Any New Jersey casino licensee requesting information from another New Jersey casino licensee concerning a credit patron shall represent to the requested casino licensee that the patron has a credit line or has applied for credit and shall provide the information required by (a)1, 2 and 6(i) above. Upon receipt of this information, the requested New Jersey casino licensee shall be required to furnish to other New Jersey casino any information in its possession concerning a patron as required by (c)1 through (c)5 above.

(e) The credit limit, and any changes thereto, must be approved by the vice president of casino operations (or an equivalent executive of a casino licensee that is either a partnership or sole proprietorship), credit manager, assistant credit manager, credit shift managers, or a credit committee which may approve credit as a group but whose members may not approve credit individually unless such person is included in the job positions referenced above. The casino manager, assistant casino manager, or casino shift manager may contribute to the credit limit decision but shall not have approval authority. The approval shall be recorded in the credit file and shall include:

1. The signature of the employee approving the credit limit. Such signature shall be dated and time stamped;

2. An explanation of how the patron's credit worthiness was determined or the reason for denying or reducing the requested credit limit;

3. A reason as to why credit was approved if derogatory information was obtained during the verification process;

4. Any other information considered in the evaluation of the credit requested, including the source of the information.

(f) Prior to approving a credit limit increase, a representative of the casino licensee's credit department shall:

1. Obtain a written request from the patron which shall include, but not be limited to:

- i. Date and time of the patron's request;
- ii. Amount of credit limit increase requested by the patron;
- iii. Signature of the patron;

2. Perform the requirements of (c)1 and (c)3 through (c)6 above unless such procedures have been performed within the previous six months.

3. Verify the patron's current casino credit limits and outstanding balances, as required by (c)2 above, unless such verification has been performed earlier that same gaming day.

4. Consider the credit player rating based on a continuing evaluation of the amount and frequency of play subsequent to

the patron's initial receipt of credit. The player rating shall be recorded in the patron's credit file. The information for the credit player's rating shall be recorded on a player rating form by casino department supervisors and shall include, but not be limited to, the following:

- i. Patron's name;
- ii. Game and table number;
- iii. Average bet;
- iv. Approximate length of time played;
- v. Rating as determined by supervisor;
- vi. Rater's signature and license number; and
- vii. Date of observations.

5. Include the information and documentation required by (f)1 through 3 above in the patron's credit.

(g) Credit limit increases may be approved without performing the requirements of (f)2 and (f)3 above if the increases are temporary and are noted as being for this trip only (TTO) in the credit file. Temporary increases shall be limited to two during any 30 day period and the total amount of the temporary increases during that period shall not exceed 10 percent of the currently approved credit limit.

(h) The casino licensee's credit department shall perform the procedures required by (c)1 through (c)5 above every six months for each credit patron or shall reduce the patron's credit limit to zero. If an approved credit limit has been reduced to zero, the required procedures shall be performed before the credit limit is reinstated.

(i) Any patron having a check returned to any casino unpaid by the patron's bank shall have his credit limit reduced to zero at all New Jersey casinos until such time as the returned check has been paid in full. All derogatory information concerning a patron's credit limit shall be reported by each casino licensee on a daily basis to a casino credit bureau used by New Jersey casinos. All New Jersey casinos shall contact the credit bureau on a daily basis to obtain any derogatory information and shall record such information in the patron's credit file. Notwithstanding the fact that a check has been returned unpaid, a casino licensee may continue the patron's credit limit if the licensee records the explanation for its decision in the credit file before accepting any further checks from the patron.

(j) All transactions affecting a patron's outstanding indebtedness to the casino licensee shall be recorded in chronological order in the patron's credit file and credit transactions shall be segregated from the safekeeping deposit transactions. The following information shall be included:

1. The date, amount and check number of each Counter Check initially accepted from the patron;

2. The date, amount and check number of each consolidation check and the check numbers of the checks returned to the patron;

3. The date, method, amount and check number of each redemption transaction and the check number of the redeemed check returned to the patron;

4. The date, amount and check number of each substitution transaction and the check number of the check returned to the patron;

5. The date, amount and check number of each check deposited;

6. The date, amount and check number of each check returned to the casino licensee by the patron's bank and the reason for its return; and

7. The outstanding balance after each transaction.

(k) A log of all Counter Checks exchanged and of all checks received for redemption, consolidation or substitution

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shall be prepared, manually or by computer, on a daily basis, by check cashiers and such log shall include, at a minimum, the following:

1. The balance of the checks on hand in the cashier's cage at the beginning of each shift;

2. For checks initially accepted and for checks received for consolidation, redemption or substitution:

i. The date of the check;

ii. The name of the drawer of the check;

iii. The amount of the check;

iv. The Counter Check serial number(s) for Counter Check(s) received; and

v. An indication as to whether the check was initially accepted or received in a redemption, consolidation or substitution.

3. For checks deposited, redeemed by patrons for cash or cash equivalents, gaming chips and plaques, or any combination thereof, consolidated or replaced:

i. The date on which the check was deposited, redeemed, consolidated or replaced;

ii. The name of the drawer of the check;

iii. The amount of the check;

iv. The Counter Check serial number(s) for Counter Check(s) deposited, redeemed, consolidated or replaced; and

v. An indication as to whether the check was deposited, redeemed, consolidated or replaced.

4. The balance of the checks on hand in the cashiers' cage at the end of each shift.

(l) A list of all Counter Checks on hand, and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a monthly basis, at a minimum, and shall include the following:

1. The date of the check;

2. The name of the drawer of the check;

3. The amount of the check; and

4. The Counter Check serial number(s) for Counter Check(s) received.

(m) At the end of gaming activity each day, at a minimum, the following procedures shall be performed:

1. The daily total of the amounts of checks initially recorded as described in (k)2 above shall be agreed to the daily total of Counter Checks issued;

2. The daily total of the checks indicated as deposited on the log required by (k)3 above shall be agreed by employees with no incompatible functions to the bank deposit slip corresponding to such checks; and

3. The balance required by subsection (k)4 above shall be agreed to the total of the checks on hand in the cashier's cage.

(n) All information recorded in the credit file shall be in accordance with the licensee's system of internal accounting control submitted to the Commission.

19:45-1.28 Procedure for depositing checks received from gaming patrons

(a) All checks, unless redeemed or consolidated prior to the time requirements herein, received from gaming patrons in conformity with N.J.A.C. 19:45-1.25 shall be deposited in the casino licensee's bank account in accordance with the casino licensee's normal business practice, [and] (such practice must be submitted in writing to both the Commission and Division[,]) but in no event later than:

1. (No change.)

2. Seven [banking] calendar days after the date of the check for a check in an amount less than [\$1,000.00] \$1,001.00;

3. Fourteen [banking] calendar days after the date of the check for a check in an amount of at least [\$1,000.00] \$1,001.00 but less than [\$2,500.00] \$5,001.00; or

4. [Ninety banking] Thirty calendar days after the date of the check for a check in an amount of [\$2,500.00] \$5,001.00 or more.

(b) All checks received for consolidation in conformity with N.J.A.C. 19:45-1.26 shall be deposited in the casino licensee's bank account within:

1. Seven [banking] calendar days after the date of the [initial check for a consolidating check] earliest dated check consolidated where the consolidating check is in an amount less than [\$1,000.00] \$1,001.00. The date recorded on the consolidating check shall be the same as that recorded on the earliest dated check consolidated; or

2. Fourteen [banking] calendar days after the date of the [initial check for a consolidating check] earliest dated check consolidated where the consolidating check is in an amount of at least [\$1,000.00] \$1,001.00 but less than [\$2,500.00] \$5,001.00. The date recorded on the consolidating check shall be the same as that recorded on the earliest dated check consolidated; or

3. [Ninety banking] Thirty calendar days after the date of [the initial check for a consolidating check] earliest dated check consolidated where the consolidating check is in an amount of [\$2,500.00] \$5,001.00 or more. The date recorded on the consolidating check shall be the same as that recorded on the earliest dated check consolidated.

(c) All checks received as part of a redemption in conformity with N.J.A.C. 19:45-1.26 shall be deposited in the casino licensee's bank account within:

1. Seven [banking] calendar days after the date of the [initial check if the initial check is] earliest dated check redeemed if that check was in an amount of less than [\$1,000.00] \$1,001.00. The date recorded on the redeeming check shall be the same date as that recorded on the earliest dated check redeemed;

2. Fourteen [banking] calendar days after the date of the [initial check if the initial check is] earliest dated check redeemed if that redeemed check was in an amount of at least [\$1,000.00] \$1,001.00 but less than [\$2,500.00] \$5,001.00. The date recorded on the redeeming check shall be the same date as that recorded on the earliest dated check redeemed; or

3. [Ninety banking] Thirty calendar days after the date of the [initial check if the initial check accepted is] earliest dated check redeemed if that redeemed check was in an amount of [\$2,500.00] \$5,001.00 or more. The date recorded on the redeeming check shall be the same date as that recorded on the earliest dated check redeemed.

(d) In the event of a series of consolidation or redemption transactions with a patron, the date of [initial check shall be] the earliest dated check returned to the patron in the first of the series of consolidation or redemption transactions shall be recorded on the consolidating or redeeming check. The deposit requirements shall be based upon the date of the earliest dated check returned to the patron in the first of the series of consolidation or redemption transactions.

(e) (No change.)

(f) In computing a time period prescribed by this section, the last day of the period shall be included unless it is a Saturday, Sunday or a State or Federal holiday in which event the time period shall run until the next business day.

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19:45-1.29 Procedure for collecting and recording checks returned to the casino after deposit

(a)-(i) (No change.)

(j) After [all] reasonable collection efforts, returned checks [shall be written-off and listings of such checks shall be approved in writing by, at a minimum, the Chief Executive Officer, or his equivalent, Vice-President of Casino Operations, or his equivalent and Controller and such checks and listings shall be maintained and controlled by accounting department employees. A continuous trial balance of all written off checks shall be maintained by employees of the accounting department with no incompatible functions. The continuous trial balance shall be adjusted for any subsequent collections.] **may be considered uncollectible for accounting purposes and deducted from the casino licensee's gross revenue to the maximum limit allowed by the Casino Control Act, for the purpose of computing the gross revenue tax provided, however, that a check which is unenforceable pursuant to section 101 of the Act shall not be deducted from gross revenue. Any patron's indebtedness, in excess of \$1,000, may only be considered uncollectible for accounting purposes and deducted from**

the casino licensee's gross revenue after the following information has been included in the patron's credit file:

1. Documentation by two or more of the casino licensee's collection department employees evidencing independent efforts to collect the patron's outstanding check(s) and the reason why the patron cannot make repayment; and/or

2. A letter from the casino's outside collection attorney documenting the efforts to collect the patron's outstanding checks and the reason why the patron cannot make repayment.

(k) Listings of uncollectible checks shall be approved in writing by, at a minimum, the Chief Executive Officer, Vice-President of Casino Operations or equivalent executives of a casino licensee that is either a partnership or sole proprietorship and Controller and such checks and listings shall be maintained and controlled by accounting department employees. A continuous trial balance of all uncollectible checks shall be maintained by employees of the accounting department with no incompatible functions. The continuous trial balance shall be adjusted for any subsequent collections.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Credit Service Charge Rate Requisition Number One

Adopted Repeal: N.J.A.C. 3:19-2.1

Proposed: November 7, 1983 at 15 N.J.R. 1788(a).
Adopted: July 23, 1984 by Mary Little Parell, Commissioner, Department of Banking.
Filed: July 23, 1984 as R.1984 d.334, **without change**.
Authority: N.J.S.A. 17:16C-69.

Effective Date: August 6, 1984.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted repeal appears in the New Jersey Administrative Code at N.J.A.C. 3:19-2.1.

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(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Subcodes

Adopted Amendments: N.J.A.C. 5:23-3.14, 3.15, 3.16, 3.17

Adopted New Rule: N.J.A.C. 5:23-3.20

Proposed: May 21, 1984 at 16 N.J.R. 1139(a).
Adopted: July 3, 1984 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: July 9, 1984 as R.1984 d.314, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:27D-124.

Effective date: August 6, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses:

A comment was received from a representative of the New Jersey Builders Association opposing section 1313.0 of the BOCA Basic/National Building Code/1984, which deals with floodproofing. The State Uniform Construction Code Act does not allow the Commissioner to delete from an adoption of a model code any substantive provision. Since section 1313.0 is substantive rather than administrative in nature, it is automatically adopted by virtue of the adoption of the model code of which it is a part as a subcode of the State Uniform Construction Code. However, inasmuch as the N.J.B.A. representative has also submitted proposed amendments to section 1313.0 as a code change proposal, the Bureau of Construction Code Enforcement will review them as such and, if the Bureau finds them to have merit, they will be submitted to BOCA as a State-sponsored code change proposal.

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

5:23-3.14 Building subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the "BOCA Basic/National Building Code/1984," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the building subcode for New Jersey subject to the modifications stated in subsection (b) of this section.

i. Copies of this code may be obtained from the sponsor at: BOCA, International, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477.

ii. "The BOCA Basic/National Building Code/1984," including all subsequent revisions and amendments thereto, may be known and cited as the "building subcode."

(b) The following articles or sections of the building subcode are modified as follows:

1. (No change.)

2. The following amendments are made to article 2 of the building subcode, entitled "Definitions," section 201.0-general definitions

i. (No change.)

ii. The definition of the term "approved agency" is amended to add the phrase "or other authority having jurisdiction in accordance with the regulations" after the word "official" on line 3;

iii. The term and definition of "approved material, equipment and methods" is deleted;

iv. The term and the definition of "approved rules" is deleted;

v. (No change in text.)

vi. The definition of the term "building official" is deleted and is redefined herein and throughout the subcode as the

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“building subcode official” as defined in N.J.A.C. 5:23-1.4 unless indicated otherwise;

vii. (No change in text.)

viii. (No change in text.)

ix. The definition of the term “child day care center” is amended to add the phrase “and DCA Interpretation No. 5A” after the term “Section 304.0” on line 4.

x. (No change in text.)

xi. The definition of the term “dwellings-boarding house” is deleted, and substitute in lieu thereof, the definition of the term “boarding house” found in N.J.S.A. 55:13B-3;

xii. (No change in text.)

xiii. (No change.)

xiv. The term “mobile unit” is deleted and in lieu thereof, substitute the term “mobile home.” Further, the definition is deleted, and substitute in lieu thereof, the definition found in N.J.A.C. 5:23-1.4 for manufactured home;

xv.-xviii. (No change.)

3. The following amendments are made to article 3 of the building subcode entitled “Use Group Classification;”

i. (Old text deleted)

i. Section 309.5 is deleted in its entirety.

4. The following amendments are made to Article 4 of the building subcode entitled “Types of Construction Classification;”

i. Section 401.4.3 is amended to delete the phrase “and plumbing codes listed in Appendix A” and substitute in lieu thereof, the phrase “code listed in Appendix A and the plumbing subcode;”

ii. Section 401.4.4 is amended to delete the phrase “NFIPA 70 listed in Appendix A” and substitute in lieu thereof, the phrase “the electrical subcode”.

5. The following amendments are made to article 5 of the building subcode entitled “General Building Limitations”

i. Section 505.1 is amended to delete the phrase “Sections 103.0 and 505.2” and substitute in lieu thereof, N.J.A.C. 5:23-2”.

ii. Section 505.2 is amended to delete the phrase “this code” on line 5 and substitute in lieu thereof, “the regulations;”

iii. Section 510.1 is amended to delete the phrase “building official” on line 1 and substitute in lieu thereof, “construction official;”

iv. Section 511.1 is amended to read as follows: “The construction official may issue a permit for temporary construction. Such permits shall be limited as to time of service, but such temporary construction shall not be permitted for more than one year.”

v. Section 511.3 is amended to delete the phrase “or as directed by a decision of the board of appeals” after the word “discretion;”

vi. Sections 512.0 comprised of sections 512.1 through 512.4.1 is deleted in its entirety.

vii. Section 513.1 is amended to delete the phrase “subject to the approval of the board of appeals” on line 5.

6. The following amendments are made to Article 6 of the building subcode entitled “Special Use and Occupancy Requirements:”

i.-xxv. (Old text deleted)

i. Section 607.2 is amended to delete the term “NFIPA 70” and substitute in lieu thereof, “the Electrical Subcode”.

ii. Section 609.2.5 is amended to delete the phrase plumbing code listed in Appendix A” and substitute in lieu thereof, “the Plumbing Subcode”.

iii. Section 612.1 is amended to delete the phrase “the approved rules” on line 2;

iv. Section 612.4 is amended to delete the phrase “section 107.4 of this code” and substitute in lieu thereof, “N.J.A.C. 5:23-2”.

v. Section 613.0 is amended to delete the word “units” and in lieu thereof, substitute the words “dwelling parks”.

vi. Sections 613.1 and 613.2 are deleted in their entirety.

vii. Sections 613.3 and 613.3.1 are amended to delete the words “unit” and “units” wherever they appear and substitute in lieu thereof, the words “home” and “homes”.

viii. Section 614.5 is amended to add the phrase “to comply with the requirements of the Electrical Subcode” after the word “grounded” on line 1.

ix. Sections 616.6 and 616.6.2 are amended to add the phrase “in accordance with the plumbing subcode” after the words “equipment” and “property” respectively.

x. Section 616.6.1 is deleted.

xi. Section 616.9 is amended to delete the words “governing body” on line 11 and substitute in lieu thereof, “construction official”.

xii. Sections 618.9.1 and 620.1.4 are amended to delete the phrase “Section 2007.0” and substitute in lieu thereof, “the Electrical Subcode”.

7. The following amendments are made to article 7 of the building subcode entitled “Interior Environmental Requirements”.

i.-x. (Old text deleted)

i. Section 702.1 is deleted.

ii. Section 702.2 is amended to add the phrase “in accordance with N.J.A.C. 5:23-2.3” after the words “Sections 703.0 and 708.0” on line 5.

iii. Section 710.7 is amended to delete the phrase “code listed in Appendix A” and in lieu thereof, substitute “subcode”.

iv. Section 711.1 is amended to delete the phrase “of the minimum dimensions herein prescribed”, and to delete sections 711.1.1 and 711.2.

v. Section *[713.1.1]* *713.3.1.* is amended to delete the phrase “in accordance with the approved rules”.

vi. Section 713.3.3 is amended to delete the phrase “and the approved rules”.

8. The following amendments are made to Article 8 of the building subcode entitled “Means of Egress”:

i.-v. (No change.)

vi. Section 815.3 is amended to delete lines 3 through 7 and substitute in lieu thereof, “Ramp landings for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations.”

vii. Section 815.4 is amended to delete the third sentence and substitute in lieu thereof, “Ramp landings for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations.”

viii. Section 815.5 is amended to delete the third sentence and substitute in lieu thereof, “Ramp guards and handrails for barrier-free accessibility shall be in accordance with the Barrier-Free Design Regulations”.

ix. Section 818.7.7 is amended to delete the words “Sections 2007.0 and 618.9.1” and substitute in lieu thereof, “the Electrical Subcode and Section 618.9.1.”

[viii.] x. (No change in text.)

xi. Sections 823.4 and 824.4 are amended to delete the words “Section 2006.0” and substitute in lieu thereof, “this subcode”.

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xii. Section 825.6 is amended to delete the term "Section 512.0" and substitute in lieu thereof, the "Barrier-Free Design Regulations".

9. The following amendments are made to Article 9 of the building subcode, entitled "Structural Loads and Stresses":

ii. (No change in text.)

i. Section 901.3 is amended to delete the phrase "the approved rules" on lines 2 and 3 and substitute in lieu thereof, "this code."

iii. Section 905.4 is amended to delete the words "sections 103.3" and substitute in lieu thereof, "N.J.A.C. 5:23-2.3".

iv. Section 919.1 is amended to delete the phrase "the approved rules" on line 5 and substitute in lieu thereof, "this code."

10. The following amendments are made to Article 11 of the building subcode, entitled "Materials and Tests":

i.-ii. (Old text deleted.)

i. Section 1101.1 is amended to delete the words "Section 110.0" and substitute in lieu thereof, "the regulations."

ii. Section 1102.6 is amended to delete the words "Section 2002.0" on line 6, the phrase "and plumbing codes listed in Appendix A" on lines 8 and 9 and the phrase "the approved rules" on line 10 and substitute in lieu thereof, "the electrical subcode", "code listed in Appendix A and the plumbing subcode" and "the regulations" respectively.

11. The following amendments are made to Article 13 of the building subcode, entitled "Building Enclosures, Walls and Wall Thickness":

i. (No change.)

ii. Section 1312.4.1 is amended to delete the phrase "at or below the area to be protected . . . in Appendix A" and substitute in lieu thereof, "in accordance with the plumbing subcode."

iii. Section 1315.4 is deleted.

12. The following amendments are made to Article 14 of the building subcode, entitled "Fire-resistive Construction Requirements":

i. (No change.)

ii. Section 1405.8.1 is amended to delete the phrase "NFIPA 70 listed in Appendix A" and substitute in lieu thereof, "the electrical subcode".

iii. Section 1427.2 is amended to delete the reference to "section 103.0" and substitute in lieu thereof, "N.J.A.C. 5:23-2.3".

12. (Old text deleted)

13. The following amendments are made to Article 16 of the building subcode entitled "Mechanical Equipment and Systems":

i. Section 1603.0 and comprising section 1603.1 is deleted in its entirety.

ii. Section 1604.0 and comprising section 1604.1 is deleted in its entirety.

14. The following amendments are made to Article 17 of the building subcode entitled "Fire Protection Systems":

i. Section 1700.3 is amended to add the phrase "and fire protection subcode official" after the words "fire department" on lines 5 and 8.

ii. (No change.)

iii. Section 1701.1 is amended to delete the word "department" on line 2 and in lieu thereof, substitute "fire protection subcode official"; and to delete the word "since" on line 3; and in lieu thereof, substitute the word "If".

iv.-ix. (No change.)

x. Section 1716.7 is amended to delete the term "department" on line 3 and in lieu thereof, substitute "fire protection subcode official".

xi. Section 1716.8 is amended to delete the words "Section 2006.0" on line 2 and substitute in lieu thereof, "the electrical subcode".

xii. (No change in text.)

xiii. Section 1717.6 is amended to delete the words "Section 2006.0" on line 2 and substitute in lieu thereof, "the electrical subcode".

[xii.] xiv. (No change in text.)

15. The following amendments are made to Article 18 of the building subcode, entitled "Precautions During Building Operations":

i.-iv. (No change.)

v. Section 1808.2 is amended to delete the words "the approved rules" and in lieu thereof, substitute "N.J.A.C. 5:23-2.14";

vi.-viii. (No change.)

16. The following amendments are made to Article 19 of the building subcode entitled "Signs":

i.-iii. (No change.)

iv. Section 1907.3 is amended to delete the term "NFIPA 70 listed in Appendix A" and substitute in lieu thereof, the term "the electrical subcode";

v. Section 1914.1 is amended to delete the term "NFIPA 70 listed in Appendix A" and substitute in lieu thereof, the term "the electrical subcode".

17. The following amendments are made to Article 20 of the building subcode entitled "Electrical Wiring, Equipment and Systems":

i. Article 20 comprising sections 2000.1 through 2007.3 of the building subcode is deleted in its entirety.

18. The following amendments are made to Article 21 of the building subcode entitled "Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance":

i.-iii. (No change.)

iv. Sections 2101.1, 2101. 2, 2101.3, 2103.1, 2103.2, 2103.3, 2104.4, 2104.5 and 2104.6 are amended to delete the term "building official" and substitute in lieu thereof, "construction official";

v.-vi. (No change.)

vii. (Delete)

19. (No change.)

20. (Old text deleted.)

20. The following amendments are made to Article 24 of the building subcode entitled "Energy Conservation":

i. Article 24 comprising sections 2400.1 through 2406.2 is deleted in its entirety.

21. The following amendments are made to Appendix A of the building subcode entitled "Reference Standards":

i. (No change.)

ii. Under the subheading "BOCA," delete the following titles:

- (1) Basic/National Plumbing Code
- (2) Basic/National Existing Structures Code

iii. Under the subheading "CABO," delete the following titles:

- (1) One and Two-Family Dwelling Code
- (2) Model Energy Code.

[iii.] iv. (No change in text.)

(c) (Delete)

5:23-3.15 Plumbing subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the Model Code of the National Association of Plumbing-Heating-Cooling Contractors, known as "The National Standard Plumbing Code/1983", including all

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subsequent revisions and amendments thereto, as the plumbing subcode for New Jersey.

- i. (No change.)
2. "The National Standard Plumbing Code/1983", including all subsequent revisions and amendments thereto, may be known and cited as "the plumbing subcode."
3. (Old text deleted.)
- (b) The following pages, chapters, sections or appendices of the plumbing subcode are amended as follows:
 - [1.] (Old text deleted.)
 1. (No change in text.)
 2. Chapter 1 of the plumbing subcode, entitled "Definitions," is amended as follows:
 - i. (No change.)
 - ii. The definition of the term "approved" is amended to add after the word "authority" on line 3, the words "as defined in N.J.A.C. 5:23-3.7."
 - iii.-viii. (No change.)
 3. Chapter 2 of the plumbing subcode, entitled "General Regulations," is amended as follows:
 - i.-iii. (No change.)
 - iv.-v. Redesignated as v.-vi. (No change in text.)
 - iv. *[The definition of the term "building classification" is amended to delete the term "administrative authority" and substitute in lieu thereof, the term "building subcode official.']* ***Section 2.6.1.c is amended to delete the numbers "2.6.12" on line 3 and in lieu thereof, substitute "2.6.3."***
 - vii. Section 2.16 is amended to insert the number "Forty-two" in the blank space under item (a), and to insert the number "Twenty-four" in the blank space under item (b). Under item (c), delete the words "section 3.12.1" and substitute in lieu thereof, the words "N.J.A.C. 5:23-2.9."
 - vii.-viii. Redesignated as viii.-ix. (No change in text.)
 4. Chapter 3 of the plumbing subcode, entitled "Materials," is amended as follows:
 - i. Section 3.1.1 is amended in the heading to delete the word "minimum" and under items (a) and (b) to delete the words "Section 3.12.2" at the end and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."
 - ii. (Old text deleted.)
 - ii. Section 3.1.2 is amended to delete the words "at least" on line 2. Also delete the words "section 3.12" at the end and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."
 - iii. Section 3.1.3 is amended to delete the words "Section 3.12.2 on line 4 and in lieu thereof, substitute the words "N.J.A.C. 5:23-3.7."
 - v. (Old text deleted.)
 - vi.-viii. Redesignated as iv.-vi. (No change in text.)
 - vii. Sections 3.12.2, 3.12.3, 3.12.4, and 3.12.5 are deleted in their entirety.
 5. Chapter 4 of the plumbing subcode entitled "Joints and Connections" is amended as follows:
 - i. (No change.)
 - ii. Section 4.3.2 is amended to delete the word "acceptable" on line 3 and in lieu thereof, substitute "approved".
 - iii. Section 4.3.8a is amended to delete the word "acceptable" on line 2 and in lieu thereof, substitute "approved".
 6. Chapter 5 of the plumbing subcode entitled "Traps and Cleanouts" is amended as follows:
 - i. Section 5.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 3.
 - ii. Section 5.3.4 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 2.

7. Chapter 6 of the plumbing subcode, entitled "Interceptors," is amended as follows:

- i. Section 6.1.1 is amended to delete the phrase "in the opinion of the administrative authority" on line 2 and to add after line 5 the sentence "The determination of necessity shall be made by the administrative authority in accordance with N.J.A.C. 5:23-3.3."
- ii. Section 6.3.2b is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "required" on line 5.
- iii. Section 6.4.4 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "approval" on line 3.

8. Chapter 7 of the plumbing subcode, entitled "Plumbing Fixtures," is amended as follows:

- i. Section 7.16.1 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.7" after the words "administrative authority" on line 6.
- ii. Section 7.23.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 2.
- iii. Section 7.25 is amended to delete the words "local Administrative Authority" on line 2 and in lieu thereof, substitute the words "Barrier Free Design Regulations".
- [iii.] iv. Table 7.24.1 Note #1 is amended to delete the words "for handicap requirements see local, state, and national ordinances" in third sentence.

9. Chapter 9 of the plumbing subcode, entitled "Indirect Waste Piping and Special Waste," is amended as follows:

- i. Section 9.1.6 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 4.
- ii. Section 9.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 4.
- iii. Section 9.7.2 is amended to delete the phrase "submitted to, and accepted by," on line *[2]* *8* and in lieu thereof, substitute the phrase "approved in accordance with N.J.A.C. 5:23-3.3."
- iv. (Old text deleted.)

10. Chapter 10 of the plumbing subcode, entitled "Water Supply and Distribution," is amended as follows:

- i. Section 10.4.2 is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".
- ii. Section 10.4.4 is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".
- iii. Section 10.4.9 is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".
- iv. Section 10.5.4 is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".
- v. Section 10.5.6b is amended to delete the phrase "by the local administrative authority" and in lieu thereof, insert "in N.J.A.C. 5:23-2.23".
- vi. (No change.)
- vii. Section 10.12.9 is amended to add the words "valves to be accessible" as the title of the section.
- viii. Section 10.16.2 is amended to delete the phrase "when required by the administrative authority" on line 2.

11. Chapter 11 of the plumbing subcode, entitled "Sanitary Drainage Systems," is amended as follows:

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i. Section 11.3.1 is amended to delete the words "administrative authority" and substitute in lieu thereof, the words "authority having jurisdiction" on line 5.

ii. Section 11.4.3 is amended at the end to add the sentence "Diversity factors shall be established in accordance with N.J.A.C. 5:23-3.3."

iii. Section 11.7.1a is amended to delete the words "administrative authority" on line 4 and in lieu thereof, substitute the words "authority having jurisdiction".

12. Chapter 12 of the plumbing subcode, entitled "Vents and Venting," is amended as follows:

i. Section 12.2.2 is amended to delete the words "administrative authority" and in lieu thereof, substitute the words "authority having jurisdiction" on line 3.

ii.-iii. (No change.)

13. Chapter 13 of the plumbing subcode, entitled "Storm Drains," is amended as follows:

i. Section 13.1.5 is amended to delete the words on lines 1 and 2 "around the perimeter of all buildings having basements, cellars or crawl spaces or floors below grade" and in lieu thereof, substitute the words "in accordance with Section 1312.4.1 of the building subcode/1984".

ii. Section 13.9.1 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "authority" on line 6.

14. Chapter 14 of the plumbing subcode, entitled "Medical Care Facility Plumbing Equipment" is amended as follows:

i. Section 14.25.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 5.

15. (No change in text.)

16. (No change in text.)

17. Chapter 18 of the plumbing subcode, entitled "Mobile Home and Trailer Park Plumbing Standards," is amended as follows:

i.-iv. (No change.)

v. Section 18.1.2(d) is amended to delete the last phrase, beginning "and shall, in addition, conform to all other pertinent local ordinances and state regulations."

vi. (Old text deleted.)

vii.-xi. Redesignated as vi.-x. (No change in text.)

18. Appendix D, entitled "Water Conservation," is amended as follows:

i. Item D.4 is amended to add a note after line 4 to read "Note: See Energy subcode for public lavatories flow rate value."

ii. (Old text deleted.)

19. Appendix E of the plumbing subcode, entitled "Special Design Plumbing Systems", is amended as follows:

i. Section E.2.1 is amended to delete the words "local administrative authority" on line 2 and in lieu thereof, substitute "authority having jurisdiction".

(c) (Old text deleted.)

5:23-3.16 Electrical subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the Model Code of the National Fire Protection Association known as "The National Electrical Code/1984," including all subsequent revisions and amendments thereto, as the electrical subcode for New Jersey.

i. Copies of this code may be obtained from the sponsors at NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

2. The National Electrical Code; 1984, including all subsequent revisions and amendments thereto, may be known and cited as "the electrical subcode."

(b) The following chapters or articles of the electrical subcode are amended as follows:

1. Article 90 of the electrical subcode, entitled "Introduction," is amended as follows:

i. Section 90-4, Enforcement, is amended to delete in the first paragraph the phrase, "authority having jurisdiction of enforcement of the code" and substitute in lieu thereof, the term "electrical subcode official." And add a new last sentence in the first paragraph: "Approval shall be in accordance with N.J.A.C. 5:23-2.9." Delete in the second paragraph the phrase "authority having jurisdiction" and substitute in lieu thereof the term "electrical subcode official" and add after "effective safety" the phrase "as provided in N.J.A.C. 5:23-2.9." Delete in the third paragraph the phrase "authority having jurisdiction" and substitute in lieu thereof the term "electrical subcode official" and delete the phrase "by the jurisdiction" after the word "adopted."

2. (No change.)

3. Chapter 3 of the electrical subcode, entitled "Wiring Methods and Materials," is amended as follows:

i. Section 300-4 is amended to delete all wording from "so that the edge. . ." on line 3 through ". . . cover the area of the wiring," on line 8 and in lieu thereof substitute "as required by the building subcode."

4. (No change.)

5:23-3.17 Fire protection subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, as amended, the commissioner hereby adopts the following portions of the building and electrical subcodes to the extent delineated in N.J.A.C. 5:23-3.4, as the Fire Protection Subcode for New Jersey.

i. BOCA Basic/National Building Code 1984 of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.14):

(1) Section 513.0 of article 5 - General Building Limitations;

(2) (No change.)

(3) Section 713.0 of Article 7 - Interior Environmental Requirements;

(4) (No change.)

(5) Sections 1316.0 and 1317.0 of Article 13 - Building Enclosures, Walls and Wall Thickness;

(6) (No change.)

(7) Article 15 - Masonry Fireplaces;

(8)-(10) (No change.)

(11) Sections 2108.0, 2111.0, 2112.0, 2116.0 and 2117.0 of Article 21 - Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance.

ii. National Electrical Code/1984 of the National Fire Protection Association (N.J.A.C. 5:23-3.16).

(1) (No change.)

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

(2) Article 450, Part C - Transformer Vaults of Chapter 4 - Equipment for General Use;

2. (No change.)

(b) (No change.)

5:23-3.20 Mechanical subcode

(a) Rules concerning subcode adopted are as follows:

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1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc. known as the "BOCA Basic/National Mechanical Code/1984," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the Mechanical Subcode for New Jersey subject to the modifications stated in subsection (b) of this section.

i. Copies of this code may be obtained from the sponsor at: BOCA International, 4051 Flossmoor Road, Country Club Hills, Illinois 60477;

ii. The "BOCA Basic/National Mechanical Code/1984," including all subsequent revisions and amendments thereto, may be known and cited as the "mechanical subcode."

(b) The following articles, sections or pages of the BOCA Basic/National Mechanical Code/1984 are amended as follows:

1. Article 1 of the mechanical subcode, entitled "Administration and Enforcement," is deleted in its entirety.

2. Article 2 of the mechanical subcode, entitled "Definitions," is amended as follows:

i. Section M-200.3 is amended to delete the words "codes listed in Appendix A" on line 2, and in lieu thereof, substitute "subcodes."

ii. The definition of the term "administrative authority" is deleted in its entirety, and substitute in lieu thereof, the following language: "For the purpose of the mechanical subcode, the term "administrative authority" shall mean the appropriate subcode official designated in N.J.A.C. 5:23-3.4."

iii. The definition of the term "approved" is amended to delete the words "mechanical official or other."

iv. The term and definition of "code" is deleted in its entirety.

v. The term and definition of "department" is deleted in its entirety.

vi. The term and definition of "department having jurisdiction" is deleted in its entirety.

vii. The definition of the term "hazardous location" is amended to delete the words "building code" in line 3, and in lieu thereof, substitute "building subcode."

viii. The term and definition of "mechanical official" is deleted in its entirety.

ix. The term and definition of "nuisance" is deleted in its entirety.

3. Article 3 of the mechanical subcode, entitled "Air Distribution Systems," is amended as follows:

i. Section M-301.1 under "Exception," is amended to delete "building code listed in Appendix A" on line 4, and in lieu thereof, substitute "building subcode." Also delete "NFPA 70 listed in Appendix A" on line 12, and in lieu thereof, substitute "the electrical subcode."

ii. Section M-305.1 is amended to delete the words "building code listed in Appendix A" on line 4, and in lieu thereof, substitute the term "building subcode."

iii. Section M-307.5.1 is amended to delete the words "building code, listed in Appendix A" on line 1, and in lieu thereof, substitute the term "building subcode."

iv. Section M-309.2.1 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."

v. Section M-309.3 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."

vi. Section M-311.2 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "building subcode."

4. Article 4 of the mechanical subcode, entitled "Mechanical Equipment," is amended as follows:

i. Section 401.1 is amended to delete "Section M-108" on line 3, and in lieu thereof, substitute "N.J.A.C. 5:23-3.7."

ii. Section M-406.2 is amended to delete the words "building code listed in Appendix A" on line 2, and in lieu thereof, substitute the term "the electrical subcode."

iii. Section M-407.1 is amended to delete the words "NFPA 70 listed in Appendix A" on line 2, and in lieu thereof, substitute the term "the electrical subcode."

5. Article 5 of the mechanical subcode, entitled "Kitchen Exhaust Equipment," is amended as follows:

i. Section M-505.4 is amended to delete the words "building code listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."

ii. Section M-505.7.2 is amended to delete the words "building code listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."

iii. Section M-507.1 is amended to delete the words "building code listed in Appendix A" on line 3, and in lieu thereof, substitute the term "building subcode."

iv. Section M-508, "Maintenance and Test," is deleted in its entirety.

6. Article 6 of the mechanical subcode, entitled "Boilers and Water Heaters," is amended as follows:

i. Section M-601.1 is amended to delete the words "plumbing code listed in Appendix A" on line 2 and in lieu thereof, substitute the term "plumbing subcode."

ii. Section M-602.2 is amended to delete the words "plumbing code listed in Appendix A" on line 2 and in lieu thereof, substitute the term "plumbing subcode."

iii. Section M-603.5 is amended to delete the words "plumbing code listed in Appendix A" in the last sentence and in lieu thereof, substitute the term "plumbing subcode."

iv. Section M-606.2 is amended to delete the words "plumbing code listed in Appendix A" in the last sentence and in lieu thereof, substitute the term "plumbing subcode."

v. Section M-607.3 is amended to delete the words "plumbing code listed in Appendix A" on line 6 and in lieu thereof, substitute the term "plumbing subcode."

7. Article 7 of the mechanical subcode, entitled "Hydronic Piping," is amended as follows:

i. Section M-700.1 is amended to delete the words "plumbing code listed in Appendix A" on line 4 and in lieu thereof, substitute the term "plumbing subcode."

ii. Section M-701.1 is amended to delete the words "Section M-108.0" on line 4 and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."

iii. Section M-705.2 is amended to delete the words "plumbing code listed in Appendix A" on line 4 and substitute in lieu thereof, the words "plumbing subcode."

iv. Section M-705.3 is amended to delete the words "plumbing code listed in Appendix A" on line 2 and substitute in lieu thereof, the words "plumbing subcode."

v. Section M-705.4 is amended to delete the words "building code listed in Appendix A" on line 4 and in lieu thereof, substitute the words "building subcode."

vi. Section M-706.2.1 is amended to delete the words "building code listed in Appendix A" on line 2 and in lieu thereof, substitute the words "building subcode."

8. Article 8 of the mechanical subcode, entitled "Gas Piping Systems," is amended as follows:

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i. Section M-801.1 is amended to delete the words "Section M-108.0" on line 5 and substitute in lieu thereof, "N.J.A.C. 5:23-3.7."

9. Article 9 of the mechanical subcode, entitled "Fuel Oil Piping," is amended as follows:

i. Section M-900.2 is amended to delete the phrase "prevention codes listed in Appendix A" on line 2, and substitute in lieu thereof, "protection subcode."

ii. Section M-901.1 is amended to delete the phrase "Section M-108.0" on line 2 and substitute in lieu thereof, "N.J.A.C. 5:23-3.7."

10. Article 12 of the mechanical subcode, entitled "Chimneys and Vents," is amended as follows:

i. Section M-1202.0 is deleted in its entirety.

ii. Section M-1203.3.2 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof, "building subcode."

iii. Section M-1203.2.2 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof the words "building subcode."

iv. Section M-1206.4.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

v. Section M-1210-3.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

vi. Section M-1211.4.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

11. Article 13 of the mechanical subcode, entitled "Mechanical Refrigeration," is amended as follows:

i. Section M-1302 is amended to delete the phrase "Section M-108.0" on line 4 and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."

12. Article 14 of the mechanical subcode, entitled "Solid Fuel Burning Appliances," is amended as follows:

i. Section M-1403.3 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, "building subcode."

ii. Section M-1404.2 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, "building subcode."

13. Article 15 of the mechanical subcode, entitled "Incinerators and Crematories," is amended as follows:

i. Section M-1500.2 is deleted in its entirety.

ii. Section M-1500.5 is deleted in its entirety.

iii. Section M-1502.1.3 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

iv. Section M-1502.1.6 is amended to delete the phrase "mechanical official" on line 2 and substitute in lieu thereof, the term "administrative authority."

v. Section M-1502.1.7 is amended to delete the phrase "mechanical official" on line 3 and substitute in lieu thereof, the term "administrative authority."

vi. Section M-1502.2.5.2 is amended to delete the phrase "mechanical official" on line 2 and substitute in lieu thereof, the term "administrative authority."

vii. Section M-1502.7.6.1 is amended to delete the phrase "mechanical official" on line 3 and in lieu thereof, substitute the term "administrative authority."

viii. Section M-1502.8 is amended to delete the phrase "mechanical official" on line 9 and in lieu thereof, substitute the term "administrative authority."

14. Article 16 of the mechanical subcode, entitled "Ventilation Air," is amended as follows:

i. Section M-1601.4 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

ii. Section M-1602.1 is amended to delete the phrase "building code listed in Appendix A" on line 4 and substitute in lieu thereof, the term "building subcode."

iii. Section M-1605.1 is amended to delete the phrase "building code listed in Appendix A" on line 2 and substitute in lieu thereof, the term "building subcode."

15. Article 17 of the mechanical subcode, entitled "Air Quality" and comprising Sections M-1700.0 through M-1704.0, is deleted in its entirety.

16. Article 18 of the mechanical subcode, entitled "Solar Heating and Cooling Systems," is amended as follows:

i. Section M-1801.2.2 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

ii. Section M-1801.3.1 is amended to delete the phrase "building code listed in Appendix A" on line 3 and substitute in lieu thereof, the term "building subcode."

iii. Section M-1801.3.2 is amended to delete the phrase "building code listed in Appendix A" on line 3 and on line 2 of the exception and substitute in lieu thereof, the term "building subcode."

iv. Section M-1801.3.3 is amended to delete the phrase "building code listed in Appendix A" on line 2 of the exception and substitute in lieu thereof, the term "building subcode."

17. Article 19 of the mechanical subcode, entitled "Energy Conservation" and comprising sections M-1900.0 through M-1903.5, is deleted in its entirety.

18. Article 20 of the mechanical subcode, entitled "Boilers and Pressure Vessels, Maintenance and Inspection" and comprising sections M-2000.0 through M-2002.1 is deleted in its entirety.

19. The following amendments are made to Appendix A of the mechanical subcode, entitled "Reference Standards":

i. Under the subheading "ASHRAE," delete the following title:

(1) Energy Conservation in New Building Design

ii. Under the subheading "BOCA," delete the following title:

(1) Basic/National Plumbing Code

iii. Under the subheading "NFIPA," delete the following title:

(1) National Electrical Code.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Transfer of Ownership Interests

Adopted Repeal: N.J.A.C. 5:80-5

Adopted New Rule: N.J.A.C. 5:80-5

Proposed: May 7, 1984 at 16 N.J.R. 951(a).

ADOPTIONS

Adopted: June 13, 1984 by New Jersey Housing and Mortgage Finance Agency, Feather O'Connor, Executive Director.

Filed: July 13, 1984 as R.1984 d.318, **without change**.

Authority: N.J.S.A. 55:14K-34(f).

Effective Date: August 6, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1989.

Summary of Public Comments and Agency Responses:

General Comments: Portions of the proposed regulations are questionable on public policy grounds. Other portions of the regulations would most likely fail to withstand challenges on legal grounds. Detailed comments follow but some general comments as to the nature of the regulations are also called for.

The most significant problem with the proposed regulations is that they appear to ignore the fact that the Agency is not the owner of the projects in question. The Agency has two major interests to protect: First, the Agency has an interest in protecting its position as a mortgage holder. This position is already fully protected by the mortgage documents. If the Agency had wished to obtain any further protection of its interests as mortgage holder, it should have negotiated them at the time of execution of the mortgages. Just as the owners of the projects cannot now demand that the Agency modify the mortgage agreements, similarly the Agency cannot unilaterally modify those agreements by promulgating new regulations. Second, the Agency has a legitimate interest in protecting the supply of low income housing which has been constructed using public funds. This interest, however, is and should be limited. The Agency has no right, under any theory of law or protection of the public interest, to require payments of very substantial sums of money into its administrative or portfolio funds out of the proceeds of resale of the projects which do not belong to it. In this respect, it should be noted that the Agency is attempting to obtain the following amounts out of a resale of a syndicated property: (a) 10 percent of net residual proceeds of sale (pursuant to syndication regulations and negotiated Partnership Agreements); (b) one-half percent of entire sale price, including assumed mortgages and other indebtedness (pursuant to proposed regulations); (c) between 10 and 15 percent of "cash proceeds", which apparently includes all "cash or cash equivalent . . . at closing or in successive years" (pursuant to proposed regulations). Finally, the Agency appears to be attempting to direct the use of whatever sales proceeds remain after the Agency's fees have been deducted. These proceeds belong to the owners of the Projects, not the Agency, and are not subject to the control of the Agency.

Specific Comments: 5:80-5.1 "Cash Proceeds". The term "cash proceeds" is unclear; the "cash or cash equivalent" paid "at closing or in successive years" is entirely too vague to provide any guidance concerning its application or interpretation. Does it apply to cash paid now or in the near future, or to short-term, long-term or conditional promissory notes?

5:80-5.2(d). This section gives the Agency total discretion to block the transfer of an interest in a Partnership, even if that limited partner had less than a 10 percent interest in the Partnership or the Project. I recognize that the Agency might have a legitimate interest in reviewing and approving transfers

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of controlling interests held by general or limited partners. However, at the time of an initial investment in a Partnership, the only limitation on a limited partner's admission is the Agency police check. The Agency should not have any greater powers of review regarding any transfers by limited partners subsequent to that time.

5:80-5.3. This section provides that any inconsistency between these regulations and the basic syndication regulations are all resolved in favor of the syndication regulations. I do not believe that this is what the Agency intends. For example, it appears that this provision would require the incorporation of the letter of credit and security requirements which apply to an initial syndication. Such requirements are irrelevant except in instances where the Agency or a Non-Profit Sponsor is to obtain deferred cash proceeds out of the resyndication. The transfer of interest regulations should stand on their own or incorporate specific provisions of the syndication regulations.

5:80-5.4(b). The nature of the opinion to be required from Buyer's legal counsel should be specified.

5:80-5.4(d). We do not believe that the Agency has any power to require the various actions specified in this paragraph. The Agency's rights with respect to requiring proper maintenance of a Project are thoroughly spelled out in its mortgage documents. If a Project has not been properly maintained in a manner sufficient to satisfy the requirements of the Mortgage, then the Agency has the power (through its right to foreclose) to require that repairs and maintenance be made as a condition to permitting the transfer of title. The Agency has no right or power to exercise control over the maintenance of a Project in excess of the power granted to it under the mortgage.

5:80-5.4(e). The Agency has no authority, other than that set forth in a mortgage, to require funding of immediate and anticipated reserve needs. A Project belongs to its owner, not the Agency. If all mortgage requirements are being satisfied, then the Agency has no authority whatsoever to direct the use of cash contributions by new purchasers or sellers. Requirements on funding of project reserve accounts should be limited to the Agency reserve and replacement funding schedule.

5:80-5.4(g). This section attempts to eliminate all challenges to the legality and enforceability of proposed regulations. If the regulations are constitutional, and do not constitute an abuse of administrative discretion, and are otherwise legally enforceable, then they should stand on their own merits. If they do not, the Agency should not require as a condition of closing that a prospective purchaser agree to waive any of its legal objections to the proposed regulations.

5:80-5.6(a)3. Agency regulations do not, so far as I know, require an Experience Questionnaire for the initial syndicator or purchaser of a project. We see no policy reason for the Agency to have review and approval rights which are greater in a transfer of ownership than in an initial syndication.

5:80-5.6(b)1. The Agency appears to have no interest to protect which would require the submission to it of an appraisal of the Project. A negotiated sale between a willing buyer and a willing seller should be sufficient protection of all interested parties. It appears to me that the purchase price arrived at by those parties is not relevant to any concerns of the Agency. If the Agency desires to obtain an appraisal for its own purposes, the cost of that appraisal (between \$6,000 and \$10,000 per Project) should be paid by the Agency.

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5:80-5.7(b)1. This section seems to indicate that tenants will not be required to pay rent relating to any debt service whatsoever on second mortgages. Such second mortgages may be necessary in order to make significant repairs or replacements, or to pay accrued indebtedness. These obligations should be borne by the Project. Neither an original owner nor a new purchaser of a Project would be willing to make such advances without any hope of getting them repaid. Similarly, neither the Agency nor a financial institution would be willing to make advances on such basis. This Section should be eliminated. Please note 5:80-5.4(f), which implies that increased rents relating to financing are acceptable.

5:80-5.7(d). This section apparently provides that upon default on an Agency first mortgage, any other debts owed to parties other than the Agency, such as a previous owner or a bank, would be transferred to the Agency so that it would become the holder of those notes. This section bears no relation to any commercial reality, and no lender or seller would ever accept such a provision. In a normal commercial setting, the holder of a first mortgage on a property has the right to have its debt satisfied out of the value of that property or the proceeds of a sale of that property prior to the time that any junior lienholders receive payment. Once the first mortgage holder has been paid in full, junior lienholders are entitled to payment of their debts. The Agency's interests are fully protected in this fashion by virtue of its status as a first mortgage lienholder. It is entitled to no more. The proposed regulation would simply permit the Agency to confiscate the entire property, regardless of how much that property was worth and regardless of the excess of value of that property over the amount of debt owed to the Agency. This section should be eliminated.

5:80-5.8. This section restricts the permitted distribution of proceeds from a resale far more substantially than does the limited dividend law. The Agency's rights and powers regarding prepayment are specified in the mortgage documents to which the Agency is a party. The Agency cannot assume for itself powers which are not given to it in either the mortgage or the limited dividend law.

5:80-5.9. The proposed fee schedule in this section is excessive and unrelated to any proper interest of the Agency. Pursuant to the syndication regulations, the Agency has required that at the time of a resale of a project, the Agency is entitled to 10 percent of the net residual proceeds of that sale (after payment of all outstanding debts, selling expenses and investor contributions). Because such a resale also involves a transfer of ownership interest, it appears that the Agency is now attempting to collect all of the various fees specified in 5:80-5.9 as well. The Agency has no ownership interest in the Projects; the Projects belong to private individuals and entities. The Agency has no right to any of the proceeds of sale of the privately owned Projects, except for the fees previously negotiated in the Partnership Agreements. The attempt to obtain an additional share of these proceeds constitutes confiscation of private property. Aside from our general objections to the fees, there are specific problems relating to each of them. First, it should be made clear that the fees apply only to transfers of title to an Project, rather than to transfers of interests of limited or general partners in the Partnership. Other specific objections are as follows:

5:80-5.9(a). The processing fee of one-half of 1 percent of the entire purchase price is excessively burdensome to sellers of projects. The fee would apply to the entire purchase price,

including the assumption of preexisting indebtedness. The Agency's actual costs relating to such a transfer are in no way related to this fee.

Furthermore, at the time of initial syndication, the Agency approved the terms of the Partnership Agreement governing the syndicated project. Investors have already been advised of Agency fees in connection with a resale of the Project. The Agency cannot now add to those fees an additional "processing fee" with respect to these previously syndicated partnerships. The Agency should be bound by the terms of the Agreement just as firmly as all of the other parties are. This proposed fee could not withstand a legal challenge by sellers or investor limited partners.

5:80-5.9(b). The review fee of \$5,000 should be related to the actual cost of review by the Agency, using a billing schedule for legal time comparable to that which the Agency allows to attorneys for syndicated projects, and a similar fee schedule for other Agency personnel. Furthermore, since the Agency apparently has absolute discretion to block a transfer of ownership interests, the fee should be refunded if the proposed transaction is not consummated because of such Agency action.

5:80-5.10(c). Our comments with respect to Section 3.10A apply here as well. The Agency has no right to receive any further payment into the Portfolio Reserve Account. The Agency is already receiving 10 percent of the net residual proceeds of a resale pursuant to the original partnership agreements and the syndication regulations. The Agency has no right to any additional proceeds of a resale.

5:80-5.9(d). The term "supplemental financing" is not defined in the regulations. If it is intended that this section relate to secondary financing, the requirement is entirely unnecessary. Secondary financing should be permitted to be assumed by a new purchaser if either (a) the secondary financing documents permit, or (b) the holder of the secondary financing agrees.

5:80-5.11. The Agency's right to investigate and disapprove prospective buyers and others should be subject to a specified time limit such as thirty days from submission of administrative questionnaires. Any longer period would seriously jeopardize the ability of a seller to consummate a sale.

Agency Responses

General comments: Overall, the major concern is whether the Agency has exceeded the parameters of their authority in various portions of the proposed regulations. The Agency is well within its authorization. The Agency's primary purpose is to protect the housing portfolio. The Agency has been given broad powers to administer its primary objective of providing low and moderate income housing for the State of New Jersey. In conformance with the enabling statute, the Agency's authorization includes the power to establish rules and regulations as the Agency deems necessary, the power to renegotiate the terms of any agreement, and to determine whether the transfer is in the best interest of the project. As a matter of policy, the New Jersey legislature has declared that the Agency's power shall be interpreted broadly to effectuate the purposes of the enabling statute and shall not be construed as a limitation of powers.

Specific Comments: 5:80-5.1 "Cash Proceeds". This section is clear on its face inasmuch as the Agency has re-

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served the right to review and analyze the transaction including interpretations of cash requirements.

5:80-5.2(d). Prior to conversions and resyndications, the Agency's involvement in a transfer of Agency financed projects was generally limited to background checks of the individuals involved in the transfer. However, over a period of time, Agency review was extended beyond the police check clearance and the Agency has played a more extended role since conversions and resyndication merit careful scrutinizing by the Agency. In addition to the power granted to the Agency under the enabling statutes, as an authorized signatory of PHDA, the Agency has the right to review the partnership agreement and require modification or amendment prior to approval.

5:80-5.3 This provision is exactly what the Agency intends. If there are any inconsistencies as it relates to conversion, then the basic syndication regulations shall apply. Conversions are defined as transfers involving the sale of the housing project owned by a nonprofit corporation to a limited dividend entity. This provision is necessary to prevent any circumvention of the syndication regulations. Once the conversion occurs, that is the housing project is owned by a limited dividend sponsor, then the transfer of ownership regulations are applicable. As a result, there is no incorporation of the letter of credit requirement and security requirement.

5:80-5.4(b). If the Agency should request an opinion from the buyer's attorney, the parameters of the opinion will be made known at that point.

5:80-5.4(d) and (e). The Agency's authority extends beyond the mortgage documents and the limited dividend law. The enabling statute gave the Agency exclusive control and responsibility of its multi-family projects. The responsibility encompasses not only financing but also regulating and supervising. In addition, section 7b(2) of the enabling statute states that the Agency has the power to order such alterations, changes or repairs as may be necessary to protect the security of its investment.

5:80-5.4(g). This assertion is groundless due to the fact that at the time of execution of the assignments the sponsor will have implicitly agreed to be bound by the Agency's regulations making the assignment a formality.

5:80-5.6(a)3. Again, it is within the Agency's authority. The Agency has the power to establish rules and regulations that it deems necessary. An experience questionnaire is necessary. The Agency must determine if the transaction is in the best interests of the property and needs of the questionnaire to thoroughly check out the buyer and make a decision based on information provided.

5:80-5.6(b)1. The requirement of an appraisal is only where the seller is transferring a substantial portion of his interest, namely resyndication. As you know, an appraisal is a crucial component of the transaction. All parties involved will insist upon a sound appraisal. This requirement must remain.

5:80-5.7(a)1. The secondary financing specifically refers to residual receipts notes or other forms of deferred cash payments which cannot be paid by raising the rents of tenants. This section should remain.

5:80-5.7(d). In the event of a default or foreclosure, the Agency is obligated to protect the tenants and the bondhold-

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ers which includes the obligation to cure outstanding debts and liens.

5:80-5.8. In the new legislation, the New Jersey Housing & Mortgage Finance Agency Law of 1983, the Agency is given the authority to determine the return on equity. Section 7A(6) of the enabling statute states that:

The loan shall be subject to an agreement between the agency and the housing sponsor limiting the housing sponsor and its principals or stockholders to such rate of return on its investment in the housing project to be assisted with a loan from the agency as shall be fixed from time to time by the agency in its regulations which shall take into account the prevailing rates of return available for similar investments and the risks associated with the development of the project, together with factors designed to promote the objectives of providing affordable housing, encouraging investment in urban development areas, maintaining and improving the existing housing stock, and other objectives of this act; but agreements entered into by the predecessors of the agency prior to the effective date of this act shall continue to be subject to any restrictions on the rate of return imposed by prior law unless those restrictions are expressly modified pursuant to regulations of the agency.

5:80-5.9. The enabling statute states that the Agency has the power to make and collect fees and charges that the Agency determines are reasonable. Your major concern is payments into the Portfolio Reserve Account. The Agency feels that this fee is reasonable. In carrying out its public purposes, strengthening the portfolio is important. The Portfolio Reserve Account is essential for financial support.

Other fees are reasonable and necessary given the nature of the transaction.

5:80-5.9(d). "Supplemental Financing" involves instances where the Agency has committed funds in the form of additional mortgages or advances.

Full text of the adoption follows.

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

5:80-5.1 Definitions

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

"Agency" is the New Jersey Housing and Mortgage Finance Agency.

"Cash proceeds" means that portion of the purchase price paid by the buyer to the seller in cash or cash equivalent acceptable to the agency at closing or in successive years following the closing as determined by the agency.

"Closing" means the date on which title or other interest in the housing project is transferred from seller to buyer.

"Conversion" means transfers involving sale of the housing project owned by a nonprofit corporation to limited dividend partnership.

"Development costs" means the total development cost which shall include the original mortgage loan amount and

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may include any supplemental financing provided by the agency or the State of New Jersey and any additional funds to be paid out of the net proceeds which the agency has determined to be reasonable and necessary for the development or financial viability of the housing project.

"Housing project" or "project" means any work or undertaking, other than a continuing care retirement community, whether new construction or rehabilitation, which is designed for the primary purpose of providing rental housing of more than 25 dwelling units.

"Limited Dividend Corporation or Association" is any entity created pursuant to the Limited-Dividend Nonprofit Housing Corporation or Associations Law, N.J.S.A. 55:16-1 et seq.

"Portfolio Reserve Account" means that fund established pursuant to N.J.A.C. 5:80-2.4(a)3 intended primarily for financial support for any housing project financed by the agency.

"Net proceeds" means the gross proceeds of the transfer which are received from buyer, less the costs of the transfer. Net proceeds does not include secondary financing granted on the transfer.

"Purchase price" includes the cash proceeds plus secondary financing, if any, plus existing mortgage(s) assumed by the buyer.

"Resyndication" is the sale of 90 percent or more of the beneficial interest of an existing housing project by its current limited dividend owners to a new owner, typically a limited partnership.

"Secondary financing", both secured and unsecured, is any portion of the purchase price which is not paid in cash proceeds or by assuming an existing indebtedness. Secondary financing will be permitted as set forth in N.J.A.C. 5:80-5.7.

"Seller" is the existing mortgagor and owner of the housing project having a loan from the New Jersey Housing and Mortgage Finance Agency.

"Transaction cost" means those costs related directly to the sale of the housing project. All transaction costs must be approved by the agency.

5:80-5.2 General policy

(a) To be effective, all proposed changes in ownership interests of an agency financed housing project must receive the prior review and written approval of the Agency's executive director.

(b) The prior specific review and approval of the Agency members is required if a proposed change involves a general partner or a limited partner with more than a 10 percent interest.

(c) Changes in ownership processed under this policy shall not result in a modification of statutory and contractual requirements that the housing project be occupied by persons and families of low and/or moderate income except to the extent that prepayment is permitted by the Agency pursuant to N.J.A.C. 5:80-5.9.

(d) The Agency is under no obligation to approve the transfer or resale.

(e) If a general partner is withdrawing from the partnership, financial and experience data on the remaining or substituted general partners must be provided to the Agency for review and evaluation of their financial sufficiency and organization capabilities.

(f) The approval of the Public Housing and Development Authority must be obtained where necessary pursuant to N.J.S.A. 55:16-1 et seq.

(g) If a Federal subsidy contract is involved, a change in ownership must receive approval of the United States Department of Housing and Urban Development and may involve additional processing requirements in conjunction with obtaining such approval.

5:80-5.3 Conversions and applicable regulations

There are separate regulations at N.J.A.C. 5:80-2 dealing with transfers involving conversions ("conversion regulations"). The conversion regulations shall be applicable to transfers involving conversions unless the Agency determines that such treatment would jeopardize the viability of the housing project, in which case the Agency, in its discretion, may apply these regulations to such conversion. In the event, however, of any conflict or inconsistency between the provisions of these regulations and N.J.A.C. 5:80-2 as it applies to such conversion, the provisions of N.J.A.C. 5:80-2 shall control.

5:80-5.4 Procedure

(a) The seller must initially submit to the executive director of the Agency a written request for approval of any proposed change in ownership. The request must contain a detailed description of the terms of sale or other ownership changes and a statement of the reasons for the proposed sale. The seller must also identify in detail and in a written report, the present physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information or revisions to the report and may conduct its own review of the housing project's condition and operation.

(b) All essential parties within the seller's organization documents must approve the transfer or sale. An affidavit and opinion of the seller's legal counsel must be submitted to the Agency as proof of the legality of the transfer pursuant to the seller's Partnership Agreement or any other document and all applicable laws and regulations. An opinion of the buyer's legal counsel may also be requested by the Agency.

(c) In selecting the prospective buyer, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best financial package/offer. Full and complete disclosure as to the nature and amount of the transaction must be made in writing to the Agency.

(d) As a condition of approving the transfer, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller and the independent review by the Agency. Deferred maintenance must be corrected at the time of transfer unless otherwise approved by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency. A schedule for performing the work and a letter of credit or bond in the amount needed to complete the work must be provided to the Agency at closing.

(e) Cash contributions must be sufficient to fund both immediate and anticipated reserve needs. The mortgage and all fees and charges due the Agency must be current at the time of closing. All housing project reserve accounts must be funded to an acceptable level, as determined by the Agency, within 12 months from the date of transfer in accordance with the Agency's repair and replacement funding schedule.

(f) Contributions toward the purchase price from any sources other than cash proceeds, must be identified.

(g) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage

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clearly specifying the Agency's right to enforce these regulations.

5:80-5.5 Scope of review

(a) The scope of the Agency's review of transfers depends on the nature of the interest to be transferred. A transfer of 90 percent or more of the ownership interest requires full review. Full review is also required in the following instances.

1. Transfer of title from the seller to any other party;
2. Any conveyance or attempted conveyance by land contract;
3. Transfer of 90 percent or more of the interest in the partnership/owner within a five year period;
4. A change in general partners or management control of the owner.

(b) In other cases, the Agency in its discretion may conduct a modified review.

5:80-5.6 Required documents

(a) Required documents for either a full or modified review must be satisfactory to the Agency and include at least the following:

1. Administrative questionnaires for buyer;
2. Previous Participation Certificates (Form 2530) for buyer;
3. Experience questionnaire for buyer;
4. Buyer's certified financial statements;
5. Legal opinion from seller's and/or buyer's attorney;
6. Complete description as to the nature of the transaction.

(b) The following additional documents shall be subject for full review:

1. Appraisal of property;
2. Physical inspection report approved by the Agency;
3. Financial report on project operations approved by the Agency.

5:80-5.7 Secondary financing

(a) Secondary financing, representing a portion of the purchase price may be permitted by the Agency. However, the following limitations exist where secondary financing is an element of the transaction:

1. The Agency will review and may restrict all secondary financing particularly where the secondary financing is secured by a lien on the project;
2. Repayment of secondary financing cannot be taken into consideration in determining the rents to be charged tenants;
3. The second mortgage, security agreement, or any other debt instrument must be subordinate to any existing mortgage of the agency;
4. In the event of a declaration of default on any existing mortgage held by the Agency, the secondary financing debt and all rights thereunder to rent or any other project income or assets shall be assigned to the Agency.

5:80-5.8 Return on equity

(a) The equity base used for calculating allowable return on equity shall be determined by the Agency as a function of the total development cost of the project rather than the purchase price unless the purchase price is less than the total develop-

ment cost in which case the purchase price will be used by the Agency to determine the equity base.

(b) In conjunction with permitted prepayments of the Agency's mortgage, the mortgagor shall be limited to a cumulative return on its investment of 8 percent per annum. This limit shall include any return from project operations or on sale of the project.

1. Upon sale or other disposition of the project or any interest thereon, any amounts realized by the seller in excess of 8 percent shall be paid to the Agency as an additional fee for approving the transfer.

2. With regard to transfers which do not involve prepayment of the agency's mortgage which recognize the agency's right to approve any prepayment which preserve the low and/or moderate income nature of the project and which fully comply with all Agency rules, regulations and policies, the limit shall apply only to revenues received from operations and no such limit on return on equity shall apply to money earned from the sale of the project or any other sale of ownership interests.

5:80-5.9 Fees and repayments

(a) At closing, the following fees are required:

1. The seller shall pay the Agency a processing fee amounting to one-half of one percent of the purchase price;

2. For transfers which will require a full review pursuant to N.J.A.C. 5:80-5.4, the owner shall submit with its request for review, a non-refundable fee of \$5,000 which will be applied toward the processing fee at closing;

3. For projects subsidized under Section 236, the seller shall pay 10 percent of the cash proceeds received and for projects subsidized under Section 8, or projects without direct Federal subsidies, the seller shall pay 15 percent of the cash proceeds received into the portfolio reserve account established by the Agency;

4. Any outstanding supplemental financing must be paid at closing.

5:80-5.10 Prepayment

Prepayment of the mortgage loan made by the Agency is prohibited without the prior written approval of the Agency.

5:80-5.11 Approval and disclosure requirements

(a) The Agency specifically reserves the right to investigate and disapprove any prospective buyer or any other party involved in the transaction including without limitation all limited and general partners, attorneys, syndicators, brokers or consultants, as well as any partners or shareholders thereof. Prior to its approval, the Agency may require any party to disclose such information as may be reasonably related to the transaction and may require any party to sign such waivers, releases or affidavits as may be necessary to authenticate or investigate the information requested.

(b) All reviews, inspections, reports and other determinations received pursuant to these regulations shall be subject to final review, approval and determination by the Agency.

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(a)

DIVISION OF WATER RESOURCES

Sewer Extension Ban

Readoption with Amendments: N.J.A.C. 7:9-13

Proposed: April 2, 1984 at 16 N.J.R. 660(a).
Adopted: July 16, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection
Filed: July 23, 1984 as R.1984 d.336 with technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:10A-1 et seq.

DEP Docket No.: 011-84-03.

A public hearing concerning this proposal was held on April 18, 1984 at the State Library, Trenton, New Jersey. The public comment period remained open until May 3, 1984.

Summary of Public Comments and Agency Responses:

The Department received public comments on the proposed readoption with amendments from the following:

1. Township of Franklin Sewerage Authority
2. Camden County Municipal Utilities Authority
3. Western Monmouth Utilities Authority
4. Princeton Environmental Commission
5. New Jersey Water Resources Coalition
6. Township of Burlington
7. Township of Morris
8. Ocean County Utilities Authority
9. Stony Brook-Millstone Watersheds Association
10. Upper Rockaway River Watershed Association

These comments and the Department's responses are summarized below.

1. Comment: Part of the definition of "extension" includes a line which serves two or more separate buildings. In some cases you may have "extensions" which will carry very little flow, such as someone adding a sink to a garage. By making this type of line subject to the regulation, you create an administrative headache for the Department and local agencies.

Response: Although it is true that there may be de minimus cases, the Department has to deal with cases throughout the State on an equal basis. When the Department modified the regulations to impose extension bans rather than connection bans this eliminated many of the minor discharge cases. The present definition balances the equities between the burden

imposed on the public and the potential environmental harm and will therefore not be changed.

2. Comment: What does the term "endorse" mean in N.J.A.C. 7:9-13.6(b)?

Response: A definition for "endorse" has been added to the regulations.

3. Comment: The regulations, if readopted, must not be selectively enforced.

Response: To some extent these new regulations will be self-implementing because the responsibility for controlling the flows to the treatment works is with the sewerage authority. (The term "sewerage authority" used throughout the responses summarized in this document corresponds to the definition in the regulations.) Failure to impose a ban will be a violation of these regulations. The Water Pollution Control Act, N.J.S.A. 58:10A-1 (the "Act"), clearly imposes this responsibility on sewerage authorities. The intent is to treat everyone the same, although priorities for enforcement will be set according to the seriousness of the water quality violations.

4. Comment: The regulations do not address the problem of violations caused by overflows from collection systems.

Response: The Department has made changes to the regulations so that bans can be imposed for problems caused by overflows from collection systems or pumping stations. Also it should be noted that these discharges are required to have discharge permits.

5. Comment: There should be better coordination with local governmental agencies, especially local planning boards.

Response: Within these regulations notice of the self-imposed ban is required to be given to local planning boards and other entities affected by the ban (N.J.A.C. 7:9-13.5(a)). If the Department imposes a ban, the sewerage authority and participating municipalities must give notice to the planning board and other legal entities affected by the ban (N.J.A.C. 7:9-13.5(d)). Also under the 90 Day regulations, N.J.A.C. 7:1C-1, prior to submitting an application to the Department for a construction permit, notice must be given to, among others, the municipal environmental commission and municipal planning board. Certainly the intent of the Department in promulgating these regulations is that the local agencies take into account the fact that a collection or treatment facility is causing environmental harm in any local approval process. This is true whether the agencies are dealing with extensions which will require State approval or projects entirely under local control. Any project which needs a sewer "extension", as defined in the regulations, and does not qualify for exemption should be rejected at the local level. If it is not, the Department will do so.

6. Comment: Does the Department's new procedures for handling permits for the construction of sewer extensions affect the sewer ban program?

Response: As part of the new procedures, the Department requires a statement by the design engineer that there is capacity to handle the flow. The sewerage agency is required to certify that the new project will not cause permit violations or conflict with 201 Plans. Also water quality management planning agencies have to determine consistency with 208 Plans. These references have been added to the regulations.

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7. Comments: By passing enforcement powers to municipalities the Department has not retained sufficient enforcement powers to maintain the quality of the waters of the State. For example, when an authority reaches 80 percent of capacity, the only enforcement power that Department retains is a warning notice.

Response: No change has been made in the regulations which weakens the Department's power to impose bans. The new regulations are the Department's regulatory requirements for sewerage authorities to comply with the Act. The new regulations provide standards to be used for the evaluation of the programs which the sewerage authorities must implement under the Act to prevent or correct problems. Any authority which ignores these regulations does so in violation of the Act and is at risk with regards to penalties.

8. Comment: Using a four month instead of a three month review period weakens the regulations.

Response: When the Department adopted the regulations in 1979, nine months was used as a flow period that the Department used to track capacity in issuing sewer extension permits. This means that the treatment plant was evaluated over a nine month period. Based on field results this was found to be too broad a window. Plants, as an example, in shore communities may have flows in the summer time that are very large and exceed the design of the plant. However, it is only for a very small period of time. The flow over nine months will average out. So the Department dropped the window down to three months and that period was determined to be too restrictive. All plants have some minor problems during the Spring and Fall when there are temperature changes. Also the biological community in the plant has to re-adapt due to changes. Therefore the decision was made to expand the period from three months to four months.

9. Comment: The change in the criteria for an exemption based on malfunctioning septic systems has been weakened. Also by allowing this exemption you are passing a bad water problem from one place to another.

Response: The change in the criteria actually makes this exemption harder to acquire. In the past the Department received requests from Health Departments stating that septic tanks were malfunctioning and that there was a need to connect to a plant under ban. The planned modification means that prior to granting an exemption, the system must be evaluated either by a soil scientist or a civil engineer, and it must be shown that one cannot reasonably rehabilitate the system. Rehabilitation would entail such things as peroxide treatment of the laterals or pumping out the septic tank to remove the accumulation of solids and possibly rebuilding the disposal fields, trenches and lines. If an area has clay soil or other problems so that no matter what is done to the system there is an inherent problem whereby it can not be corrected, then an exemption may be granted. The comment is correct, however, that if the system can not be reasonably rehabilitated, you trade off one public health risk for another. However, the Department's rationale is, based upon its experience, that it is a less severe public health problem for the waste to be treated at the plant rather than have raw wastewater entering a stream or flowing over the ground.

10. Comment: What does the term "maximum sewage treatment capacity" mean?

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Response: The term is related to the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program. Within the permit the design capacity is listed. Also within the permit are limitations for the various parameters that are discharged such as Biochemical Oxygen Demand (BOD), suspended solids, fecal coliform, etc. It will also give the disposal site of the sludge. The NJPDES permit file would contain all relative data on the plant and its operation.

As to the actual terms used in the definition, hydraulic capacity of the plant is the design flow as listed within the discharge permit. The biological handling capability is the degree of treatment provided by the type of system designed by the engineer to meet the permit limits. The sludge handling capability is the method designed by the engineer to treat sludge to a specific degree for solid contents as well as the ultimate disposal of the sludges. To impose a ban, only one of these parameters need be exceeded.

11. Comment: One plant in the State is under ban based upon the terms of an Administrative Consent Order (ACO) between the Department and the township which owns and operates the plant. The 201 Facility Plan which covers this plant must be certified before the ban can be lifted. The plant is not discharging in violation of its NJPDES Permit nor is it receiving flows in excess of its design rating. Therefore the ban should be lifted.

Response: This particular case is a unique situation because the ban was imposed under an ACO and not under the old regulations. The Construction Grants Element in the Division of Water Resources has been advised of the situation. (It is responsible for certifying the 201 Plan.) The Division will work on this problem to resolve it.

12. Comment: The 80 percent figure used to trigger a capacity assurance program or warning notice is too low.

Response: It is the Department's position that this provides an adequate margin of safety. It should provide enough lead time for the municipalities and authority to develop a program to prevent violations from occurring. This margin is especially important for smaller plants which could quickly go from 80 percent to 100 percent of their design flow solely on the basis of a few projects.

13. Comment: The proposed N.J.A.C. 7:9-13.4(c) uses the term "certification" and this is not used elsewhere in the regulations.

Response: The proposed N.J.A.C. 7:9-13.4(b) provided for certification by participating municipalities and authorities as an alternative to a program submission. Because of the changes made in the requirements in N.J.A.C. 7:9-13.5(a), the certification language has been dropped. (Note. In the proposal notice, N.J.A.C. 7:4-13.5(a), (b) and (c) were inadvertently not printed in boldface by the Office of Administrative Law. It was clear, however, from the Department's summary, the changes in N.J.A.C. 7:9-13.1 and the new 7:9-13.5(d) through (f) that subsections (a), (b) and (c) were new.)

14. Comment: N.J.A.C. 7:9-13.5(g) allows for incremental additions to systems under ban if there is a program underway to make substantial improvements. The proposed language allows this if there is substantial improvement in effluent quality or there is a reduction in committed flow. The use of the term "committed flow" should be "actual flow" because

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someone could buy up system capacity for future projects and pledge not to use it in part. This might be the basis for an exemption when there will be no improvement in existing water quality.

Response: This point is well taken. This subsection has been rewritten to take this into account, as well as to clarify the applicability of the subsection. The subsection was also rewritten to make it clear that the allocation of additional capacity and improvements to treatment works are to be made only under the terms and conditions of an NJPDES permit or an Administrative Consent Order.

15. Comment: The term "domestic treatment works" should be defined in the regulations instead of referring to another set of regulations.

Response: This has been done.

16. Comment: The Department is following the right course in requiring plans of actions from municipalities or authorities which includes specific measures listed in the Capacity Assurance Program section.

Response: Naturally the Department is pleased with this comment. N.J.A.C. 7:14A-13.4(a)5 has been amended to make it clear that the imposition of a self-imposed ban is not optional.

17. Comment: The regulations do not provide for how "committed flows" are, or should be, determined.

Response: The Department is always willing to consult with authorities and municipalities on determining committed flows. In addition these agencies can adopt their own rules by ordinance on wastewater flows. The Department understands that, because large projects take a long time to build, it may be difficult to track flows. This is why the Department provides for partial operational permits. This way the flows from portions of projects already completed can be tracked and associated with the metered flow at a treatment plant.

18. Comment: These regulations should take into account a project's secondary impact on surface water, ground water and wet lands.

Response: Although these concerns are environmentally important, they are addressed through other mechanisms. After a project is given an exemption, the project must still comply with the applicable 201 and 208 Plans. These Plans have only been adopted after extensive public participation. The Department is presently working on a Statewide Water Quality Management Program Plan and Implementation Strategy. This will address some of these issues and will be adopted after due public notice by the Department.

19. Comment: Because the design capacity of a treatment plant is conditioned on the basis of sewerage flow, not building occupancy, the maximum allowable use of sewerage flows should be based on the solitary building or 2,000 gallons per day, which ever is greater.

Response: The Department has amended the definition of "extension" to take this comment into account.

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

7:9-13.1 General policy

(a) One goal of the Department's water quality management program is to have domestic treatment works within the state discharge without violating the State Surface Water Quality Standards (N.J.A.C. 7:9-4 et seq.) and state and federal effluent limitations. To achieve this goal, the Division of Water Resources provides for a continuing evaluation of all domestic treatment works as an integral part of its water pollution control program. This evaluation is necessary to protect the waters of the state from improperly treated sewage.

(b) All domestic treatment works have a design flow for treating sewage. When a treatment works receives sewage in excess of its design flow, it may discharge improperly treated wastes.

(c) In order to control pollution from domestic treatment works, the Department shall act to prevent pollution as well as to abate pollution. It is the purpose of these rules to permit the Department to take steps to avoid pollution problems created by domestic treatment works which receive flow in excess of design flow.

(d) Pursuant to N.J.S.A. 58:10A-6 and N.J.A.C. 7:14A-12.1 et seq. no person may build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, including any "extension" as defined in these regulations, without the prior approval of the Department. Approvals, permits, service contracts or reservations of capacity issued or agreed to by any participating municipalities or sewerage authorities do not constitute the required approval of the Department referred to herein.

(e) In determining whether to approve the construction of an extension, the Department will consider, among other things, the committed flow to the domestic treatment works.

(f) It is the responsibility of participating municipalities and sewerage authorities to carefully monitor the issuance of municipal approvals and sewerage connection permits in order to prevent committed flow from exceeding design flow, to provide for the future availability of adequate sewage treatment capacity, and to initiate appropriate action when maximum sewage treatment capacity is being approached. Therefore, the participating municipalities and sewerage authorities shall do the following:

1. Whenever the committed flow reaches or exceeds 80 percent of the design flow of the domestic treatment works, the participating municipalities and authorities shall submit to the Department a program they shall pursue in order to prevent an overloading of their facilities or a violation of their NJPDES Permit.

2. Whenever the committed flow reaches 100 percent of the design flow of the domestic treatment works or there is a violation of their NJPDES Permit, the sewerage authorities and the participating municipality shall cease the issuance of sewer permits by instituting a sewer moratorium program and undertake such additional measures as are necessary to correct the problem. Said sewer moratorium shall prohibit the issuance of approvals for extensions and may restrict the issuance of approvals for connections.

(g) To achieve the previously stated goals, if participating municipalities and sewerage authorities fail to comply with their NJPDES Permit or there is not compliance with (f), above, the Department will take the following actions:

1. Whenever the committed flow reaches or exceeds 80% of the design flow of the domestic treatment works, the Department shall issue a warning notice to the sewerage authority and participating municipalities.

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2. Whenever the committed flow reaches 100% of the design flow of the domestic treatment works, the Department will cease issuance of sewer extension approvals and order the sewerage authority and participating municipality to cease further approval of sewer extensions.

(h) (No change in text.)

(i) In many cases, the problems created by the inability of a domestic treatment works to properly treat sewage will not be corrected until the completion of a regional facility in accordance with an approved facilities (201) plan and/or areawide water quality management (208) plan, prepared in accordance with section 201 of the Federal Clean Water Act. The Division may require interim upgrading of the domestic treatment works pending the completion of the regional facilities.

(j) In any case where the discharge from a domestic treatment works is threatening another critical water use or could result in a health hazard, the Division shall exercise its discretion to impose and maintain a sewer extension ban.

7:9-13.2 Authority
(No change.)

7:9-13.3 Definitions

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

(a) "Actual flow" means the volume of sewage and other wastes which a domestic treatment works receives; actual flow shall be determined by the arithmetic average of the metered daily volumes of waste received at a treatment works for a period of four consecutive months.

*"Adequate conveyance capacity" means

1. That in the downstream sewers, the peak dry weather flow does not flood the bench of the manhole and the peak wet weather flow does not result in overflows or discharges from any manhole.

2. That in downstream pumping stations, with two pumps, peak dry weather flow shall be handled by one pump and in pumping stations with more than two pumps, peak dry weather flow shall be handled with the largest pump out of service, and the peak wet weather flow does not result in any overflow or discharge.*

"Connection" means any physical change or addition to the plumbing or piping of any building, facility, or other structure either proposed or existing for which a building permit or other municipal approval is required which connects directly or indirectly to any portion or extension of a domestic treatment works and which will result in flow into the domestic treatment works.

"Design flow" means the average volume of waste water, which a domestic treatment works was designed to treat, or the maximum permissible volume of flow to a domestic treatment works as established by a federal NPDES permit, an NJPDES permit, or a treatment works approval, whichever [volume is least]* *permit or approval is most recently issued*.

"Endorse" means that the sewerage authority under a Departmentally imposed ban accepts and approves of the project and that the project is in conformance with all ordinances, rules and regulations of the sewerage authority. This is not a judgement by the sewerage authority that an exemption is justified.

"Extension" means any sewer, pipe, line, or any other structure or appurtenance for the transport of sewage, which

1. Conveys sewage from more than one separate building or structure; or

2. Conveys or will convey 2,000 gallons or more of sewage per day, determined in accordance with the values specified in N.J.A.C. 7:9-1.106. ***This includes all new lines from a single building if the building utilizes more than one sewer line to convey waste to the sewer system and the combined waste flow in the aggregate is more than 2000 gallons per day.***

"Extension approval" means a treatment works approval to construct an extension pursuant to N.J.S.A. 58:10A-6, N.J.A.C. 7:14-2.1 et seq. or 7:14A-12.1 et seq., or an approval permit to construct a sewer extension issued pursuant to N.J.S.A. 58:11-10 or N.J.S.A. 58:10A-6.

"Domestic treatment works" [shall have the meaning ascribed to it in N.J.A.C. 7:14A-1.9]* ***means a publicly or privately owned treatment works and shall include a treatment works processing domestic wastes together with any ground water, surface water, storm water or industrial process wastewater that may be present.***

"Maximum sewage treatment capacity" means the hydraulic, biological and sludge handling capability necessary to meet the terms and conditions of the NJPDES Permit.

"Treatment Works Approval" means an approval issued pursuant to N.J.S.A. 10A-6 and N.J.A.C. 7:14-2.4(a) or 7:14A-12.3, or pursuant to former N.J.S.A. 58:12-3.

7:9-13.4 Capacity assurance program

(a) Whenever the committed flow reaches or exceeds 80 percent of the design flow of the domestic treatment works, the participating municipalities and authorities shall submit to the Department a program they shall pursue in order to prevent an overloading of their facilities or a violation of their NJPDES Permit. Consideration shall be given to the following elements as components of the program:

1. Implementation of water conservation measures;
2. Reduction of infiltration and inflow;
3. Implementation of a report on measures to maximize treatment plant capacity at a minimum cost (max/min report);
4. Construction of improvements; and
5. ***Preparation for imposition*** [Imposition]* of self-imposed sewer extension ban, when committed flow reaches 100 percent of design flow ***as required by N.J.A.C. 7:9-13.5(a)***.

(b) If the participating municipalities and authorities do not comply with (a), above, then the Department shall issue a warning notice. A warning notice shall require the sewerage authority to prepare and submit a program pursuant to N.J.S.A. 58:10A-6(h)(3) and (a) above [*, or in the alternative to submit a certification that it will not permit committed flow to exceed design flow of the domestic treatment works,]* within 45 days of receipt of the notice.

(c) Upon approval by the Department of a program [or certification]* submitted pursuant to (a) ***or (b)***, the sewerage authority and participating municipalities shall give public notice of the program [or certification]* in a manner designed to inform local residents, developers, the local planning boards(s) and other affected persons. Such notice shall include at least the following information:

1. The name, mailing address and telephone number of the domestic treatment works;

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2. The design flow of the domestic treatment works;
3. (No change.)
4. A statement that the treatment works is approaching design flow and that a sewer ban will be imposed when committed flow reaches 100% of design flow.
5. (No change.)

(d) In order to ensure that sufficient capacity exists and that new projects will not cause environmental degradation, applications for treatment works approvals for sewer extensions shall contain a statement by the design engineer that sufficient capacity exists in the downstream sewers or pumping stations. The 201 sewerage agency will certify that the project is in conformance with the applicable 201 Facilities Plan and the owner of the sewage treatment facility will certify that with the addition of the project, the approved design capacity will not be exceeded. In addition, water quality management planning agencies must determine that projects are consistent with 208 Areawide Plans.*

7:9-13.5 Sewer extension bans

(a) Whenever the participating municipalities and the sewerage authority have determined that:

1. Committed flow to the domestic treatment works has reached 100 percent of its design flow; *[or]*

2. Adequate conveyance capacity is not available; or

[2.]* *3. For a four month period the domestic treatment works has discharged effluent which violates any of the following as determined by the arithmetic average of the permit parameters for a period of four consecutive months: N.J.S.A. 7:9-4 et seq.; standards promulgated by the Delaware River Basin Commission, Interstate Sanitation Commission or Hackensack Meadowlands Development Commission; or the effluent limitations expressed in its NPDES or NJPDES permit or approval to operate; then the participating municipalities and sewerage authority shall do the following:

i. ***[They shall cease]* *Cease*** the further approval of sewer extensions to the domestic treatment works;

ii. ***[The participating municipalities shall condition]* *Condition*** the approval of any building projects (by way of preliminary or final subdivision approval, building permit, or other form of approval), which will require construction of a sewer extension, upon the terms and requirements of these regulations;

iii. ***[The sewerage authority and participating municipalities shall give]* *Give*** notice of the sewer extension ban to residents of the affected area, landowners therein, local planning boards, and other persons or legal entities affected by the ban at intervals of no more than 6 months in a manner reasonably expected to be received by such persons; and

iv. ***[The sewerage authority and participating municipalities shall institute]* *Institute*** a Departmentally approved program in compliance with N.J.A.C. 7:9-13.4(a). If such a program has already been instituted, then they shall consider what additional measures to institute. Such program may include restrictions on sewer connections to the treatment works.

(b) Where a ban has been instituted by the sewerage authority and participating municipalities pursuant to this section, the authority and municipality shall not issue any sewer extension approval or endorse any sewer extension application in the area covered by such ban unless:

1. An exemption has been granted for such extension ***by the sewerage authority and municipality in which the project is located*** pursuant to exemption criteria which are equivalent to or more stringent than those contained in N.J.A.C. 7:9-13.7, and has been approved by the Department; or

2. The sewer extension approval for construction prohibits the use of the extension until such time as the sewerage authority ***[and participating municipalities]*** shall determine that adequate treatment ***and conveyance*** capacity exists at the receiving treatment works, as specified in a treatment works approval or NJPDES Permit issued by the State.

Where there is no capacity, an owner may request to construct utilizing a signed dry sewer affidavit. The dry sewer affidavit shall certify that such person understands and agrees that the sewerage authority and participating municipalities shall not approve the use of the proposed sewer extension, that such person proceeds at his or her own risk, and that such person will not use the sewer extension, and the sewerage authority and participating municipality will not approve the extension for operation, until such time as they determine that adequate treatment ***and conveyance*** capacity exists at the receiving treatment works as specified in a State issued treatment works approval or NJPDES Permit.

(c) Any Sewerage Authority and participating municipality may rescind their extension ban at such time as they can show to the Department's satisfaction that:

1. Committed flow to the treatment works does not exceed design flow ***[, and]* *;***

2. The effluent from the treatment works consistently meets all applicable effluent limitations in the facility's NPDES or NJPDES permit, and the treatment works approval ***[, and]* *;***

3.* There is adequate conveyance capacity; and

[3.]* *4. The effluent from the treatment works does not cause a violation of the applicable Water Quality Standards (N.J.A.C. 7:9-4 et seq.) for the receiving water body.

(d) Whenever the participating municipalities and sewerage authority have failed to comply with (a) or (b) above and the Department has determined that:

1. Committed flow to a domestic treatment works has reached 100 percent of its design flow; ***[or]***

2. Adequate conveyance capacity is not available; or

[2.]* *3. For a four month period a domestic treatment works has discharged effluent which violates any of the following as determined by the arithmetic average of the permit parameters for a period of four consecutive months: N.J.S.A. 7:9-4 et seq.; standards promulgated by the Delaware River Basin Commission, Interstate Sanitation Commission or Hackensack Meadowlands Development Commission; or the effluent limitations expressed in its NPDES or NJPDES permit or approval to operate; then the Department shall cease issuing extension approvals and may issue an administrative order:

i. Requiring that a sewerage authority and/or participating municipalities cease further approval of sewer extensions to the domestic treatment works;

ii. (No change.)

iii. Requiring a sewerage authority and participating municipalities to give notice of the sewer extension ban order to residents of the affected area, landowners therein, local planning boards, and other persons or legal entities affected by the order at intervals of no more than 6 months in a manner reasonably expected to be received by such persons;

iv. (No change.)

(e) Where an order has been issued pursuant to this section, the Department shall not issue any sewer extension approval in the area covered by such order unless:

1. (No change.)

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2. he sewer extension approval for such extension prohibits the use of the extension until such time as the Department determines that adequate treatment ***and conveyance*** capacity exists at the receiving treatment works, as specified in a treatment works approval ***or NJPDES Permit issued by the State***, and the extension approval states that the Department shall not approve operation of such extension until it determines that adequate treatment ***and conveyance*** capacity exists; and the person proposing to build the extension submits a dry sewer affidavit. The dry sewer affidavit shall certify that such person understands and agrees that the Department shall not approve the use of the proposed sewer extension, that such person proceeds at his or her own risk, and that such person will not use the sewer extension, and the Department will not issue a Stage III treatment works approval, pursuant to N.J.A.C. [7:14-2.4] ***7:14A-12.1*** et seq., for operation, until such time as the Department determines that adequate treatment ***and conveyance*** capacity exists at the receiving treatment works as specified in a ***State issued*** treatment works approval ***or NJPDES Permit***.

(f) Any Sewerage Authority may apply for a recession or modification of any order issued pursuant to these regulations, at such time as it can show that:

1. Committed flow to the treatment works does not exceed design flow **[, and]* ***;

***2. There is adequate conveyance capacity*;**

[2.]* *3.* The effluent from the treatment works consistently meets all applicable effluent limitations in the facility's NPDES or NJPDES permit, and the treatment works approval as determined by the arithmetic average of the permit parameters for a period of four consecutive months **;** ***and** **[3.]* *4.*** (No change in text from proposal.)

(g) The Department may grant incremental allotments of additional sewage capacity to the sewage authority under ban, when it has been demonstrated that substantial ***interim*** improvement in effluent quality **[and/or]* *through a*** reduction in **[committed]* *actual*** flow ***or other measures*** will occur **.* *and]* *The interim improvements must address the cause(s) for imposing the ban. In addition*** the sewage authority **[is]* *must be*** committed to make improvements **[through an Administrative Order, Administrative Consent Order or schedule of compliance contained in a NPDES or NJPDES permit]* *sufficient to enable the domestic treatment works to meet the July 1, 1988 deadline for secondary treatment as specified in the Federal Clean Water Act.* *The implementation of the improvement must be initiated prior to any additional sewage capacity allotment being granted.]* ***The terms and conditions for sewage capacity allotments, treatment and conveyance requirements, and interim improvements will be specified by either an Administrative Consent Order or NJPDES permit.*****

7:9-13.6 Sewer extension ban exemptions

(a) The Department shall consider exemptions to sewer extension bans in order to provide relief to persons that suffer certain types of substantial harm due to the imposition of the sewer extension bans, or when, in the opinion of the Department there is a compelling public need for a proposed facility. The burden of proof is upon the applicant in all exemption

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requests under this Section. The Department shall presume that all applicants have knowledge of the ban after the effective date of the order, and the Department shall not grant an exemption to any party who subsequently proceeds with a proposed project and thereby increases or creates the hardship which is the basis for the requested exemption. An applicant for an exemption must submit a plan for water conservation plumbing, and the implementation of such plan will be a condition of the exemption. An applicant for an exemption must prove to the satisfaction of the Department that it meets any of the criteria outlined below.

1. (No change.)

2. If an existing building or group of buildings with individual subsurface disposal system(s) is certified by the local health authorities and proven to the satisfaction of the Department to be presently creating a health hazard due to overflow, contamination of the waters of the State, or other malfunction, and the system can not be reasonably rehabilitated, an exemption may be allowed.

3. If the application for the exemption is a request to allow the connection of a proposed building, which is publicly owned or operated, including but not limited to: a school, hospital, fire or police station, senior citizen housing, or long term health care facility which has received a certification of need from the New Jersey Department of Health, an exemption may be granted if in the Department's opinion there exists a sufficient public need for the proposed building.

4. (No change.)

(b) The applicant shall submit the request for an exemption along with the appropriate documentation to the sewerage authority under order. The sewerage authority shall endorse and forward this request along with a completed exemption request form which can be obtained from the Division. (See appendix 1). The sewerage authority shall provide the applicant with copies of these regulations and information on water conservation plumbing. ***The granting of an exemption by the Department does not relieve the applicant from complying with all other State and local requirements, including compliance with 201 Facilities and 208 Water Quality Management Plans.***

(c) (No change from proposal.)

(d) An exemption granted for a specific property is not transferrable to any other property ***and is only transferrable to another person if the original circumstances which justified granting the exemption have not changed*.**

7:9-13.7 Adjudicatory hearings

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

(c) Requests for hearings shall be sent to:

Division of Water Resources
Department of Environmental Protection
P.O. Box CN 029
Trenton, New Jersey 08625

7:9-13.8 Orders issued prior to the effective date of these rules

(No change.)

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(a)

DIVISION OF WATER RESOURCES

**Flood Hazard Area Delineations
Delineated Floodways for Green Brook and
Bound Brook within Townships of
Bridgewater and Piscataway, City of
Plainfield and the Boroughs of Bound
Brook, Dunellen, Green Brook and
Middlesex within Somerset, Middlesex and
Union Counties**

**Adopted Amendment: N.J.A.C. 7:13-7.1
(formerly N.J.A.C. 7:13-1.11)**

Proposed: September 19, 1983 at 15 N.J.R. 1540(a).
Adopted: July 17, 1984, by Robert E. Hughey, Com-
missioner, Department of Environmental Protection.
Filed: July 23, 1984 as R.1984 d.338, **without change**.

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et
seq.

Effective Date: August 6, 1984.
Expiration Date pursuant to Executive Order No.
66(1978): July 19, 1988.

DEP Docket No. 053-83-08.

Summary of Public Comments and Agency Responses:

On October 5, 1983, a public hearing was held on the proposed delineation. Approximately seven people attended the hearing. Additionally the Department received approximately 18 written comments on the proposal. As a result of the Department's review of the proposal during the comment period, Plate G-1 covering the lower reach of Green Brook, approximately between the Route 18 and Route 28 bridges was recalculated. This recalculation caused a minor change in Plate G-1. However this change was too minor to change the delineation as contained in the New Jersey Register. During the course of the public hearing, the Department described the methodology used to delineate the stream and described the reach of the stream being included within the delineation.

Comment: Commenters expressed concern that proposed development upstream could impact the delineation and cause additional flooding upstream or downstream of the site.

Response: Before any development is started in a delineated flood hazard area or in an area which would be inundated by the 100 year design flood, the developer must obtain a stream encroachment permit, which will not be granted until the developer meets the Department's flood prevention standards contained in the Department's Flood Hazard Area Regulations, N.J.A.C. 7:13.

Comment: A commenter asked if there would be public hearings if other streams in the area were delineated.

Response: A public hearing will be held at a convenient location any time a delineation is proposed or amended.

Comment: What must an owner of property within a newly delineated floodway do if he wishes to build a garage on his property.

Response: The owner would have to obtain a stream encroachment permit if he wished to build a garage on property within a delineated floodway.

Comment: The new delineation is inaccurate because it fails to take into account the replacement bridges at King George Road and Rock Avenue, and the improvements to Municipal Brook.

Response: The replacement bridges at King George Road and Rock Avenue were included in the analyses. The additional stream improvements to Municipal Brook were researched and were found to have no impact on the results of the flood delineation.

Full text of the adoption follows.

7:13-7.1 Delineation floodways

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

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

1.-41. (No change.)

42. . . . The floodway and flood hazard area of Green Brook from the Reading Rail Road at its mouth upstream to Rock Avenue, and Bound Brook from its mouth upstream to approximately 450 feet downstream of the Lehigh Valley Railroad bridge.

43.-49. (No change.)

(e)-(g) (No change.)

(b)

**DIVISION OF WATER RESOURCES
WATER POLLUTION CONTROL**

**Construction of Wastewater Treatment
Facilities**

**Adopted New Rules: N.J.A.C. 7:14-2.13,
2.14 and 2.15**

Proposed: May 21, 1984 at 16 N.J.R. 1147(a).
Adopted: July 19, 1984 by Robert E. Hughey, Commis-
sioner, Department of Environmental Protection.
Filed: July 23, 1984 as R.1984 d.339, **without change**.

Authority: N.J.S.A. 58:10A-4, 58:10A-5(d), and 58:25-
8.

Effective Date: August 6, 1984.
Expiration Date pursuant to Executive Order No.
66(1978): October 17, 1987.
DEP Docket No. 017-84-04.

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Summary of Public Comments and Agency Responses: No comments received.

Full text of the adoption follows.

7:14-2.13 Excavation material unacceptable or conditionally acceptable for reuse as trench backfill

(a) The following trench excavation materials are unacceptable as trench backfill:

1. Any excavation materials that will cause damage to the piping systems;

2. Any excavation material that cannot be compacted or consolidated to yield the desired density as specified in the contract specifications;

3. Trees, stumps and foreign material.

(b) The following excavation materials are conditionally acceptable as trench backfill only if provided for in the contract specifications and the trench is located in a right-of-way, an easement, a roadway or an unimproved area:

1. Clay, organics and silt determined to be suitable in accordance with soil tests required by the owner/engineer.

2. Hard materials, such as blacktop, concrete, stone and rock.

i. The hard materials shall only be placed in the midzone of the trench beginning two feet above the top of the pipe, after compaction of the pipe envelope, to a point two feet below the final road or ground surface.

ii. Placement of the hard materials shall not create a potential hazard to the pipe or create voids that will cause adverse settlement.

iii. The maximum overall size of any piece of hard material shall be 12 inches.

(c) The Department may require that all trench backfill material not conforming to this subsection and contract specifications be removed and spoiled to a spoil site approved by the Department in accordance with the requirements of N.J.A.C. 7:26-1, for solid or hazardous wastes.

7:14-2.14 Construction equipment costs compensation for extra work

(a) The contractor is entitled to all identifiable direct job equipment costs associated with extra work. The compensable cost for construction equipment shall be based upon the most current costs established in "Rental Rates for Construction Equipment" and "Rental Rates for Older Construction Equipment" (Blue Book), Dataquest Incorporated, A.C. Nielsen Company, San Jose, CA, 1983.

(b) Overhead and profits factors allowed in N.J.A.C. 7:14-2.7, shall only be applied to the rates charged for rental equipment used by the contractor for extra work.

7:14-2.15 Substantial and final completion of pipe projects; contractor's guarantees

(a) The contractor shall notify the owner/engineer in writing when the contract work is substantially complete as defined by N.J.A.C. 7:14-2.8(d). Within a reasonable time, the owner/engineer shall inspect the work.

(b) If the owner/engineer considers the work to be substantially complete, and before the Certificate of Substantial Completion is issued, the contractor shall:

1. Submit a construction schedule for the remaining work to be completed, and

2. Warrant and guarantee, for a period of one year or for a period as otherwise specified, from the date of Substantial Completion, that the completed work is free from defects due

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to faulty materials, equipment or workmanship. The Performance Bond shall remain in effect through the guarantee period.

(c) If the owner/engineer does not consider the work to be substantially complete, the engineer shall notify the contractor in writing, listing the items to be completed or corrected.

1. The contractor shall correct or complete items identified in writing within a reasonable time as specified in the contract documents, including repairs of any damage resulting from such defects to other work completed under the contract.

2. If the contractor fails to make such corrections within a reasonable time as specified in the contract documents, the owner may do so and charge the costs incurred, including direct and indirect costs, to the contractor.

(e) Before the Contractor has received notification of substantial completion, the owner/engineer may submit a request to the contractor to use a functional portion of the work if:

1. Such use does not significantly interfere with construction on any portion of remaining work to be completed, and

2. The conditions of such use shall be identified in the Certificate of Substantial Completion when issued by the owner/engineer.

(f) Final completion shall be that point at which the contract is completed, defective work corrected and clean up work accomplished. Unless a Certificate of Substantial Completion has been issued, the guarantee period shall begin upon certification of final completion by the engineer.

(a)

DIVISION OF WATER RESOURCES

Water Supply Allocation Procedures for Determining, Assessing and Collecting Payments for Water Diversion

Adopted Amendments: N.J.A.C. 7:19-4.3, 4.7, and 4.9

Proposed: April 2, 1984 at 16 N.J.R. 664(a).

Adopted: July 11, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: July 23, 1984 as R.1984, d.335, 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. 58:2-1 et seq. and N.J.S.A. 13:1B-3.

DEP Docket No. 007-84-03.

Expiration Date pursuant to Executive Order No. 66(1978): September 19, 1988.

Summary of Public Comments and Agency Responses:

The Department received a comment on the proposal from the Elizabethtown Water Company stating that it no longer used and diversion at Upper Cold Brook near Pottersville. As a result of this comment the Department has deleted that diversion from N.J.A.C. 7:19-4.7 and 4.9. The Department

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has determined that the New Jersey Water Company no longer diverts from Brass Castle Creek, and has deleted that diversion from N.J.A.C. 7:19-4.7 and 4.9. Additionally, the Department has changed Jersey City's passing flow requirement in N.J.A.C. 7:19-4.7, to reflect the amount of water Jersey City is to release from Boonton Dam into the Rockaway River to meet the passing flow requirement for the Rockaway River at the point at which it is measured. No other comments were received.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

7:19-4.3 Definitions

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

...
 "Passing flow requirements" means the volume of water required to be maintained at a selected point **in the stream** to promote water quality conditions after consideration of the needs of downstream users.
 ...

7:19-4.7 Calculation of fees
 (a)-(c) (No change.)

(d) The total diversion by each purveyor less the free allowance, and adjustments thereto, shall be subject to the excess diversion fee.

1. The excess diversion fee shall be fixed at not less than \$1.00 nor more than \$10.00 per million gallons in excess of the free allowance.

i. The minimum charge of \$1.00 per million gallons of water shall apply on those days when the passing flow requirement below the point of diversion is maintained.

ii. The maximum charge of \$10.00 per million gallons of water shall apply on those days when the passing flow below the point of diversion is zero.

iii. The rate of charge for any day in which the passing flow requirement is not maintained shall be computed in accordance with the following formula:

$$\text{Daily charge} = \left[1.00 + 9.00 \left(1 - \frac{\text{ADF}}{\text{PFR}} \right) \right] \times (\text{TF})$$

ADF = average daily passing flow in stream

PFR = passing flow requirement

TF = total daily diversion in millions of gallons subject to the excess diversion fee

(e) The passing flow requirements which apply in these calculations include but are not limited to the following:

Purveyor	Gaging Station	Passing Flow (cubic feet per second)
Commonwealth Water Co.		
Passaic River	Passaic River at Chatham	116
Canoe Brook	Canoe Brook near Summit	2.12
Passaic River at Madisonville	Passaic River near Millington	10.7
Elizabethtown Water Co.		
Raritan River	Passing flows maintained by N.J. Water Supply Authority	
Hackensack *[River]* *Water Co.*		
Hackensack River	Hackensack River at New Milford	12.9
Saddle River	Saddle River at Lodi	13.9
Two Bridges (except when Passaic Valley Water Commission is diverting at Two Bridges, in which case passing flow will be 27.2 cfs).	Passaic River	143.3
City of Jersey City	*[Rockaway River]* *To be released from Boonton Dam to the Rockaway River*	*[23.0]* *10.83*
¹ Subject to adjustment when flows in Beaver Brook at the outlet of Split Rock Pond are less than 1.5 cfs.		
Middlesex Water Co.		
Robinson's Branch of Rahway River	Rahway River at Rahway	4.2
Raritan River	Passing flow maintained by N.J. Water Supply Authority	
Monmouth Consolidated Water Supply Co.		
Swimming River	Swimming River near Red Bank	9.4
Jumping Brook	Jumping Brook near Neptune	1.16

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Shark River	Shark River near Neptune	1.9
Newark Water Dept.	Pequannock River at Macopin	12.3
City of New Brunswick	Lawrence Brook at Westons Mill	8.7
North Jersey District	Wanaque River at Wanaque	15.5 ¹
Water Supply Commission		
¹ Subject to reduction by the amount of flows into reservoir at Awosting less than 4.6 cfs		
	Ramapo River at Pompton Lakes	61.9
Two Bridges	Passaic River	143.3
(except when Passaic Valley Water Commission is diverting at Two Bridges, in which case passing flow will be 27.2 cfs).		
Passaic Valley Water Commission		
Pompton River	at Pompton Plains	92.8
Passaic River	at Little Falls	89.0
Passaic River	at Two Bridges	27.2
Rahway Water Department		
Rahway River	at Rahway	7.9
*[Elizabethtown Water Co.		
Upper Cold Brook]*	*[near Pottersville]*	*[0.6]*
City of Trenton		
Delaware River	at Trenton	1,1311.1
*[New Jersey Water Company		
Brass Castle Creek	near Washington]*	*[0.44]*

(f) Where the passing flow is not specified above, it shall be fixed by the Department based on an amount equal to the average daily flow for the driest month, as shown on existing records or in lieu thereof, 125,000 gallons for each square mile of unappropriated watershed above the point of diversion. The flows computed on the basis of 125,000 gallons per day per square mile shall be in addition to flows from any appropriated watershed above the point of diversion.

7:19-4.9 Free allowance determination

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

(d) The Department has determined the following free allowances, in accordance with (a) above for the following purveyors:

Purveyor/ Division	Points of Diversion	Free Allowances (million gallons) ³
Atlantic City Water Dept.	Absecon Creek	1,649.070
Bloomsbury Water Dept.	Musconetcong River	29.200
Boonton Water Dept.	Stony Brook Reservoir	143.628
Branchville Water Dept.	Dry Brook	21.571
Buckhorn Springs Water Co.	Tributary of Buckhorn Creek	68.219
Burlington City Water Co.	Delaware River	293.387
Butler Water Co.	Aphawa Brook	139.175
Commonwealth Water Co.	Canoe Brook/ Passaic River	782.889
Commonwealth Water Co.	Madisonville	64.423
Elizabethtown Water Co.	Millstone River and Raritan River	
Including		
Somerville Water Co.		472.067
Highland Park		26.061
Elizabethtown Division		154.395
Plainfield Division		826.614
[City of Elizabeth]		2,208.579 ¹
City of Elizabeth		
Franklin Water Dept.	Franklin Pond	58.400 ¹
Hackensack Water Co.	Hackensack River	9,153.47 ²
	Saddle River	
	Hirschfield Brook	
	Sparkill Brook	

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Hackettstown M.U.A	Mine Brook	94.681
Haledon Water Dept.	Oldam Brook	108.551
High Bridge Water Dept.	Willoughby Brook	50.443
Jersey City Water Dept.	Rockaway River	16,542.946
Lambertville Water Co.	Tributary of Delaware River	183.084
Mendham Water Dept.	India Brook	62.926
Middlesex Water Co.	Robinson's Branch	639.006
	Rahway River	
	Raritan River	
Monmouth Consolidated Water Company	Swimming River	1,090.946
	Jumping River	16.813
	Shark River	140.615
	Harmony Creek	627.253
Southeast Morris County M.U.A.		
Newark Water Department	Pequannock River	
Newark and Belleville		13,228.208 ¹
Bloomfield		425.882
North Jersey District Water Supply Comm.		
Including		
Montclair, Kearny,	Wanaque River	
Glen Ridge, Bayonne	Ramapo River	
and East Newark	Two Bridges	2,825.940
City of Newark		10,340.048
City of New Brunswick	Lawrence Brook	957.445
New Brunswick and Milltown		
Newton Water Co.	Tributary of Paulinskull River	161.403
	West Branch	952.686
Orange Water Dept.	Rockaway River	
	Passaic River at Little Falls, or	6,542.735 ¹
Passaic Valley Water Commission	Passaic River at Two Bridges	
Peapack - Gladstone Water Dept.	Peapack Brook	58.400
Rahway Water Dept.	Rahway River	555.397
Salem Water Dept.	Alloway Creek	235.170
Sussex Water Dept.	Lake Rutherford	48.107
City of Trenton	Delaware River	4,923.850
[New Jersey Water Co.]	*[Brass Castle Creek]*	*[125.232]*

¹Subject to Allocation

²May include credits for releases to DeForest Reservoir.

³For leap year, multiply these quantities by the fraction 366/365.

(a)

**DIVISION OF FISH, GAME AND
WILDLIFE**

**Fish and Game Council
1984-85 Game Code**

Adopted Amendment: N.J.A.C. 7:25-5

Proposed: May 7, 1984 at 16 N.J.R. 972(a).

Adopted: June 12, 1984 by Fish and Game Council,
Anthony E. DiGiovanni, Chairman.

Filed: July 11, 1984 as R.1984 d.317 **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. 13:1B-30 et seq. and 23:1-1 et seq.

Effective Date: August 6, 1984.

Expiration Date: July 31, 1985, except the woodchuck
season which continues through September 28, 1985,
as set forth in N.J.A.C. 7:25-5.18.

Summary of Public Comments and Agency Responses:

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Eleven written comments were received during the public comment period. Two written comments and eleven verbal comments were received at the public hearing before the New Jersey Fish and Game Council on June 12, 1984.

One commenter objected to the Code as being unacceptable. The commenter's organization is opposed to all hunting and trapping activities. No specific areas of the Code were pointed out. Two letters received during the comment period and one received at the hearing were in opposition to the proposed Code and to hunting and trapping in general. Letters from a private individual and the New Jersey Congress for Animals were general in their opposition to deer hunting at the Great Swamp National Wildlife Refuge, increased bag limits on white-tailed deer, expansion of turkey hunting opportunity, the extended pheasant season and the proposed muzzleloader squirrel season.

The Council and the Division recognize the views of those who are philosophically opposed to hunting and trapping. The Division, however, is charged with the responsibility of maintaining healthy wildlife populations and providing valuable recreation to the public. These responsibilities can be met only through promulgation of annual hunting and trapping seasons.

Three letters were received from individuals supporting the proposed Code. Two additional letters were received from organizations which gave their support to the proposed Code. Those organizations were the United Bow Hunters of New Jersey and the Sourland Mountain Muzzleloaders.

Two commenters supported the proposed Code at the public hearing. One specifically addressed the muzzle-loader squirrel season and extended archery seasons in certain deer management zones. Another commenter, representing the New Jersey Chapter of the National Wild Turkey Federation supported the proposed Code but requested the Council to consider minor wording changes regarding the weapons, methods, and missiles used for taking wild turkeys. Though numerous recommendations were made by various commenters, the aforementioned recommendations of the Wild Turkey Federation were the only ones which the Division considered to have merit. Both the Council and the Division agreed with this commenter's points and amendments were made to the proposed Code addressing those issues. Specifically N.J.A.C. 7:25-5.7(e).

An individual voiced opposition to sections in the proposed Code allowing a properly licensed hunter to take eight deer. While the Council recognizes the opinions of the commenter, these bag limits are designed to enhance the ability of the Division to manage the deer herd effectively.

A representative of the New Jersey Farm Bureau and an individual farmer commented on either-sex deer hunting seasons. Both indicated a desire to see harvests increased in certain deer management areas through extended seasons and increased bag limits. Correspondence received from the Hunterdon County Board of Agriculture and from the New Jersey Christmas Tree Growers Association also urged harvest increases in certain areas of the State. Another individual requested that the Council encourage deer hunting in certain parks and sanctuaries.

The Council's goal is to manage deer herds, keeping population levels at a point compatible with agricultural land use. The Council recognizes the problems farmers and homeowners encounter with deer damage and believes that population management goals will be accomplished within the framework of seasons and limits submitted in the Division's proposed Code. While the Council and Division can suggest manage-

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ment strategies to control deer populations, neither has the authority to open private park lands to deer hunting.

One request from an individual received during the comment period asked that the Council change boundaries of the woodcock zones in Ocean County. Data supplied by the Division suggested that such a change might adversely affect recreational opportunity available to woodcock hunters. Therefore, these boundaries were not changed from the proposal.

Letters were received from one individual and from one organization urging the Council to approve the proposed muzzle-loader squirrel season. A letter from the Cumberland County Sportsmen's Federation opposed the season. Taking these comments into consideration, the Council made amendments to that section of the proposed Code, specifically N.J.A.C. 7:25-5.23(e).

A written comment submitted by the New Jersey Water Waterfowlers Association supported the proposed expansion of the steel shot zone for waterfowl hunting. Six commenters at the hearing expressed opposition to the proposal. The commenters questioned the availability of supportive data and the effectiveness of steel shot for waterfowl hunting. Based on public comment, the Council elected not to approve the expanded steel shot zone but to maintain the zone as delineated in the preceding game code, specifically N.J.A.C. 7:25-5.14(a)1.

A letter received from the Cumberland County Sportsmen's Federation requested that the special shotgun permit deer season in deer management zones 31, 34 and 44 be eliminated. After hearing these comments, the Council amended that section of the proposed Code to close the zones, specifically N.J.A.C. 7:25-5.29(k).

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

7:25-5.1 General provisions

- (a)-(b) (No change.)
- (c) This Code, when adopted and when effective, shall supersede the provisions of 1983-84 Game Code.
- (d)-(e) (No change.)

7:25-5.2 Pheasant-Chinese ringneck (*Phasianus colchicus torquatus*), English or blackneck (*P.c. colchicus*), Mongolian (*P.c. mongolicus*), Japanese green (*Phasianus versicolor*); including mutants and crosses of above

(a) The duration for the male pheasant season is November 10, to December 1, inclusive and December 10 through January 5, 1985 excluding December 12, 13 & 14 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December 1 inclusive and December 10 through March 31, 1985 excluding November 10 and December 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

- (c) (No change.)
- (d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hud-

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son, Essex, Camden, Atlantic and Cape May is November 10 to December 1, inclusive and December 10 through February 9, 1985 excluding December 12, 13 and 14 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open. The pheasant season on wildlife management areas shall close on January 5, 1985.

(e) The hours for hunting pheasants on November 10 will be 8:00 A.M. to ½ hour after sunset. All other days on which the hunting for pheasants is legal, the hours shall be sunrise to ½ hour after sunset.

(f) Hen Pheasants: In the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County South of Rt. 70, and in the Counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic, and Cape May, and on all State Fish and Wildlife Management Areas, the daily bag limit shall be 2 pheasants of either sex. Unlawful to take or attempt to take female pheasants elsewhere or to have female pheasants in possession afield other than in areas above described.

(g) The opening of the season on semi-wild preserves shall coincide with the listed statewide openings of November 10.

(h) Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 23:4-1, 23:3-32, 23:4-2, 23:4-8, and other applicable statutes.

7:25-5.3 Cottontail rabbit (*Sylvilagus floridanus*), Black-tailed jack rabbit (*Lepus californicus*), white-tailed jack rabbit (*Lepus townsendii*) european hare (*Lepus europeus*), chukar partridge (*Alectoris graeca*), and quail (*Colinus virginianus*)

(a) The duration of the season for the hunting of the animals enumerated by this section shall be November 10 through December 1 inclusive, and December 10, 1984 to February 9, 1985 excluding December 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(b) The duration of the season for the hunting of the animals enumerated by this section for properly licensed persons engaged in falconry shall be September 1 to December 1 inclusive and December 10 through March 31, 1985 excluding November 9 and December 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November 10, 8:00 A.M. to ½ hour after sunset. On all other days for which hunting for these animals is legal, the hours shall be sunrise to ½ hour after sunset.

(e) (No change.)

7:25-5.4 Ruffed grouse (*Bonasa umbellus*)

(a) The duration of the season for the hunting of grouse in that portion of the state situated north of Rt. 70 from Pt. Pleasant west to Camden shall be October 3 through December 1 inclusive and December 10 to February 9, 1985, excluding December 12, 13 & 14, 1985 in those deer management zones in which a special shotgun deer season is authorized and excluding any extra special deer permit season day that is declared open.

(b) The duration of the season for the hunting of grouse in that portion of the state situated south of Rt. 70 from Pt.

Pleasant west to Camden shall be October 20 through December 1, 1984 inclusive and December 10 to February 9, 1985, excluding December 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special deer permit season day that is declared open.

(c) (No change.)

(d) The hunting hours for ruffed grouse shall be sunrise to ½ hour after sunset, with the exception of November 10 when legal hunting hours shall be 8:00 A.M. to ½ hour after sunset.

(e) (No change.)

7:25-5.5 Eastern gray squirrel (*Sciurus carolinensis*)

(a) The duration of the season for the hunting of squirrels in that portion of the state situated north of Route 70 from Pt. Pleasant west to Camden shall be October 13 through December 1, 1984 inclusive and December 10 to February 9, 1985 excluding December 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special permit season day if declared open.

(b) The duration of the season for hunting squirrels in that portion of the state situated south of Rt. 70 from Pt. Pleasant west to Camden shall be October 20 through December 1, 1984 inclusive and December 10 to February 9, 1985 excluding December 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special deer season day that is declared open.

(c) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry shall be September 1 to December 1 inclusive and December 10 through March 31, 1985 excluding December 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(d) (No change.)

(e) Hunting hours for squirrels shall be sunrise to ½ hour after sunset, with the exception of November 10 when legal hunting hours shall be 8:00 A.M. to ½ hour after sunset.

(f) (No change.)

7:25-5.6 (No change.)

7:25-5.7 Wild turkey (*Meleagris gallapavo*)

(a) The duration of the Spring Wild Turkey Gobbler hunting season shall include four separate hunting periods of five days each. The hunting periods for hunting areas 1-7 shall be:

1. Monday, April 29-Friday, May 3
2. Monday, May 6-Friday, May 10
3. Monday, May 13-Friday, May 17
4. Monday, May 20-Friday, May 24

The hunting periods for hunting areas 14 and 22 shall be:

1. Monday, April 22-Friday, April 26
2. Monday, April 29-Friday, May 3
3. Monday, May 6-Friday, May 10
4. Monday, May 13-Friday, May 17

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

(e) Hunting methods shall be restricted to calling or *[still-hunting]* ***stand-hunting. No person shall stalk or attempt to approach a wild turkey for the purpose of taking or attempting to take the bird. All persons must have a turkey calling device in their possession while turkey hunting.*** No person shall use an electronic calling device at any time during the open season. Persons may not drive or chase wild turkeys for

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the purpose of putting them in range of hunters. The use of dogs is prohibited. No decoys, live or artificial, may be used. Fluorescent hunter's orange not required on outer clothing for turkey hunting. No shot size larger than number four fine shot ***or smaller than number seven and one-half fine shot*** may be used for turkey hunting. ***No shotgun larger than 10 gauge or smaller than 20 gauge may be used for turkey hunting.***

(f) Method: The taking of one male wild turkey with firearm or bow and arrow under a special wild turkey permit will be permitted in nine designated turkey hunting areas by holders of a special wild turkey permit.

1. Special wild turkey permits will be issued on an individual basis to holders of valid 1985 firearm or archery hunting licenses. Only one application per person may be submitted for the spring wild turkey season.

(g) (No change.)

(h) Applying for a Wild Turkey Hunting Permit

1. Only holders of valid 1985 firearm or archery hunting licenses, including juvenile licenses may apply by detaching from the hunting license the stub marked "Special Spring Turkey", signing as provided on the back, and sending the stub together with a computer card application form which has been properly completed in accordance with instructions. Application cards may be obtained from:

i.-iii. (No change.)

2. (No change.)

3. Fill in the application form to include: name, address, 1985 firearm or archery hunting license number, turkey hunting area applied for, hunting period applied for, and any other information requested. Only those applications will be accepted for participation in random selection by card sorting machine which are received in the Trenton office during the period of February 14-March 1, 1985, inclusive. Applications received after March 1 will not be considered. **DO NOT SEND FEE WITH THE APPLICATION.** Selection of permittees will be made on the basis of a random selection of computer cards.

4. (No change.)

5. Successful applicants will be notified by mail. The computer card and the permit issuance fee of \$5.00 in the form of a check or money order, made payable to "Division of Fish, Game and Wildlife" must be returned by mail before March 23, 1985. The Spring Turkey Hunting Permit will then be issued. Permits not claimed by March 23 will be immediately reallocated in the same random manner as the original selection and be returnable two weeks thereafter.

(i) Applying for the Special Farmer Spring Turkey Permit

1. Only the owner or lessee of a farm, who resides thereon, or immediate members of his family 10 years of age or older who also reside thereon, may apply on forms provided for a special farmer spring turkey permit. Under this section a farm is an area of five acres or more and producing a gross income in excess of \$500.00 and is tax assessed as farmland. Special farmer spring turkey permits will be issued only in those Turkey Hunting Areas where a spring gobbler season is prescribed.

2. Application forms may be obtained from the Division of Fish, Game and Wildlife, CN 400, Trenton, N.J. 08625, or from Conservation Officers.

3. Fill in the application form to include: Name, age, address and any other information requested thereon. **THIS APPLICATION MUST BE NOTARIZED.** Properly completed application forms will be accepted in the Trenton office only during the period of February 14-March 1, 1985. There is

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no fee required and all qualified applicants will receive a special farmer spring turkey permit delivered by mail.

4. Only one application may be submitted per individual.

(j) Use of Spring Turkey Hunting Permit and Special Farmer Spring Turkey Permit.

1. The spring turkey hunting permit is valid only in the turkey hunting area (THA) designated and during the time period designated and is not transferable. The spring turkey hunting permit hunter is responsible for hunting in the correct THA and time period as indicated and in ascertaining the boundaries. The Special Farmer Spring Turkey Permit is valid only on the farm designated on the application and is not transferable.

2. The spring turkey hunting permit is not transferable from turkey hunting area to turkey hunting area, or from hunting period to hunting period, from individual to individual or from farm to farm. The permit must be used in the Turkey Hunting Area, in the hunting period, and by the individual to whom it was issued.

(k) Turkey Hunting Area Map (on file at the Office of Administrative Law)

1984 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota	Season Total	Portions of Counties Involved
1	100†	400	Sussex
2	120†	480	Sussex, Warren
3	80†	320	Sussex, Warren
4	100†	400	Sussex, Warren, Morris
5	100†	400	Sussex
6	150†	600	Sussex, Passaic, Bergen
7	150†	600	Sussex, Morris, Passaic
14	100‡	400	Burlington, Ocean, Atlantic, Cape May, Cumberland
22	100‡	400	Cumberland
	1000	4000	

†Applied to each of the four hunting periods (A, B, C, D) in areas 1-7:

- A. Monday, April 29-Friday, May 3
- B. Monday, May 6-Friday, May 10
- C. Monday, May 13-Friday, May 17
- D. Monday, May 20-Friday, May 24

‡Applied to each of the four hunting periods (A, B, C, D) in areas 14 and 22.

- A. Monday, April 22-Friday, April 26
- B. Monday, April 29-Friday, May 3
- C. Monday, May 6-Friday, May 10
- D. Monday, May 13-Friday, May 17

(l) Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 23:4-1, 23:4-2, 23:4-11, 23:4-12 and other applicable statutes.

(m) Location of Turkey Hunting Areas:

- 1. (No change.)
- 2. Turkey Hunting Area #2

That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Rt. 94 and the Blairstown-Millbrook Road at Blairstown; then northwest along the Blairstown-Millbrook Road to Millbrook Village;

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then northwest along the Millbrook-Flatbrookville Road to its intersection with the Flatbrook at Flatbrookville; then south along the west bank of the Flatbrook to its confluence with the Delaware River; then north along the east bank of the Delaware River to the intersection with Rt. 521 at Dingman's Ferry; then east along Rt. 521 to its intersection with Rt. 206; then southeast along Rt. 206 to its intersection with Rt. 519 at Branchville; then south along Rt. 519 to its intersection with Rt. 94 at Newton; then southwest along Rt. 94 to the point of beginning at Blairstown.

3.-6. (No change.)

7. Turkey Hunting Area #7

That portion of Sussex, Passaic and Bergen Counties lying within a continuous line beginning at the intersection of Route 23 and Route 517 at Hardystonville; then east along Rt. 23 to its intersection with Rt. 202 at Wayne; then south and west along Rt. 202 to its intersection with Rt. 287; then south along Rt. 287 to its intersection with Rt. 80; then west along Rt. 80 to its intersection with Rt. 183 at Netcong; then east along Rt. 183 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with Rt. 517; then northeast along Rt. 517 to the point of beginning at Hardystonville.

8. Turkey Hunting Area #14

That portion of Burlington and Ocean Counties lying within a continuous line beginning at the intersection of Rt. 70 and Rt. 72; then northeast along Rt. 70 to its intersection with Rt. 88 at Laurelton; then east along Rt. 88 to Bay Head; then south along the Atlantic coast to Ship Bottom; then west along Rt. 72 to the point of beginning.

9. Turkey Hunting Area #22

That portion of Atlantic, Cape May and Cumberland Counties lying within a continuous line beginning at the intersection of Rt. 55 and Rt. 552 spur; then east along Rt. 552 spur to its intersection with Rt. 552; then east along Rt. 552 to its intersection with Rt. 557; then southeast along Rt. 557 to its intersection with Rt. 50; then southeast along Rt. 50 to its intersection with Rt. 9 at Seaville; then south along Rt. 9 to its intersection with Rt. 83 at Clermont; then west along Rt. 83 to its intersection with Rt. 47; then west and north along Rt. 47 to its intersection with Dennis Creek; then west along the shore of Delaware Bay to its intersection with Rt. 49 at Millville; then east along Rt. 49 to its intersection with Rt. 55; then north along Rt. 55 to the point of beginning.

7:25-5.8 Mink (*Mustela vison*) and muskrat (*Ondatra zibethicus*) Nutria (*Myocaster coypus*) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6.00 A.M. on November 15, 1984 through March 15, 1985, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6.00 A.M. on December 1, 1984 through March 15, 1985, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, 1985 inclusive.

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

7:25-5.9 Beaver (*Castor canadensis*) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February 28, 1985, inclusive.

(c) Special Permit: A special \$5.00 permit obtained from the Division of Fish, Game and Wildlife is required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications must be received in the Trenton office during the period December 1, 1984-December 25, 1984. Applicants may apply for only one beaver trapping permit and must provide their 1984 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-9, Zone 2-7, Zone 3-3, Zone 4-3, Zone 5-3, Zone 6-3, Zone 7-3, Zone 8-3, Zone 9-4, Zone 10-11, Zone 11-4, Zone 12-6, Zone 13-1, Zone 14-4, Zone 15-0. Total 64. Successful applicants must provide their 1985 Trapping License Number to the Division before permit will be issued.

(d) (No change.)

(e) A "beaver transportation tag" provided by the Division must be affixed to each beaver taken immediately upon removal from trap, and all beaver must be taken to a designated beaver checking station at the times and dates specified on the beaver permit and in any case no later than March 9, 1985.

(f)-(g) (No change.)

7:25-5.10 River Otter (*Lutra canadensis*) trapping

(a) (No change.)

(b) The duration for the trapping of otter shall be February 1 through February 28, 1985, inclusive.

(c) Special Permit: A special \$5.00 permit obtained from the Division of Fish, Game and Wildlife is required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications must be received in the Trenton office during the period December 1, 1984-December 25, 1984. Only 1 application per person may be submitted for trapping otter and applicants must provide their 1984 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-6, Zone 2-3, Zone 3-4, Zone 4-5, Zone 5-5, Zone 6-6, Zone 7-3, Zone 8-7, Zone 9-3, Zone 10-7, Zone 11-5, Zone 12-9, Zone 13-14, Zone 14-7, Zone 15-10. Total 94. Successful applicants must provide their 1985 Trapping License Numbers to the Division before permit will be issued.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses must be taken to a beaver-otter check station at dates specified on the otter permit, and in any case no later than March 9, 1985, where a pelt tag will be affixed and the carcass surrendered.

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

(i) Beaver and Otter Zone Descriptions:

Zone 1: That portion of Sussex County lying within a continuous line beginning at the intersection of the New York-New Jersey state line with Rt. 519, then south on Rt. 519 to its intersection with Rt. 23, then south on Rt. 23 to its intersection with Rt. 519 at Colesville, then south on Rt. 519 to its intersection with County Rt. 636 above Branchville, then west on 636 to its intersection with Rt. 206, then south on Rt. 206 to Rt. 521, then southwest on 521 to its intersection with County Rt. 617, then south on Rt. 617 to its intersection with Rt. 624 near Fairview Lake, then northwest on Rt. 624 to its intersection with Rt. 615, and then west on 615 to the Delaware River, then north along the Delaware River to the state line and south along the state line to Rt. 519, the point of beginning.

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Zone 2: That portion of Sussex County lying within a continuous line beginning at the intersection of the New York-New Jersey state line with Rt. 519, then south on Rt. 519 to its intersection with Rt. 23, then south on Rt. 23 to its intersection with Rt. 519 at Colesville, then south on Rt. 519 to its intersection with County Rt. 636 above Branchville, then west on 636 to its intersection with Rt. 206, then southeast on Rt. 206 to its intersection with Rt. 15 at Ross Corner, then south on Rt. 15 to its intersection with Rt. 517 at Sparta, then north on Rt. 517 to its intersection with Rt. 23, then east on Rt. 23 to its intersection with Rt. 515 at Stockholm, then north on Rt. 515 to its intersection with Rt. 94 at Vernon, then north on Rt. 94 to the state line, then west along the state line to its intersection with Rt. 519, the point of beginning.

Zone 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Rt. 615 and the Delaware River at Flatbrookville, then east along 615 to its intersection with Rt. 624, then south on Rt. 624 to its intersection with Rt. 617, then north on 617 to its intersection with Rt. 521 then northeast on Rt. 521 to its intersection with Rt. 206, then south on Rt. 206 to its intersection with Rt. 94 at Newton, then south on Rt. 94 to its intersection with Rt. 608 at Marksboro, then south on Rt. 608 to its intersection with Rt. 521, then south on Rt. 521 to its intersection with Rt. 80 near Hope, then west on Rt. 80 to the Delaware River near Columbia, then north and northeast along the Delaware River to its intersection with Rt. 615, the point of beginning.

Zone 5: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of the Delaware River and Rt. 80 at Columbia, then east on Rt. 80 to its intersection with Rt. 521 near Hope, then north on Rt. 521 to its intersection with Rt. 608, then northeast on Rt. 608 to its intersection with Rt. 94 at Marksboro, then north and east on Rt. 94 to its intersection with Rt. 206 at Newton, then north on Rt. 206 to its intersection with Rt. 15 at Ross Corner, then south on Rt. 15 to its intersection with Rt. 517 at Sparta, then southwest on Rt. 517 to its intersection with Rt. 46 at Hackettstown, then west on Rt. 46 to the Delaware River, then north on the Delaware River to Rt. 80 at Columbia, the point of beginning.

Zone 6: That portion of Warren, Morris, Sussex, Passaic Counties lying within a continuous line beginning at the intersection of Rt. 46 and Rt. 517 in Hackettstown, then north on Rt. 517 to its intersection with Rt. 23 at Franklin, then south on Rt. 23 to its intersection with Rt. 699 (Berkshire Valley Rd.) at Oak Ridge, then south on Rt. 699 to its intersection with Rt. 15, then south on Rt. 15 to its intersection with Rt. 80, then west on Rt. 80 to its intersection with Rt. 10 near Ledgewood, then east on Rt. 10 to its intersection with Rt. 513, then west on Rt. 513 to its intersection with Rt. 517 at Long Valley then north on 517 to its intersection with Rt. 182, then north on Rt. 182 to its intersection with Rt. 46, then northwest on Rt. 46 to its intersection with Rt. 517 at Hackettstown, the point of beginning.

Zone 7: That portion of Morris, Passaic and Essex Counties lying within a continuous line beginning at the intersection of Rt. 699 (Berkshire Valley Rd.) and Rt. 23 at Oak Ridge, then southeast on Rt. 23 to its intersection with Rt. 80 near Singac, then west on Rt. 80 to its intersection with Rt. 287, then south on Rt. 287 to its intersection with Rt. 10 near Whippany, then west on Rt. 10 to its intersection with Rt. 80 at Ledgewood, then east on Rt. 80 its intersection with Rt. 15, then north on Rt. 15 to its intersection with Rt. 699 at Mt.

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Hope, then north on Rt. 699 to its intersection with Rt. 23 at Oak Ridge, the point of beginning.

Zone 8: That portion of Ocean County lying within a continuous line beginning at the intersection of Rt. 537 and Rt. 539 at Hornerstown, then south on Rt. 539 to its intersection with Rt. 72 near Howardsville, then east on Rt. 72 to its intersection with Rt. 532, then east on Rt. 532 to the Atlantic Ocean, then north along the Atlantic Ocean to its intersection with Rt. 528 at Mantoloking, then west along Rt. 528 (527/528) to its intersection with Rt. 195 near Jackson Mills, then west along Rt. 195 to its intersection with 537 near Holmeson, then southwest along 537 to its intersection with 539 at Hornerstown, the point of beginning.

Zone 9: That portion of Ocean and Burlington Counties lying within a continuous line beginning at the intersection of Rt. 537 and Rt. 539 at Hornerstown, then south on Rt. 539 to its intersection with Rt. 72 near Howardsville, then northwest on Rt. 72 to its intersection with Rt. 532, then west on Rt. 532 to its intersection with Rt. 206 near Tabernacle, then north on Rt. 206 to its intersection with Rt. 537 at Chambers Corner, then east on Rt. 537 to its intersection with Rt. 539 at Hornerstown the point of beginning.

Zone 10: That portion of Burlington, Camden and Atlantic Counties lying with a continuous line beginning at the intersection of Rt. 623 (Taunton Rd.) and Rt. 541 near Medford, then southeast on Rt. 541 to its intersection with Rt. 532, then east on Rt. 532 to its intersection with Rt. 563 at Chatsworth, then south on Rt. 563 to its intersection with Rt. 30 at Egg Harbor, then northwest on Rt. 30 to its intersection with Rt. 561 near Hammonton, then northwest on Rt. 561 to its intersection with Rt. 73 at Blue Anchor then north on Rt. 73 to its intersection with Spur 536 (Taunton-Hopewell Rd.) near Tansboro then north on Spur 536 to its intersection with Rt. 623 near Taunton Lake, then north on Rt. 623 to its intersection with Rt. 541 near Medford, the point of beginning.

Zone 11: That portion of Ocean, Burlington and Atlantic Counties lying within a continuous line beginning at the intersection of Rt. 563 and Rt. 532 at Chatsworth then east on 532 to its intersection with Rt. 72, then southeast on Rt. 72 to its intersection with Rt. 532 near Howardsville, then east on Rt. 532 to the Atlantic Ocean, then south along the Atlantic Ocean to the Absecon light house in Atlantic City, then northwest on Rt. 30 to its intersection with Rt. 563 in Egg Harbor, then north on Rt. 563 to its intersection with Rt. 532 at Chatsworth, the point of beginning.

Zone 12: That portion of Atlantic, Gloucester, Camden and Cape May Counties lying within a continuous line beginning at the intersection of Rt. 322 and Spur 536 at Williamstown, then northeast on Spur 536 to its intersection with Rt. 73 near Tansboro, then south on Rt. 73 to its intersection with Rt. 561 at Blue Anchor, then southeast on Rt. 561 to its intersection with Rt. 30 near Hammonton, then southeast on Rt. 30 to the Absecon Lighthouse in Atlantic City, then south along the Atlantic Ocean to Sea Isle Boulevard (Rt. 625) in Sea Isle, then west on Sea Isle Boulevard to its intersection with Rt. 50 at Seaville, then northwest on Rt. 50 to its intersection with Rt. 557 near Buck Hill, then northwest on 557/555 to its intersection with Rt. 322 near Williamstown, then east on 322 to its intersection with Spur 536 at Williamstown, the point of beginning.

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Zone 13: That portion of Cape May, Atlantic and Cumberland Counties lying with a continuous line beginning at the intersection of Rt. 557 and County Rt. 671 at Buena, then southeast on Rt. 557 to its intersection with Rt. 50 near Buck Hill, then south on Rt. 50 to its intersection with Rt. 9 at Seaville, and south on Rt. 9 to its intersection with Sea Isle Boulevard (Rt. 625) at Ocean View; then east on Sea Isle Boulevard to the Atlantic Ocean, then south along the Atlantic Ocean, then north along the Delaware Bay to its intersection with East Point Rd. in Heislerville Management Area, then north on East Point Rd. to its intersection with Rt. 616 (Dorchester-Heislerville Rd.), then north on Rt. 616 to its intersection with Rt. 740, then northeast on Rt. 740 to its intersection with Rt. 47, then north on Rt. 47 to its intersection with Rt. 646 (Cumberland-Port Elizabeth Rd.) near Port Elizabeth, then north on Rt. 646 to its intersection with Rt. 49 near Cumberland, then west on Rt. 49 to its intersection with Rt. 671 (Union Rd.) then north on Rt. 671/71 to its intersection with Rt. 557 near Buena, the point of beginning.

Zone 14: That portion of Cumberland, Salem, Gloucester and Atlantic Counties lying within a continuous line beginning at the intersection of Delaware Bay and the west bank of the Maurice River, then north along the west bank of the Maurice River to Rt. 631, then north along Rt. 631 to its intersection with Rt. 553, then north along Rt. 553 to its intersection with Rt. 536/322 at Glassboro, then east along Rt. 322/536 to its intersection with Rt. 555 near Williamstown, then south along Rt. 555/557 to its intersection with Rt. 71 (Union Rd.) near Buena, then south on Rt. 71/671 to its intersection with Rt. 49 at Cumberland, then east on Rt. 49 to its intersection with Rt. 646 (Cumberland-Port Elizabeth Rd.) then south on Rt. 646 to its intersection with Rt. 47 at Port Elizabeth, then south on Rt. 47 to its intersection with Rt. 740, then southwest on Rt. 740 to Rt. 616 (Dorchester-Heislerville Rd.) then south on Rt. 616 to East Point Rd. in Heislerville Mgt. Area, then south on East Point Rd. to the Delaware Bay, then west along the Delaware Bay to its intersection with the west bank of the Maurice River, the point of beginning.

Zone 15: That portion of Salem and Cumberland Counties lying within a continuous line beginning at the intersection of the Delaware River and Rt. 25 at Oakwood Beach, then east on Rt. 25 to its intersection with Rt. 49 at Salem, then southeast on Rt. 49 to its intersection with Rt. 32, then east on Rt. 32 to its intersection with Rt. 540, then east on Rt. 540 to its intersection with Rt. 553 at Centerton, then south on Rt. 553 to its intersection with Rt. 631 near Port Norris, then south on Rt. 631 to the Delaware Bay, then northwest along the Delaware Bay and Delaware River to its intersection with Rt. 25 at Oakwood Beach, the point of beginning.

7:25-5.11 Raccoon (*Procyon lotor*), Red Fox (*Vulpes fulva*), Gray Fox (*Urocyon cinereoargenteus*) and Virginia Opossum (*Didelphis virginiana*), Striped Skunk (*Mephitis mephitis*), Long-tail Weasel (*Mustela frenata*), Shorttail Weasel (*Mustela erminea*), Coyote (*Canis latrans*). Trapping Only.

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tail weasel, short-tail weasel and coyote trapping season shall be 6:00 A.M. on November 15, 1984 to March 15, 1985, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas shall be after 6:00 A.M. on January 1, through March 15, 1985, inclusive.

(d)-(h) (No change.)

7:25-5.12 (No change.)

7:25-5.13 Migratory Birds

(a) Should any open season on migratory game birds, including waterfowl, be set by federal regulation which would include the date of November 10, 1984, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the state as regularly prescribed throughout the season by federal regulations.

(b) (No change.)

(c) No person shall take, attempt to take, hunt for or have in possession, any migratory game birds including waterfowl, except at the time and in the manner prescribed by the code of federal regulations of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the 1984-85 hunting seasons. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the 1984-85 hunting season.

(d)-(h) (No change.)

(i) Federal and state waterfowl stamps are required for hunting ducks and geese for everyone 16 years of age or over. Regular state valid hunting license is also required to hunt ducks and geese.

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

(l) No person shall take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November 10, 1984. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the state or federal regulation, or by the 1984-85 Game Code.

15.-19. (No change.)

(m) Seasons and bag limits

1. Whistling swan (*Cygnus olor columbianus*), and dove (*Zenaidura macroura*) are protected. There will be no open season on these birds during 1984-85.

2. Rail and Gallinule

i. The duration of the season for hunting clapper rail (*Rallus longirostris*, Virginia rail (*Rallus limicola*), sora rail (*Porzana carolina*) and common gallinule (*Gallinula chloropus*) shall be September 1 through November 9, 1984 inclusive.

ii. (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 6 through November 29, 1984.

ii. South Zone: The duration of the season for hunting woodcock in that portion of the state situated south of Route 70 from Point Pleasant west to Camden shall be October 27 through December 1, 1984 inclusive and December 15 to January 2, 1985 including December 12, 13 & 14 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

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iii. (No change.)

iv. Hunting hours for woodcock are sunrise to sunset except on November 10, when the hunting hours are 8:00 A.M. to sunset.

(n) (No change.)

7:25-5.14 Special regulation limiting use of shotgun shells containing lead pellets

(a) No person shall have in possession or use in hunting water-fowl and coot or any snipe, rail or gallinules after the season for hunting waterfowl commences any shotgun shell containing lead shot or lead pellets in the following designated area of New Jersey.

1. *[The State and Federal designated steel shot area includes that portion of Monmouth, Ocean, Burlington Atlantic and Cape May Counties lying within a continuous line beginning at the Atlantic Ocean and the Shark River; then up the Shark River to the Garden State Parkway; then south along the Garden State Parkway to its intersection with Route 9; then south along Route 9 to its intersection with Route 542; then west along Route 542 to its intersection with Route 563 at Greenbank; then south along Route 563 to its intersection with Route 50 at Egg Harbor; then south along Route 50 to its intersection with Route 557 at Tuckahoe; then west and south along Route 557 to its intersection with Route 47; then west along Route 47 to its intersection with Stimpson Island Road at Eldora; then south along Stimpson Island Road to its intersection with the West Creek; then south along the east bank of the West Creek to the Delaware Bay; then along a straight line bearing of 225°SW to the New Jersey-Delaware State Line in the Delaware Bay; then southeast along the New Jersey-Delaware line to the Atlantic Ocean; then north along the Atlantic Ocean to the Shark River, the point of beginning.]* ***The State and Federal designated steel shot area is bounded on the north by the Shark River, on the west by the Garden State Parkway, on the south by the Cape May Canal and on the east by the Atlantic Ocean.***

2. (No change.)

(b) (No change.)

(c) (No change.)

7:25-5.15 Common crow (*Corvus brachyrhynchos*)

(a) Duration for the season for hunting the common crow shall be Monday, Thursday, Friday and Saturday from August 20, 1984 through March 30, 1985 inclusive, excluding December 3-8 December 12, 13 & 14, 1984 in those deer management zones in which a special regular firearm deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to ½ hour after sunset, except on November 10 when the hours are 8:00 A.M. to ½ hour after sunset.

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

7:25-5.16 (No change.)

7:25-5.17 Raccoon (*Procyon lotor*) and Virginia opossum (*Didelphis virginiana*) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum shall be one hour after sunset on October 1, 1984 to one hour before sunrise on March 1, 1985. The hours for hunting shall be one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) No person shall hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December 3-8, 1984 and on December 12, 13 & 14, 1984, in those deer management zones in which a special shotgun deer season is authorized and including any extra special shotgun permit deer season day.

(d) No person shall train a raccoon or opossum dog other than during the period of September 1 to October 1, 1984 and from March 1 to May 1, 1985. The training hours shall be 1 hour after sunset to 1 hr. before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (*Marmota monax*) hunting

(a) Duration for the hunting of woodchucks with a rifle in this state shall be March 16-September 28, 1985. License hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (*Vulpes fulva*) and gray fox (*Urocyon cinereoargenteus*) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Northern Zone: November 10, 1984 through March 1, 1985 inclusive, excluding December 3-8 and December 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special shotgun permit deer season day if declared open.

2. Southern Zone: November 10, 1984 through February 9, 1985, excluding December 3-8 and 12, 13 & 14, 1984 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special shotgun permit deer season day if declared open.

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

(d) The hours for hunting fox shall be 8:00 A.M. to ½ hour after sunset on November 10, 1984 and other days sunrise to ½ hour after sunset.

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

7:25-5.20 Dogs

(a) There shall be no exercising or training of dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November 9 and on Clinton, Flatbrook, Black River, Assunpink and Whittingham WMA's on the following Sundays: November 11, 18 and 25, 1984.

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

7:25-5.21 (No change.)

7:25-5.22 (No change.)

7:25-5.23 Firearms and missiles, etc.

(a) Except during the firearm deer seasons no person shall have in his possession in the woods, fields, marshlands or on the water any shell or cartridge with missiles of any kind larger than #4 fine shot. This shall not preclude a properly licensed person from hunting woodchuck with a rifle during the woodchuck season. Also excepted is the use of a muzzle-loading rifle, .36 caliber or smaller, loaded with a single projectile during the late squirrel season in designated areas.

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Waterfowl hunters may possess and use shotgun shells loaded with BB steel fine shot or #2 or smaller lead fine shot and properly licensed persons hunting for raccoon or opossum with hounds or engaged in trapping for furbearing animals may possess and use a .22 caliber rifle and .22 short caliber cartridge only for the purpose of killing raccoon, or opossum or legally trapped furbearing animals other than muskrat.

(b) (No change.)

(c) No person shall use in hunting fowl or animals of any kind, any shotgun capable of holding more than three shells at one time or that maybe fired more than three times without reloading. No person shall use in hunting or trapping of any kind, a rifle loaded with more than three cartridges.

(d) (No change.)

(e) Within the areas described as portions of Passaic, *[Morris, Somerset]* Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York state line; then south along Rt. 513 to its intersection with *[Rt. 80; then west along Rt. 80 to its intersection with Rt. 206; then south along Rt. 206 to its intersection with Rt. 202 at Somerville;]* ***the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with Rt. 202;*** then southwest along Rt. 202 to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their 1985 firearm hunting license may hunt for squirrels between January 21 and February 9, 1985 using a .36 caliber or smaller muzzle-loading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzle loader deer hunters and trappers, from December 3-8 inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the standard hollow base rifled slug or hollow base slug shotgun shell only

or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge hollow base rifle slug or hollow base slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of shotgun and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than No. 2 lead fine shot or BB steel shot. A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his trap line).

1. Persons who are properly licensed may hunt for deer with a muzzle loading rifle during the 1984 six day firearm deer season and the special permit, muzzleloading rifle deer season.

2. Muzzleloading rifles used for hunting deer are restricted to single-shot single barrelled weapons with flintlock or percussion actions, shall not be less than .44 caliber and shall fire a single missile or projectile. No telescopic sights shall be attached or affixed to the muzzle loading rifle while engaged in hunting for deer. Only one muzzle loading rifle may be possessed while hunting. Double barrel and other types of muzzle loading rifles capable of firing more than one shot without reloading or holding more than one charge are prohibited. Persons who are properly licensed may hunt for deer with a smooth bore muzzleloader during the special permit muzzleloading rifle season. Smooth bore muzzleloaders are restricted to single-shot, single barrelled weapons with flintlock or percussion actions, shall not be smaller than 20 gauge or larger than 10 gauge, and shall fire a single missile or projectile. No telescopic sights shall be attached or affixed to the smooth bore muzzleloader while engaged in hunting for deer. Only one muzzleloading rifle or smooth bore muzzleloader may be possessed while deer hunting. Double barrel and other types of smooth bore muzzleloaders capable of firing more than one shot without reloading or holding more than one charge are prohibited.

3. Properly licensed persons 14 years of age and older engaged in hunting with a muzzle loading rifle must have in possession a proper and valid rifle permit. Properly licensed persons 14 years of age or older, hunting during the muzzle-loading rifle deer season with a smooth bore muzzleloader must also have in possession a proper and valid rifle permit. Rifle permits for 14-17 year olds will be valid for muzzle-loader deer hunting only.

(g) No person shall hunt, hunt for, or attempt to capture, kill, take, injure or destroy game birds or animals except at the time and in the manner provided by NJSA Title 23 and the valid State Game Code.

(h) The prohibition against shooting waterfowl or placing a boat or other structure at a greater distance than one hundred feet from shore shall not apply in all areas, and in the Atlantic Ocean. (Sinkbox prohibited by U.S. Regulations).

(i) Wild waterfowl, migratory game birds, rabbits, hares, jack rabbits, squirrels, grouse, chukar partridge, pheasants, and quail shall not be hunted for or taken on Sunday. However, pheasants, quail and chukar partridge may be hunted for or taken on Sunday on semi-wild and commercial shooting preserve lands that are properly licensed for the taking thereof.

(j) Except for conservation officers and their deputies, no person shall carry or possess a bow and arrow, firearm of any kind or any instrument capable of firing or throwing a projec-

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tile of any type within the limits of a state game refuge unless authorized by the Division.

(k) Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

(l) No person shall, for the purpose of hunting for, pursuing, taking or killing, or attempting to hunt, pursue, take or kill any bird or animal, have in an automobile or vehicle of any kind, any firearm loaded with missiles of any kind, under a penalty of not less than \$20.00 nor more than \$50.00.

(m) The Division may issue special permits without fee, to shoot or hunt from a standing vehicle that is parked off the road, to licensed hunters who after investigations, are found to be paraplegics. Permittees are subject to all applicable New Jersey Fish and Game laws and regulations.

(n) No person shall have both a firearm and a bow and arrow in his possession or under his control in the woods or fields or on the water while hunting any wild bird or animal. This does not apply to duly constituted law enforcement officers.

(o) Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 23:3-1, 23:4-1, 23:4-12, 23:4-13, 23:4-16, 23:4-18, 23:4-19, 23:4-24.1, 23:4-29, 23:4-42, 23:4-44 and 23:8-10 and other applicable statutes.

7:25-5.24 Bow and arrow; general provisions

(a) A bow means longbow, recurved bow or compound bow that is hand-held and hand drawn, and that has no mechanical device built into, or attached to, that will enable the archer to lock the bow at full or partial draw. All draw locking and draw holding devices are prohibited. All cross-bows or variations thereof are prohibited.

(b) No person shall use a bow and arrow for hunting, on December 12, 13 & 14, 1984 in those deer management zones in which a special regular shotgun deer season is authorized or on any extra Special Permit Deer Season Day if declared open, or between ½ hour after sunset and ½ hour before sunrise during the Fall Bow and Arrow Deer Seasons or during the 6 Day Firearm Deer Season, or between ½ hour after sunset and sunrise during other seasons.

(c) During the Bow and Arrow Seasons for taking deer, September 29-November 9, 1984 in most deer management zones; September 29-December 1, 1984, excluding November 24, in zones 13, 36, 49, 50 and 51; and, January 5-19, 1985, or any other time bow and arrow deer or turkey hunting is permitted, all arrows used for taking deer or turkey must be fitted with an edged head of the following specifications:

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

7:25-5.25 White-tailed Deer (*Odocoileus virginianus*) fall bow and arrow exclusively (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September 29-November 9, 1984 inclusive; except in zones 13, 36, 49, 50 and 51 where the season shall be September 29-December 1, 1984, excluding November 22, 1984. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(b) Bag Limit: One deer of either sex. Kill must be tagged immediately with completely filled in "transportation tag" and must be transported to a deer checking station before 8:00 P.M. EST on day killed. Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional

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legal deer during the 1984 fall bow and arrow deer season. This permit shall not be valid on the day of issuance.

- 1. (No change.)
- 2. Deer taken during the period of November 10-December 1, 1984, in zones 13, 36, 49, 50 and 51 inclusive, must be transported to a designated deer checking station before 7:00 P.M. E.S.T. on the day killed.

(c) This season shall be open only to holders of a valid 1984 bow and arrow hunting license which contains an attached fall bow and arrow deer "transportation tag". If the anticipated harvest of deer has not been accomplished during this season, additional days of bow and arrow deer hunting may be authorized by the Director. Such authorization and dates thereof shall be announced by press and radio.

- (d) (No change.)

7:25-5.26 White-tailed deer (*Odocoileus virginianus*) winter bow and arrow, exclusively (either-sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from ½ hour before sunrise on January 5 to ½ hour after sunset on January 19, 1985. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(b) Bag Limit: One deer of either sex. Deer must be tagged immediately with "transportation tag" appropriate for the season (special winter bow and arrow) completely filled in, and must be transported to a deer checking station before 7:00 P.M. EST on day killed. Any legally killed deer which is recovered too late to be brought to a check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional deer during the 1985 winter bow season. This permit shall not be valid on the day of issuance. Only deer with antlers at least three inches in length may be taken under this permit (second tag) provision.

(c) This season will be open only to holders of a valid 1985 bow and arrow hunting license which contains an attached winter bow season "transportation tag", in addition to the regular fall bow season "transportation tag". If the anticipated harvest of deer has not been accomplished during this season, additional days of special winter bow and arrow deer hunting may be authorized by the Director. Such authorization and dates thereof shall be announced by press and radio.

- (d) (No change.)

7:25-5.27 White-tailed deer (*Odocoileus virginianus*) six day firearm

(a) Duration for this season will be December 3-8, 1984 inclusive with shotgun or muzzle loading rifle, exclusively.

(b) Bag Limit: One deer, antlered only, except in those areas designated as "hunters choice" indicated in subsection (d) below. One deer for the season, with antler at least three inches in length. Kill must be tagged immediately with completely filled in "transportation tag" and must be transported to a deer checking station before 7:00 P.M. EST on day killed. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish,

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Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next day to receive a legal "possession tag". If the season has concluded, said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional, legal deer during the 1984 firearm deer season. This permit shall not be valid on the day of issuance.

(c) A person who has legally taken deer during the fall bow and arrow season can legally take an antlered deer with a shotgun or muzzle loading rifle during the interval of December 3-8, 1984 if he possesses his valid firearm license, but he may not take another deer with a bow. If the anticipated harvest of deer has not been accomplished during this season, additional days of deer hunting may be authorized by the Director, with the approval of the Council. Such authorization and dates thereof shall be announced by press and radio.

(d) Hunter's Choice Area: Hunter's choice area is described as follows: That portion of Bergen, Hudson, Essex, Morris, Union, Somerset and Middlesex Counties lying within a continuous line beginning at the intersection of Rt. 202 and the New York State line near Suffern; then south on Rt. 202 to its intersection with Rt. 23 near Wayne; then south on Rt. 23 to its intersection with Rt. 80; then southwest on Rt. 80 to its intersection with Rt. 511; then south on Rt. 511 to its intersection with Rt. 510; then west on Rt. 510 to its intersection with Rt. 24 at Morristown; then southeast on Rt. 24 to its intersection with Rt. 82; then southeast along Rt. 82 to its intersection with Rt. 22; then southwest on Rt. 22 to its intersection with Rt. 287 near Somerville; then southeast on Rt. 287 to its intersection with Rt. 18 near South Bound Brook; then southeast on Rt. 18 to its intersection with the NJ Turnpike; then north on the Turnpike to its intersection with the Raritan River; then east along the north bank of the Raritan River to Raritan Bay and the New York State line; then north along the New York State line Arthur Kill and west bank of the Hudson River; then west along the NJ-NY border to the point of beginning near Suffern.

(e) Hunting Hours: December 3-December 8, 1984, inclusive, 7:00 A.M. EST to 5:00 P.M. EST, with shotgun or muzzle loading rifle.

(f)-(g) (No change.)

7:25-5.28 White-tailed deer (*Odocoileus virginianus*) special permit season, muzzleloading rifle, either sex

(a) The Director with the approval of the Council may authorize the issuance of special muzzle loading rifle deer permits for the taking of deer with a muzzleloading rifle or smoothbore muzzle-loader loaded with a single projectile anywhere within this state or at any state or federal installation.

(b) (No change.)

(c) One deer of either sex, and any age, may be taken with a special muzzleloading rifle deer permit. Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional deer during the 1984 special permit, muzzleloading rifle deer permit season. This permit shall not be valid on the day of issuance. Only deer with antlers at least three inches in length may be taken under the special, second tag (permit) provision. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the special deer permit season for muzzle-loading rifles shall be from 7:00 A.M. EST to 5:00 P.M. EST on December 10, 11, 15, and 17-22, 1984 or any other time as determined by the Director.

(e) (No change.)

1. Special deer permits for muzzleloading rifles will be issued on an individual basis to holders of valid 1984 firearm licenses. Only one application per person may be submitted for the special either sex deer seasons for muzzleloading rifle or shotgun. Special farmer muzzleloader deer permits will be issued on an individual basis to owners or lessee of farms who reside thereon or to the immediate members of their families 14 years of age or older who also reside thereon, upon receipt of a notarized application form.

(g) Special permits for muzzleloading rifles consist of back display which include a "special permit transportation tag" and a validated permit application stub. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license. The validated application stub must be in the possession of permittee while hunting. The "Deer Transportation Tag" portion of the permit must be completely filled out, separated at the performance and affixed to the deer immediately upon killing. This completely filled in "special permit transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag". Any permit holder killing a deer of either sex on December 10, 11, 15 and 17-22, 1984 must transport this deer to an authorized checking station by 7:00 P.M. EST on the day killed to secure the legal possession tag". The possession of a deer of either sex after 7:00 P.M. EST on the day killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded said deer must be taken to a regular deer check station on the following weekday to receive a legal possession tag.

(h) Applying for a Special Muzzleloading Rifle Deer Permit:

1. Only holders of valid 1984 firearm hunting licenses may apply by detaching from their hunting license stub marked "Special Deer Season 1984" signing as provided on the back, and sending the stub, together with a Special Muzzleloading Rifle Deer Season computer card application form which has been properly completed in accordance with instructions. Application cards may be obtained from:

i.-iii. (No change.)

2. (No change.)

3. Only one application whether for special permit muzzleloading rifle season or the special permit shotgun season accompanied by the hunting license stub, may be submitted by any one individual.

4. Fill in the application form to include: Name, address, 1984 firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection by card sorting machine which are received in the Trenton office during the period of August 25-September, 10, 1984 inclusive. Applications postmarked after the 13th will not be considered. DO NOT SEND FEE WITH THE APPLICATION. Selection of permittees will be made on the basis of a random selection of computer cards.

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5. (No change.)

6. Successful applicants will be notified by mail. The computer card and the permit fee of \$10.00 in the form of a money order, made payable to "Division of Fish, Game and Wildlife" must be returned by mail before October 10, 1984. The Special Deer Permit will then be issued. Permits not claimed by October 11 will be immediately reallocated in the same random manner as the original selection and be returnable two weeks thereafter.

(i) Applying for the Special Farmer Muzzleloading Rifle Deer Permit

1.-2. (No change.)

3. Fill in the application form to include: Name, age, size of farm, address, and any other information requested thereon. **THIS APPLICATION MUST BE NOTARIZED.** Properly completed application forms will be accepted in the Trenton office only during the period of September 1-17, 1984. There is no fee required, and all qualified applicants will receive a special farmer muzzleloading rifle deer permit, delivered by mail.

4. Only one application, whether for special permit muzzleloading rifle season or special permit shotgun season may be submitted per individual.

(j) Use of Special Muzzleloading Rifle Deer Permit and Special Farmer Muzzle loading Rifle Deer Permit.

1. The special muzzleloading rifle deer permit is valid only in the deer management zone (DMZ) designated and is not transferable. The special farmer muzzleloading rifle deer permit is valid only on the farm occupied and designated in the application and is not transferable. The DMZ quota and DMZ map follow. The special permit hunter is responsible for hunting in the correct DMZ or farm as indicated and in ascertaining the boundaries.

2. Neither the special muzzleloading rifle deer permit nor the special muzzleloading rifle farmer deer permit is transferable from Deer Management Zone to Deer Management Zone, or from farm to farm, or from individual to individual. The permit must be used on the farm, in the Deer Management Zone, and by the individual to whom it was issued.

(k) Deer Management Zone Map (on file at the Office of Administrative Law).

**1984 MUZZLELOADING RIFLE DEER SEASON
PERMIT QUOTAS
EITHER SEX**

Deer Mgt. Zone No.	Anticipated Deer Harvest	Permit Quota	Portions of Counties Involved
	1984	1984	
1	56	400	Sussex
2	25	155	Sussex
3	28	280	Sussex, Passaic, Bergen
4	123	880	Sussex, Warren
5	129	860	Sussex, Warren
6	49	445	Sussex, Morris, Passaic, Essex
7	79	440	Warren, Hunterdon
8	211	1240	Warren, Hunterdon, Morris, Somerset
9	38	235	Morris, Somerset
10	160	725	Warren, Hunterdon
11	41	295	Hunterdon
12	139	730	Mercer, Hunterdon, Somerset
13	17	120	Morris, Somerset
14	37	365	Mercer, Somerset, Middlesex, Burlington
15	18	175	Mercer, Monmouth, Middlesex
16	25	250	Ocean, Monmouth
17	14	140	Ocean, Monmouth, Burlington

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18	16	155	Ocean
19	11	105	Camden, Burlington
20	11	105	Burlington
21	30	300	Burlington, Ocean
22	5	45	Burlington, Ocean
23	34		Burlington, Camden, Atlantic
24	48	240	Burlington, Ocean
25	21	205	Gloucester, Camden, Atlantic, Salem
26	38	210	Atlantic
27	35	185	Salem, Cumberland
28	19	110	Salem, Cumberland, Gloucester
29	36	240	Salem, Cumberland
30	8	35	Cumberland
31		15	Cumberland
32	4		Cumberland
33	12		Cape May, Atlantic
34	30	185	Cape May, Cumberland
35	15	150	Gloucester, Salem
41	62	270	Mercer, Hunterdon
42	4	35	Atlantic
43	11	45	Cumberland
44	2	15	Cumberland
45		90	Cumberland, Atlantic, Cape May
46	14		Atlantic
47	2		Atlantic, Cumberland, Gloucester
48	8	80	Burlington
49			Burlington, Camden, Gloucester
50	5	50	Middlesex, Monmouth
51	10	100	Monmouth, Ocean
Total	1,699	11,180	

(k) Muzzle loader, either-sex permits not applied for by September 10, 1984 will be reallocated to shotgun either-sex season permit applicants.

(l) (No change.)

7:25-5.29 White-tailed deer (*Odocoileus virginianus*) special permit season, shotgun only, either sex

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

(c) One deer of either sex, any age, may be taken with a special shotgun deer permit except in deer management zones where the limit will be two deer of either-sex and any age; only one deer may be taken in a given day. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the special permit shotgun deer season shall be from 7:00 A.M. EST to 5:00 P.M. EST on Wednesday, December 12, 1984 except that in zones: 2, 5, 6, 7, 8, 12, and 16 the special permit shotgun season will also include December 13, 1984; and, except that in zones 9, 13, 14, 41, 50, and 51 the special permit shotgun season will also include December 13 and 14, 1984; or at other times as determined by the Director.

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

1. Special shotgun deer permits will be issued on an individual basis to holders of valid 1984 firearm licenses. Only one application per person may be submitted for the special season whether as a farmer or a license holder. Farmer shotgun deer permits will be issued on an individual basis to owners or lessees of farms who reside thereon, or the immediate members of their families 10 years of age or older who also reside thereon, upon receipt of a notarized application form.

(g) Special permits consist of back display which include a "special permit transportation tag" and a validated permit application stub. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license in the case of a special deer permit, and without the license in the case of the farmer deer permit. The validated application stub must be in the possession of

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permittee while hunting. The "Deer Transportation Tag" portion of the permit must be completely filled out, separated at the perforation and affixed to the deer immediately upon killing. This completely filled in "special permit transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag". Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. EST on date killed to secure the legal "possession tag". The possession of a deer of either sex after 7:00 P.M. EST on date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has been concluded said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". For deer management zones where the special permit shotgun season is more than one day and the bag limit is two deer, a second valid and proper "special permit transportation tag" will be issued upon registration of the first deer, provided the season is open on the following day(s). Said permit will allow this person to continue hunting and take one additional legal deer during the shotgun permit season. This permit shall not be valid on the day of issuance, and will only be available from check stations designated to be open for the extended shotgun permit deer season.

(h) Applying for a Special Shotgun Deer Permit:

1. Only holders of valid 1984 firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license stub marked "Special Deer Season 1984" signing as provided on the back, and sending the stub, together with a computer card application form which has been properly completed in accordance with instructions. Application cards may be obtained from:

i.-iii. (No change.)

2.-3. (No change.)

4. Fill in the application form to include: Name, address, 1984 firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection by card sorting machine which are received in the Trenton office during the period of August 25-September 10, 1984. Applications postmarked after the 10th will not be considered. **DO NOT SEND FEE WITH THE APPLICATION.** Selection of permittees will be made on the basis of a random selection of computer cards.

5.-6. (No change.)

(i) Applying for the Special Farmer Shotgun Deer Permit

1.-2. (No change.)

3. Fill in the application form to include: Name, age, size of farm, address, and any other information requested thereon. **THIS APPLICATION MUST BE NOTARIZED.** Properly completed application forms will be accepted in the Trenton office only during the period of September 1-17, 1984. There is no fee required, and all qualified applications will receive a special farmer shotgun deer permit, delivered by mail.

4. (No change.)

(j) Use of Special Shotgun Deer Permit and Special Farmer Shotgun Deer Permit

1. The special shotgun deer permit is valid only in the deer management zone (DMZ) designated and is not transferable. The special shotgun farmer deer permit is valid only on the farm occupied and designated in the application and is not transferable. The DMZ quota and DMZ map follow. The special shotgun permit hunter is responsible for hunting in the correct DMZ or farm as indicated and in ascertaining the boundaries.

2. Neither the special shotgun deer permit nor the special shotgun farmer deer permit is transferable from Deer Management Zone to Deer Management Zone, or from farm to farm, or from individual to individual. The permit must be used on the farm, in the Deer Management Zone, and by the individual to whom it was issued.

(k) Deer Management Zone Map (on file at the Office of Administrative Law).

**1984 SHOTGUN DEER SEASON
PERMIT QUOTAS
EITHER SEX**

Deer Mgt. Zone No.	Anticipated Deer Harvest	Permit Quota	Portion of Counties Involved
	1984	1984	
1	149	931	Sussex
2†	258	860	Sussex
3	38	380	Sussex, Passaic, Bergen
4	111	585	Sussex, Warren
5†	1025	2770	Sussex, Warren
6†	201	1150	Sussex, Morris, Passaic, Essex
7†	365	986	Warren, Hunterdon
8†	1076	2624	Warren, Hunterdon, Morris, Somerset
9†	304	950	Morris, Somerset
10	608	1737	Warren, Hunterdon
11	348	1122	Hunterdon
12†	676	1502	Mercer, Hunterdon, Somerset
13‡	197	657	Morris, Somerset
14†	461	1537	Mercer, Somerset, Middlesex, Burlington
15	107	713	Mercer, Monmouth, Middlesex
16†		630	Ocean, Monmouth
17	118	407	Ocean, Monmouth, Burlington
18	38	292	Ocean
19	31	172	Camden, Burlington
20	33	275	Burlington
21	17	131	Burlington, Ocean
22	15	136	Burlington, Ocean
23	15	125	Burlington, Camden, Atlantic
24	9	64	Burlington, Ocean
25	27	142	Gloucester, Camden, Atlantic, Salem
26	32	128	Atlantic
27	74	296	Salem, Cumberland
28	21	117	Salem, Cumberland, Gloucester
29	202	594	Salem, Cumberland
30	18	72	Cumberland
31	*[9]* *0*	*[90]* *0*	Cumberland
32	0	0	Cumberland
33	30	167	Capy May, Atlantic
34	*[48]* *0*	*[117]* *0*	Cape May, Cumberland
35	53	212	Gloucester, Salem
41‡	541	751	Mercer, Hunterdon
42†	10	67	Atlantic

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43	0	0	Cumberland
44	*[10]* *0*	*[42]* *0*	Cumberland
45	0	0	Cumberland, Atlantic, Cape May
46	21	75	Atlantic
47	12	48	Atlantic, Cumberland, Gloucester
48	35	218	Burlington
49			Burlington, Camden, Gloucester
50†	57	285	Middlesex, Monmouth
51‡	52	260	Monmouth, Ocean
<hr/>			
Total	*[7,515]* *7,448*	*[24,417]* *24,168*	

(l) Shotgun, either-sex permits not applied for by September 10, 1984 will be reallocated to muzzleloading rifle, permit applicants.

(m) (No change.)

† Indicates two day zones (December 12 and 13, 1984).

‡ Indicates three day zones (December 12, 13, and 14, 1984) with provision for second deer tag.

(n) Locations of Deer Management Zones

ZONE #1 to ZONE #35 (No change.)

ZONE #36 Hunters' Choice Area: That portion of Bergen, Hudson, Essex, Morris, Union, Somerset and Middlesex Counties lying within a continuous line beginning at the intersection of Rt. 202 and the New York State line near Suffern; then south on Rt. 202 to its intersection with Rt. 23 near Wayne; then south on Rt. 23 to its intersection with Rt. 80; then southwest on Rt. 80 to its intersection with Rt. 511; then south on Rt. 511 to its intersection with Rt. 510; then west on Rt. 510 to its intersection with Rt. 24 at Morristown; then southeast on Rt. 24 to its intersection with Rt. 82; then southeast along Rt. 82 to its intersection with Rt. 22; then southwest on Rt. 22 to its intersection with Rt. 287 near Somerville; then southeast on Rt. 287 to its intersection with Rt. 18 near South Bound Brook; then southeast on Rt. 18 to its intersection with the NJ Turnpike; then north on the Turnpike to its intersection with the Raritan River; then east along the north bank of the Raritan River to Raritan Bay and the New York State line; then north along the New York State line Arthur Kill and west bank of the Hudson River; then west along the NJ-NY border to the point of beginning near Suffern.

ZONE #37 to ZONE 51 (No change.)

7:25-5.30 White-tailed deer (*Odocoileus virginianus*) special permit, fire arms only, either-sex, Great Swamp

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

(c) Duration of the Great Swamp Special Permit Season shall be from 7:00 A.M. EST to 5:00 P.M. EST on the following dates: December 6, 7, 8, 1984 and January 17, 18, 19, 1985 or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d) Bag Limit: Two deer of either sex, any age, may be taken with a Great Swamp Special Deer Permit. Only one deer may be taken in a given day. This shall not preclude the taking of a third deer in that portion of Great Swamp designated as the Wilderness Area.

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

7:25-5.31 (No change.)

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7:25-5.32 (No change.)

7:25-5.33 Controlled Hunting Wildlife Management Areas
(a) No wildlife management areas have been selected for limited hunter density for the 1984-85 season.

(b) Authority: 13:1B-30, 23:4-1, 23:4-12, 23:7-9 and other applicable statutes.

7:25-5.34 (No change.)

7:25-5.35 (No change.)

7:25-5.36 (No change.)

7:25-5.37 (No change.)

(a)

**DIVISION OF WASTE MANAGEMENT
DIVISION OF WATER RESOURCES**

**Hazardous Waste Regulations
Phase II RCRA Equivalency**

Notice of Correction: N.J.A.C. 7:26-9.6

Effective Date: August 6, 1984.

Please take notice that an error appeared in the May 21, 1984 issue of the New Jersey Register at 16 N.J.R. 1261 concerning amendments to the hazardous waste regulations to achieve equivalency with the Federal RCRA regulations for Phase II A and B Authorization.

On February 21, 1984 at 16 N.J.R. 306(a), the Department proposed to amend N.J.A.C. 7:26-9.6(f)6 to require facility owners and operators to document in the operating record refusals by various local agencies, contractors and suppliers to enter into arrangements regarding preparedness for and prevention of environmental hazards at the facility. The proposed amendment contained a cross-reference to the facility operating record required by N.J.A.C. 7:26-9.4(i). As a result of public comment, the Department determined to adopt the proposal without the cross-reference to N.J.A.C. 7:26-9.4(i) (see 16 N.J.R. 1261). However, due to an inadvertent error, the text of the adopted rule failed to delete the cross-reference in N.J.A.C. 7:26-9.6(f)6 to N.J.A.C. 7:26-9.4(i). The Department takes this opportunity to correct this error.

Full text of the corrected section follows (deletions from the adoption indicated with asterisks and brackets *[thus]*).

7:26-9.6 Preparedness and prevention

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

(f) The owner or operator shall make the following arrangements, in addition to the requirements of N.J.A.C. 7:26-9.4(g)8, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations:

1.-5. (No change.)

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6. Where the authorities identified in (f)1 through 5, above, decline to enter into such arrangements, the owner or operator must document the refusal in the operating record *[required by N.J.A.C. 7:26-9.4(i)]*.

(a)

COMMISSION ON RADIATION PROTECTION

Bureau of Radiation Protection Radio Frequency Radiation

Adopted New Rule: N.J.A.C. 7:28-42 Adopted Amendment: N.J.A.C. 7:28-1.4

Proposed: January 3, 1984 at 16 N.J.R. 7(a)
Adopted: July 10, 1984 by Max Weiss, Chairman,
Commission on Radiation Protection
Filed: July 23, 1984 as R.1984 d.337, **with substantive changes not** requiring public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1D-1 et seq. and specifically
N.J.S.A. 26-2D-1 et seq.

Effective Date: August 6, 1984.
Expiration Date pursuant to Executive Order No. 66
(1978): N.J.A.C. 7:28-42, August 6, 1989; N.J.A.C.
7:28-1.4, December 19, 1988.

Summary of Public Comments and Agency Responses and Changes Upon Adoption:

The Commission on Radiation Protection received nine written comments in connection with the proposed new rules. In addition several verbal comments were received at the two public hearings which were held concerning the proposal. These comments and the responses thereto are set forth below.

1. Comment: Some relief should be granted by the Commission from the specific requirement for a standard thermal load in testing of microwave ovens, that is, it seems unnecessarily rigid to specify the shape and type of container to be used.

Response: The Commission believes that the standardization of the test method is important to insure uniformity in testing. In addition the test method proposed conforms with the Federal microwave oven standard. Finally, the cost of the specified container is minimal and does not pose an undue burden.

2. Comment: Microwave ovens are adequately regulated by Federal standards.

Response: Because some microwave ovens may have been manufactured prior to the effective date of the Federal stan-

dard and because the Federal standard primarily assures that the ovens are in compliance as they leave the manufacturer's plant, State regulation is necessary to assure that ovens in the hands of users continue to meet the proper standards.

3. Comment: Mobile radios should be excluded from the coverage of the rule because compliance therewith will place an undue burden on public health and safety functions performed by numerous public health and safety agencies throughout the State.

Response: The Commission agrees, and N.J.A.C. 7:28-42.1(a) has been revised to state that Subchapter 42 governs only exposure from fixed radio frequency devices. The Commission believes this action is justified in view of the transitory nature and the brevity of radio messages associated with mobile radios. For the purpose of clarification, the Commission has added a definition of "Fixed radio frequency device" to N.J.A.C. 7:28-1.4. This term means a device operating at a specific location for a period of 30 days or more.

4. Comment: All amateur installations should be exempted from the scope of the rule.

Response: The Commission disagrees with this suggestion because the radiation emitted from such sources does not differ in kind from the radiation being regulated.

5. Comment: The American National Standard Institute (ANSI) standard contains an exclusion if the specific absorption rate can be shown to be less than 400 milliwatts per kilogram. This exclusion should be adopted in the subject regulation.

Response: The Commission agrees with this recommendation, and N.J.A.C. 7:28-42.3(a) has been revised to include a second paragraph which provides for this type of situation.

6. Comment: Who will enforce Subchapter 42?

Response: The Bureau of Radiation Protection in the New Jersey Department of Environmental Protection pursuant to the authority granted it under the Radiation Protection Act, specifically N.J.S.A. 26:2D-9.

7. Comment: What type of radiation monitoring equipment is needed for enforcement of Subchapter 42?

Response: For microwave ovens, the monitoring equipment must be capable of measuring power at the frequency of the microwave ovens, that is, 2450 MHz or 915 MHz. The equipment for environmental monitoring should be a broadband isotropic monitor. The Bureau of Radiation Protection has the necessary equipment to monitor both the environment and microwave ovens to effectively carry out enforcement actions.

8. Comment: What penalties may be assessed for violations of this Subchapter and who will impose the penalties?

Response: Pursuant to the Radiation Protection Act, specifically N.J.S.A. 26:2D-13, any person who violates the provisions of the Act or any rules promulgated thereunder shall be liable to a penalty of not more than \$2,500. The Department of Environmental Protection is authorized to bring a civil action in the Superior Court to prevent a violation of the rules promulgated by the Commission. In addition, any person who violates any provision of the Radiation Protection Act shall be guilty of a crime of the fourth degree (see N.J.S.A. 25:2D-22). Until such time as specific penalties are adopted for violations of Subchapter 42, the penalties will be

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consistent with those mandated by the Radiation Protection Act.

9. Comment: Will the procedures be similar to the radiation testing of doctors, dentists and hospital x-ray equipment?

Response: No. There will be no routine testing for radio frequency radiation. See, however, the response to comment no. 13 below.

10. Comment: An exemption should be provided for the application of microwaves in the healing arts.

Response: The Commission agrees. N.J.A.C. 7:28-42.1(b) has been reworded to clarify that use of radio frequency producing equipment by medical practitioners is excluded from the coverage of Subchapter 42. Since the proposed provision implied that the use of radio frequency radiation is a licensed activity, the provision was reworded to clarify that such use is not a licensed activity.

11. Comment: Too little is known about the effect of radio frequency radiation to permit the adoption of regulations governing such radiation.

Response: The Commission believes that delay in regulating radio frequency radiation could result in higher levels in the environment than those proposed in the regulations. Publication of the 1982 ANSI standard, from which Subchapter 42 is derived, culminated five years of study of many hundreds of reports on bioeffects research. The study was conducted by a group of qualified physical and biological scientists. However, no standard is frozen in time, and research into the biological effects of electromagnetic radiation is a continuing process. The ANSI C95 committee has already commenced study of research published since the standard was issued. As significant new information is revealed, Subchapter 42 will be revised.

12. Comments: Subchapter 42 should govern occupational exposure, as well as nonoccupational exposure, to radio frequency radiation since the Federal Occupational Safety and Health Administration (OSHA) standard is merely an advisory one.

Response: The Commission recognizes that there is a need to collaborate with the Department of Labor in this area because of the current absence of an enforceable Federal regulation on radio frequency radiation hazards in the workplace. Since the inclusion of occupational exposure in the subject regulations would qualify as a substantive change requiring additional public notice and comment, this matter shall be reserved for future revision.

13. Comment: Doesn't the Bureau of Radiation Protection have limited capability for conducting the inspection and enforcement required by Subchapter 42?

Response: The Bureau will continue its current efforts to respond promptly to all requests for microwave oven inspections. In some instances broadcast patterns from radio frequency sources can be accurately described by mathematical models so that a field investigation is not necessary. The Bureau will respond to requests for radio frequency radiation assessments on a case-by-case basis taking into particular account any potential impact upon the health, safety or welfare of the public.

14. Comment: The original ANSI radio frequency standard, ANSI C95.1-1966, and its 1974 revision were developed

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for occupational exposure. When ANSI issued its 1982 standards, from which Subchapter 42 is derived, it extended this voluntary standard to nonoccupational exposure. The commenter is concerned that if New Jersey adopts an essentially occupational standard for nonoccupational exposure, it will encourage those responsible for siting sources to design to these upper limits.

Response: The Commission believes that the intent of the New Jersey Radiation Protection Code, N.J.A.C. 7:28, is to require that in all forms of radiation exposure, the exposure shall be reduced to a value that is as low as reasonably achievable (ALARA) (see specifically, N.J.A.C. 7:28-1.4 and the definitions of "radio frequency protection guide" and "ALARA").

15. Comment: How can you consider adopting the ANSI standard when in certain areas like Vernon Township, which has over fifty transmission sources in a five mile radius, there is a higher than normal rate of birth defects and cancer?

Response: The Commission takes notice of the fact that the Department of Health is currently conducting a study of the Vernon Township area. However, the purpose of developing standards is to have some benchmark against which we can evaluate a situation like Vernon Township. Should the results of the Department of Health study produce evidence of a health problem relating to radio frequency radiation in that area, the Commission will promptly reevaluate the regulatory action taken in this regard.

16. Comment: Since pulsed systems affect the molecular structure of cells, the standard proposed should make a distinction between pulsed and non-pulsed transmission.

Response: The Commission recognizes that this is not addressed by Subchapter 42 or by the ANSI standard. Although there is a lack of sufficient information in this area to develop a Radio Frequency Protection Guide (RFPG) for pulsed fields, several of the studies used by ANSI to develop the existing RFPG, utilized pulsed fields. Until there is more information on the subject, the Commission believes Subchapter 42 should remain as proposed.

17. Comment: Will the adoption of Subchapter 42 supersede local regulation of radio frequency radiation?

Response: Yes. The Radiation Protection Act, specifically N.J.S.A. 26:2D-17, provides that no ordinance, resolution or regulation concerning unnecessary radiation adopted by any municipality, county or local board of health shall be effective until same has been submitted to the Commission and approved by the Commissioner of the Department. In addition, no ordinance, resolution or regulation may be approved unless consistent with the Radiation Protection Act or any rule adopted thereunder.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 1. GENERAL PROVISIONS

7:28-1.4 Definitions

"Fixed radio frequency device" means a device operating at a specific location for a period of 30 days or more.

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SUBCHAPTER 42. RADIO FREQUENCY RADIATION

7:28-42.1 Scope

(a) This subchapter governs non-occupational exposure to radio frequency radiation from ***fixed*** radio frequency devices.

(b) ***[The provisions of this subchapter shall not limit the kind or amount of radio frequency radiation that may be intentionally administered by a person licensed to so administer such radiation under the laws of the State of New Jersey.]***

This subchapter shall not apply to the intentional exposure of patients to radiation for the purpose of diagnosis, treatment or investigation for the prevention or control of disease.

7:28-42.2 Purpose

The purpose of this subchapter is to define safety requirements for the use of radio frequency devices that radiate in the frequency range 300 kHz to 100 GHz in order to prevent possible harmful effects in human beings from exposure to such radiation.

7:28-42.3 Radio Frequency Protection Guides (RFPG)

(a) Radio frequency devices, excluding microwave ovens, shall be maintained as follows:

1. No person shall cause, suffer, allow or permit the use of a radio frequency device which exposes or may expose any member of the public in any location normally accessible to the public to radio frequency radiation which is in excess of the applicable Radio Frequency Protection Guide in N.J.A.C. 7:28-42.4.

2. At frequencies between 300 kHz and 100 GHz, the RFPG in N.J.A.C. 7:28-42.4 may be exceeded if the exposure conditions can be shown by laboratory procedures to produce specific absorption rates (SARs) below 0.4 W/kg as averaged over the whole body, and spatial peak SAR values below 8 W/kg as averaged over any one gram of tissue.

(b) Microwave ovens shall be maintained as follows:

1. No person shall cause, suffer, allow or permit the use of a microwave oven manufactured after October 6, 1971 in any location normally accessible to the public that radiates in excess of 5mW/cm² at any point 5 cm or greater from any external surface of the oven.

2. No person shall cause, suffer, allow or permit the use of a microwave oven manufactured before October 6, 1971 in any location normally accessible to the public that radiates in excess of 10mW/cm² at any point 5 cm or greater from any external surface of the oven.

3. Measurements shall be made with the microwave oven operating at its maximum output and with a container of 275 ± 15 ml of tap water at an initial temperature of 20 ± 5 ° C placed on the carrying surface provided by the manufacturer.

i. The container shall be a low form 600 ml **b*[r]*eaker** having an inside diameter of approximately 8.5 cm and made of electrically non-conductive material such as glass or plastic.

7:28-42.4 Radio Frequency Protection Guide (RFPG) for whole bodyexposure

Frequency Range	Maximum Allowed Mean Squared Electric Field Strength (V/m) ²	Maximum Allowed Mean Squared Magnetic Field Strength (A/m) ²	Equivalent Plane Wave Power Density (mW/cm ²)
300 khz-3 MHz	400,000	2.5	100
3 MHz-30 MHz	4,000 (900/f ²)	0.025 (900/f ²)	900/f ²
30 MHz-300 MHz	4,000	0.025	1.0
300 MHz-1.5 GHz	4,000 (f/300)	0.25 (f/300)	f/300
1.5 GHz-100 GHz	20,000	0.125	5.0

Note 1. f*-frequency (MHz)

Note 2. For near field exposure, both the mean squared electric and magnetic field strengths shall be determined.

Note 3. For frequencies below 300 MHz, both the mean squared electric and magnetic field strengths shall be determined.

Note 4. At frequencies above 300 MHz, either the mean squared electric or magnetic field strengths shall be determined.

Note 5. The applicable RFPG shall be averaged over any 0.1 hour interval.

Note 6. Measurement to determine adherence to the RFPG shall be made at distances 5 cm or greater from any object.

Note 7. Where electromagnetic fields are present at more than one frequency or for broadband fields, the fraction of the RFPG incurred within each frequency interval shall be determined and the sum of all such fractions shall not exceed unity.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Cardiac Facilities, Cardiac Diagnostic Facilities

Readoption with Amendments: N.J.A.C. 8:33E-1

Proposed: May 21, 1984 at 16 N.J.R. 1154(a).

Adopted: July 16, 1984, Charles Pierce, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: July 20, 1984, as R.1984 d.325, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: August 6, 1984 for amendments.

Summary of Public Comments and Department Responses:

Comments were received during the comment period from the following:

New Jersey Hospital Association
Saint Michael's Medical Center

Comment: The New Jersey Hospital Association (NJHA) commented that the introduction to the proposed amendment states that there is gross underutilization of existing services which is not reflected in Statewide utilization figures, since all but two existing facilities do not meet existing regulations. The Veterans Administration cardiac program should also be excluded from consideration (apart from information purposes) because it is not under State regulatory review.

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Response: Utilization of the existing invasive cardiac diagnostic resources in the State has steadily increased during the past five years. There are fewer cardiac diagnostic facilities not meeting the proposed utilization criteria of 500 patients for a dedicated laboratory and 250 patients for a shared laboratory in 1983 (three of twelve facilities currently fail to meet these standards) than on 1979 (ten of thirteen facilities). These proposed utilization levels, however, represent less than fifty percent of the true capacity of any cardiac diagnostic facility. While the Statewide increases in utilization have resulted in a reduction in the number of cardiac diagnostic facilities meeting the proposed utilization levels, there remains a considerable amount of unused capacity Statewide. While the degree of underutilization has certainly been reduced over the last five years, it continues to be a problem Statewide and is particularly evident at the one quarter of the facilities in the State which fail to meet even the proposed standard. The Department, however, seeks to encourage improved utilization of existing resources by promoting utilization closer to capacity levels than we have been known heretofore. It should also be noted that Veterans Administration utilization data has always been included for informational purposes only and is not included in the utilization statistics cited above.

Comment: St. Michael's Medical Center (SMMC) commented that the fact that there continues to be underutilized cardiac diagnostic facilities in the State suggests that there is no justification for the proposal to process certificate of need applications for even a limited number of new diagnostic facilities. Such a proposal is contrary to the State Health Plan's promotion of the regionalization of costly specialty services and will ultimately result in reduced caseloads at all cardiac centers and greatly increase the costs per case for studies performed in all facilities.

Response: The proposed removal of the moratorium on new cardiac diagnostic facilities is intended to allow the planning process to consider such factors as referral of patients requiring these services to out of state providers, regional accessibility to existing cardiac diagnostic services, and the overall impact of the addition of new cardiac diagnostic programs on the existing providers of these services. A new program will only be considered where existing providers in an area are meeting at least optimal utilization. At the same time the applicant must demonstrate that existing resources are insufficient to meet need in an area and that the proposed new facility will not negatively impact on existing providers. In accordance with State Health Plan objectives, the systemic impact of the addition of a program on the cost of providing the service and on overall health care costs will certainly be an important consideration in the review process.

Comment: The NJHA commented that the proposed limitation of one new program for each health systems area (HSA) potentially disregards geographic access concerns, particularly in the larger geographically diverse HSA's.

Response: The limitation to consider one new program in each health service area (where all existing invasive cardiac diagnostic programs meet the optimal utilization criteria) is being proposed in recognition that there is considerable unused capacity at virtually all existing cardiac diagnostic facilities. The optimal utilization defined in the proposed rule should not be equated with capacity utilization. These optimal levels represent less than fifty percent of the capacity of these cardiac diagnostic laboratories. The proposed removal of the moratorium on new cardiac diagnostic facilities is therefore

designed to allow the planning process to consider additional programs in areas of the State that may be geographically distant from existing cardiac resources. However, the limitation reflects a recognition of existing unused capacity Statewide. In the past, the number and location of existing cardiac diagnostic resources in the State has served to make these services reasonably accessible to the vast majority of the State's residents. The proposal's intent is to allow the planning process to weigh the merits of such issues as improved access, unused capacity of existing resources and cost impacts on the health care system in considering the addition of a cardiac diagnostic program in any given area of the State. To allow more than one new cardiac diagnostic program in an HSA, given the number and location of existing cardiac diagnostic services, would only serve to jeopardize existing programs and increase the costs of providing these services throughout the State.

Comment: The NJHA commented that it supports expansion of the Cardiac Advisory Committee (CAC) to include non-physicians but does not feel that it is appropriate to add another level of certificate of need review to the process.

Response: The Commissioner's Cardiac Advisory Committee (CCAC) has been providing the Commissioner with technical recommendations on certificates of need since the establishment of the Committee in 1977. The formal incorporation of their role in certificate of need review process is based on the recognition of the CCAC by the Statewide Health Coordinating Council (SHCC) as their technical advisory committee (for purposes of cardiac designation and statewide appropriateness review of cardiac services) as well as the realization by HSAs, the SHCC review committee and the SHCC that the CCAC is making recommendations to the Commissioner that they wish to recognize and consider during their own review of applications. The role of the CCAC in certificate of need review of new cardiac surgery services was included in the amendments to N.J.A.C. 8:33E-2 in 1982. This proposed amendment similarly includes the CCAC in the review process for any proposed new cardiac diagnostic facilities. The CCAC is an advisory body. Their presence does not in any way change the authorities of the Commissioner, the SHCC, and the Health Care Administration Board (HCAB) in the certificate of need process.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33E-1.

Full text of the adopted amendments to the readoption follows.

8:33E-1.1 Scope

(a) (No change.)

(b) In the cardiac diagnostic facility the primary diagnostic services are provided by cardiac catheterization, coronary angiographic and non-invasive laboratories. The cardiac catheterization and coronary angiographic laboratories are devoted to achieving optimal quality physiological and angiographic studies. The non-invasive laboratory includes at a minimum ECG and VCG instruments, exercise stress testing, phono/pulse tracing/echo equipment and Holter type monitoring and nuclear cardiology (often in a separate department) facilities.

(c) The existing inventory of cardiac services located within the State includes 12 "free standing" diagnostic facilities which perform cardiac catheterizations but do not offer cardiac surgery and an additional 10 facilities which perform

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both diagnostic and surgical functions. The total of 22 sites offering invasive cardiac diagnostic services are distributed throughout the State and serve each of the five health systems agencies.

(d) Given the increase in utilization levels experienced by New Jersey's invasive cardiac diagnostic facilities and the statewide reduction in the number of providers of this service, the Department of Health will process certificate of need applications for a limited number of new cardiac diagnostic facilities in accordance with N.J.A.C. 8:33E-1.12.

(e) The diagnostic cardiac facility must be regionally based in an effort to achieve improved quality at manageable costs. Data indicate that the larger the volume of diagnostic procedures, the lower the risk factor. Of the 22 existing invasive cardiac diagnostic programs in the State for which the department has comparable data 4 or 31 percent currently are operating below minimum State utilization requirements.

(f) (No change.)

(g) The standards and criteria defined herein (N.J.A.C. 8:33E-1.1 et seq.) shall apply to the efficient delivery of quality diagnostic services within the setting of the "free standing" cardiac catheterization laboratory. In addition to meeting these minimal requirements, the diagnostic facility is expected to operate a well established non-invasive cardiac diagnostic laboratory. Additional policy has been proposed for the more comprehensive cardiac surgery center and is identified within N.J.A.C. 8:33E-2.1 et seq.

8:33E-1.2 Utilization of invasive cardiac diagnostic facilities

(a) (No change.)

(b) Volume of patients diagnosed is not the only determinant or indicator of quality. However, some minimum volume is required to maintain the skills of the diagnostic team and to minimize costs per patient. The minimum acceptable number of adult cardiac catheterization patients per laboratory which is shared with other specialized radiographic procedures is 250 per year while the minimum number for a fully dedicated adult cardiac catheterization laboratory is 500 per year in order to maintain the efficiency and the skills of the catheterization team. Of the 250, 150 must be coronary arteriographic patients in a shared laboratory.

1. (No change.)

(c) The optimal utilization level for a laboratory dedicated to cardiac catheterization/coronary angiographic examinations is 500 adult patients per year, including 400 coronary arteriographic patients, in order to maximize quality of care and minimize unit cost per examination (250 adult patients per year is considered optimal utilization for a shared laboratory). All diagnostic facilities will be evaluated in light of this optimal level by the commissioner's cardiac advisory committee.

(d) Each cardiac diagnostic facility should establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. The cardiac advisory committee recommends that each physician should perform a minimum of 50 cases each year or be under the supervision of a physician who has performed this minimum number of cases. (This minimum case load may be accomplished at more than one laboratory.)

(e) Acutely ill (cardiac) infants should be definitively examined only in centers with active pediatric cardiac surgical programs.

8:33E-1.3 Facility personnel; requirements and responsibilities

(a) (No change.)

(b) While the following functions shall be performed within each facility, more than one function may be executed by a single individual appropriately cross-trained to perform the required functions:

1.-4. (No change.)

5. Monitoring and recording technician: Responsible for constant monitoring of physiologic data, including the electrocardiogram and recording this information. This function can best be handled by a second cardiac catheterization technician or radiologic technician.

6.-7. (No change.)

(c) (No change.)

8:33E-1.4 Peer review

(a) Quality control is essential for the consistent high quality level of performance required of any medical service. As one means of quality control, appropriate mechanisms for peer review shall be described in each application for designation as a cardiac diagnostic facility. Such mechanisms should include, but not be limited to, the delineation of criteria for the evaluation of:

1. Overall case selection for study (e.g., rate of normal studies, rate of surgical referral)

2. Laboratory and physician performance (e.g., case volume, mortality and complication rates per physician)

3. Quality of studies (e.g., number of incomplete studies, diagnostic adequacy of films, number of restudies performed elsewhere)

In all cases, criteria selection should be based on sound medical practice and consistency with the literature.

(b) (No change.)

8:33E-1.5 Commissioner's cardiac advisory committee

(a) A cardiac advisory committee has been established under the authority of the Commissioner of Health to review on a regular basis the performance of all cardiac institutions in the state to insure high quality patient care.

(b) In addition to practicing specialists, the cardiac advisory committee will be comprised of representatives from third party payors, a consumer member who is involved in the New Jersey health planning process, and the administration of institutions providing the service.

(c) Mortality rate, utilization of facilities and medical practices of each cardiac diagnostic facility will be reviewed regularly by the commissioner's cardiac advisory committee to insure quality control and accurate data reporting.

(d) To the greatest degree possible, other inspection programs of cardiac services will be integrated with those of the advisory committee, to minimize the number of official visits to these services.

(e) The Commissioner's Cardiac Advisory Committee will review certificate of need applications for new invasive cardiac diagnostic facilities and make recommendations to the Statewide Health Coordinating Council and Commissioner of Health.

8:33E-1.6 Association with cardiac surgical services

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

8:33E-1.7 Long-range planning

(No change.)

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8:33E-1.8 Documentation of purchase and operational cost

The applicant will provide full written documentation of the projected implementation and operational costs of the proposed program. This documentation will include direct and indirect costs, that is, construction, equipment, supplies, personnel, maintenance, overhead costs, as well as projected costs of remodeling or renovation necessary to accommodate the program. Projections of anticipated revenues must be supplied for at least the first three years.

8:33E-1.9 Statistical data required

The facility will maintain and provide basic statistical data on the operation of the program and report that data to the Department of Health on a quarterly basis and on a standardized form prepared by the department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New Jersey State Department of Health, Health Data Services, Room 405, CN 360, Trenton, New Jersey 08625.

8:33E-1.10 Certification of nondiscriminatory practices (No change.)

8:33E-1.11 Compliance

Facilities, which on the effective date of this subchapter are providing cardiac diagnostic services without cardiac surgery, must meet the minimal criteria and standards outlined herein or be subject to disallowance for the service under the State's rate setting program.

8:33E-1.12 New facilities

(a) The Department of Health will process certificate of need applications for new invasive cardiac diagnostic facilities only from health service areas, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities meet optimal levels of utilization as specified in N.J.A.C. 8:33E-1.2(c).

(b) No more than one new invasive cardiac diagnostic facility may be approved in each health service area, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities are operating at optimal levels of utilization as specified in N.J.A.C. 8:33E-1.2(c). Additional new facilities, beyond the first approved pursuant to this subchapter, will be considered only when both existing and approved facilities in a given health service area are operating at optimal levels of utilization as specified at N.J.A.C. 8:33E-1.2(c).

(c) Competing applications for new invasive cardiac diagnostic facilities in a health service area will be evaluated on the basis of their ability to meet the standards established in this subchapter. In addition, such factors as the applicant's case-mix, physician staffing, and the utilization of its non-invasive cardiac services will be considered in the review process.

(d) All certificate of need applications for new invasive cardiac diagnostic facilities must document the ability of the applicant to meet the minimum standards and criteria contained in this subchapter within three years from the initiation of the service.

8:33E-1.13 Subchapter review

This subchapter will be reviewed and evaluated at least every three years by the Commissioner's cardiac advisory committee.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Computerized Tomography (CT) Services

Readoption with Amendments: N.J.A.C. 8:33G-1

Proposed: May 21, 1984 at 16 N.J.R. 1157(a).

Adopted: July 16, 1984, Charles Pierce, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: July 20, 1984, as R.1984 d.327, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date for Readoption: July 20, 1984.

Effective Date for Amendments: August 6, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): July 20, 1989.

Summary of Public Comments and Department Responses:

Comments were received during the comment period from the following:

Overlook Hospital

Comment: Overlook Hospital commented that the 88 hours of operation per week required for the addition of a second CT unit at the same facility was excessive and places an unrealistic burden on the existing CT equipment. Such a requirement will result in increasingly unreliable equipment over time and shorten its useful life.

Response: The 88 hour weekly operating time requirement is intended to inhibit the proliferation of multiple CT unit departments where existing utilization is insufficient to justify additional equipment. The number of hours is based on a double shift during the week and a single shift on Saturday. Existing units falling short of this operating schedule are not considered to be optimally utilized and would therefore not be approved for additional equipment. It is not the Department's intention to require that all CT units in the State operate 88 hours per week. Instead, the Statewide average operating hours during 1982 was 59 hours and that figure may decline as more and more hospitals acquire their own CT units and inter-hospital referrals decline. Only those existing CT units seeking to justify an additional unit must document optimal utilization of their present equipment prior to the approval of a second CT unit. This approach is essential to the promotion of cost efficiencies in the provision of CT services.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33G-1.

Full text of the adopted amendments to the readoption follows.

8:33G-1.1 (No change.)

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8:33G-1.2 Utilization standards

(a) Each applicant for a computerized tomographic scanner must show evidence of a minimal proposed volume of 2,000 scans per unit, per year by application of the Leonard model, herein attached as Appendix A.

1. Copies of the full text of the Leonard model may be obtained by written request to the New Jersey Department of Health, Health Planning Services, Room 403, CN 360, Trenton, New Jersey 08625.

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

(d) Each application for an additional computerized tomography scanner, beyond the first approved unit, must be supported by documentation demonstrating that each existing computerized tomographic (CAT/CT) scanner is being used at least 88 hours per week inclusive of scheduled down-time and exclusive of non-scheduled down-time.

8:33G-1.3 (No change.)

8:33G-1.4 General criteria

(a) As part of the application for a computed tomographic scanner, each applicant must meet each of the following minimum general criteria:

1. Provide written documentation of need as expressed by the Leonard model (Appendix A) and show evidence that the proposed action is both consistent with the institution's approved long-range plan, submitted to the department under requirements of N.J.A.C. 8:31-16.1, and with the health systems plan and annual implementation plan of the health systems area in which the applicant is located.

2.-5. (No change.)

6. Maintain and provide basic statistical data on the operation of the unit and report that data to the New Jersey Department of Health on a quarterly basis and on a standardized form prepared by the department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New Jersey State Department of Health, Health Data Services, Room 405, CN 360, Trenton, New Jersey 08625.

7.-9. (No change.)

Delete old Appendix A in its entirety.

APPENDIX A

LEONARD MODEL
PROSPECTIVE CT USE BASED ON
THE
INCIDENCE OF DISEASE AND TRAUMA

PROCEDURE

1.-8. (No change.)

APPENDIX A
(GROUP A)
INDICATORS FOR COMPUTED TOMOGRAPHY
(No change in text)

APPENDIX A
(GROUP B)

INDICATORS FOR COMPUTED TOMOGRAPHY
(No change in text.)

APPENDIX A
(GROUP C)

INDICATORS FOR COMPUTED TOMOGRAPHY

APPENDIX A
(GROUP D)

INDICATORS FOR COMPUTED TOMOGRAPHY

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards for Licensure of Residential
Health Care Facilities
Personal Needs Allowance**

Adopted Amendment: N.J.A.C. 8:43-4.13

Proposed: April 16, 1984 at 16 N.J.R. 808(a).

Adopted: July 18, 1984, by Charles F. Pierce, Acting Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: July 20, 1984, as R.1984 d.326, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: August 6, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): May 8, 1985.

Summary of Public Comments and Department Responses:

No comments were received.

Full text of the adoption follows.

8:43-4.13 Personal needs allowance

(a) No licensee shall retain for his or her own, or require payment to him or her of, any portion of the personal needs allowance required to be reserved for any resident pursuant to N.J.S.A. 44:7-87(h). Such personal need allowance shall not be less than \$50.00 per month unless otherwise provided by the New Jersey State Department of Human Services.

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

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HUMAN SERVICES

HUMAN SERVICES

(a)

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

**Pharmaceutical Services Manual
Dispensing Fee and Capitation Rates**

**Adopted Amendments: N.J.A.C. 10:51-1.17
and 3.15**

Proposed: June 4, 1984 at 16 N.J.R. 1313(a).
Adopted: July 19, 1984 by George J. Albanese, Com-
missioner, Department of Human Services.
Filed: July 20, 1984 as R.1984 d.329, **without change**.
Authority: N.J.S.A. 30:4D-6b(6), 7 & 7b, 4D-20, 24.

Effective Date: August 6, 1984.
Expiration Date pursuant to Executive Order 66(1978):
Subchapter 1, November 2, 1985.
Subchapter 3, September 11, 1986.

**Summary of Public Comments and Agency Re-
sponses:**

There were two comments on this proposal. One comment was submitted by the New Jersey Pharmaceutical Association, who was generally supportive of the fee increase. The second comment was submitted by Automated Pharmaceutical Services, and was also supportive of the fee increase but wanted a greater share allocated to the Unit Dose Distribution System. However, the Division has already made provision for costs, such as repackaging, that are unique to the Unit Dose System by establishing a differential in the capitation rate.

Full text of the adopted amendment follows.

10:51-1.17 Legend drug dispensing fee
(a) The dispensing fee for legend drugs, dispensed by providers having Retail Permits to patients other than those in long-term care facilities, shall be \$3.155. Additional increments shall be given to pharmacy providers who provide the following:
1.-3. (No change.)
(b) (No change.)

10:51-3.15 Capitation of dispensing fee for legend drugs provided to long-term care patients
(a) The New Jersey Medicaid program capitates the dispensing fee for legend drugs for patients in Medicaid approved long-term care facilities in accordance with the total number of Medicaid patient days in the facility(ies) served by the pharmacy.
1. Pharmacies with retail permits dispensing medication in a dispensing system in which a 24-hour supply of unit dose

oral medication, both solid (i.e. tablets, capsules) and liquid formulations, is delivered for each patient daily, shall be reimbursed to the cost of all reimbursable legend medication plus a fee of \$.579 per patient day.

- i. (No change.)
- 2. Pharmacies with a retail permit dispensing medication in a dispensing system in which up to a one month supply of oral unit dose solid medication is delivered for each patient (i.e., unit dose solids, "bingo" card), shall be reimbursed the cost of all reimbursable legend medication plus a fee of \$.470 per patient day.
- 3. Pharmacies with a retail permit dispensing medication in a dispensing system in which a maximum one month supply of medication is delivered for each patient monthly shall be reimbursed the cost of all reimbursable legend medication plus a fee of \$.415 per patient day.
- 4. Pharmacies which provide ancillary computerized services, such as, but not limited to, continuously updated computerized patient profiles, clinical records (med sheets and physicians orders on at least a monthly basis), etc., will receive an added increment of \$.05 per patient day, thereby making the total fee \$.629, \$.520 or \$.465 depending upon the dispensing system used.
- 5. (No change.)

(b)

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

**Long Term Care Services Manual
Consultations or Referrals for Examinations
and Treatment**

Adopted Amendments: N.J.A.C. 10:63-1.4

Proposed: September 19, 1983 at 15 N.J.R. 1543(a).
Adopted: July 5, 1984 by George J. Albanese, Commis-
sioner, Department of Human Services.
Filed: July 6, 1984 as R.1984 d.313, **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. 30:4D-6a4(a), b(4)-(10), 7 and 7b.

Effective Date: August 6, 1984.
Expiration Date pursuant to Executive Order 66(1978):
March 21, 1989.

Summary of Public Comments and Agency Responses:

There were four comments submitted on this proposal. The New Jersey Association of Health Care Facilities requested additional time for the attending physician to sign the order for the consultation or referral. The time period was extended from 48 hours to 7 days. The requirement that ambulance service be reimbursed only if such service is not free and available in the community was deleted at the Association's request.

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The New Jersey Dental Society requested clarification as to what procedures are considered "invasive" and should be brought to the physician's attention. However, the text of the rule does give examples of "invasive" procedures, such as extractions, fillings, etc. (see 10:63-1.4(c)2).

Comments were also submitted by the New Jersey Speech-Language-Hearing Association, and by Irwin H. Blake, Ph.D., Director, Hearing and Speech Consultants. Both commentators requested an increase in the fee for the initial evaluation visit. However, this proposal was not concerned with the fees for the consultations.

The Speech-Language-Hearing Association also requested clarification of the definition of "qualified therapist." The text was revised accordingly.

Summary of Changes Between Proposal and Adoption:

As indicated above, the time period for the attending physician to countersign the order was extended from 48 hours to 7 days (see 10:63-1.4(a)5i, and (e)1i).

The section on podiatry services was revised for clarification. The basic requirements for reviewing and approving treatment were not changed (10:63-1.4(f)).

The language concerning evaluations for various types of therapy was clarified to indicate that physical, speech-language or occupational therapy could be performed by qualified individuals in the respective disciplines (10:63-1.4(g)1).

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

10:63-1.4 Additional services

(a) As condition for qualifying as a LTCF under the New Jersey Medicaid Program, the facility must maintain effective agreements in order to provide additional services which might be required by an individual patient. Additional services include chiropractic services; dental services; laboratory and x-ray services, including portable, and other diagnostic services; mental health services; podiatry services; rehabilitation services; special medical equipment; transportation services; vision care;

1. It is the right of each Medicaid eligible patient in a LTCF, in consultation with the attending physician, to exercise free choice with respect to a provider of additional services. If the patient does not choose to exercise such a right, or is unable by virtue of his/her physical or mental condition to do so, a person authorized to act on the patient's behalf, in consultation with the attending physician, may designate a provider. In the absence of an authorized person, the facility, in consultation with the attending physician, may designate a provider.

2. The services listed in this section must be provided and/or be available to each Medicaid eligible patient in a LTCF, but are not part of the per diem rate paid to the LTCF.

3. Additional services are initiated by the attending physician. All additional services listed in this subsection, except in an emergency, require the attending physician's signature on the order sheet.

4. Consultations and referrals for examination and treatment: Certain services such as medical and surgical specialties, chiropractic, dental, mental health, podiatric, and vision care, must be initiated by the attending physician as either a request for a "consultation" or as a "referral for examination and treatment".

i. A consultation is ordered when the attending physician wishes an appropriate practitioner to evaluate, through history and appropriate physical findings and other ancillary means:

- (1) The nature and progress of a disease, illness, or condition, and/or
- (2) To establish or confirm a diagnosis, and/or
- (3) To determine the prognosis, and/or
- (4) To suggest appropriate therapy.

ii. When a consultant assumes the continuing care of the patient, subsequent services rendered by the consultant are not considered a consultation and other appropriate procedure codes must be utilized.

iii. A referral for examination and treatment must be ordered by the attending physician when he/she wishes a practitioner to assume responsibility for a specific aspect of the patient's care; for example, the attending physician would order a referral for examination and treatment for dental services.

5. A request for either a consultation or a referral for examination and treatment should be written and signed by the attending physician on the order sheet. Also, the order must clearly indicate the reason for the request.

i. If the attending physician is unable to write the request on the order sheet, the physician may personally dictate by telephone to an appropriate person at the facility, the order for the consultation or the referral for examination and treatment, indicating the supporting reason(s) for the request; however, in this case the attending physician within ***[forty-eight (48) hours]* *7 days*** of requesting the consultation or referral for examination and treatment must countersign the order on the order sheet or must personally have signed and forwarded to the long-term care facility an identical order on a prescription form which will satisfy the requirements until the next visit when he/she must sign the order sheet.

6. In consideration of a patient's rights, a patient may request either a consultation or a referral for examination and treatment provided it is consistent with medical necessity. The attending physician must note the request on the order sheet and, if the physician so wishes, may note that it was made at the patient's request.

Example: Patient requests ophthalmologic consultation with Dr. Evans for significant refractive error.

Signed: A.B. Turner, M.D.

(b) Chiropractic services: It is required that all facilities assist Medicaid eligible patients to obtain chiropractic care through a licensed chiropractor who shall provide, or make provision for routine and emergency services.

(c) Dental services:

1. It is required that all facilities assist Medicaid eligible patients to obtain dental care through a licensed dentist who shall provide, or make provision for:

- i. Appropriate consulting services;
- ii. In-service education to the facility;
- iii. Policies concerning oral hygiene;
- iv. Routine and emergency services.

2. Dental examinations carried out to comply with the State Department of Health's minimal requirements as well as regular dental examinations, are not considered consultations and need not be brought to the attending physician's attention except as a matter of courtesy. However, treatments which involve invasive procedures such as extractions, fillings, etc., except in an emergency, must be brought to the attention of

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the attending physician who acknowledges clearance for such treatment on the order sheet.

3. Policy and procedures regarding the provision of dental services are listed in the New Jersey Medicaid Program Manual for Dental Services. Services requiring prior authorization are listed under 202.2 (N.J.A.C. 10:56-1.3).

(d) Laboratory; X-ray, including portable, and other diagnostic services:

1. Laboratory services: A LTCF must have written agreements with one or more general hospitals or one or more clinical laboratories so that the facility can obtain laboratory services, including emergency services promptly. If the facility has its own laboratory capabilities, the services may not be billed on a separate fee-for-service basis. A laboratory must be:

i. Licensed and/or approved by the New Jersey State Department of Health and the State Board of Medical Examiners—which includes meeting Certificate of Need and licensure requirements, when required, and all applicable laboratory provisions of the New Jersey State Sanitary Code; and

ii. Certified as an independent laboratory under the Title XVIII Medicare Program; and

iii. Approved for participation as an independent laboratory provider by the New Jersey Medicaid Program; and

iii. Approved for participation as an independent laboratory provider by the New Jersey Medicaid Program.

2. X-ray services: A LTCF must have written agreements with one or more general hospitals or one or more Board certified or Board eligible radiologists so that the facility can obtain radiological services, including emergency services promptly.

i. Portable X-ray may be used when medically indicated. The mechanical portion of the services (obtaining the films) may be done by personnel of either the hospital or radiologist, but the interpretation of the film will be by a Board certified or Board eligible radiologist only.

ii. X-ray services offered directly by the facility must be in adherence with the standards of the New Jersey Radiological Society.

3. Other diagnostic services (e.g., ECG, EEG, etc.): A LTCF must have written agreements with one or more general hospitals or one or more qualified providers so that the facility can obtain such specified services including emergency services promptly.

(e) Mental Health services: It is required that all facilities assist Medicaid eligible patients to obtain mental health care through a licensed psychiatrist or psychologist who shall provide or make provision for routine and emergency services.

1. An initial consultation for mental health services does not require prior authorization but shall be performed only upon a written order signed by the attending physician (on the order sheet) citing the reason(s) for the consultation.

i. If the attending physician telephones the order to an appropriate person designated by the Long-Term-Care Facility, the physician within *[forty-eight (48) hours]* ***7 days*** must countersign the order on the order sheet, citing the reason(s) for the consultation, or must personally have signed and forwarded to the Long-Term Care Facility an identical order on a prescription form, citing the reason(s) for the consultation.

2. If mental health services are recommended following a consultation, the individual who then will provide the mental health services must submit a completed FD-07 form, ("Request for Authorization of Mental Health Services"), to the

Medicaid District Office (MDO) serving that particular Long-Term Care Facility. Items #10, #11, and #12 need not be completed on the initial FD-07 inasmuch as a copy of the consultation must accompany this request.

3. The medical consultant in the MDO will discuss with the attending physician the request for services as identified on the FD-07.

i. If the service is authorized, the medical consultant will forward a copy of the FD-07 to the Long-Term Care Facility. The FD-07 is to be made a part of the "order section" of the patient's chart.

4. If during a current period of authorization the mental health provider believes that additional services will be required, or after a reasonable time interval a renewal of therapy for the same condition is deemed necessary, a formal consultation is not necessary. The mental health provider must fill out another FD-07 form completing all items except Item #10. Special attention is to be given Items #11 and #12 on the form to support the need for additional therapy, and then the same procedure is followed as described under (e)3.

(f) Podiatry services:

1. It is required that all facilities assist Medicaid eligible patients to obtain podiatry care through a licensed podiatrist who shall provide, or make provision for:

- i. Appropriate consulting services;
- ii. In-service education for the facility;
- iii. Policies concerning foot care;
- iv. Routine and emergency services.

2. Once the attending physician reviews ***and approves*** the treatment plan of the podiatrist, the physician is not required to sign a request every time the podiatrist treats the patient; however, the attending physician must review ***and approve*** the need for podiatric services ***for patients under treatment*** every six months, and if ***continuing service is*** indicated, complete a request for podiatric services for each patient ***under treatment*** at least once a year. This is to be accomplished by an order on the order sheet and not by repeated request for consultations.

3. Policies and procedures regarding the provision of podiatric services are outlined in the New Jersey Medicaid Program's Podiatry Services Manual (N.J.A.C. 10:57).

(g) Rehabilitation services: Rehabilitation services include physical therapy, occupational therapy, speech-language therapy services and other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best functional level. It does not include physical medicine procedures administered directly by a physician, or physical therapy which is purely palliative, such as the application of heat per se, in any form; massage; routine calisthenics or group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a qualified physical therapist. Rehabilitation services shall be made available to eligible recipients as an integral part of a comprehensive medical program.

1. If the attending physician orders an evaluation for physical, speech-language or occupational therapy, an appropriate qualified ***physical* therapist ***, **speech-language pathologist, or occupational therapist, as appropriate,*** may make an initial visit to evaluate the need for physical, speech-language or occupational therapy without prior authorization. The reimbursement fee for the initial visit will be the same as the allowance for the subsequent treatment visits. Prior authorization by the Medicaid Medical Consultant of the Medicaid District Office is required for all subsequent therapy visits.

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2. When prior authorized, reimbursement to a LTCF may be made for more than one type of therapy service performed on the same day, e.g., physical therapy and speech-language therapy.

3. Where the same type of therapy is performed more than once on a given day, or the therapy rendered is a different modality within the same type of therapy, reimbursement will be made for one therapy treatment only. All therapy must be provided under the direct supervision and in the presence of a qualified therapist or psychiatrist.

4. Providers of service:

i. Rehabilitation services shall be provided by qualified therapists employed by or under contract to:

- (1) An approved Home Health Agency; or
- (2) A licensed or accredited general or special hospital; or
- (3) An approved independent outpatient health facility; or
- (4) A LTCF.

ii. Reimbursement for rehabilitation services is made to the LTCF, not to the therapist, by this program. Prior authorization is required as outlined in (g) 5 below.

(1) Outpatient physical therapy, speech-language therapy and occupational therapy services furnished by a Medicare Certified facility to its Medicare eligible inpatients may be billed by the facility to Medicare under Part B only when the beneficiary has exhausted his benefits under Part A or is otherwise ineligible for Part A benefits. When physical therapy, speech-language therapy or occupational services are furnished under arrangements to combination Medicare/Medicaid patients, these services should be billed to the provider's Part A Intermediary using Form HCFA-1483 (Provider Billing for Medical and Other Health Services, Exhibit No. 23).

(2) Outpatient physical therapy, speech-language therapy and occupational therapy services furnished only by a Medicaid LTCF to Medicaid eligible inpatients only may be billed by the facility to the Bureau of Claims and Accounts if prior authorization for the treatment visits has been given by the Medicaid District Office (MDO). The facility must state to the Medicaid District Office (MDO) that it is not a Medicare provider and, therefore, no Medicare denial letter is needed.

(3) Medicaid may reimburse Medicare certified facilities through their Part A Intermediary (Blue Cross or Prudential) for the unsatisfied deductible (Medicare Part B) when physical therapy, speech-language therapy or occupational therapy services are performed for patients eligible for both programs.

5. Billing Medicaid following Medicare decline:

i. If the HCFA-1483 (Exhibit No. 23) claim for physical therapy, speech-language therapy or occupational therapy is declined by Medicare and you wish to bill Medicaid for these services, a request for authorization must be made to the MDO. When submitting such a request for authorization to the MDO, the facility must attach a copy of the Medicare denial letter. Medicaid will not authorize payment for any claim for rehabilitation services including but not limited to physical therapy, occupational therapy, speech-language therapy or any other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best functional level, which was denied by Medicare by reason of "not medically necessary." If authorization is granted by the MDO, the facility shall bill the Bureau of Claims and Accounts in accordance with established procedures, e.g., therapy charges, Form MCNH-14 (Exhibit No. 5) plus Form FD-06 (Request for Authorization or Reauthorization for Prescribed Rehabilitation Treatment Program, Exhibit No. 1).

ii. When submitting requests for prior authorization of physical therapy, speech-language therapy or occupational therapy to the MDO on behalf of patients not covered by Medicare benefits, the facility must state that the "patient is not a Medicare beneficiary."

6. Medicaid patients not eligible for Medicare benefits: Prior authorization by the Medical Consultant of the Medicaid District Office is not required for the initial evaluation visit. See N.J.A.C. 10:63-1.4(g)1. All subsequent rehabilitation therapy treatment visits require prior authorization. Authorization shall be considered only when the request includes a written prescription by a licensed physician who is the patient's attending physician, substantiating the need, type of therapy, objective of treatment, and an estimate of the number of treatment days. Prescriptions must be definitive as to type and scope. Orders such as "Physical Therapy three times a week" will not be accepted. Prior authorization may be for a period not exceeding 60 days. Subsequent authorizations for periods not exceeding 60 days may be issued by the Medical Consultant of the Medicaid District Office when the request is supported by the written prescription of the attending physician, including a statement of the anticipated number of treatments required, and a progress report of the recipient's condition.

7. Procedure regarding the acquisition of prior authorization for prescribed rehabilitation services:

i. All LTCFs requesting prior authorization for rehabilitation services for Medicaid eligible patients receiving care in their facilities will use the Form FD-06 (Exhibit No. 1).

ii. The LTCF will be responsible for the total completion of the "Patient Information" and "Medical Information and Therapy Requested" portions of the form, in triplicate. If the request is for initial authorization of rehabilitation services, it will not be necessary to complete No. 13 on the form. Note also that if the form is completed by the therapist rather than the attending physician, the latter's prescription must be attached to the request when it is submitted to the Medicaid District Office (MDO).

iii. Following Medical Consultant's review and disposition, the billing and provider copies of the form will be returned to the LTCF by the MDO. The billing copy is to be submitted to the Bureau of Claims and Accounts along with the MCNH-14 form (Exhibit No. 5) for payment.

8. Therapy charges-billing procedures: Refer to N.J.A.C. 10:63-1.11(h) for detailed instructions.

(h) Special Medical equipment: When unusual circumstances require special medical equipment not usually found in a LTCF, such special equipment may be reimbursable with prior authorization from the Medicaid District Office serving the county where the facility is located.

1. When special medical equipment is authorized and purchased on behalf of a Medicaid recipient, ownership of such equipment will vest in the Division of Medical Assistance and Health Services. The recipient will be granted a possessory interest for as long as the recipient requires use of the equipment. When the recipient no longer needs such equipment, possession and control will revert to the Division. The recipient agrees to this when he/she signs the "patient's certification" section on the claim form.

(i) Transportation services: When a Medicaid eligible patient requires a service or care not regularly provided by the LTCF, arrangements to obtain these services are to be made by the facility with appropriate agencies or other responsible persons.

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1. Transportation provided by LTCF: If a transportation service is provided by the LTCF to an inpatient of that LTCF, no additional reimbursement is allowed. Reimbursement is included in the per diem rate.

2. Ambulance service does not require authorization, but is reimbursable only *[under the following conditions:

i. When such service is not free and available in the community; or

ii.]* when the use of any other method of transportation is medically contraindicated. (See N.J.A.C. 10:50-1.3(b)) for specific medical conditions).

3. Invalid Coach: Invalid Coach services require prior authorization from the MDO.

i. Invalid Coach services must be rendered by a certified transportation provider.

ii. An Invalid Coach may be utilized when a Medicaid eligible person requires transportation from place to place for medical purposes and when the use of a lesser form of transportation, i.e., cab, bus, or private vehicle would create a serious risk to live or health.

4. Other transportation not directly reimbursable: Transportation by taxi, train, bus, and other public conveyances is not directly reimbursable by the New Jersey Medicaid Program. Inquiry should be made to the County Welfare Agency for authorization and payment for such transportation.

5. Policy and procedures regarding the provision of transportation services are outlined in the New Jersey Medicaid Transportation Services Manual (N.J.A.C. 10:50-1.3 thru 1.6).

(j) Vision care services: It is required that all facilities assist Medicaid eligible patients to obtain vision care through a licensed ophthalmologist or optometrist who shall provide or make provision for routine and emergency services.

1. Policies and procedures regarding the provision of Vision Care services are outlined in the New Jersey Medicaid Program's Vision Care Manual (N.J.A.C. 10:62).

Effective Date of Readoption: July 23, 1984.

Effective Date of Concurrent Amendments and Amendments: August 6, 1984.

Expiration Date pursuant to Executive Order 66(1978): July 23, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:65-1.

Full text of the adopted amendments to the readoption, and to Subchapter 2 follows.

10:65-1.1 Scope

The Medical Day Care Program is concerned with the fulfillment of the health needs of eligible recipients of the New Jersey Medicaid Program who could benefit from a health services alternative to total institutionalization. Medical Day Care is a program of medically supervised, health related services provided in an ambulatory care setting to persons who are non-residents of the facility, who do not require 24 hour in-patient institutional care and yet, due to their physical and/or mental impairment, need health maintenance and restorative services supportive to their community living.

10:65-1.2 Definitions

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

...
"Medical Day Care Center" means an identifiable part of a long-term care facility, or a hospital affiliated facility, or a freestanding ambulatory care facility, or such other facility which is licensed by the New Jersey State Department of Health to provide non-residential medical day care services, which possesses a valid and current provider agreement from the New Jersey Division of Medical Assistance and Health Services and which provides services as described in this manual at section N.J.A.C. 10:65-1.4.

...

10:65-1.4 Required Services

(a) As a minimum the following services shall be provided by the Center for participation in the Medical Day Care Program.

1. Medical Services

i. The Center Director, with the Medical Director of the facility shall establish written medical and administrative policies governing the provision of medical services to the participants. The Medical Director shall be responsible for, but not limited to, the following:

(1)-(4) (No change.)

(5) Establish relationships with appropriate personnel in other institutions, such as general or special hospitals, rehabilitation centers, home health agencies, clinics, laboratories, and related community resources. This would include but not be limited to arrangements for emergency room services, unavailable within the facility.

ii. The Medical Day Care Center shall provide:

(1) (No change.)

(2) The Medical Director may not bill the New Jersey Medicaid Program separately for any service performed for a

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care Manual

Readoption: N.J.A.C. 10:65-1.3, 1.7

Readoption with Concurrent Amendments:

N.J.A.C. 10:65-1.1, 1.2, 1.4 through 1.6,

1.8

Adopted Amendments: N.J.A.C. 10:65-2.1,

2.2, 2.4, 2.6, 2.7

Proposed: June 18, 1984 at 16 N.J.R. 1443(a).

Adopted: July 23, 1984 by George J. Albanese, Commissioner, Department of Human Services.

Filed: July 23, 1984 as R.1984 d.332, **without change.**

Authority: N.J.S.A. 30:4D-6b(12)(16), 7 and 7b.

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Medicaid eligible while serving in his capacity as Medical Director.

(3)-(4) (No change.)

2.-7. (No change.)

8. Rehabilitative Services:

i. (No change.)

ii. Physical and speech-language therapies provided by the Center shall not be included in the per diem costs for Medical Day Care. However, they are reimbursable and shall be billed separately. Prior authorization is not required for an initial visit to evaluate the need for physical or speech-language therapies. All subsequent therapy treatment visits following the initial visit will continue to require prior authorization. (See 10:65-1.6).

iii. (No change.)

10:65-1.5 Staff

(a) (No change.)

1.-2. (No change.)

3. Social Worker: The Social Worker shall possess a Master's degree in Social Work from an accredited graduate school of Social Work plus one year of full-time or full-time equivalent social work experience in a health care setting. If a designate is utilized, the designate shall possess a Bachelor's degree in the social sciences plus one year of social work experience in a health care setting. A designate must have available on-site consultation from a qualified social worker, a person with a Master's degree in Social Work from an accredited School of Social Work in accordance with the New Jersey State Department of Health's standards (see N.J.A.C. 8:39-1.20(d)).

4.-6. (No change.)

10:65-1.6 Prior authorization

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

(c) The Medical Day Care Center may bill the Medicaid Fiscal Agent, Prudential Insurance Company, for one initial visit evaluation for eligible recipients without prior authorization.

10:65-1.8 Records

(a) As a minimum, the participant's chart shall contain the following information:

1.-8. (No change.)

(b) An Individualized Plan of Care shall be written for each participant prior to admission to the Program, with input from the participant, family, and interested community agencies. The plan shall state medical needs of the participant as evaluated by the attending physician, and nursing, social service and other service needs as determined by the Center Staff, with in-put from community agencies. Overall goals and services to be provided by the Center to fulfill the needs expressed should be indicated.

1.-2. (No change.)

3. This Individualized Plan of Care is not part of the authorization/reauthorization process. Therefore, it should not be sent to the Medicaid District Office with the FD-140 form, which is to be used for the authorization/reauthorization only.

10:65-2.1 Billing Procedures

(a) This subchapter contains basic information and instructions necessary for the proper completion and submission of a claim. Included are exhibits to be utilized by Medical Day Care Centers for use in submitting claims for covered items or

services. All forms to be completed by the facility are available from Prudential Insurance Company.

1. Payment: Payment will be based only on the number of days spent by the participant at the Medical Day Care Center. Billing will be performed by using the MC-14C2 Claim form, Independent Outpatient Health Facility (Exhibit I) which must indicate days of participant attendance during the period of authorization or reauthorization.

2. (No change.)

i. Physical and speech-language therapy services are not included in the per diem rate and these services must be billed separately on the MC-14C2 form;

ii. The reimbursement fee for an initial visit for physical or speech-language therapy will be the same as that for which the Medical Day Care Center is reimbursed for a subsequent treatment visit.

3.-4. (No change.)

10:65-2.2 General Policy

Billing should be done on a monthly basis. In all cases, claims must be submitted no later than ninety days after the last date services are furnished, and no later than twelve (12) months from the earliest date of service as indicated on the claim form.

10:65-2.4 Prior authorization

(a) (No change.)

(b) Following the initial evaluation visit for medical day care, prior authorization is required. A claim for the initial visit must be submitted on the Independent Outpatient Health Facility Claim Form (MC-14C2) with the comment "Initial Visit Only" in item 13 (Report of Services), Section D. This should only be done when authorization has been declined.

(c) Prior authorization is required for all persons participating under the Medical Day Care Program. The maximum duration for an initial authorization is 90 days (or less); reauthorization may be for a period up to six (6) months. Reauthorization can be obtained by the submission of the FD-140 form, Request for Medical Day Care Authorization or Reauthorization, which must include in item 19 recommendations for extension of such continued participation in medical day care. Allow at least two weeks prior to termination date of previous authorization for processing of a reauthorization of this request.

1. How to obtain prior authorization:

i. The form, FD-140, Request for Medical Day Care Authorization or Reauthorization, should be promptly completed by the attending physician with the involvement of the nursing and social work staff and submitted to the appropriate Medicaid District Office.

2. Completing the FD-140, Request for Medical Day Care Authorization or Reauthorization form (See Exhibit IV): All items, 1 through 21 inclusive must be completed on all FD-140 forms. All items should be typed or printed clearly.

i. Distribution of form FD-140 (four part snap-out form):

(1) Fiscal Agent's copy and provider copy and the Medicaid District Office copy are submitted to the Medicaid District Office, with the center retaining the second provider copy;

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

3. Submission of authorization to the Fiscal Agent: When the request for authorization has been approved, it must be submitted together with the MC-14C2, Independent Outpatient Health Facility Claim form (Exhibit I) to Prudential Insurance Company for reimbursement for services provided.

4. (No change.)

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10:65-2.6 Instructions; form MC-14

(a) Instructions for completion of the MC-14C2-Independent Outpatient Health Facility Claim Form (see Exhibit I):

1.-2. (No change.)

3. Item 7-8: Self-explanatory;

4.-7. (No change.)

8. Item 13: Report of services:

i. Item A (No change.)

ii. Item B: Enter separately the procedure code for medical day care visit (0001) or for physical therapy treatment (0030) or for speech-language therapy treatment (0032); for an initial evaluation visit for rehabilitative therapy only, enter separately the procedure code for physical therapy (0049) or for speech-language therapy (0047);

iii.-v. (No change.)

vi. Item F: Enter the total charges represented by the number of visits or treatments times the approved rate for same. The sum of the charges entered in column F should be shown at the bottom under "total charges \$";

9. Items 14-16: Self-explanatory

10. Item 16a: Physician Case Manager. If the recipient is enrolled in the Medicaid Personal Physician Plan (MP Plan), enter the Physician Case Manager's name and IMP number. If not, leave blank.

11. Item 17: Patient's certification: See Chapter I, 10:49-1.26

12. Item 18: Provider's Certification: The provider must sign and date the form before the claim may be considered.

10:65-2.7 Mailing Instructions

Mail the original copy (Fiscal Agent's-(contractor) copy) of the MC-14C2 Outpatient Claim Form together with the FD-140 form to:

The Prudential Insurance Company
of America
P.O. Box 5000
Millville, New Jersey 08332

(a)

DIVISION OF PUBLIC WELFARE

**Special Payments Handbook: Aged, Blind and Disabled
Notice of No Financial Interest**

Adopted Amendment: N.J.A.C. 10:100-3.8

Proposed: May 7, 1984 at 16 N.J.R. 1013(a).

Adopted: July 23, 1984, George J. Albanese, Commissioner, Department of Human Services.

Filed: July 23, 1984, as R.1984 d.331, **without change**.

Authority: N.J.S.A. 44:7-12, 44:7-13, 44:7-38 and 44:7-43.

Effective Date: August 6, 1984.

Operative Date: September 4, 1984.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the adoption follows.

10:100-3.8 Other CWA duties at time of death

(a) In any case in which the CWA becomes aware of the death of an SSI or Medicaid Only recipient and the CWA (and to the best of its knowledge, no other CWA) has no financial interest (that is, has no lien or claim and will not be paying any part of burial cost), the CWA will notify in writing all known holders of the decedent's assets or funds that it has no interest in the assets or funds. The CWA is cautioned against the giving of instructions as to the disposition of funds in which it has no interest.

(b) (No change.)

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

**Child Care
Manual of Standards for Child Care Centers**

Adopted Amendments: N.J.A.C. 10:122-1.1, 1.2, 2.1-2.4, 4.3, 5.1, 5.2, 5.4, 6.1-6.5, and 6.7

Adopted New Rules: N.J.A.C. 10:122-2.5 and 8.1-8.5

Proposed: May 7, 1984 at 16 N.J.R. 1013(b).

Adopted: July 23, 1984 by George J. Albanese, Commissioner, Department of Human Services.

Filed: July 23, 1984 as R.1984 d.333, **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. 30:5B-1 to 15.

Effective Date: August 6, 1984.

Expiration Date pursuant to Executive Order 66(1978): Subchapters 1 through 7—September 19, 1988; Subchapter 8—August 6, 1989.

Summary of Public Comments and Agency Responses:

The Division received comments from the State Departments of Community Affairs and Health.

Comment: The inclusion of the term "development" in the definition of "child care center" could make the regulations applicable to a number of agencies providing medical evaluation, diagnosis, and treatment services to children under 6 years of age. Since these regulations are not, nor were they meant to be, applicable to medical services, it is requested that "centers or special clinics operated primarily for the purpose

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of providing medical and health related services" be added to the exemptions under the definition of child care center.

Response: The Child Care Center Licensing Act and the proposed regulations are in no way intended to govern centers, facilities or clinics that primarily provide medical or health care services to children; rather, the law applies only to facilities and programs that are established for child caring purposes, such as day care centers, nursery schools and similar types of facilities, as spelled out in the definitions section of the law and of the proposed regulations. Medical and health care facilities and programs clearly do not fall within the definition of "child care center" and for that reason need not be specified among the exemptions in the law or regulations.

Comment: A facility whose license was revoked may have its license reinstated through submission of a new application and fee.

Response: The Division has the authority under the law to accept or deny an application for a new or renewal license to operate a child care center. Thus, a center whose license was previously revoked, while having the right to apply for a new license, would not have its license automatically reinstated by virtue of its new application. Rather, the center's application would be subject to review by the Division and a determination made on whether to accept or deny the application. If the same circumstances that led to the revocation of the initial license are present in the new application, the Division would deny the application promptly.

Comment: The regulations require that an administrative hearing be conducted within 60 days following issuance of a notice denying, suspending, revoking, or refusing to renew a license. Would the State automatically lose its case if the hearing does not take place within 60 days?

Response: The regulations require conducting an administrative hearing within 60 days of a notice of denial, suspension or revocation of a license, since that requirement is mandated specifically by the licensing law. While the Division understands the concern over the possible impact on our enforcement efforts that might occur if that time frame were not met, it has been the Division's experience that a period of 60 days is sufficient time to schedule and conduct an administrative hearing in a contested matter.

Comment: Does the requirement that staff members with symptoms of illness not be permitted in the children's play or sleeping rooms include all illness or just communicable disease?

Response: The regulation requiring that staff members with symptoms of illness not be permitted in children's play or sleeping rooms refers only to staff with communicable diseases; for that reason, the regulation is placed in the communicable disease control section of that sub-chapter of the Manual.

Comment: Winding staircases should not be permitted unless approved by the fire marshal or local fire authority.

Response: Child care centers are obligated as a condition of licensure to meet all applicable provisions of the State Uniform Construction Code (UCC), as determined through inspections by local construction and fire safety code officials. Therefore, winding staircases are subject to the approval of local building and fire inspection officials and would not be permitted without receiving such approval.

Comment: Waste receptacles should be required to be covered.

Response: The Division concurs with this suggestion and the text has been amended accordingly.

Comment: The used diaper container should be lined with a leak proof or impervious liner.

Response: The provision on containers for used diapers has been amended to incorporate this suggestion.

The Division also received some comments that focused on content matter in the chapter on which it did not propose amendments. As such, these comments were not considered at this time. However, these comments will be reviewed and considered for future proposals, as appropriate.

Summary of changes between proposal and adoption follows:

Portions of N.J.A.C. 10:122-5.1d.3 were excluded inadvertently from the proposal as it was published in the May 7, 1984 edition of the New Jersey Register. Paragraphs 5. and 6. within subsection (g) of N.J.A.C. 10:122-6.1 were deleted and should have been shifted to 10:122-5.1(d)3 with the other provisions on medication (prescription and non-prescription). These provisions, which should have appeared in the proposal, are to be included in these adopted regulations. They do not constitute content changes from the regulations previously in effect. The only difference is that they will appear in Subchapter 5 instead of Subchapter 6 of this chapter.

The above mentioned paragraphs are included below in their entirety.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

10:122-1.1 Legal authority

(a) This chapter is promulgated pursuant to the Child Care Center Licensing Act (N.J.S.A. 30:5B-1 to 15).

(b) Under N.J.S.A. 30:5B-1 to 15, the Department of Human Services is authorized to license certain public and private child care centers that are maintained for the care, development or supervision of six or more children under six years of age for less than 24-hours-a-day.

(c) Under N.J.S.A. 30:5B-1 to 15, the Department of Human Services is authorized to certify a child care center that was operating prior to May 16, 1984 (the effective date of the Child Care Center Licensing Act) and was exempt from the licensing provisions of N.J.S.A. 18A:70-1 et. seq. because it was operated by an aid society of a properly organized and accredited church. Such centers are not required to be licensed under this act, but are required to comply with physical facility and life/safety requirements as specified in N.J.A.C. 10:122-5.1 to 5.4.

(d) In order to be eligible for a license, a child care center shall demonstrate to the satisfaction of the Department of Human Services or its duly authorized agent through such methods and procedures as may be prescribed that it complies with the rules and regulations contained in this chapter, which constitute minimum standards only.

(e) Responsibility for insuring that centers comply with the provisions of the statutes cited in (a) above and of this chapter

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is hereby delegated by the Department of Human Services to the Bureau of Licensing of the Division of Youth and Family Services.

10:122-1.2 Definitions

The following words and terms when used in this chapter, have the following meanings.

“Bureau” means the Bureau of Licensing of the Division of Youth and Family Services, New Jersey Department of Human Services.

“Child” means any person under six years of age.

“Child Care Center” or “Center” means any facility, by whatever name known, which is maintained for the care, development and supervision of six or more children under six years of age who attend the facility for less than 24-hours-a-day. This term shall include, but shall not be limited to, such programs as child care centers, day care centers, drop-in centers, night time centers, day nursery schools, play schools, cooperative child centers, centers for children with special needs, infant-toddler programs, employment related centers, child care centers that have already received approval from the Department of Human Services prior to the enactment of the Child Care Center Licensing Act, and kinder gartens that are not an integral part of a private educational institution or system offering elementary education in grades kindergarten through sixth. The term shall not include:

1. Foster homes, group homes and other types of in-home residential facilities, and children’s institutions, whether public or private, providing live-in care on a 24-hour basis;

2. Programs operated by a public school district and private schools which are run solely for educational purposes. This exclusion shall apply to kindergartens, prekindergarten programs or child care centers that are an integral part of a private educational institution or system offering elementary education in grades kindergarten through sixth;

3. Centers or special classes operated primarily for religious instruction or for the temporary care of children while persons responsible for such children are attending religious services;

4. Special activities programs for children, including athletics, hobbies, art, music, dance, or craft instruction, which are supervised by an adult, agency or institution.

5. Youth camps required to be licensed under the Youth Camp Safety Act of New Jersey (N.J.S.A. 26:12-1 et seq.); or

6. Day training centers operated by the Division of Mental Retardation, New Jersey Department of Human Services.

“Department” means the New Jersey Department of Human Services.

“Director” means any person responsible for the actual operation and management of a child care center.

“Division” means the Division of Youth and Family Services, New Jersey Department of Human Services.

“Manual of Standards for Child Care Centers” or “Manual of Standards” means the rules and regulations promulgated in this chapter, which constitute minimum requirements for child care centers.

“Parent” means a natural or adoptive parent, guardian, or any other person having responsibility for, or custody of, a child.

“Person” means any individual, corporation, company, association, organization, society, firm, partnership, joint stock company, the State or any political subdivision thereof.

“Regular Certificate of Life/Safety Approval” or “Regular Certificate” means an approval in writing issued by the Bureau which indicates that the child care center is in full

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compliance with the physical facility and life/safety requirements, as specified in N.J.A.C 10:122-5.1 to 5.4 of this chapter.

“Regular License” means a certificate in writing issued by the Bureau which indicates that the child care center is in full compliance with the provisions of the Child Care Center Licensing Act (N.J.S.A. 30:5B-1 to 15) and of this chapter.

“Revocation of a Certificate of Life/Safety Approval” means a rescinding of a center’s current certificate of life/safety approval to operate for failure or refusal to comply with the physical facility and life/safety requirements, as specified in N.J.A.C. 10:122-5.1 to 5.4 of this chapter.

“Revocation of a License” means a rescinding of a center’s current license to operate for failure or refusal to comply with the provisions of the Child Care Center Licensing Act (N.J.S.A. 30:5B-1 to 15) and of this chapter.

“Shall” denotes a provision of this chapter that a child care center must meet to qualify for a license.

“Should” denotes a recommendation reflecting goals towards which a center is encouraged to work for the improvement of the program.

“Sponsor” means any person owning or operating a child care center. The “sponsor” also may serve as the director.

“Staff Member” means any person employed by or working for or with a child care center on a regularly scheduled basis. This shall include full-time, part-time, voluntary and substitute staff, whether paid or unpaid.

“Suspension of a Certificate of Life/Safety Approval” means a temporary rescinding of a center’s current certificate of life/safety approval to operate, which can be reinstated by the Bureau upon the center’s compliance with the physical facility and life/safety requirements, as specified in N.J.A.C 10:122-5.1 to 5.4 of this chapter.

“Suspension of a License” means a temporary rescinding of a center’s current license to operate, which can be reinstated by the Bureau upon the center’s compliance with the provisions of the Child Care Center Licensing Act (N.J.S.A. 30:5B-1 to 15) and of this chapter.

“Temporary Certificate of Life/Safety Approval” or “Temporary Certificate” means an approval in writing issued by the Bureau which indicates the child care center is in substantial compliance with the physical facility and life/safety requirements, as specified in N.J.A.C. 10:122-5.1 to 5.4 of this chapter, provided that no serious or imminent hazard affecting the children exists, and on the condition that the center comes into full compliance with the physical facility and life/safety requirements, as specified in N.J.A.C. 10:122-5.1 to 5.4 of this chapter, by the expiration date of the temporary certificate of life/safety approval.

“Temporary License” means a certificate in writing issued by the Bureau which indicates the child care center is in substantial compliance with the provisions of the Child Care Center Licensing Act (N.J.S.A. 30:5B-1 to 15) and of this chapter, provided that no serious or imminent hazard affecting the children exists, and on the condition that the center comes into full compliance with the provisions of the Child Care Center Licensing Act (N.J.S.A. 30:5B-1 to 15) and of this chapter by the expiration date of the temporary license.

SUBCHAPTER 2. LICENSING PROCEDURES

10:122-2.1 Application for license

(a) No person shall conduct, maintain or operate a child care center unless the center first secures a license to do so from the Bureau, pursuant to the provisions of the Child Care

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Center Licensing Act (N.J.S.A. 30:5B-1 to 15) and of this chapter. Any person who operates or assists in the operation of a child care center which does not have a regular or temporary license, or who has used fraud or misrepresentation in obtaining a license or in the subsequent operation of a center, or who offers, advertises or provides any service not authorized by a valid license or who violates any other provision of this act shall be guilty of a crime of the fourth degree.

(b) Filing of application with the Bureau:

1.-2. (No change.)

10:122-2.2 Issuance of a license

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

(c) If the Bureau determines that a child care center is in substantial compliance with, but does not meet all of the applicable provisions of this chapter, and provided that the extent of the center's deviation from such requirements is not deemed serious or imminently hazardous to the education, health, safety, well-being and physical and intellectual development of the children, the Bureau shall issue a temporary license.

(d)-(k) (No change.)

10:122-2.3 Causes for denial, suspension or revocation of a license

(a) A child care center's license may be denied, suspended or revoked for good cause, including but not limited to the following:

1. Failure to comply with the provisions of the Child Care Center Licensing Act and of this chapter;

2. Violation of the terms and conditions of a license;

3. Use of fraud or misrepresentation in obtaining a license or in the subsequent operation of the center;

4. Refusal to furnish the Bureau with files, reports or records as required by this chapter;

5. Refusal to permit an authorized representative of the Division to gain admission to the center during normal operating hours; or

6. Any conduct, engaged in or permitted, which adversely affects or presents a serious or imminent hazard to the education, health, safety and well-being and physical and intellectual development of any child attending the child care center, or which otherwise demonstrates unfitness or inability to operate a child care center.

7. Failure to provide a developmental or age-appropriate program that meets the physical, social, emotional and cognitive needs of the children in the center as required by this chapter.

(b) If the center's license is suspended or revoked, the parent of a child in the center shall receive notice thereof, personally and in writing, by the center's sponsor.

(c) If a child care center's license is suspended, it shall be reinstated by the Bureau once the center achieves compliance with the provisions of the Child Care Center Licensing Act and of this chapter. In such a case, it is not necessary for the center to submit a new application for a license and application fee.

(d) If the Bureau revokes a center's license to operate, the center shall submit to the Bureau a new application for a license and application fee, meet the provisions of the Child Care Center Licensing Act and of this chapter and secure a new license to operate prior to resuming operations.

(e) Each license issued by the Bureau to a child care center remains the property of the State of New Jersey. If a center's license is suspended or revoked or upon the permanent closing

of the center by the sponsor, the sponsor shall return the center's license to the Bureau immediately.

10:122-2.4 Administrative hearings

(a) To effectuate the purposes of this chapter, the Bureau may initiate an administrative hearing and transfer the matter to the Office of Administrative Law as a contested case in the interest of justice.

(b) When the Bureau proposes to deny, suspend, revoke or refuse to renew a license, the Bureau shall afford the child care center sponsor, personally, or by certified or registered mail, notice and opportunity for an administrative hearing.

(c) The hearing shall take place within 60 calendar days from the issuance or mailing of the notice and shall be conducted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.) and the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1).

10:122-2.5 Court action

(a) The Bureau may institute a civil action in a court of competent jurisdiction for injunctive relief to enjoin the operation of a child care center for good cause, including but not limited to the following:

1. Any imminent danger or hazard that threatens the health and safety of children in the center;

2. Repeated violation of the provisions of the Child Care Center Licensing Act; and

3. Opening and operating a child care center without a license or without complying with the provisions of the Child Care Center Licensing Act.

10:122-2.6 Complaints

10:122-2.7 Public access to licensing records

SUBCHAPTER 3. ADMINISTRATION

10:122-3.2 Reporting requirements

(a) The center shall notify the Bureau and the Office of Child Abuse Control (toll-free 800-792-8610) immediately if any of the following events occur:

1. Injury or illness requiring hospitalization and/or the death of any child which occurred while the child was on the premises of the center or in the care of center personnel; and

2. (No change.)

(b) (No change.)

(c) The Center shall notify the Bureau in writing within 14 calendar days of the following proposed changes and events:

1.-7. (No change.)

SUBCHAPTER 4. STAFF REQUIREMENTS

10:122-4.3 Types, responsibilities and qualifications of staff

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

(c) Responsibilities and qualifications of staff for centers serving only children under 2½ years of age:

1.-3. (No change.)

4. For any program category, the caregiver shall:

i.-iii. (No change.)

iv. Possess a Child Development Associate Credential (CDA) and have one year of experience in a group program for children under six years of age, which may include student teaching.

(d) (No change.)

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(e) Responsibilities and qualifications of staff for centers serving only children over 2½ years of age:

1. (No change.)
2. The head teacher shall possess the qualifications as specified in (e)2i, ii and iii below for the appropriate program category.
 - i. Day program: The head teacher shall:
 - (1)-(2) (No change.)
 - (3) For conditional approval, submit to the Bureau documentation of enrollment in an undergraduate program or in courses approved by the New Jersey Department of Education leading to the required New Jersey Instructional Certificate for Teacher of Nursery School or New Jersey Instructional Certificate with the Teacher of Nursery School Endorsement and have two years of teaching experience in a group program for children under six years of age. This conditional approval shall be valid for a maximum of six months, at which time the individual must submit to the Bureau a copy of a New Jersey Instructional Certificate for Teacher of Nursery School or a New Jersey Instructional Certificate with the Teacher of Nursery School Endorsement in order to continue serving as head teacher; or
 - (4) (No change.)
 - ii.-iii. (No change.)
- 3.-4 (No change.)
5. A group teacher shall possess the qualifications as specified in (e)5i, ii and iii below for the appropriate program category.
 - i. Day program: A group teacher shall:
 - (1)-(2) (No change.)
 - (3) For conditional approval, submit to the Bureau documentation of 12 college credits in early childhood education and/or child development and documentation of enrollment in an additional three-credit college course in these subject areas and have two years of teaching experience in a group program for children under six years of age, which may include student teaching. This conditional approval shall be valid for a maximum of six months, at which time the center must submit to the Bureau documentation showing that the individual has acquired the three additional credits; or
 - (4) (No change.)
 - ii.-iii. (No change.)
 - (f)-(h) (No change.)

SUBCHAPTER 5. PHYSICAL FACILITY REQUIREMENTS

10:122-5.1 Local government physical facility requirements

(a) An applicant seeking a license to open and operate a child care center for the first time as such shall:

1. For newly constructed buildings, existing buildings whose construction code use group classification would change from that which it had been or existing buildings that require major alteration or renovation, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located, reflecting the center's compliance with the provisions of the State Uniform Construction Code (N.J.A.C. 5:23), hereinafter referred to as UCC, for one of the following use group classifications:
 - i. E (Educational) for buildings accommodating children 2½ years of age and/or older and having a total occupancy (children and adults) that is 50 or more; or
 - ii. B (Business) for buildings accommodating children 2½ years of age and/or older and having a total occupancy (children and adults) that is fewer than 50; or

iii. 1-2 (Institutional) for buildings accommodating one or more children below 2½ years of age.

2. For existing buildings whose construction code use group classification is already E, B or I-2 and that have not had major alterations or renovations to make them suitable for use as a center, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located at the time the building was originally constructed or approved for use in the UCC's E, B or I-2 use group classifications.

3. For existing buildings whose use prior to the adoption of the UCC was and continues to be for a center and that have not had major alterations or renovations to the center, submit to the Bureau a copy of the building's certificate of continued occupancy issued by the municipality in which it is located, reflecting the building's compliance with provisions of the municipality's construction code requirements that were in effect at the time it was originally constructed or converted for use as a child care center.

4. On an annual basis thereafter, the center shall, if the municipality in which the building is located has enacted an ordinance governing the maintenance of centers, submit to the Bureau a statement from the municipal enforcing agency certifying that the building is in compliance with such ordinance.

(b) The child care center shall submit to the Bureau a copy of a new certificate of occupancy issued by the municipality in which it is located, reflecting the building's compliance with provisions of the appropriate UCC use group classification whenever it takes any of the following actions:

1. Changing the building's use group classification to one other than the one prescribed on its original certificate of occupancy; or
2. Making a major alteration or renovation, as defined by the UCC, of the building or premises in which the center is located; or
3. Increasing the floor area or the number of stories to the building or premises in which the center is located.

(c) Whenever a variation(s) has been granted by the municipality for any of the requirements of the UCC, such variation(s) may be accepted by the Bureau as meeting the appropriate requirement(s) of this chapter.

(d) Health:

1. Inspection approval

i. The center shall submit to the Bureau a copy of the municipal, county or state health inspection approval for the building, based on an inspection conducted within the preceding 12 months. The local, county or state health official shall certify that the building meets the provisions of all local, county and state health codes and poses no health hazard to the children served.

ii. A center seeking renewal of a license to operate shall submit to the Bureau a copy of the municipal, county or state health inspection approval for the building, as specified in (d)1 above.

2. Communicable disease control

i. The center shall report the occurrence of a communicable disease to the Bureau and its local board of health within 24 hours after such disease has been diagnosed in accordance with the provisions of Chapter 2 of the State Sanitary Code (N.J.A.C. 8:57 -1.1 et seq.).

ii. A child who is ill at the center shall be isolated from other children in a separate area of the center, as specified in N.J.A.C. 10:122-5.2(q), where she/he can be cared for until

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arrangements are made for the child's return to a parent or other authorized person.

iii. Staff members with symptoms of illness shall not be permitted in the children's play rooms or sleeping rooms.

iv. Pets kept by the center shall be domesticated and free from disease. Pets shall be inoculated as prescribed by law or as recommended by a veterinarian.

3. Medication control (prescription and non-prescription)

i. All medication shall be kept in a secured area that is inaccessible to the children.

ii. Unused medication shall be discarded or returned to the parent(s) when no longer being administered.

***iii. The center shall insure that the staff member(s) responsible for administering medication are informed of the medication needs of each child at the center.**

iv. The center shall keep a record of each time and by whom medication was administered to a child.*

[iii.] *v.* Any prescription medication for a child shall be:

- (1) Prescribed by the child's physician;
 - (2) Stored in its original container according to the directions on the container; and
 - (3) Labeled with the child's name, the name of the medication, date prescribed and directions for its administration.
4. Smoking shall be prohibited in all rooms occupied by children.

10:122-5.2 General life/safety requirements

(a) Exiting requirements:

1. Exits:

i. Exits shall be maintained in proper operating condition and the center shall insure that:

(1) There are two independent unobstructed exits from every floor of a building which allows exiting from the building or room in two separate directions;

(2) The maximum travel distance to an outside exit door or exit stairway does not exceed the following lengths:

Use Group Classification	Without Fire Suppression System	With Fire Suppression System
E	150 feet	200 feet
B	200 feet	300 feet
I-2	100 feet	200 feet

(3) An exit access shall not pass through a boiler room, furnace room, toilet facility or storage room.

ii. (No change.)

2. Doors:

i.-iv. (No change.)

3. Stairways:

i. Stairways used for exits shall be unobstructed.

ii. Interior stairways:

(1) The maximum height of risers shall be seven and one half inches and the minimum width of tread shall be 10 inches.

(2) Winding staircases shall not be counted for purposes of meeting the exit requirements of this chapter.

(3) A space below a stairway shall be enclosed with a one-hour fire-rated material.

iii. Exterior stairways:

(1) Exterior stairways conforming to the interior stairway requirements, as noted in (a)3ii above, shall be acceptable as required exits in child care centers not exceeding five stories in height and that serve only children 2½ years of age and/or older.

(2) Exterior stairways shall be constructed of materials that are in accordance with table 401 of the UCC's Building Sub-Code (BOCA).

iv. Handrails and guardrails:

(1) All stairways having three or more risers shall have a handrail on at least one side.

(2) Stairways more than 44 inches wide shall have continuous handrails on both sides.

(3) Stairways more than 88 inches wide shall also have an intermediate hand rail dividing the stairway.

(4) Handrails shall be 30 to 34 inches above the nosing of treads.

(5) Guardrails shall not be less than 42 inches in height measured vertically above the nosing of treads.

(6) Guardrails shall be provided with intermediate guards spaced six inches apart or with equivalent protection.

4. (No change.)

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

(d) Maintenance and sanitation:

1. (No change.)

2. Indoor maintenance and sanitation requirements:

i. Child care centers shall be free of moisture resulting from water leaks or seepage.

ii. All lally columns in areas used by the children shall have protective padding placed around them that is at least 48 inches above the floor.

iii. Floors, walls, ceilings, and other surfaces shall be kept clean and in good repair. These areas shall be covered or treated when necessary and no paint containing lead shall be used.

iv. Stairways shall be free of hazards such as toys, boxes, loose steps, uneven treads, torn carpeting, raised strips, or risers that are not uniform.

v. Carpeting shall be secured to the floor to avoid tripping.

vi. Garbage shall be removed from the interior of the building daily.

vii. The center shall utilize receptacles for food waste disposal that are made of durable materials that are nonabsorbent, leak proof and easily cleanable.

viii. Food waste receptacles shall be lined and cleaned daily and more frequently when necessary.

ix. The center shall take necessary action to protect the facility from rodent, insect and related infestations. Extermination services and the application of pesticides shall be in accordance with the regulations of the State Department of Environmental Protection, as specified in N.J.A.C 7:30-1 through 10.

x. Toilets, wash basins, kitchen sinks, and other plumbing shall be maintained in good operating and sanitary condition at all times and shall be kept free of materials that might clog or impair their operation.

xi. All corrosive agents, insecticides, bleaches, detergents, polishes, any products under pressure in an aerosol spray can and any other toxic substance, shall be stored in a locked cabinet or in an enclosure located in an area not accessible to the children.

xii. Openable windows that are located within 48 inches above the floor shall have protective guards so as to prevent children from falling out of the windows.

3. Outdoor maintenance and sanitation requirements:

i. The building, land and the outdoor play area shall be maintained in good repair and be free from any hazards to the health, safety or welfare of the children.

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ii. The land, including the outdoor play area, shall be properly graded and provided with drains to dispose of surface water.

iii. The building structure shall be maintained to prevent water from entering, excessive drafts, or heat loss during inclement weather, and to provide protection against infestation from rodents, insects, etc.

iv. Railings of balconies, landings, porches, or steps shall be maintained in safe condition.

v. A sufficient number of garbage receptacles to accommodate the center's waste disposal needs shall be located in an outdoor area, shall be made of durable, leak proof and non-absorbent materials, shall be ***[provided with covers]* *covered***, and shall be changed as regularly as necessary to maintain them in sanitary condition.

vi. The area in which the garbage receptacle(s) are located shall be maintained in a sanitary manner.

(e)-(g) (No change.)

(h) Ventilation:

1. Natural or mechanical ventilation shall be provided in all rooms used by children.

2. All required mechanical ventilation systems shall exhaust directly to the outside.

3. Rooms not having windows with an openable area of at least four percent of the floor space shall be equipped with a mechanical ventilating or air conditioning system with a capacity that is in conformance with provisions of the Mechanical Sub-Code of the UCC.

4. Corridors shall be provided with natural or mechanical ventilation that is in conformance with provisions of the Mechanical Sub-Code of the UCC.

5.-7 (No change.)

8. Kitchens provided with a stove with more than four burners shall be vented with a mechanical system having a capacity that is in conformance with provisions of the Mechanical Sub-Code of the UCC.

9. (No change.)

10. Toilet room doors shall have at least one inch but not more than two inches of space between the floor and the bottom of the toilet room door.

(i) Toilet facilities:

1.-3. (No change.)

4. Centers serving children that require diapering:

i. The center shall insure that the diapers of children are changed when wet or soiled.

ii. A staff member shall wash and dry each child during each diaper change with an individual sanitary wash cloth or paper towel.

iii. Areas used for changing children's diapers shall be cleaned after each child has been changed by:

(1) Sanitizing the area with a disinfectant solution; or

(2) Using a clean paper or cloth covering for the area and discarding or laundering the covering after each use.

iv. A supply of clean diapers shall always be available.

v. Used diapers shall be placed in a closed container that is lined ***with a leak proof or impervious liner***. Such diapers shall be removed daily.

vi. Staff members changing children's diapers shall wash their hands with soap and water immediately after each diaper change.

5. In centers serving a mix of children ranging from birth through five years of age, the center shall either:

i.-ii. (No change.)

6. Location of toilet facilities: Toilet facilities shall be easily accessible to the children:

i.-iii. (No change.)

7. Additional toilet facility requirements:

i.-ii. (No change.)

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

(l) Asbestos:

1. (No change.)

2. If sprayed-on asbestos-containing materials appear to be present in a center, the Bureau shall notify the New Jersey Department of Health. The material shall be tested, through laboratory analysis, to determine its contents. When test results reveal the presence of sprayed-on asbestos containing materials, and the State Health Department determines that action must take place to minimize exposure potential, the sponsor shall follow the recommendation of the State Health Department for enclosure, removal or other appropriate action to abate the threat or risk of asbestos contamination.

(m) (No change.)

(n) Emergency plan, first aid and equipment:

1. Emergency plan: A written plan showing the procedures and manner in which emergencies and evacuations, are handled shall be posted in a location of prominence on every floor within the center. All staff members shall review the plan periodically. The plan shall contain at least the following:

i.-v. (No change.)

vi. The location of written authorization from parent(s) for emergency medical care for each child;

vii. A diagram showing how the center is to be evacuated in case of emergency; and

viii. The location of fire alarms and fire extinguishers.

2.-3. (No change.)

(o) Evacuation Requirements: In order to assure the safe and timely evacuation of the children from the center in the event of a fire or other emergency, centers required to secure a certificate of life safety approval shall meet the minimum staff/child ratio requirements as specified in N.J.A.C. 10:122-4.5 (d)-(f).

(p) Furniture and equipment:

1. Furniture for feeding:

i. Furniture appropriate to the maturity of the child shall be provided at mealtime, including:

(1) Feeding chairs or other age appropriate seating apparatus that have a wide sturdy base and safety straps; and

(2) Low chairs and tables that insure a comfortable seating arrangement for each child.

2. Furniture and materials:

Play equipment, materials and furniture for indoor and outdoor use shall be of sturdy and safe construction, non-toxic, easy to clean and free of hazards that may be injurious to young children.

3. Rest and sleep equipment:

i. Each crib/playpen shall be equipped with:

(1) A waterproof mattress; and

(2) A clean sheet or other covering and blanket.

ii. The tops of the crib/playpen rail shall be at least 19 inches above the mattress.

iii. The crib/playpen slats shall not be more than 2 3/8 inches apart.

iv. Any locks or latches on the dropside of a crib shall be safe and secure from accidental release.

v. The mattress used in the crib/playpen shall fit snugly.

4. A center providing a mat for rest and sleep shall insure that the floor or surface on which the mat is placed is warm, dry, clean and draft free.

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5. Cribs, beds, playpens, cots or mats shall be placed at least one foot apart and shall be arranged so as to provide direct access to a three-foot-wide aisle that leads to an unobstructed exit(s).

(q) Space and room requirements:

1. At no time shall a center allow more children in attendance than the number specified on its license or certificate of approval.

2. The center shall provide sufficient space to insure the safety and well-being of the children. The center shall include:

- i. Play rooms/sleep rooms and/or areas to accommodate the various play activities and sleeping needs of the children served;
- ii. An isolation room/area to accommodate children too ill to remain in the group;
- iii. Space for the children's physical activities;
- iv. Bathroom facilities to accommodate the needs of the children served; and
- v. A kitchen and/or food preparation area, if the center is preparing and/or serving food.

3. Space requirements for play rooms/sleep rooms:

i. The minimum net square footage shall be determined by excluding the space used in hallways, bathroom facilities, lockers, offices, storage rooms, staff sleeping rooms, furnace rooms, kitchen areas, the isolation area and any other areas that children do not use for sleep or play.

ii. Day, drop-in and special needs programs: There shall be a minimum of 30 square feet of net indoor floor space for each child in play rooms.

iii. Night programs:

(1) For centers serving children under 2½ years of age, there shall be a minimum of 30 square feet of net indoor floor space for each child; and

(2) For centers serving children over 2½ years of age, there shall be a minimum of 50 square feet of net indoor floor space for each child.

4. Space requirements for isolation room/area:

i. There shall be a small isolation room in a separate section of the center or a small isolation area in a section of a room in the center where ill children shall be cared for until they can be taken home or suitably cared for elsewhere.

ii. The isolation room/area shall be furnished with sleeping equipment and clean bedding.

iii. All items used by the ill child (including sleeping equipment, bedding, utensils and toys) shall be cleaned and sanitized prior to being used by another child.

(r) Supplemental requirement:

1. In addition to all of the above requirements, the Bureau shall also require the center to take whatever steps are necessary to correct any conditions in the facility that may endanger in any way the health, safety and well-being of the children served.

10:122-5.4 Additional life/safety requirements for centers beginning operation after January 1, 1977

(a) Any center, as specified in N.J.A.C. 10:122-5.1(a), beginning operation after January 1, 1977 and approved to operate as a center, in accordance with provisions of the UCC, shall be inspected by the Bureau prior to beginning its operation or renewal of its license to insure that the center is being maintained in accordance with the UCC and (a)1 through 6 below.

1.-2. (No change.)

3. Fire protection:

i. General requirements:

(1)-(3) (No change.)

(4) Illuminated exit signs shall be provided at all doors used as exits with directional signs being provided at locations where the exit may not be readily visible or understood. Any door, stairway or passageway that is not an exit, but may be mistaken for an exit, shall be identified with a sign that reads, "NOT AN EXIT".

ii-iv (No change.)

4.-6. (No change.)

SUBCHAPTER 6. PROGRAM REQUIREMENTS

10:122-6.1 Health

(a) (No change.)

(b) Staff members shall visually inspect each child upon his/her arrival at the center every day in an effort to determine the child's general health condition.

(c) When accidents or illnesses occur to a child, the center shall take the necessary emergency action and notify the parent(s) immediately.

(d) If any child demonstrates unusual behavior or shows signs of possible illness while attending the center, a staff member shall report this information to the parent(s) at the time of the child's departure from the center.

(e) Medication (prescription and non-prescription):

1. Medication shall be administered to a child at the center only upon written approval from the child's parent(s).

2. The director of the center shall authorize and designate those staff members at the center who may administer medication to those children whose parent(s) have authorized it.

3. A center administering medication shall comply with the requirements, as specified in N.J.A.C. 10:122-5.1(d)3.

10:122-6.2 Hygiene

(a) (No change.)

(b) Toilet training:

1.-5. (No change.)

(c) Additional requirements for centers serving children under 2½ years of age:

1.-2. (No change.)

10:122-6.3 Food and nutrition

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

10:122-6.4 Rest and sleep

(a) Day, drop-in and night programs serving children under the age of 18 months:

1.-2. (No change.)

3. A center providing a crib/playpen for rest and sleep shall comply with the requirements, as specified in N.J.A.C. 10:122-5.2(p)3.

(b) Special needs programs serving children under the age of 18 months:

1.-2. (No change.)

3. A center providing a crib/playpen for rest and sleep shall comply with the requirements, as specified in N.J.A.C. 10:122-5.2(p)3.

(c) Day, drop-in and special needs programs serving children over the age of 18 months and under the age of 5 years:

1.-2. (No change.)

3. A center providing a crib, bed or playpen for rest and sleep shall comply with the requirements, as specified in N.J.A.C. 10:122-5.2(p)3.

4. Each cot or mat used for rest and sleep shall be equipped with a clean sheet or other covering and blanket.

5. (No change.)

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(d) Night programs serving children over the age of 18 months:

1. (No change.)

2. A center providing a crib/bed for sleep shall comply with the requirements, as specified in N.J.A.C. 10:122-5.2(p)3.

3. A center providing a cot for rest and sleep shall comply with the requirements, as specified in (c)4. above. In addition, a cot shall be provided with a minimum one inch, waterproof rest mat secured with a fitted sheet.

4. (No change.)

(e) Other requirements:

1.-5. (No change.)

6. The center shall comply with any special health conditions for rest and sleep that have been provided in writing from a child's physician.

7. The staff members responsible for supervising the children during rest and sleep periods shall be awake at all times and shall oversee the children.

8. Dim lighting shall be provided in the sleeping room in order to enable staff to oversee the children during rest or sleep periods.

9. The center shall insure that no child is deprived of needed sleep or has it unnecessarily interrupted. The center shall arrange the scheduled hours for admitting children and for picking them up so that sleeping children are not disturbed by the arrival or the pick-up of other children.

10:122-6.5 Enrollment

(a) A center may enroll up to 10 percent more children per session than the maximum number of children permitted to be served, as specified on its license.

(b) A center may enroll from 11 percent up to 15 percent more children per session than the maximum number of children permitted to be served, as specified on its license, provided that it documents in writing to the satisfaction of the Bureau that its rate of absenteeism is such that an over-enrollment would not result in more children attending the center on a given day than is permitted by its maximum number, as specified on its license.

(c) The center shall provide sufficient space to allow for the implementation of the center's program, and meet the space requirements specified in N.J.A.C. 10:122-5.2(q).

(d) Space requirements for physical activities for children over the age of 10 months:

1.-4. (No change.)

10:122-6.7 Program equipment

Play equipment, materials and child-size furniture shall be provided in such quantity so as to meet the needs of the children.

SUBCHAPTER 8. CERTIFICATION REQUIREMENTS AND PROCEDURES FOR LIFE/SAFETY APPROVAL FOR CENTERS OPERATED BY AN AID SOCIETY OF A PROPERLY, ORGANIZED AND ACCREDITED CHURCH AND THAT BEGAN OPERATING PRIOR TO MAY 16, 1984

10:122-8.1 Application for certification

(a) No person shall conduct, maintain or operate a child care center unless the center first secures a certificate of life/safety approval to do so from the Bureau, pursuant to the

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provisions of the Child Care Center Licensing Act (N.J.S.A. 30:5B-1 to 15) and of this chapter. Any person who operates or assists in the operation of a child care center which does not have a regular or temporary certificate of life/safety approval, or who has used fraud or misrepresentation in obtaining a certificate or in the subsequent operation of a center, or who offers, advertises or provides any service not authorized by a valid certificate or who violates any other provision of this act shall be guilty of a crime of the fourth degree.

(b) Filing of application with the Bureau:

1. A person applying to the Bureau for a certificate of life/safety approval for the first time for such a child care center shall submit to the Bureau a completed application form (supplied by the Bureau). A center renewing its certificate must submit such an application at least 45 days prior to the expiration of its current certificate.

2. Applicants for an initial or renewed certificate shall submit the following with the completed application form:

i. A \$50.00 certificate fee in the form of a check or money order made payable to "The Treasurer, State of New Jersey."

(1) In the event the application is denied, the Bureau shall return this fee to the applicant.

(2) The certificate fee, or any portion thereof, shall not be refundable once the Bureau issues the center a regular or temporary certificate and the center discontinues operating voluntarily or involuntarily.

ii. Written certification from the municipality or county in which the child care center will operate stating that the center meets local government code approval, as specified in N.J.A.C. 10:122-5.1 of this chapter.

10:122-8.2 Issuance of a certificate

(a) The Bureau shall review the application for a certificate and materials submitted with it, and shall conduct an on-site physical facility inspection of the child care center to determine whether the center meets the provisions of the physical facility and life/safety requirements of N.J.A.C. 10:122-5.1 to 5.4 of this chapter. If so, the Bureau shall issue a regular certificate of life/safety approval to the center.

(b) The Bureau shall provide notice if the certificate will not be granted or renewed and shall specify reasons for such action.

(c) If the Bureau determines that a child care center is in substantial compliance with, but does not meet all of the applicable provisions of N.J.A.C. 10:122-5 of this chapter, and provided that the extent of the center's deviation from such requirements is not deemed serious or imminently hazardous to the health, safety, and well-being of the children, the Bureau shall issue a temporary certificate of life/safety approval.

(d) When a temporary certificate of life/safety approval is issued, the Bureau shall provide a written statement explaining what the center must do to achieve a regular certificate of life/safety approval.

(e) A temporary certificate may be issued for a period not to exceed six months. The Bureau may renew the temporary certificate as often as it deems necessary; provided, however, that a center shall not operate pursuant to temporary certificates for more than a total of 18 months.

(f) Each period of certification, which may include the issuance of one or more temporary certificates and/or one regular certificate, shall be three years.

1. In determining the expiration date of the first certificate, the Bureau shall compute the three-year period of certifica-

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tion from the date of issuance of the first regular certificate or temporary certificate.

2. In determining the expiration date of a renewed certificate, the Bureau shall compute the three-year period of certification from the date on which the center's previous regular certificate of life/safety approval expired, unless the center ceased to operate for a period of at least six months following the expiration date of its previous regular certificate of life/safety approval.

(g) The certificate shall be issued to a particular child care center sponsor at a particular location and shall not be transferable.

1. Any change in identifying information noted on the certificate shall necessitate application for and receipt of a new certificate reflecting the change.

2. An application fee shall not be required in cases where there is a change in identifying information during any period in which a certificate is in effect; provided, however, that this certificate shall be given the same expiration date as that of the previous certificate.

(h) The certificate shall be posted and displayed by the sponsor at all times in a location of prominence within the center.

(i) When two or more child care centers are or will be operated at different locations by the same sponsor, the sponsor shall submit to the Bureau a separate application for a certificate and certificate fee for each center.

(j) When two or more child care centers will be operated on the same premises by the same sponsor, the sponsor shall submit to the Bureau a single application for a certificate and certificate fee.

(k) A child care center shall not make claims either in advertising or in any written or verbal announcement or presentation contrary to its certificate status.

10:122-8.3 Causes for denial, suspension or revocation of a certificate

(a) A child care center's certificate may be denied, suspended or revoked for good cause, including but not limited to the following:

1. Failure to comply with the provisions of the Child Care Center Licensing Act or of subchapter 5 of this chapter;

2. Violation of the terms and conditions of a certificate;

3. Use of fraud or misrepresentation in obtaining a certificate or in the subsequent operation of the center;

4. Refusal to furnish the Bureau with files, reports or records as required by subchapter 5 of this chapter;

5. Refusal to permit an authorized representative of the Division to gain admission to the center during normal operating hours; or

6. Any activity engaged in or permitted which adversely affects or presents a serious or imminent hazard to the health, safety and well-being of any child attending the child care center, or which otherwise demonstrates unfitness or inability to operate a child care center.

(b) If a child care center's certificate is suspended or revoked, the parent of a child in the center shall receive notice thereof, personally and in writing, by the center's sponsor.

(c) If a child care center's certificate is suspended, it shall be reinstated by the Bureau once the center achieves compliance with the provisions of the Child Care Center Licensing Act and of subchapter 5 of this chapter. In such a case, it is not necessary for the center to submit a new application for a certificate and application fee.

(d) If the Bureau revokes a center's certificate to operate, the center shall submit to the Bureau a new application for a certificate and application fee, meet the provisions of the Child Care Center Licensing Act and of subchapter 5 and secure a new certificate to operate prior to resuming operations.

(e) Each certificate issued by the Bureau to a child care center remains the property of the State of New Jersey. If a center's certificate is suspended or revoked or upon the permanent closing of the center by the sponsor, the sponsor shall return the center's certificate to the Bureau immediately.

10:122-8.4 Administrative hearings

(a) To effectuate the purposes of this chapter, the Bureau may initiate an administrative hearing and transfer the matter to the Office of Administrative Law as a contested case in the interest of justice.

(b) When the Bureau proposes to deny, suspend, revoke or refuse to renew a certificate, the Bureau shall afford the child care center sponsor, personally or by certified or registered mail, notice and opportunity for an administrative hearing.

(c) The administrative hearing shall take place within 60 calendar days from the issuance or mailing of the notice and shall be conducted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14f-1 et seq.) and the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1).

10:122-8.5 Court action

(a) The Bureau may institute a civil action in a court of competent jurisdiction for injunctive relief to enjoin the operation of a child care center for good cause, including but not limited to the following:

1. Any imminent danger or hazard that threatens the health and safety of children in the center;

2. Repeated violation of the provisions of the Child Care Center Licensing Act; and

3. Operating a child care center without a certificate or without complying with the provisions of the Child Care Center Licensing Act.

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(a)

DIVISION OF MOTOR VEHICLES DEPARTMENT OF DEFENSE

Enforcement Service Special National Guard Plates

Adopted Amendments: N.J.A.C. 13:20-36.1 and 36.2

Proposed: May 21, 1984 at 16 N.J.R. 1188(a).

Adopted: July 2, 1984 by Robert S. Kline, Deputy,
Director of the Division of the Motor Vehicles and
Major General Francis R. Gerard, Chief of Staff,
Department of Defense.

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Filed: July 13, 1984 as R.1984 d.319, **without change.**

Authority: N.J.S.A. 39:3-27.14 (P.L. 1983, Chapter 132).

Effective Date: August 6, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): December 22, 1985.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:20-36.1 Application; certification; fees

(a) Application for special National Guard plates may be made by any person who is an active member of the New Jersey National Guard or former active member who has been honorably separated under normal conditions from the New Jersey National Guard. An active or separated member of the New Jersey National Guard may make application for no more than two motor vehicles owned by him. The Division of Motor Vehicles will issue no more than two sets of special National Guard plates to each active or separated member of the New Jersey National Guard.

(b) An application for special National Guard plates must be obtained from the Commander of the National Guard Unit of which the applicant is an active member, or retired members may obtain an application from the New Jersey Department of Defense.

1. The Commander shall certify that the applicant is an active or separated member of the New Jersey National Guard.

2. The Commander shall forward the completed application together with the fee established in this section to the Division's Special Plate Unit.

3. The Special Plate Unit shall notify the Department of Defense when the special National Guard plates are issued to an applicant.

(c) A fee of \$15.00 for each set of plates shall be paid at the time of application for special National Guard plates. A fee of \$5.00 shall be paid for replacement of lost, stolen or obliterated special National Guard plates.

13:20-36.2 Surrender of special plates

(a) Whenever the holder of special National Guard plates ceases to be an active member of the New Jersey National Guard for reasons other than honorable separation or for honorable separation under abnormal conditions, he shall obtain replacement plates from the Division of Motor Vehicles, within five days of his separation from the New Jersey National Guard and he shall then surrender the National Guard plates to the Department of Defense.

1. The Department of Defense shall forward the surrendered plates to the Division of Motor Vehicles.

2. If the special National Guard plates are not surrendered to the Department of Defense within five days from the date the holder of special plates ceases to be an active member of the New Jersey National Guard, the Department of Defense shall notify the Division of Motor Vehicles of the holders failure to surrender the special plates.

(a)

BOARD OF BARBER EXAMINERS

**General Rules and Regulations
Fee Schedule**

Adopted New Rule: N.J.A.C. 13:27A-1.2

Proposed: May 21, 1984 at 16 N.J.R. 1189(a).

Adopted: June 26, 1984, by Louis Cagnole, Chairman of the Board of Barber Examiners.

Filed: July 23, 1984 as R.1984 d.340, **without change.**

Authority: N.J.S.A. 45:4-54.

Effective Date: August 6, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): November 1, 1987.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:27A-1.2 Fee schedule

(a) The following fees shall be charged by the Board:

1.	Initial shop license:	\$ 70.00
2.	Biennial shop renewal fee:	\$ 50.00
3.	Shop restoration fee:	\$ 50.00
4.	Shop relocation fee	\$ 50.00
5.	Barber examination fee:	\$ 50.00
6.	Apprentice barber fee:	\$ 25.00
7.	Biennial barber certificate renewal fee:	\$ 28.00
8.	Barber restoration fee:	\$ 40.00
9.	License duplication:	\$ 5.00
10.	Initial barber school fee:	\$250.00
11.	Barber school annual fee:	\$250.00
12.	Initial instructor fee:	\$ 50.00
13.	Annual Instructor renewal fee:	\$ 50.00

(b)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF MORTUARY SCIENCE**

Rules of the Board of Mortuary Science

Readoption: N.J.A.C. 13:36-7

**Adopted New Rules: N.J.A.C. 13:36-1.9,
2.1, 2.3, 2.5, 2.14**

**Readoption with Amendments: N..A.C.
13:36-1, 2, 2, 4, 5, 6 and 8**

**Adopted Repeal: N.J.A.C. 13:36-1.2, 1.7,
1.9, 2.3, 2.5, 2.12, 2.13, 2.14 and 3.8**

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Proposed: March 19, 1984 at 16 N.J.R. 505(a).
Adopted: May 3, 1984 by Paul Ippolito, President,
Board of Mortuary Sciences.
Filed: July 23, 1984 as R.1984 d.341, **with technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 45:7-38.

Effective Date: August 6, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes upon Adoption

A typographical error in the printing of a cross-reference to N.J.A.C. 13:36-2.14 was corrected in N.J.A.C. 13:36-2.3. An incorrect statutory citation contained in 13:36-8.6(d) was also corrected. N.J.A.C. 13:36-5.18(a) was amended to reflect the fact that Chapter Five of the State Sanitary Code is now codified in the Health Department regulations as N.J.A.C. 8:9-1 et seq.

Full text of the readoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 1. ADMINISTRATION

13:36-1.1 Seal of the Board
(No change.)

13:36-1.2 (Reserved)

13:36-1.3 Board meetings

(a) The Board shall hold an annual meeting in May each year, or at such other time as the President may direct, at which time the President and Secretary of the Board shall be elected for the ensuing year.

(b) Special meetings of the Board may be called by the President upon reasonable notice being given to the members. In the event of unavailability of the President for illness or otherwise, three members of the Board shall have the power to call a special meeting in cases of emergency.

13:36-1.4 Duties of Executive Secretary
(No change.)

13:36-1.5 Inspector's duties
(a) The inspector shall:

1. Inspect mortuaries for cleanliness wherein practitioners of mortuary science, embalmers and funeral directors are practicing;

2. Where necessary, view dead human bodies which have been placed in the care of any practitioner of mortuary science, embalmer or funeral director;

3. Inspect the license and registration of practitioners of mortuary science, embalmers and funeral directors;

4. Verify employment and check credentials of all interns in training;

5. Visit any place where the practice of embalming is being conducted or where a funeral is in process of being directed; provided, however, that such visitation shall be made in a respectful and decorous manner, as may be fitting the presence of the dead;

6. Visit any cemetery, crematory or public mausoleum for the purpose of determining whether dead human bodies entrusted to the care of a practitioner of mortuary science or funeral director are being properly disposed of according to law.

(b) The inspector shall perform such other duties as may be directed by the Board and shall report to the Board at each regular meeting and at such other times as the Board may direct.

13:36-1.6 Fees and charges
(No change.)

13:36-1.7 (Reserved)

13:36-1.8 Record keeping by practitioner of mortuary science

(a) All persons engaging in the practice of mortuary science shall be required to maintain full, accurate records of all funerals which they conduct or in which they participate in any manner.

(b) Such records are to be kept on a yearly basis and each funeral will be designated by a number assigned consecutively at the time funeral arrangements are made. The information on such records shall be recorded after the completion of each funeral.

(c) Such records are to include the following:

1. Name and last address of deceased;
2. Date and place of death;
3. Name and address of person making funeral arrangements;

4. Dates of visitation and date of disposition;
5. Itemization of all merchandise and service provided as required by the rule entitled "Itemization of funeral expenses" promulgated in conjunction herewith but including in addition thereto the wholesale price of any merchandise provided in conjunction with the funeral service and the name and address of the person or company from which such merchandise was purchased. Merchandise provided in conjunction with funeral service is defined to include, but not be limited to casket, vault or other outer enclosure (including model and invoice numbers, date of purchase and wholesale cost), clothing, flowers, prayer cards, registration book, religious artifacts and any other item purchased by the practitioner for resale without substantial alteration;

6. Cemetery in which burial was made or name of crematorium where appropriate, and the charges made by the cemetery or crematorium;

7. The name and address of any church synagogue and/or clergy who participated in the funeral service and who received any offering or honorarium, and the amount thereof, if paid by the funeral home;

8. A specific enumeration of all services charged for in conjunction with the rendering of funeral services.

13:36-1.9 Itemization of funeral expenses

(Delete text of N.J.A.C. 13:36-1.9 and replace with new text as follows:)

(a) No one, but a duly licensed practitioner of mortuary science or funeral director, shall make funeral arrangements

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13:36-2.5 Reporting embalmments and funeral attendance, form

(a) The Board shall furnish monthly report forms to the intern for reporting embalmments and funerals attended, which shall be signed by the intern and preceptor and dated and filed with the Board no later than 15 days after the last day of each month. The intern shall complete such report setting forth all information required therein and file the forms with the Board.

(b) No internship credit shall be granted for the month when a report is received after the prescribed monthly filing date except upon presentation of proof acceptable to the Board that good cause exists for failing to timely file the report.

13:36-2.6 Credit for embalming body

No practitioner of mortuary science shall credit more than one student intern for the embalming of any one body.

13:36-2.7 Intern qualifications for employment

No practitioner of mortuary science shall engage a student intern unless, prior to such engagement, his case volume during the previous calendar year shall meet a minimum requirement of 25 cases which shall not include stillbirths.

13:36-2.8 Absence from training

If for any reason it becomes necessary for an intern to absent himself during his internship for a period longer than 30 days, he must submit to the Board in letter form the reason for his absence and the length of time he intends to be away.

13:36-2.9 Termination of training

Upon termination of any internship, the licensee preceptor shall immediately request of the Board a notice of termination form to be completed by him and filed with the Board within five days of its receipt.

13:36-2.10 Return of intern identification card

Upon completion or termination of an internship for any reason, the intern shall be charged with the responsibility of returning his intern identification card immediately to the Board. When an internship is completed and the intern is eligible for examination, permission may be requested to carry the intern card and to continue the period of practical training for a period not exceeding one year from the date the required internship is completed.

13:36-2.11 Affidavit recommendation form

(a) Upon termination of an internship, an affidavit recommendation form shall be filed with the Board. Any practitioner of mortuary science who refuses to certify any intern for the internship served under his license shall furnish the Board with a statement under oath setting forth the reasons for such refusal. If not satisfied with such statement, the Board may take such action as it may deem proper.

(b) In the event a preceptor or licensee is not available when the affidavit is to be executed, the Board may in its discretion, upon proper proof of satisfactory internship, select someone to sign the affidavit.

13:36-2.12 (Reserved)

13:36-2.13 (Reserved)

13:36-2.14 Preceptors' responsibility for training

The preceptor shall be charged with the professional responsibility of insuring bona fide internships for all student interns by seeing to it that such interns are thoroughly trained in the theory and practice of mortuary science, the laws, rules and regulations pertaining thereto, and are proficient in the following areas:

1. Removal of remains, embalming, restorative art, dressing and casketing remains;

2. Making funeral arrangements with families which includes selling of merchandise, arranging flowers, taking statistical information from families, filing death certificates, preparing obituary notices and placing same with newspapers, completing funeral cortege lists, arranging cortege cars in proper order on the day of the funeral, attending viewings;

3. Ordering and pricing funeral merchandise, arranging for and coordinating a schedule for the clergyman, church, crematory or cemetery, livery, pallbearers, visitation of various organizations, transportation by common carrier, delivery of outer enclosures to cemetery and;

4. Performing such other incidental duties related to the practice of mortuary science and the maintenance of the funeral establishment.

SUBCHAPTER 3. EXAMINATIONS

13:36-3.1 Application for examination

(a) Upon request, an application for examination shall be forwarded to the applicant. The form shall be signed by the applicant and certified, unless notified otherwise. All applications shall be filed with the Board on or before the first day of the month in which the examination is to be held.

(b) The statements contained in the application must be complete and accurate before the application is processed or accepted by the Board.

(c) Any candidate who fails to appear, without good cause, shall forfeit the examination fee.

(d) An out of state resident may make application for a written examination administered by the Board, provided the applicant meets all admission requirements.

13:36-3.2 Waiver of practical training and experience

(a) An applicant for examination having satisfactorily completed two years of academic instruction in a college or university approved by the New Jersey Department of Education and one year of instruction in a school of mortuary science approved by the Board, may be admitted to the written examination without having first served the required period of practical training. However, a license to enter into the practice of mortuary science shall not be issued or granted to any such applicant unless and until the applicant has served the required period of practical training and experience as a registered intern.

(b) Such period of training and experience may be served in whole or in part before or after the applicant's commencement of instruction in an approved school of mortuary science.

13:36-3.3 through 3.6

(No change)

13:36-3.7 Practical examination requirements

(a) No applicant will be given the practical examination until after the candidate has:

1. Completed the prescribed period of practical training except that an intern may be examined two months prior to

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the completion of the required practical training provided the intern has assisted with 75 embalmments and 75 funerals.

2. Attained an average of 70 percent or higher on the written examination.

(b) Such practical examination shall be at the establishment of the preceptor or such other place as determined by the Board and the examination shall be conducted by one or more Board members. In the event a candidate does not have a preceptor at the time of the scheduling of his practical examination, the examination will be held at a place designated by the Board. A candidate who has failed his practical examination must wait three months before being rescheduled for examination.

13:36-3.8 (Reserved)

SUBCHAPTER 4. LICENSE AND REGISTRATION GENERALLY

13:36-4.1 License renewals
(No change)

13:36-4.2 Notice of residence address change
(No change)

13:36-4.3 Legal name change
(a) If a licensee changes his or her name, the change will only be recorded by the Board upon receipt of legal documentation to substantiate the name change.

(b) If it is necessary to issue a duplicate license certificate, the original certificate must be returned for cancellation, if possible.

13:36-4.4 New installations
(a) Any person desiring to operate, maintain or use a mortuary after adoption of these rules and regulations, shall first apply to the Board for a new installation inspection and an application for certificate of registration.

(b) A new installation inspection of the premises shall be made by the inspector before an application is granted.

(c) When the new installation inspection is made, temporary approval may be granted to operate until a certificate of registration is issued.

13:36-4.5 Change of ownership
Whenever there are any changes whatsoever in ownership, except a change of stockholders in an existing and continuing corporation, it shall be necessary for the new ownership to notify the Board a least 15 working days before the ownership changes.

13:36-4.6 through 4.8
(No change.)

13:36-4.9 Participation of unlicensed persons
No unlicensed person, shall actively participate in any capacity in the actual funeral arrangements, preservation, preparation or disposal of dead human bodies.

13:36-4.10 through 4.12
(No change.)

SUBCHAPTER 5. MORTUARIES

13:36-5.1 through 5.17
(No change.)

LAW AND PUBLIC SAFETY

13:36-5.18 Disposition of dead human remains
(a) Whenever dead human remains are entrusted to the care of a licensee for disposition, the licensee shall conform with *[Chapter 5 of the State Sanitary Code]* *N.J.A.C. 8:9-1 et seq.* and shall not remove any part or dispose of the remains in any manner whatsoever except as permitted by law or by the person legally entitled to grant said authorization.

(b) (No change.)

13:36-5.19 (No change.)

SUBCHAPTER 6. EMBALMING PROCEDURE

13:36-6.1 through 6.6
(No change.)

13:36-6.7 Interns
An intern may not embalm or perform any part of embalming procedure on a dead body unless such activity is performed under the immediate and direct supervision and control of a licensed practitioner of mortuary science holding a New Jersey license.

13:36-6.8 Sterilizing instruments
(No change.)

SUBCHAPTER 7. EMBALMING SCHOOLS

13:36-7.1 and 7.2
(No change.)

SUBCHAPTER 8. GENERAL RULES OF PRACTICE

13:36-8.1 through 8.5
(No change.)

13:13-8.6 Funeral arrangements involving cash or negotiable instrument
(a)-(c) (No change.)
(d) Any funeral home accepting pre-need funeral funds from a welfare recipient shall not accept funds over and above that amount allowed pursuant to N.J.S.A. *[45]* *44*:7-13. Violation of any section of this regulation may constitute unethical and unprofessional conduct, fraud and the performance of a fraudulent act in the conduct of practice.

13:36-8.7 through 8.9
(No change.)

13:36-8.10 Presence of licensee for disposition of dead human body
No interment, disinterment, cremation or other disposition of a dead human body shall be made in the State of New Jersey unless a New Jersey licensed practitioner of mortuary science or funeral director is present at the time of disposition, provided, however, that this rule shall not apply to a disinterment resulting from a court order in connection with a criminal investigation.

13:36-8.11 Multiple burials
(No change.)

ENERGY

(a)

THE COMMISSIONER

Business Energy Improvement Loan Subsidy Program

Adopted New Rule: N.J.A.C. 14A:6-2

Proposed: May 21, 1984 at 16 N.J.R. 1190(a).
 Adopted: July 11, 1984 by Leonard S. Coleman, Jr.,
 Commissioner, Department of Energy.
 Filed: July 17, 1984 as R.1984 d.323, with changes.

Authority: N.J.S.A. 52:27F-11g and m; Pub. L. No. 97-377 (1982).

Effective Date: August 6, 1984.
 Operative Date: September 1, 1984.
 Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1989.

Summary of Public Comments and Agency Responses:

The Department received comments from the New Jersey Economic Development Authority. The EDA suggested that the Department remit loan subsidy payments directly to the lender rather than the borrower to avoid diversion of the funds by the borrower. While the Department considers this procedure to be a good method of ensuring that the loan subsidy is used to pay off the loan, the Department has been advised that a waiver of bid requirements will be required in each instance, since State monies will be paid directly to financial institutions. Thus direct payment to the lending institutions is not feasible because the waiver process is too time-consuming to utilize effectively. For this reason the Department has retained the provision that loan subsidy payments be made directly to the borrower. The regulations contain safeguards designed to ensure that the borrower will use the funds to pay off the loan, so there should be little incentive for the borrower to apply the proceeds to anything other than loan repayment. The EDA also suggested that the program not be restricted to New Jersey lending institutions. The Department agrees that so long as the renovations are made to New Jersey businesses, the location of the financial institution outside the State should not preclude the borrower from participating in the program. The regulations have been changed accordingly.

A representative of a bank suggested that eligible loans should not be limited to those made at fixed interest rates and that the Department should be more flexible providing subsidies to variable interest rate loans. The Department does not have the ability to calculate the amount of subsidy due on each variable interest rate loan every time that payment is due. The paperwork and costs of administering such a program are simply too high for the Department to bear, given current departmental resources. Additionally, the Department does not have the capability to alter its interest subsidy pay-

ments in response to minor or even moderate changes in commercial lending conditions. However N.J.A.C. 14A:6-2.6(a)1v was included in the proposed regulations to give the Commissioner some flexibility to modify the fixed interest rate requirement but only in the event that lending conditions change drastically or substantially. The representative also questioned whether the program would preclude participating lenders from charging the normal appraisal and closing fees and points on loans that receive subsidies pursuant to the program. The Department has established these program requirements in order to ensure that subsidies are provided only for energy conservation loans and to constrain the program to a manageable form and size. These requirements are in no way intended to alter banks' loan review procedures or the fees that are charged for bank services. The subsidy should be viewed as an incentive that is made available to eligible borrowers after a loan commitment is obtained by the borrower. It is the borrower, not the bank, who incurs the primary obligations specified in the regulations as a condition of receiving a subsidy. Therefore, banks remain free to follow whatever procedures they deem necessary to review these or any other loans.

The third commenter expressed concern that the loan program would have anticompetitive effects in energy conservation materials and service markets because the program operates in conjunction with the Commercial and Apartment Conservation Service (CACS) program. This concern arises out of a misconception of the role of CACS in the loan subsidy program. It would be highly imprudent for the Department to approve loan subsidy applications, without sufficient documentation that the energy conservation measures are appropriate to and will save energy in the applicant's business. A CACS audit is one means of providing an objective evaluation of those needs by trained auditors. However the CACS audit is not the only permissible energy analysis. The borrower may have had a CLIENTS survey or may choose such "other energy consumption and costs analysis . . . approved by the Department." The Department recognizes that there are other types of energy audits and surveys that can provide equivalent information. The "other . . . analysis" provision was included to allow the Department to approve these on an ad hoc basis. Thus, no business is required to obtain a CACS audit as a condition of participating in the program. Further, the utilities that provide CACS audits are not permitted, by the terms of the CACS regulations, to recommend a particular energy conservation contractor to the audit recipient. They merely perform audits and provide information concerning appropriate conservation measures. The requirement that the loan subsidy applicant submit "a reasonable construction bid" was included in order to ensure that the conservation measures are not supplied at unreasonable prices. It is the responsibility of the loan subsidy applicant to select the contractor on the basis of the reasonableness of the bid. This process is completely independent from the CACS (or other) audit chosen by the applicant. For these reasons, the loan program will not have anticompetitive effects on the energy conservation supply and installation markets. In fact, it will foster recourse to those markets by providing businesses with an incentive that did not exist previously to obtain energy conservation loans.

The Department received two comments stating that all energy saving calculations should be performed by or attested to a state-approved analyst or a licensed professional engineer. The regulations address only the documentary requirements that must be met before the Department will process an

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application. In so doing the Department has established no requirements as to the persons who must perform the relevant calculations. In instances where these calculations must, by law, be performed by specific, licensed professionals, the applicant should ensure that the documents submitted comply with those laws.

Finally, the Department has made a technical correction to N.J.A.C. 14A:6-2.5(a)3 by deleting reference to the word "or" and requiring that both the audit/energy calculators and the construction bid be submitted with the subsidy application. The former contains payback information, the latter accurate current prices needed by the Department to evaluate an application.

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

CHAPTER 6
GRANTS AND LOANS PROGRAMS

SUBCHAPTER 2. BUSINESS ENERGY IMPROVEMENT LOAN SUBSIDY PROGRAM

14A:6-2.1 Scope and purpose

This subchapter establishes the rules governing the Business Energy Improvement Loan Subsidy Program. The Program provides interest subsidies for certain loans obtained by eligible businesses for energy conservation renovations. The interest subsidies are intended to encourage the installation of energy conservation renovations by businesses by reducing the effective interest rate on loans for such renovations.

14A:6-2.2 Definitions

"Applicant" means an eligible business that applies for an interest subsidy pursuant to this subchapter.

"Application" means a Business Energy Improvement Loan Subsidy application.

"Commissioner" means the Commissioner of the Department.

"Department" means the New Jersey Department of Energy.

"Eligible business" means businesses meeting the Small Business Administration definition of small business contained in 13 C.F.R. Part 121.2 (49 F.R. 5030-37), multi-family buildings, and not-for-profit businesses, but not including religiously-owned or -affiliated businesses, which are located in New Jersey.

"Eligible loan" means a loan made by a lender to the applicant for energy conservation renovations, which meets the requirements of N.J.A.C. 14A:6-2.6.

"Energy conservation renovation" means any equipment, materials alterations or improvements that reduce energy consumption in or increase the energy efficiency of an eligible business, and which have been approved by the Department pursuant to N.J.A.C. 14A:6-2.7, but shall not include new construction or energy conservation renovations installed prior to approval of a Business Energy Improvement Loan Subsidy application by the Department.

"Interest subsidy" means funds provided by the Department to reduce the effective interest rate on an eligible loan.

"Lender" means ***[New Jersey State]* *State*** chartered banks, savings banks, savings and loan associations, national banks, federally-chartered savings and loan associations, ***[the principal place of business of which is located in New**

Jersey]* *and other corporations authorized to transact the business of banking*.

"Multi-family buildings" means owners and other proprietors of multi-family buildings used for residential occupancy and containing five or more dwelling units, but not including condominiums, co-operatives and similar property regimes.

"Program" means the Business Energy Improvement Loan Subsidy Program established by this subchapter.

14A:6-2.3 Program duration and limitation of funding

(a) The number and amount of interest subsidies and the duration of the Program shall depend on the availability of sufficient revenues to cover interest subsidies previously approved by the Department and to provide sufficient monies for further interest subsidies. The Business Energy Improvement Loan Subsidy Program shall continue only so long as funds remain available to the Department for the Program.

(b) The Commissioner may terminate the Program (with respect to new applicants) in the event that funds are exhausted or the anticipated demand for interest subsidies exceeds available funds.

14A:6-2.4 Requests for applications

The Department shall make available Business Energy Improvement Loan Subsidy applications on request, until the Program is terminated pursuant to N.J.A.C. 14A:6-2.3.

14A:6-2.5 Submission requirements

(a) Each Business Energy Improvement Loan Subsidy application submitted to the Department shall include the following information:

1. Name and address of the applicant.

2. A precise description of each energy conservation renovation for which an interest subsidy is sought.

3. An analysis of the energy conservation renovation requirements of the eligible business, which shall be comprised of:

i. The results of a Commercial and Apartment Conservation Service (CACS) energy audit, Commercial Light Industrial Energy Technical Service (CLIENTS) survey, or other energy consumption and cost analysis of the eligible business approved by the Department; ***[or]* *and***

ii. A reasonable construction bid with respect to the energy conservation renovations, including cost estimates for each energy conservation renovation. The construction bid shall be accompanied by the following:

(1) A sworn statement by the bidder, or an officer or partner of the bidder, indicating that the bidder is not, at the time of the construction bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders; and

(2) A certification that, where applicable, the bidder is in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 et seq. and the rules and regulations promulgated pursuant thereto.

4. Engineering calculations and energy savings calculations for each energy conservation renovation.

5. The simple payback period and calculations for each energy conservation renovation. Only energy conservation renovations having a simple payback period of less than or equal to five years shall be included in the application and shall be eligible for an interest subsidy.

6. A commitment by a lender for an eligible loan and the terms thereof; provided, however, that in the event that the commitment is not available on the date of submission of the application, same may be submitted as a supplement to the

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application, in accordance with the provisions of N.J.A.C. 14A:6-2.7(b) 1, ii.

7. Such additional information as may be required by the Department to provide a complete and accurate description of the project.

(b) All calculations with respect to information contained in the application and any supporting documents shall be based on the energy estimating methods of the American Society of Heating, Refrigerating and Air conditioning Engineers, Inc. ("ASHRAE"), including all revisions and updates adopted by ASHRAE. Copies of the document may be obtained from ASHRAE, Inc., 1971 Tullie Circle, N.E., Atlanta, Georgia 30329.

14A:6-2.6 Eligible loans

(a) Only eligible loans shall be reviewed by the Department for interest subsidies pursuant to N.J.A.C. 14A:6-2.7. In order to be eligible for an interest subsidy the loan shall meet the following requirements:

1. The loan (and any supporting or related documents) shall:

i. Be for the purpose of financing the installation of energy conservation renovations that meet the requirements of N.J.A.C. 14A:6-2.5 and that are approved by the Department pursuant to N.J.A.C. 14A:6-2.7.

ii. State separately in the loan the amount representing the principal, interest, interest accruals and penalties with respect to each energy conservation renovation, and separately account for same for each energy conservation renovation during the term of the loan;

iii. Be for an amount (of principal) of not more than \$250,000.

iv. Have a term of not more than five years.

v. Have a fixed interest rate; provided, however, that in the event of a substantial change in commercial loan market conditions, the Commissioner may, in his discretion, modify the requirement specified herein.

vi. Be amortized according to a predetermined monthly amortization schedule.

vii. Not obligate or render the Department liable to pay the lender or the applicant at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:

(1) The default or late repayment of the eligible loan by the applicant.

(2) Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Department.

viii. Have been reviewed and approved by the lender in accordance with standard procedures.

(b) The Department does not guarantee the approval by lenders of loans for energy conservation renovation. Applicants that are denied loans shall have no recourse to the Department. The Department shall not participate in any manner in any aspect of the lender's loan review process.

14A:6-2.7 Application and review procedures

(a) Applicants shall submit to the Department a completed Business Energy Improvement Loan Subsidy application. The application shall bear either a legible (non-metered) postmark or a date stamp from the Department's Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. 14A:6-2.3.

(b) The Department shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Department may require the submission

of additional information to complete the application or may require the resubmission of the entire application if incomplete. The Department shall review the applications to determine whether:

1. The application is made on behalf of an eligible business;

2. The application covers energy conservation renovations;

3. The application is complete as to form (required documentation is present and complete);

4. The application is complete as to the submission requirements of N.J.A.C. 14A:6-2.5;

5. The engineering calculations and other technical matters with respect to the energy conservation renovations are accurate and correct; and

6. The energy conservation renovations are appropriate for the eligible business.

(b) Upon completion of the review of an application pursuant to (a) above, the Department shall notify the applicant in writing whether the application has been approved, approved with the condition that an eligible loan be obtained, or denied. Interest subsidies shall be extended to applicants in the order that applications are approved.

1. In the event that an application is approved an interest subsidy agreement shall be executed pursuant to (c) below.

2. In the event that an application is approved with the condition that the applicant obtain an eligible loan, the Department shall:

i. Indicate preliminarily in writing, the terms on which an interest subsidy will be extended to the applicant, including but not limited to the energy conservation renovations for which the interest subsidy will be extended and the amount of the interest subsidy.

ii. Allow the applicant a period of 30 calendar days from the date of approval of the application to obtain an eligible loan on the terms which include any requirements established pursuant to (b) 2 above i, and to file same with the Department.

iii. In the event that an eligible loan is not obtained for the energy conservation renovations approved by the Department within the 30 calendar day period, the Department may, in its discretion, extend the period for obtaining and filing the loan for an additional 30 calendar days. Upon filing of the loan by the applicant, the Department shall review the loan for eligibility in accordance with the requirements of N.J.A.C. 14A:6-2.6. The Department shall notify the applicant whether the application is approved pursuant to (b) 1 above or denied pursuant to (b) 3 below.

iv. Failure of the applicant to obtain an eligible loan by the conclusion of the appropriate 30 calendar day period and to file same with the Department shall result in a denial of the application.

v. In the event that a loan is obtained for energy conservation renovations or on terms other than those approved by the Department the applicant shall be required to file a new application with the Department pursuant to N.J.A.C. 14A:6-2.5 in order to be considered for an interest subsidy.

3. In the event that an application is denied, the applicant shall be ineligible to receive an interest subsidy for the particular energy conservation renovations included in the application and shall not be permitted to submit another application for the same energy conservation renovations.

(c) Upon approval of an application pursuant to (b) 1 above, the Department and the applicant shall execute in writing an interest subsidy agreement, which shall include but not be limited to provisions specifying the energy conserva-

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tion renovations to which the interest subsidy shall apply, the terms and conditions on which the interest subsidy shall be made by the Department, the amount of the interest subsidy and the payment schedule and the effect of prepayment on any outstanding balance of the interest subsidy. All interest subsidy agreements, whether specifically stated therein or not, shall be subject to the provisions of this subchapter.

14A:6-2.8 Conditions for payment of interest subsidies
(a) The Department shall pay interest subsidies directly to the applicant on the following terms:

1. The applicant shall be solely responsible and liable for repayment of the principal, interest, interest accruals and penalties with respect to the eligible loan. The Department shall not be liable to the applicant for the repayment of principal, interest, interest accruals or penalties.

2. Interest subsidies shall be made by the Department at 50 percent of the lender's commercial lending rate up to 600 basis points; provided, however, that in the event of a substantial increase or decrease in commercial lending rates, the Commissioner may, in his discretion, modify the percentage or basis points available to applications for which an interest subsidy agreement has not been executed pursuant to N.J.A.C. 14A:6-2.7(c).

3. Interest subsidies shall be paid by the Department at intervals not exceeding six months in accordance with the terms of the interest subsidy agreement.

4. The applicant shall provide, or cause to be provided, to the Department, at intervals not exceeding six months, and commencing not more than six months after the due date of the first repayment of the eligible loan, a certification that repayment of the eligible loan is being timely made to the lender, in accordance with the terms of the interest subsidy agreement. The certification shall be in the form of an official audit confirmation from the lender.

14A:6-2.9 Monitoring

(a) The Department shall monitor all work related to energy conservation renovations that are the subject of an interest subsidy agreement by the Department. "Monitoring" shall include, but not be limited to, reviewing plans, specifications and other documents and information and conducting on-site inspections to assess the progress and completion of work. The applicant shall comply promptly with all requests by the Department to conduct monitoring activities.

14A:6-2.10 Rescission and withholding of funds

(a) The Department, in addition to any other rights or remedies available pursuant to law, may withhold or rescind payment of an interest subsidy or any portion thereof for good cause. Such withholding or rescission shall terminate the obligation of the Department to make further payments of interest subsidies to the applicant. The term "good cause" shall include, but not be limited to the following:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or regulations.

2. Failure to comply with any condition or requirement of the interest subsidy agreement.

3. Submission of false or misleading information, or failing to submit relevant information to the Department.

4. Non-payment or failure to make timely repayment of an eligible loan, or declaration by the lender that the applicant is in default of an eligible loan.

5. Insolvency, bankruptcy or other condition affecting the financial integrity of the applicant.

6. Use of the interest subsidy for any purpose other than as specified in the interest subsidy agreement.

7. Inability or failure to install the energy conservation renovations in a timely manner.

8. Failure to provide documentation with respect to the installation of energy conservation renovations.

9. Modification of the terms of the eligible loan without the express written consent of the Department.

(b) Interest subsidies shall be withheld or rescinded according to the following procedures:

1. The Department shall give written notice to the applicant of its intent to withhold or rescind an interest subsidy in whole or in part.

2. Prior to the withholding or rescission of the interest subsidy the Department shall afford the applicant a period of 20 days, commencing on the date of written notice, to consult the Department in the matter. The Department may, thereafter, withhold or rescind the interest subsidy in whole or in part. The withholding or rescission shall be in writing and shall be effective on the date such action is taken.

3. The determination to withhold or rescind an interest subsidy shall be solely within the discretion of the Department.

(c) In the event that an interest subsidy is withheld or rescinded by the Department the applicant shall refund immediately the total amount of interest subsidy paid by the Department as of the date of recession or withholding.

1. The Department shall return all rescinded monies to the Business Energy Improvement Loan Subsidy Program.

14A:6-2.11 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Electrical Bureau

Readoption: N.J.A.C. 16:26

Proposed: June 4, 1984 at 16 N.J.R. 1321(b).
Adopted: July 10, 1984 by Jack Freidenrich, Assistant Commissioner for Engineering and Operations.
Filed: July 11, 1984 as R.1984 d.316, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-1.1 et seq.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 16:26, as amended in the New Jersey Register.

TREASURY-GENERAL

(a)

DIVISION OF PURCHASE AND PROPERTY

Purchase Bureau Procedures

Readoption: N.J.A.C. 17:12

Proposed: April 16, 1984 at 16 N.J.R. 867(a).
 Adopted: July 18, 1984 by Peter D. Pizzuto, Assistant State Treasurer.
 Filed: July 20, 1984 as R.1984 d.328, **without change**.
 Authority: N.J.S.A. 52:18A-30(d).

Expiration Date pursuant to Executive Order No. 66(1978): March 12, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 17:12-1 through 17:12-7.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Corporation Business Tax Interest on Underpayment of Installment Payments

Adopted Amendment: N.J.A.C. 18:7-3.15

Proposed: May 7, 1984 at 16 N.J.R. 1043(a).
 Adopted: July 16, 1984 by John R. Baldwin, Director, Division of Taxation.
 Filed: July 17, 1984 as R.1984 d.322, **without change**.
 Authority: N.J.S.A. 54:10A-27.

Effective Date: August 6, 1984.
 Expiration Date pursuant to Executive Order No. 66(1978): March 19, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

18:7-3.15 Interest on underpayment of installment payments (a)-(b) (No change.)
 (c) The rate to be used in (b) above is a per annum rate of five percent above the average predominant prime rate, as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses as of the first business day of the calendar quarter within which the payment was due. Such amount shall be computed on a per diem basis.

1. For example, assume the average predominant prime rate for January 1, 1985 was 12 percent. Therefore, the applicable interest on underpayment pursuant to this subsection was 12 percent plus five percent or 17 percent on the amount of any underpayment of estimated tax due on or after January 1, 1985 but before April 1, 1985. The method prescribed for computing the addition to the tax may be illustrated by the following example:

Example: A corporation reporting on a calendar year basis estimated on its Statement of Estimated Tax for 1985, estimated tax in the amount of \$50,000.00. It made payments of \$12,500.00 each on April 15, 1985, June 15, 1985, September 15, 1985 and December 15, 1985. On April 15, 1986, it filed its tax return, CBT-100, showing a total tax of \$200,000.00. Since the amount of each of the four installments paid by the last date prescribed for payment thereof was less than 90 percent of the tax shown on the return, the addition to the tax under this rule is applicable and is computed as follows, assuming that no exception applies:

Item (1)	Tax on return for 1985	\$200,000
Item (2)	Ninety percent of item (1)	180,000
Item (3)	Amount of estimated tax required to be paid on each installment date (25 percent of \$180,000)	45,000
Item (4)	Deduct amount paid on each installment date	<u>12,500</u>
Item (5)	Amount of underpayment for each installment date (item (3) minus item (4))	<u>\$ 32,500</u>

First installment: Interest period April 15, 1985 to April 15, 1986.

Second installment: Interest period June 15, 1985 to April 15, 1986

Third installment: Interest period September 15, 1985 to April 15, 1986

Fourth installment: Interest period December 15, 1985 to April 15, 1986

2. Each such underpayment shall bear interest at the rate prescribed at (c) of this section.

(d) If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the taxpayer believes that one or more of the exceptions described in (e) below precludes the imposition of the addition to the tax, it should attach to its tax return, CBT-100, for the taxable year a Form CBT-160 showing the applicability of any exception upon which the taxpayer relied.

(e) Exceptions to imposition of interest on underpayment of an installment payment. The addition to the tax under this rule will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for

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payment of the installment, the total amount of all payments of estimated tax made equalled or exceeded the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

1. (No change.)
2. An amount equal to 90 percent of the tax determined by placing on an annual basis the taxable income and taxable net worth for:
 - i-ii (No change.)
 - iii. Either the first six months or the first eight months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the ninth month; and
 - iv. Either the first nine months or the first eleven months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the twelfth month.
3. (No change.)

(a)

DIVISION OF TAXATION

Local Property Tax

County Boards of Taxation; Petitions of Appeal; Hearings; Freeze Act; Practice and Procedure; Appeals; Late Filing

Adopted Amendments: N.J.A.C.

18:12A-1.6, 1.9, 1.13, 1.15 and 1.20

Proposed: June 4, 1984 at 16 N.J.R. 1330(a).
Adopted: July 23, 1984 by John R. Baldwin, Director,
Division of Taxation.
Filed: July 23, 1984 as R.1984 d.330, **without change.**

Authority: N.J.S.A. 54:3-14.

Effective Date: August 6, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

18:12A-1.6 Petitions of appeal; cross-petitions of appeal
(a) All complaints concerning property tax assessments, whether by an individual or corporation, shall be by written petition of appeal on forms prescribed by the Director, Division of Taxation, to be furnished to the boards. A petition of appeal filed by a party respondent in a tax appeal shall be denominated as a "cross-petition of appeal" and shall be filed on the same form and subject to the same standards applicable to petitions of appeal. All petitions shall contain the name and address of the taxpayer, the block and lot number or account number of the property and the assessed value of the

land and improvement respectively stated, and such other information as the Director may require.

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

(d) A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the first three quarters of taxes assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66 even though his petition to the county board of taxation might request a reduction in excess of one quarter of the taxes assessed for the full year. In the event a taxpayer who has filed a tax appeal has failed to pay the first three-quarters of the current year's taxes and in the further event the municipality appropriately makes an application before the county board of taxation for a dismissal of the petition of appeal, the county board of taxation shall allow the taxpayer a 10-day period of time to pay such taxes prior to the entry of a judgment of dismissal. The 10-day period may be extended by the county board in the interest of justice. If such taxes are not paid within the 10-day period, then the county board of taxation shall enter a judgment dismissing the petition for failure to pay taxes. Such a 10-day period for the payment of taxes should be limited where necessary by the November 15 annual deadline imposed upon county boards by law for the entry of judgments.

18:12A-1.9 Hearings

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

(h) A party intending to rely on expert testimony shall furnish to the board three copies of a written appraisal report and shall furnish one copy of the appraisal report to each opposing party at least one week prior to the hearing. If the municipality intends to rely on its tax assessor or a representative of a revaluation company as its expert and if such testimony will involve data and analysis which is not reflected on the property record card, the municipality shall furnish to the board three copies of a written report reflecting such data and analysis and shall furnish one copy of the report to each opposing party at least one week prior to the hearing. At the request of a taxpayer-party, the municipality shall also furnish that party with a copy of the property record card for the property under appeal at least one week prior to the hearing. The board in its discretion and in the interest of justice may waive the requirements for the submission of written reports.

(i) Any settlement agreed upon between the parties shall be in writing, on a form approved by the Director, Division of Taxation, signed by the parties or their attorneys and shall indicate if the assessor is in agreement with the settlement. Such proposed settlement shall include the basis for the settlement and shall be submitted to the board for approval without the necessity for an appearance by the parties or their attorneys unless the board requests such an appearance by the parties or their attorneys. If the board approves the settlement, the board shall enter judgment in accordance with the terms thereof. If the board disapproves the settlement, the board shall notify the parties of such disapproval and schedule a hearing date for the appeal.

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

18:12A-1.13 Freeze Act

(a) When an assessment is subject to the "freeze" provisions of N.J.S.A. 54:2.43 or 54:3-26, there shall be no increase in the assessment for any tax year subject to such "freeze" except upon petition first filed with and granted by the Board.

(b) If the taxing district alleges that there has been a change in the value of the property occurring since the date of such assessment, the taxing district shall file a petition with the Board together with proof of service thereof upon the owner of the property to increase the amount of the assessment. Such petition shall specifically set forth the nature of the changes relied upon as the basis for the claim that there has been a change in value of the property. A copy of the petition shall be served upon the owner of the subject property prior to the filing of the petition with the Board.

(c) A judgment entered by a county board of taxation which is not further appealed by a party shall be deemed to be binding and conclusive upon the municipality and tax assessor for the tax year in question and the two tax years immediately thereafter unless a revaluation, reassessment or change in value has occurred subsequent to the assessing date.

(d) A taxpayer may waive the application of the Freeze Act for one or both of the tax years affected and such waiver of the freeze shall be reflected in a judgment entered by the county board.

(e) A taxpayer may apply to the county board within a reasonable period of time upon proper notice to the municipality seeking the enforcement of the Freeze Act with regard to a judgment previously entered by the county board.

18:12A-1.15 Practice and procedure

(a) In the absence of a rule covering any matter at issue, the rules of the Tax Court insofar as they may be applicable, shall govern.

(b) The rules applicable to the Tax Court regarding pretrial discovery shall be applicable to the county boards of taxation except as follows:

1. Initial interrogatories shall be served within 10 days following the deadline for filing petitions of appeal with the county board of taxation.

2. The party served with interrogatories shall serve his answers thereto upon the party propounding them within 20 days after service of such interrogatories upon him.

3. All discovery shall be completed at least seven days before the scheduled hearing date.

4. Upon motion by any party to an appeal and for good cause shown, the county board of taxation may make any order which justice requires either to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense or to require a party or person to comply with specific discovery demands.

18:12A-1.20 Appeals; late filing

Where a petition or cross-petition of appeal to a county board of taxation is actually received by the board after August 15 of the tax year (except if August 15 shall fall on a Saturday, Sunday or holiday, then after the first business day immediately thereafter), the county board of taxation or the county tax administrator, if authorized by the board by resolution, shall not accept said petition or cross-petition of appeal for filing but shall forthwith return the same to the person filing it, together with the filing fee, if the filing fee accompanied said petition or was otherwise paid. The petition or cross-petition to be returned shall have endorsed thereon the date of receipt and a statement "Petition or cross-petition is returned by reason of late filing", and shall be accompanied by a judgment of dismissal by the county board of taxation for late filing.

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(a)

ELECTION LAW ENFORCEMENT COMMISSION

Campaign Contributions and Expenditures Reporting Act

Adopted Amendments: N.J.A.C. 19:25-1 through 13

Adopted New Rules: N.J.A.C. 19:25-4.3-4.6, 5.3, 5.4, 5.5, 6.1, 6.3, 8.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.8, 10.3-10.7, 10.8, 11.4, 11.8, 12.1, 12.2, 12.3, 12.4, 12.6

Adopted Repeals: N.J.A.C. 19:25-1.9, 4.3, 4.4, 4.5, 4.6, 4.8, 6.1, 7.8, 9.2, 10.3, 10.4, 12.1, 12.2, 18.1, 18.2

Adopted Recodification: N.J.A.C. 19:25-8 as 19:25-20 and 19:25-20.1 as 19:25-21.1

Proposed: May 7, 1984 at 16 N.J.R. 1044(a).

Adopted: July 20, 1984 by Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.

Filed: July 20, 1984 as R.1984 d.324 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. 19:44A-6.

Effective Date: August 6, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): Subchapters 2, 4, 5, 6, 8, 9, 10, 12 and 13 expire August 6, 1989. Subchapters 1, 7 and 8 expire August 5, 1985. Subchapter 3 expires July 15, 1988.

Summary of Public Comments and Agency Responses, and Revisions to Proposal:

On June 12, 1984, a hearing on these proposed rules was conducted at the offices of the Election Law Enforcement Commission (hereafter, the Commission). Two persons testified, one of them representing a State political party committee and the other representing a municipal political party committee. In addition, written comments were received from a political action committee (PAC), a law firm anticipating making contributions to candidates and a State Assemblyman. Copies of the letters received and the transcript of the public hearing are available at the offices of the Commission, 28 West State Street, Suite 1215, Trenton, New Jersey 08608.

Comment:

The proposed requirement that a contributor that makes more than \$10,000 in contributions to candidates in a calen-

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dar year be required to file quarterly reports as a continuing political committee (hereafter, CPC) is questioned.

Response:

The Reporting Act defines CPC as "two or more persons acting jointly," or "any corporation, partnership, or any other incorporated or unincorporated association . . ." that contributes at least \$2,500 to a candidacy in a calendar year. The Commission envisions that entities only making contributions and not raising funds for election-related activities will be most frequently classified as peripheral CPC's and therefore will acquire filing requirements only in the event that contributions by the CPC to candidates, political committees or another CPC in a calendar year exceed \$10,000. See N.J.A.C. 19:25-12.4(b)(4). The Commission anticipates that most of the entities will be corporations and unions. The Commission decided to retain the requirement in the proposed regulations that such contributors file quarterly reports when they make contributions of more than \$10,000 in the aggregate in a calendar year to candidates or political committees. However, the Commission also decided to relieve such entities of the requirement to file Statements of Organization (CPC-1) until they exceed the \$10,000 threshold and therefore the text of proposed N.J.A.C. 19:25-4.6 was changed to eliminate this requirement if the CPC did not exceed \$10,000. Under the proposed regulation CPC's would have been required to file such Statements upon exceeding the \$2,500 threshold. In considering N.J.A.C. 19:25-12.4(b)(4), the Commission anticipates that if a proposed computer system becomes operable so that in a preelection setting it can produce lists of contributors from reports filed by candidates and political committees, it will no longer be necessary to require quarterly reporting by contributing entities. However, until such a computer system is operable, the Commission will require quarterly reporting by entities contributing more than \$10,000 in the calendar year so that the public has access to a list of the candidates and political committees the contributor is supporting in a preelection setting.

Comment:

A national PAC, that is a political committee registered with the Federal Election Committee making contributions to New Jersey candidates and to Federal and out-of-state candidates, commented that the \$2,500 threshold contained in the CPC definition should clarify that contributions to federal and out-of-state candidates are not applicable in determining if the threshold has been passed.

Response:

The Commission amended the definition of "election-related activity" appearing in proposed N.J.A.C. 19:25-1.7 to apply only to contributions relevant to New Jersey candidates or public questions, and to exclude Federal or out-of-state contributions made by national PAC's. This comment raised the question whether Federal and out-of-state contributions would be counted in determining the appropriate classification of a CPC under proposed N.J.A.C. 19:25-4.5. The Commission decided that out-of-state and Federal contributions to candidates would not be considered as election-related expenditures, and as a result most national PAC's in all likelihood would be in the classification of peripheral continuing political committees. The reporting requirements for peripheral continuing committees under proposed N.J.A.C. 19:25-11.4 do not require disclosure of contributions to such CPC's unless specifically earmarked for election activity. Therefore,

the Commission believes additional reporting requirements must be imposed on national PAC's. The Commission will require that a national PAC which makes more than \$2,500 in contributions in New Jersey during a calendar year file quarterly reports identifying contributions it receives from New Jersey contributors in excess of in the aggregate \$100.00 in a calendar year, and expenditures made for the purpose of contributing to New Jersey candidates or public questions. These proposals will be published in the New Jersey Register as new proposed regulations.

Comment:

Several comments were received concerning the application of the requirement that 48-hour notice be given to the Commission of contributions received by CPC's or political committees in excess of \$250.00 immediately prior to an election. A national PAC commented the regulations should be changed to apply only to contributions received by a committee for expenditures in New Jersey, or alternatively that 48-hour reports be required only where a committee actually contributes in New Jersey within the relevant time period and receives a contribution that when allocated to New Jersey according to the proportion of the committee's expenditures in the State, exceeded \$250.00. Also, it was suggested that the 48-hour notice would require a personal messenger at a prohibitive cost to the filing entity. Finally, it was suggested that the threshold 48-hour notice reporting be raised from \$250.00 to \$1,000.

Response:

The \$250.00 threshold is mandated by the amendments to the Reporting act. N.J.S.A. 19:44A-8(a). The Commission suggested a threshold of \$500.00 in its report to the Legislature. Recommendations Proposing Amendments to the Campaign Contributions and Expenditures Reporting Act, November, 1982, Recommendation No. 2. In regard to the concern that a personal messenger was required, the Commission believes that N.J.A.C. 19:25-9.8 permits other alternatives that do not require the use of a personal messenger. For example, the written notice may be filed by telegram, including mailgram. Also, Express Mail or other overnight delivery services are available.

In regard to the impact of the 48-hour notice on a national PAC, this comment is raised both in the context of a national PAC filing as a CPC, and a national PAC that does not exceed \$2,500 but might be required, because of contributions in a New Jersey election, to file campaign reports as a political committee pursuant to N.J.S.A. 19:44A-8(a). Any entity filing as a political committee must comply with the 48-hour notice requirement of contributions received in excess of \$250.00 from the close of the 11-day preelection report until the date of the election. N.J.A.C. 19:25-9.8. Similarly, a national PAC filing quarterly reports must give 48-hour notice pursuant to proposed N.J.A.C. 19:25-10.6. However, since a national PAC under regulations to be proposed (see prior comment above) must only identify New Jersey contributors in quarterly or campaign reports, the 48-hour notice requirement similarly extends only to New Jersey contributors.

Comment:

A national PAC that does not file quarterly reports as a CPC but files as a political committee should be permitted to designate an out-of-state depository.

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Response:

The Commission concurred in this suggestion and therefore relaxed the requirement of proposed N.J.A.C. 19:25-5.1 in order to permit national PAC's to designate out-of-state depositories when such committees are filing election reports as political committees. Proposed N.J.A.C. 19:25-5.1 has been amended accordingly.

Comment:

Municipal political party committees should not be required to file quarterly reports unless the contributions to candidates exceed \$10,000 annually.

Response:

The Reporting Act specifically mandates that all political party committees, whether State, county or municipal, are included in the definition of CPC and therefore are required to file quarterly reports. N.J.S.A. 19:44A-3(n); 19:44A-8(b). Furthermore, the Commission notes that under the prior statute all municipal political party committees, regardless of the amount of financial activity, were required to file annual reports plus campaign reports for any election in which they made contributions. Under the amended Reporting act, municipal or county political party committees need only file quarterly reports, which include their organizational and campaign activities. Only in the circumstance that a municipal or county political party committee is specifically designated and agrees to be designated pursuant to N.J.S.A. 19:44A-16(h) as a candidate's sole campaign depository must the political party committee file campaign reports on behalf of a candidate.

The Commission did agree that where CPC's, including municipal and county political party committees, intended to make election-related expenditures not in excess of \$1,000 in a calendar year, they would be permitted to file a short form (Form A-3) twice a year instead of filing quarterly reports (Form R-3). The short form merely requires that the CPC certify that either it has no bank account and will raise and spend no money or that it does not expect to expend more than \$1,000 in a calendar year. Therefore, the Commission is adopting a new section to permit short form reporting. N.J.A.C. 19:25-10.8. The Commission believes that this relaxation of the quarterly reporting requirements should be of substantial benefit to the political party committees that were the subject of the comment.

Comment:

The dates for the filing of quarterly reports are inconvenient.

Response:

The dates for the filing of quarterly reports are mandated by the Reporting Act amendments. N.J.S.A. 19:44A-8(b)(2). The Commission also notes that the continuing political committees have 15 days in which to prepare their quarterly reports for filing, a period of time that the Commission believes is sufficient to overcome any inconvenience that may be perceived by such committees. Finally, the Commission notes that the filing of the proposed short form (Form A-3) will only be required on January 15 and July 15, the July 15 date being deliberately selected to elicit a certification from the new leadership of any political party committee that may have been elected in a June primary election.

Comment:

The term "public solicitation" should be defined so that ticket sales to fund raising events sponsored by political party committees and any other political committees or candidates should not be subject to the prohibition against currency contributions.

Response:

The term "public solicitation" is defined to include activity when members of the general public are personally solicited for the purchase of items having some tangible value as merchandise at a price not exceeding \$20.00 per item. N.J.S.A. 19:44A-3(j). The Commission expanded the definition of "public solicitation" to include ticket sales for a fund raising event where the price does not exceed \$20.00 per ticket and where no one person purchases more than one ticket, and therefore amended the text of proposed N.J.A.C. 19:25-11.6(b)(2) accordingly.

Comment:

A CPC does not know at the beginning of a calendar year what the extent of election-related expenditures will be during that calendar year and therefore the classification regulation is confusing.

Response:

The Commission amended proposed N.J.A.C. 19:25-4.5(c) to clarify that the classification of a CPC will depend on its actual or its anticipated expenditures during the calendar year. A CPC can make such a judgment about its anticipated expenditures by relying on performance in past years, and by projecting from its budget for the upcoming calendar year. If during the course of the calendar year those projections become inaccurate in light of actual expenditures, the CPC must be reclassified and report accordingly.

Comment:

Five days is too short a period of time to require notification to the Commission of the death, resignation or removal of a campaign or organizational treasurer.

Response:

The Commission concurs with this comment. Therefore, proposed N.J.A.C. 19:25-5.8 has been amended to provide a period of 10 days for such notification. The Commission believes that it can not extend this period any further because should a treasurer be removed prior to an election, the Commission must be informed of that fact to insure that any questions concerning filed campaign reports can be answered as soon as possible.

Comment:

Expenditures made by a CPC for fund raising activities should not have to be allocated to candidates.

Response:

The Commission concurs that normally funded raising activities by a continuing political committee, and the costs associated with conducting such activities, do not have to be reported as in-kind contributions to a candidate, or otherwise allocated to that candidacy. Fund raising expenses for CPC's are to be reported an operating expense of the CPC. However, where a CPC conducts a fund raising event specifically

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to raise funds for a candidate or candidates, and the fund raiser is conducted in reasonable proximity to the date of the election, under such circumstances the CPC would be required to allocate the costs of the event to the candidate or candidates.

Comment:

Publications of political clubs which are circulated only to members and which aid or promote candidates should be exempted from the definition of expenditures, and the political clubs should not be required to allocate costs associated with the printing and circulation of such publications. Political party committees circulating such publications should similarly be exempted.

Response:

The Commission concurs that political clubs and CPC's should be able to make communications concerning candidates to their bona fide members without being required to allocate the cost of such expenditures to specific candidates on those occasions when the communication expresses support of one or more candidates. However, the Commission does not agree that the costs of publishing and circulating such publications should be deleted from the definition of expenditures. Such costs are subject to reporting as an operating disbursement of the political club or the CPC.

Comment:

In regard to the requirement that contributors making contributions in excess of \$100.00 must be identified, the threshold of \$100.00 is too low and should be raised to \$200.00.

Response:

The threshold for contributions in excess of \$100.00 to be disclosed is mandated by the Reporting Act, N.J.S.A. 19:44A-16. A recommendation made by the Commission to the Legislature prior to the enactment of the amendments to the Reporting Act that the threshold be raised to contributions in excess of \$200.00 was not adopted by the Legislature. Recommendations proposing amendments to the Campaign Contributions and Expenditures Reporting Act, November, 1982, Recommendation No. 12.

Other changes enacted by the Commission are as follows:

1. The Commission believes that a CPC which is designated by a candidate pursuant to N.J.S.A. 19:44A-16(h) to file campaign reports on behalf of the candidate must be required to establish a separate campaign depository for that candidate, and therefore cannot use its organizational depository for campaign purposes. Accordingly, an additional paragraph will be proposed and republished as a new proposed regulation to the text of N.J.A.C. 19:25-9.2 permitting candidates to make such a designation of a CPC provided that the CPC establishes a campaign depository pursuant to N.J.A.C. 19:25-5.3, which campaign depository must be maintained separately from its organizational depository. Pursuant to such a designation, the CPC will file campaign reports reflecting the activity in that campaign account and close that account when the campaign has been concluded pursuant to the provisions of N.J.S.A. 19:44A-16.

2. The Commission deleted references to Form R-2 in proposed N.J.A.C. 19:25-9.1. As originally conceived, the Form R-2 was to be used by political committees filing campaign reports. However, the Commission believes that the Form R-1

which is currently used by candidates and political committees for the purpose of filing campaign reports remains suitable for both candidates and political committees. Therefore, there is no necessity to establish a separate form for political committee campaign reports.

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

19:25-1.5 Amendment of regulations

The commission may at any time and from time to time, rescind, alter or amend the provisions of this chapter in the manner prescribed by law as may be necessary to carry out the purposes of the act. Any new regulation resulting from such action shall be filed with the New Jersey Office of Administrative Law.

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

"The act" means The New Jersey Campaign Contributions and Expenditures Reporting Act, L.1973, c.83, as amended, N.J.S.A. 19:44A-1 and following.

"Candidate" means an individual seeking or having sought election to a public office of this State or of a county, municipality or school district at any election. It does not include an individual seeking Federal elective office, or State, county or municipal political party office.

"Commission" means the New Jersey Election Law Enforcement Commission.

"Continuing political committee" includes the State committee or any county or municipal committee of a political party. It also includes any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$2,500.00 to aid or promote the candidacy of an individual, or the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined by the commission to be a continuing political committee in accordance with N.J.A.C. 19:25-4.

"Contribution" includes every loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible (but not including services provided without compensation by individuals volunteering a part or all of their time on behalf of a candidate, committee or organization), made to or on behalf of any candidate, political committee, or continuing political committee and any pledge or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, funds or other benefits received solely for the purpose of determining whether an individual should become a candidate are not contributions.

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“District” means the State, legislative district, county, municipality or part thereof, school district or other district in which a candidate is seeking election to public office.

“Election” includes any election in which a public question is to be voted upon by the voters of the state or any political subdivision thereof; and any election for any public office of the State or any political subdivision thereof. It does not include Federal elective office, or State, county or municipal political party office.

“Election-related activity” means election activity related to a candidate ***for public office of the State of New Jersey or its political subdivisions,*** or public question ***submitted to the voters of the State of New Jersey or its political subdivisions*** as set forth in the act and ***[all campaign efforts during any election]* *includes, without limitation, contributions to candidates, expenditures for fund raising, expenditures on behalf of candidates and other related political expenditures*.**

“Expenditure” includes every transfer of money or other thing of value, including any item of real or personal property, tangible or intangible or continuing political committee, and any pledge or other commitment of assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, any such commitment or assumption shall be deemed to have been an expenditure upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, payments or commitments made solely for the purpose of determining whether an individual should become a candidate are not expenditures.

1. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by any continuing political committee, political committee or candidate, in which case the cost for a news story i. which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and ii. which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening areas, is not an expenditure.

“Paid personal services” means personal, clerical, administrative or professional services of every kind and nature, including, without limitation, public relations, research, legal, canvassing, telephone, speech writing or other such services performed other than on a voluntary basis, the salary, cost or consideration of which is paid, borne or provided other than by the committee, candidate or organization for whom such services are rendered.

“Political club” (see “Political committee” and “Political party committee”).

“Political committee” means any group of two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to or does aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does aid or promote the passage or defeat of a public question in any election. A club organized to promote the candidacy of one or more candidates or aid or defeat the passage of a public question, without a term of existence substantially longer than the campaign, is a political committee. Political committee does not include:

1. A “continuing political committee,” as defined above.
2. A contributor not involved in fund raising or other election-related activity does not become a political committee solely by virtue of having made a contribution with respect to

a candidate or public question, unless the aggregate amount of contributions during any calendar year exceeds \$10,000.00.

3. A municipal or county charter study commission or the members thereof shall not be deemed to be a political committee with respect to the subject matter of such charter study commission at any time prior to the filing of its report. Thereafter such commission or any two or more members, not otherwise excluded by these regulations, may constitute a political committee for such public question.

4. Except as set forth in paragraph 5 below of this definition, no person or persons holding elected public office in this State or any political subdivision thereof shall be deemed to be a political committee with respect to any public question by virtue of communication with their constituents or with public officials of the Federal government or of this or any other state or political subdivision thereof, or with the general public reasonably related to the duties of his or her public office.

5. Elected public officials, boards and commissions, and the members thereof, may become political committees with respect to a public question by virtue of fund raising or other election-related activities respecting such public questions.

“Political party committee” includes every State, county or municipal committee of a political party. A political club having a permanent or continuing existence unrelated to the candidacy of particular candidates, or which receives contributions or makes expenditures from time to time unrelated to the promotion or opposition of the candidacy of a particular candidate or candidates, and which carries on in fact some or all of the continuing functions of a political party committee, is determined to be a political party committee. Political party committees are continuing political committees for the purpose of the quarterly reporting requirements of the act.

“Public office” means any elective office of this State or any political subdivision thereof, except that it does not include State, county or municipal political party office.

“Public question” means any question, proposition or referendum (for example, a constitutional amendment or bond issue) required by the legislative or governing body of this State or any of its political subdivisions to be submitted by referendum procedure to the voters of the State or political subdivision for decision at elections.

“Public solicitation” means a solicitation as described in N.J.A.C. 19:25-11.6(b)2.

“Testimonial affair” means an affair of any kind or nature including, without limitation, cocktail parties, breakfasts, luncheons, dinners, dances, picnics or similar affairs directly or indirectly intended to raise campaign funds on behalf of a person who holds, or who is or was a candidate for nomination or election to public office in this State, or is directly or indirectly intended to raise funds on behalf of any continuing political committee or a political committee.

19:25-1.9 (Reserved)

SUBCHAPTER 2. ADMINISTRATIVE

19:25-2.1 Office

The office of the Election Law Enforcement Commission is located at Suite 1215, National State Bank Building, 28 West State Street, Trenton, New Jersey, 08608, telephone (609) 292-8700.

19:25-2.2 Hours of operation

The office of the commission is open for the filing of documents and for other commission business (except for

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public inspection of documents) from 9:00 A.M. to 5:00 P.M., Monday through Friday, holidays excepted. The office of the commission is open for public inspection of documents from 9:15 A.M. to 4:45 P.M., Monday through Friday, holidays excepted. The public may obtain information or make submissions or requests concerning any commission matter at the commission offices, or by telephone.

19:25-2.3 Access to documents

(a) Every document accepted for filing by the commission, including all reports, certified statements, requests for advisory opinions and replies to requests for advisory opinions, complaints or pleadings relating to a complaint, all final orders, decisions and opinions shall be maintained with the date of filing noted thereon by the commission.

(b) Any person shall, upon request, be afforded opportunity to examine a document, or a photocopy of any document so maintained.

19:25-2.4 Copies of documents; fees

(a) Any person shall, upon request, be provided copies of *[any of]* the documents referred to in N.J.A.C. 19:25-2.3 at the following rates:

1. \$0.15 per page up to the first 50 pages of photocopying, and \$0.10 per page thereafter;
2. \$0.40 per page for records produced from microfilm; and
3. At cost to the commission for production of information in computer printout or tape format.

19:25-2.5 Release of documents

No original filed document referred to in N.J.A.C. 19:25-2.3 shall be released from the custody of the commission except upon express written direction of the executive director or upon court order.

SUBCHAPTER 3. PRE-CANDIDATE ACTIVITY; "TESTING THE WATERS"

19:25-3.1 Exemption for activities conducted solely for the purpose of determining whether an individual will become a candidate; "Testing the Waters"

(a) Funds or other benefits received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions or expenditures. Activities contemplated under this exemption include, but are not limited to expenses incurred for: conducting a poll, telephone calls and travel, to determine whether an individual should become a candidate. The individual shall keep records of all such funds received and payments made.

(b) If the individual subsequently becomes a candidate, the funds received and payments made are contributions and expenditures subject to the limitations, prohibitions and requirements of the act. Such contributions and expenditures must be reported with the first report filed by the candidate or the campaign committee of the candidate, regardless of the date the funds were received or the payments made. This exemption does not apply to funds received or payments made for general public political advertising; nor does this exemption apply to funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate.

SUBCHAPTER 4. REPORTING REQUIREMENTS; GENERALLY

19:25-4.1 General provisions

Candidates, political committees, continuing political committees and campaign depositories may be subject to some or all of the reporting requirements of the act.

19:25-4.2 Candidates

(a) A candidate must comply with the preelection and post-election reporting requirements of the act.

(b) Where all of the contributions and expenditures on behalf of one or more candidates are received or expended by a political committee, political party committee or continuing political committee, which committee is required to file financial reports under section 8 of the act, the candidate or candidates may authorize that committee or campaign organization to be his, her or their agent with respect to reporting those contributions and expenditures by filing with the commission a certification of that authorization on a form prescribed by the commission (Form SR-1) pursuant to N.J.A.C. 19:25-9.2.

19:25-4.3 Political Committees

(a) Political committees are subject to the preelection and post-election reporting requirements of the act.

(b) A committee which qualifies as a political committee during any election and which expects to contribute at least \$1,000 to aid or promote the candidacy of an individual, or the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions during a subsequent election shall have the option to qualify as a continuing political committee and comply with the quarterly reporting requirements under the act by requesting from the commission prior approval to so report. The option to file quarterly reports shall not be available to those political committees which serve as the campaign committee for any candidate or candidates.

19:25-4.4 Continuing political committees: political party committees

(a) A political party committee is a continuing political committee for the purposes of the quarterly reporting requirements of the act.

(b) A political party committee, and a political club which carries on in fact some or all of the continuing functions of a political party committee is a continuing political committee for the purposes of the quarterly reporting requirements of the act regardless of the amount expended on election-related activity in any one or subsequent years.

19:25-4.5 Continuing political committees: others

(a) A group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or may be expected to contribute \$2,500 or more to aid or promote the candidacy of an individual, or the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions, and which expects to make contributions towards such aid or promotion, or toward such passage or defeat during a subsequent election, shall certify that fact to the commission and the commission, upon receiving that certification and on the basis of any information as it may require of the group, corporation, partnership, association or

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other organization, shall determine whether the group is a continuing political committee for the purposes of the act. If the commission determines that the group is a continuing political committee, it shall so notify that continuing political committee as to that fact, as well as the classification, as set forth in (c) below, for which it deems such organization to qualify.

(b) The requirements set forth in (a) above that an organization make "contributions toward such aid or promotion, or toward such passage or defeat during a subsequent election" shall be satisfied if the organization expects to expend \$2,500 or more for election-related activity during the subsequent calendar year. The failure of an organization to qualify as a continuing political committee shall not exempt such organization from the preelection and post-election reporting requirements of the act where applicable.

(c) For purposes of reporting under the act, continuing political committees shall be classified as follows:

1. A continuing political committee is a major purpose continuing political committee for any calendar year in which it makes ***or expects to make*** election-related expenditures which total more than 75 percent of its total expenditures.

2. A continuing political committee is a multi-purpose continuing political committee for any calendar year in which it makes ***or expects to make*** election-related expenditures which total more than 20 percent of its total expenditures, but not more than 75 percent of its total expenditures.

3. A continuing political committee is a peripheral purpose continuing political committee for any calendar year in which it makes ***or expects to make*** election-related expenditures which total not more than 20 percent of its total expenditures.

19:25-4.6 Statement of organization: continuing political committee

(a) A continuing political committee, other than a political party committee as defined in N.J.A.C. 19:25-1.7, ***or a peripheral continuing political committee described in (b) below,*** shall comply with the certification process required by N.J.A.C. 19:25-4.5(a) by filing a statement of organization (Form CPC-1) with the commission.

***(b) A peripheral continuing political committee shall not be required to file a statement of organization (Form CPC-1) provided that:**

1. The committee has not undertaken any election-related activity other than making contributions to candidates, and

2. The committee's aggregate contributions to candidates in any calendar year do not exceed \$10,000.*

[(b)]* *(c) The statement of organization must be filed no later than the date on which the continuing political committee first receives any contribution or makes or incurs any expenditure for election-related activity.

[(c)]* *(d) Upon receiving the statement of organization, the commission shall review the information provided by the continuing political committee for the purposes of determining the classification of the committee in accordance with N.J.A.C. 19:25-4.6. The commission shall thereafter notify the committee of its classification and filing obligation, if any.

19:25-4.8 (Reserved)

SUBCHAPTER 5. APPOINTMENT OF TREASURERS AND DEPOSITORIES

19:25-5.1 General provisions

(a) Any person 18 years of age or over may serve as campaign treasurer for any candidate or committee. A candidate may serve as his own campaign treasurer.

(b) The same person may serve as treasurer or campaign treasurer for any number of candidates or committees.

(c) Any bank authorized by law to transact business in the State of New Jersey may be designated as an organizational depository or campaign depository. The same bank may serve as organizational depository or campaign depository for any number of candidates or committees. A bank located outside of the territory of the State of New Jersey may be designated as an organizational depository, but not as a campaign depository, if such out-of-state designation is made for a legitimate business purpose and, for auditing and enforcement purposes, the treasurer consents to accept service of process or a subpoena at an address within this State or by regular mail at an address outside of the territory of this State. ***Where the depository established by a political committee is used principally for the purposes of making contributions to Federal or out-of-state candidates, such political committee may designate a bank located outside of the territory of the State of New Jersey as its campaign depository if such out-of-state designation is made for a legitimate business purpose and, for auditing and enforcement purposes, the treasurer of the political committee consents to accept service of process or a subpoena at an address within this State or by regular mail at an address outside of the territory of this State.***

19:25-5.2 Appointment by candidates

Each candidate receiving contributions or making expenditures in an election shall appoint a campaign treasurer and shall designate a campaign depository. Notification of the designation of the campaign treasurer and the campaign depository shall be made by the candidate filing notice of the name and address of such campaign treasurer and such depository with the commission no later than the 10th day after the candidate, or any political committee or continuing political committee which the candidate had authorized to act on the candidate's behalf, receives any contributions on behalf of the candidacy, or incurs an expenditure on behalf of the candidacy, whichever occurs first.

19:25-5.3 Appointment by a political committee

Each political committee must appoint a campaign treasurer and designate a campaign depository not later than the date on which it first receives any contribution or makes or incurs any expenditure in furtherance or aid of the election or defeat of any candidate, or to aid the passage or defeat of any public question. Not later than the 10th day after the initial designation of the campaign depository, the committee shall file notice of the name and address of the depository and campaign treasurer with the commission.

19:25-5.4 Appointment by a political party

Each political party committee must designate an organizational treasurer and an organizational depository on or before July 1 of each year. Not later than the 10th day after the designation of an organizational depository, the committee shall notify the commission by filing the name and address of that depository and treasurer with the commission.

19:25-5.5 Appointment by continuing political committee

Each continuing political committee must appoint an organizational treasurer and designate an organizational depository not later than the date on which it first receives any

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contribution or makes or incurs any expenditure in furtherance or aid of the election or defeat of any candidate, or to aid the passage or defeat of any public question. Not later than the 10th day after the initial designation of an organizational treasurer and depository, the committee shall file notice of the name and address of the organizational depository and treasurer with the commission.

19:25-5.6 Filing of notification with the commission

Each candidate or committee shall file the name and address of the treasurer, campaign treasurer or organizational treasurer and campaign depository or organizational depository with the commission, on a form designated by the commission.

19:25-5.7 Deputy treasurers and additional depositories

(a) A campaign treasurer of a candidate may appoint deputy campaign treasurers and may designate additional campaign depositories as may be required. The candidate shall file the names and addresses of deputy campaign treasurers and additional campaign depositories with the commission not later than the fifth day after their appointment.

(b) An organizational treasurer of a political party committee or other continuing political committee and a campaign treasurer of a political committee may appoint deputy organizational or campaign treasurers and may designate additional organizational or campaign depositories as may be required. Such committees shall file the names and addresses of deputy treasurers or campaign treasurers and additional depositories or campaign depositories with the commission not later than the fifth day after their appointment or designation, respectively.

19:25-5.8 Removal or resignation of treasurers

In the case of the death, resignation or removal of a campaign treasurer or organizational treasurer, the candidate or committee shall notify the commission of such event within ~~*[five]*~~ ~~*ten*~~ days of its occurrence. The candidate or committee shall appoint a successor as soon as practicable and shall notify the commission of the appointment of the successor and file his or her name and address with the commission within three days of such appointment.

SUBCHAPTER 6. DEPOSIT OF FUNDS

19:25-6.1 Deposits of funds by candidates or committees

(a) An organizational or campaign treasurer or deputy organizational or campaign treasurer of a candidate, political committee or continuing political committee shall make a written record of all funds which he receives as contributions to the candidate, political committee or continuing political committee, including in that record the name and address of the contributor and the amount and date of the contribution, and shall retain that record for a period of not less than four years.

(b) All funds received by a treasurer or deputy treasurer of a candidate, a political committee, or a continuing political committee serving as the campaign committee of a candidate shall be deposited by the treasurer or deputy treasurer in a depository of the candidate or committee, in an account clearly designated as such a campaign account, no later than the 10th calendar day following receipt of such funds; except that any such treasurer or deputy treasurer may, when authorized by the candidate or committee of which he is the treasurer or deputy treasurer, transmit any such funds to the duly

designated or deputy treasurer of another candidate or committee for inclusion in his or her or its campaign fund without first so depositing them; provided, however, that a record of non-deposited funds so transmitted shall be maintained and included in the pre and post-election reports of the original recipient, identifying them as to the source and amount in the same manner as deposited funds.

(c) A continuing political committee not included in (b) above may include other funds in such accounts, but must retain sufficient records to account for the separate funds.

(d) A political committee or a continuing political committee which receives funds earmarked for election-related activity must deposit such funds no later than the 10th calendar day following receipt of such funds in its campaign account or other account where permitted under these regulations.

19:25-6.2 Deposit of transmitted funds

All funds transmitted before deposit in accordance with N.J.A.C. 19:25-6.1 shall be deposited not later than the 10th calendar day following the initial receipt of funds by the treasurer or deputy treasurer of the candidate or committee making such transmittal.

19:25-6.3 Date of receipt of contributions

A contribution is received on the date it is transmitted from a contributor to the treasurer, deputy treasurer or any other person authorized to accept campaign contributions on behalf of a candidate, political committee or continuing political committee. The date of deposit of any contribution shall not be used for determining the date of receipt of a contribution, and shall not be used for determining the reporting period (that is, 29-day preelection; 11-day preelection; 20-day post-election or quarterly report) in which the contribution was received.

SUBCHAPTER 7. USE OR TRANSMITTAL OF DEPOSITED FUNDS

19:25-7.1 Expenditures through campaign treasurer

(a) No expenditure of money or other thing of value, nor obligation therefor, including but not limited to expenditures, loans or obligations of a candidate himself or of his family, shall be made or incurred, directly or indirectly, to support or defeat a candidate in any election, or to aid the passage or defeat of any public question, except through:

1. The duly appointed campaign treasurer or deputy campaign treasurers of the candidate;
2. The duly appointed organizational treasurer or deputy organizational treasurers of a political party committee or other continuing political committee;
3. The duly appointed campaign treasurer or deputy campaign treasurers of a political committee.

19:25-7.2 Use of funds; general

Funds so deposited may be used in accordance with the provisions of the act and of these regulations for any lawful purpose. Such funds shall not be used to defray private expenses of any candidate or any other person.

19:25-7.3 Transmittal of deposited funds to another candidate, political committee, or continuing political committee

(a) The act does not prohibit the transmittal of funds by a candidate or committee to another candidate, political committee, political party committee or other continuing political

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committee for the lawful purposes of such other candidate or committee.

19:25-7.4 Transmittal of deposited funds to political party committee for general purposes

The act does not prohibit the transmittal of excess or unused funds to a political party committee for the general uses of such political party committee, provided that there is no express or implied limitation by the original contributors against such transmittal at the time of the contribution or thereafter.

19:25-7.5 Transmittal of deposited funds by political party committee to candidate

The act does not prohibit contributions to a candidate of funds contributed to a political party committee which were solicited for the general purposes of the political party committee, provided there is no express or implied limitation by the original contributors against the contribution of such funds to the candidate. Such contributions must be reported by the candidate as contributions and must be reported by the political party committee as expenditures.

19:25-7.7 Limitation on or expenditure financial activity by political party committee

A State, county or municipal committee of a political party may not receive or expend funds in violation of N.J.S.A. 19:34-33 and N.J.S.A. 19:44A-12.

19:25-7.8 (Reserved)

SUBCHAPTER 8. RECORD KEEPING

19:25-8.1 Record keeping requirements

(a) An organizational or campaign treasurer or deputy organizational or campaign treasurer of a candidate, of a political committee, or of a continuing political committee shall make a written record of all funds which he or she receives as contributions to the candidate, political committee or continuing political committee, including in that record the name and address of the contributor and the amount and date of the contribution.

(b) An organizational or campaign treasurer or deputy organizational or campaign treasurer of a candidate, of a political committee, or of a continuing political committee shall make a written record of all funds which he or she expends on behalf of the candidate, political committee or continuing political committee, including in that record the name and address of the recipient, the amount and date of the expenditure, and the purpose of the expenditure.

(c) A candidate, or the chairman of a political committee or continuing political committee shall take such steps as are necessary and appropriate to insure that a campaign treasurer, or organizational treasurer, appointed by the candidate, political committee or continuing political committee, complies with the record keeping requirements of this section and this chapter.

19:25-8.2 Period of retention

(a) All records required to be made by N.J.A.C. 19:25-8.1 shall be maintained for a period of not less than four years after the date of the election to which they are relevant, or a period of not less than four years after the transaction to which they relate occurred, whichever is longer.

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(b) A candidate, or the chairman of a political committee, or continuing political committee shall take such steps as are necessary and appropriate to insure that a campaign treasurer, or organizational treasurer, appointed by the candidate, political committee or continuing political committee, complies with the record retention requirements of this section and this chapter.

SUBCHAPTER 9. PREELECTION AND POST-ELECTION REPORTS

19:25-9.1 Report Form R-1 *[and Form R-2]*

[(a)] Form R-1 is to be used for preelection and post-election cumulative reports by all candidates (except those filing a certified statement in accordance with N.J.A.C. 19:25-9.9) ***and for preelection and post-election cumulative reports by all political committees and continuing political committees serving as candidate committees which will receive contributions or make expenditures respecting a candidate or public question in any election (except those committees filing a certified statement in accordance with N.J.A.C. 19:25-9.9)*.**

[(b)] Form R-2 is to be used for preelection and post-election cumulative reports by all political committees and continuing political committees serving as candidate committees which receive contributions or make expenditures respecting a candidate or public question in any election (except those committees filing a certified statement in accordance with N.J.A.C. 19:25-9.9).]*

19:25-9.2 Designation of Joint Campaign Fund (Form SR-1)

(a) Where all of the contributions and expenditures on behalf of a candidate are received or expended by a political committee, which committee is required to file *[financial]* ***campaign*** reports under *[N.J.S.A. 19:44A-8,]* ***N.J.S.A. 19:44A-8(a),*** the candidate may authorize that committee to be his or her agent with respect to reporting those contributions and expenditures by filing with the commission a certification of that authorization on a form prescribed by the commission (Form SR-1).

[(c)] ***(b)*** Upon the filing of the certification under ***(a) above,*** and until the authorization is revoked in writing, and filed, with the commission by the candidate, the political committee shall file the reports which the campaign treasurer of the candidate would otherwise be required to file.

***(c) Where all of the contributions and expenditures on behalf of a candidate are received or expended by a continuing political committee, which committee is required to file quarterly reports pursuant to N.J.S.A. 19:44A-8(b), the candidate may authorize that continuing political committee to be his or her agent with respect to reporting those contributions and expenditures provided that:**

1. The candidate files with the commission a certification of that authorization on a form prescribed by the commission (Form SR-1).

(d) A continuing political committee designated pursuant to (c) above shall file with the commission campaign reports pursuant to N.J.S.A. 19:44A-8(a) on behalf of its campaign depository in addition to quarterly reports on behalf of its organizational account.*

[(b)] ***(e)*** A certification filed under this section shall provide for designation by the candidate of the treasurer of the political committee, ***or continuing political committee,*** as the campaign treasurer of the candidate, and shall be signed by the candidate and the treasurer of the designated

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political committee*, or treasurer of the continuing political committee*.

(d) *(f)* A candidate filing a certification under this section shall be liable, in addition to any other penalty provided by law, to the civil penalties provided by the act if the committee fails, neglects or omits to file any report or document at the time and in the manner prescribed by the act, or omits or incorrectly states any of the information required by the act in such report or document.

19:25-9.3 Assumption of candidate's debt obligations

(a) A political committee or a continuing political committee, with the exception of political party committees for candidates in a primary election, may assume remaining debt obligations of a candidate and thereby relieve the candidate and his or her treasurer of any further reporting obligation.

(b) Any assumption of debt made pursuant to (a) above, must be preceded by written notice to the commission of the debt assumption, which notice must be signed by the candidate and his or her treasurer and by the treasurer of the committee assuming the remaining debt obligation.

19:25-9.4 Reporting dates and periods covered

(a) During the period between the appointment of the campaign treasurer and the election, with respect to any contributions accepted or expenditures made by him or her, the candidate and campaign treasurer in the case of the Form R-1*[, or the campaign treasurer in the case of the Form R-2,]* shall file his or her cumulative report:

1. On the 29th day preceding the election;
2. On the 11th day preceding the election; and
3. On the 20th day following the election.

(b) If the candidate and treasurer have not certified in the report filed on the 20th day following an election that the business of the campaign has been wound up, on the 80th day following the election, and every 60 days thereafter, the candidate and campaign treasurer in the case of the Form R-1*[, or the campaign treasurer in the case of the Form R-2,]* shall file cumulative reports until the business of the campaign has been wound up.

(c) The 29-day preelection report shall cover the period ending with midnight on the 31st day preceding the election, and beginning on the date which the first contribution was received or the first expenditure made, whichever occurred first. The first report shall include all receipts and expenditures relating to pre-candidacy activity described in N.J.A.C. 19:25-3.1.

(d) The 11-day preelection report shall cover the period beginning from midnight on the 31st day preceding the election and ending at midnight on the 13th day preceding the election.

(e) The 20-day post-election report shall cover the period beginning with midnight on the 13th day preceding the election and ending with midnight on the 18th day following the election.

19:25-9.5 Candidate not receiving contributions or making expenditures

A candidate not receiving any contributions or making any expenditures on behalf of his or her candidacy shall file the certified statement (Form A-1) filed pursuant to N.J.A.C. 19:25-9.9.

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19:25-9.6 Expenditures on behalf of a candidate

(a) When a political committee, or an individual seeking party office, makes or authorizes an expenditure on behalf of a candidate, the committee or individual shall provide written notice to the candidate containing the name and address of the committee or individual, the amount of the expenditure, the date the expenditure was made or authorized and the nature and purpose of the expenditure.

(b) The written notice described in (a) above shall be delivered to the candidate on whose behalf the expenditure was made or authorized no later than three days prior to the close of any reporting period described in N.J.A.C. 19:25-9.4. In the event that the expenditure is made three days prior to the close of a reporting period or any time thereafter until the close of a reporting period, written notice of the expenditure shall be provided to the receiving candidate and a copy forwarded directly to the commission.

(c) Absent notice to the contrary from the receiving candidate, the commission shall include the notice described in subsection (a) above as part of the public file of the receiving candidate.

19:25-9.7 Time and place of filing

(a) The original and one copy of the report must be received by the commission at its office by 5:00 P.M. on the filing day. A report postmarked on the filing day but received by the commission at any time subsequent to 5:00 P.M. on the filing day will not be deemed timely filed.

(b) As to primary and general elections only, the preelection reports and the 20-day post-election report may be filed with the appropriate county clerk for transmittal to the commission, provided that such filing is made no later than 12:00 noon on the filing day. Any report filed after 12:00 noon on a filing day will not be deemed timely filed until actually received by the commission.

(c) An additional copy of a candidate report must be filed with the county clerk of the county in which the candidate seeks office, or the county where the candidate resides if his district includes more than one county.

19:25-9.8 Contributions made immediately before election

Each campaign treasurer of a candidate or a political committee shall file a written notice with the commission of a contribution in excess of \$250.00 received during the period between midnight on the 13th day prior to the election and the date of the election. The notice shall be filed in writing or by telegram with the commission within 48 hours of the receipt of the contribution, and the notice shall set forth the amount and the date of the contribution and the name and address of the contributor.

19:25-9.9 Certified statements (Form A-1 or A-2)

(a) There is no obligation to file the report (Form R-1) referred to in N.J.A.C. 19:25-9.1 on behalf of a candidate if such candidate files with the commission no later than the 29th day before the election a certified statement (Form A-1) to the effect that the total amount expended or to be expended in behalf of his or her candidacy by the candidate, or by any other person, political committee or continuing political committee shall not in the aggregate exceed \$2,000.00.

(b) There is no obligation to file the report *(Form R-2)]* *(Form R-1)* referred to in N.J.A.C. 19:25-9.1 on behalf of a political committee acting as a multi-candidate committee if the committee files with the commission a certified statement (Form A-2) to the effect that the total amount to be expended

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on behalf of the candidacies of two or more joint candidates by the reporting committee or by any other person, political committee or continuing political committee shall not exceed \$4,000.00.

(c) If a candidate or committee which has filed such a certified statement receives contributions from any one source aggregating more than \$100.00, during any reporting period, he, she or it shall further report that fact, including the identity of the source and the aggregate total of contributions therefrom to the commission on the appropriate reporting date.

19:25-9.10 Form of certified statement

Certified statements shall be in the form designated by the commission.

19:25-9.11 Period covered by certified statements

(a) Certified statements shall be filed on or before the 29th day preceding the election to which such certified statement relates.

(b) Certified statements shall cover the time period beginning on the date of the appointment of the campaign treasurer, or the first receipt or expenditure by or on behalf of the candidate, or the date of filing the petition, or the date of public declaration of candidacy, whichever first occurs, and shall include all receipts and expenditures relating to pre-candidacy activity described in N.J.A.C. 19:25-3.1 and ending on the date when all of the business regarding the election to which it relates has been wound up.

19:25-9.12 Time and place of filing

(a) The original and one copy of the certified statement must be received by the commission at its office by 5:00 P.M. on the filing day. A certified statement postmarked on the filing day but received by the commission at any time subsequent to 5:00 P.M. on the filing day will not be deemed timely filed.

(b) As to primary and general elections only, the certified statement may be filed with the appropriate county clerk for transmittal to the commission, provided that such filing is made no later than 12:00 noon on the filing day. Any certified statement filed after 12:00 noon on a filing day will not be deemed timely filed until actually received by the commission.

19:25-9.13 Sixty-day interval report

(a) Form R-1 *[or Form R-2]* shall be used for the report whenever a candidate or committee shall be required to file one or more 60-day interval reports because all business in connection with a past election has not yet been wound up, or because the candidate or committee has received contributions or made expenditures with respect to such election after the date of the period covered by the last-filed report respecting such election, or has conducted a testimonial affair or public solicitation for the purpose of raising funds to cover any part of the expenses relating to such election. Such reports shall cover the time period beginning on midnight on the second day prior to the reporting date (that is, the 18th day after the election) and ending on midnight on the second day preceding the reporting date (i.e., the 78th day after the election). Such report shall be filed with the office of the commission by 5:00 P.M. on the filing day.

(b) A candidate or political committee which would be required to file 60-day interval reports due solely to the fact that it has funds remaining in its campaign depository or has unpaid obligations, and has no other business remaining with

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regard to the past election, may, upon application to and prior approval from the commission, be permitted to file reports each time there is a change in the status of the remaining funds or debt, but no less frequently than every six months, in lieu of the 60-day interval reports required hereunder.

19:25-9.14 Final report

(a) A candidate, a political committee or a continuing political committee serving as a candidate committee must certify in the final report that the business of the election for which it was formed has been wound up and the fund dissolved.

(b) A political committee or a continuing political committee serving as a candidate committee which continues its activities beyond the election must certify in the final report that all business regarding the election has been wound up and shall state the final disposition of any balance of funds on hand or the arrangements which have been made for the discharge of any unpaid obligations.

(c) The commission may waive the above requirements to file post-election reports if the candidate or committee certifies that the outstanding campaign obligations do not exceed 10 per cent of the expenditures from the campaign fund with respect to the election, or \$1,000, whichever is less, or are likely to be discharged or forgiven. Requests for such waivers must be in writing and must set forth the facts and circumstances upon which the application is based.

SUBCHAPTER 10. QUARTERLY REPORTS

19:25-10.1 Report Form R-3

Form R-3 is used for the cumulative quarterly report by continuing political committees which are required to file.

19:25-10.2 Form of report

The report shall be in the form designated by the commission.

19:25-10.3 Period covered

(a) The quarterly report shall be filed with the commission not later than April 15, July 15, October 15 and January 15 of each calendar year. The cumulative quarterly report shall include all contributions received by the committee during the period ending on the 15th day preceding that date and commencing on January 1 of that calendar year or, in the case of the cumulative quarterly report to be filed not later than January 15, of the previous calendar year, and all expenditures made, incurred or authorized by it during the period.

(b) If a continuing political committee assumes the reporting obligations of a candidate in a particular election, such committee is determined to be a political committee for purposes of the preelection and post-election reporting requirements of the act.

19:25-10.4 Expenditures on behalf of candidates

(a) When a continuing political committee makes or authorizes an expenditure on behalf of a candidate or political committee, the continuing political committee shall provide written notice to the candidate containing the name and address of the committee, the amount of the expenditure, the date the expenditure was made or authorized and the nature and purpose of the expenditure.

(b) The written notice described in (a) above shall be delivered to the candidate on whose behalf the expenditure was

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made or authorized no later than three days prior to the close of any reporting period described in N.J.A.C. 19:25-9.4. In the event that the expenditure is made three days prior to the close of a reporting period or any time thereafter until the close of a reporting period, written notice of the expenditure shall be provided to the receiving candidate and a copy forwarded directly to the commission.

(c) Absent notice to the contrary from the receiving candidate, the commission shall include the notice described in (a) above as part of the public file of the receiving candidate.

19:25-10.5 Time and place of filing

The original and one copy of the report must be received by the commission at its office by 5:00 P.M. on the following day. A report postmarked on the filing day but received by the commission at any time subsequent to 5:00 P.M. on the filing day will not be deemed timely filed.

19:25-10.6 Contributions made immediately before election

(a) Each organizational treasurer of a continuing political committee shall file a written notice with the commission of a contribution in excess of \$250.00 received after the final day of the quarterly report and on or before the date of an election as to which it has made or intends to make a contribution, or otherwise intends to or does participate or intends to participate in. The notice shall be filed in writing or by telegram with the commission within 48 hours of the receipt of the contribution, and the notice shall set forth the amount and the date of the contribution and the name and address of the contributor.

(b) Whether a contribution received by a continuing political committee qualifies for reporting hereunder shall be determined according to the calculation set forth in N.J.A.C. 19:25-11.4, except that the base for any pro-ration shall be \$250.00 for the purposes of this regulation.

19:25-10.7 Final report

A continuing political committee which at any point expects to cease making contributions to aid or promote the candidacy of an individual, or candidacies of individuals, or the passage or defeat of a public question or public questions in this State, shall certify that fact in writing to the commission. That certification shall be accompanied by a final accounting of any funds relating to such aiding or promoting, including the final disposition of any balance in such fund at the time of dissolution. Until that certification has been filed, the committee shall continue to file the quarterly report as provided hereunder.

***19:25-10.8 Short form for certain continuing political committees**

(a) A continuing political committee may satisfy its quarterly reporting obligation for a calendar year if it files with the commission no later than January 15 and no later than July 15 of a calendar year a certified statement (Form A-3) to the effect that the total amount to be expended in that calendar year shall not exceed \$1,000.

(b) In the event a continuing political committee files with the commission a certified statement pursuant to (a) above, and total expenditures in fact exceed \$1,000 during the calendar year for which the statement was filed, the continuing political committee must commence filing quarterly reports as of the date expenditures exceed \$1,000, and the first quarterly report must include all contributions received and all expenditures made, incurred or authorized during the calendar year.

(c) If a continuing political committee files with the commission a certified statement pursuant to (a) above, and during the calendar year it receives contributions from any one source aggregating more than \$100.00, it shall report that fact by filing with the commission a report (Form C-3) identifying the name and address of the contributor, the date or dates of the contribution or contributions, and the aggregate amount of the contribution or contributions. Such report shall be filed with the commission no later than the date on which quarterly reports are due for filing pursuant to N.J.A.C. 19:25-10.3(a).

(d) Nothing contained in this section shall be construed to relieve a continuing political committee from filing notice of receipt of a contribution in excess of \$250.00 as required by N.J.A.C. 19:25-10.6.*

SUBCHAPTER 11. CONTRIBUTIONS; REPORTING OF

19:25-11.1 General provisions

Except as otherwise specifically provided in these regulations, every contribution to aid or promote the nomination, election or defeat of any candidate or candidates for public office, or to aid or promote the passage or defeat of a public question in any election must be reported.

19:25-11.2 Contributions for election-related activity

(a) Every contribution to a candidate, political committee, political party committee or other major purpose continuing political committee is determined to be a contribution for election-related activity as described in N.J.A.C. 19:25-11.1.

1. Example 1: "Candidate A" has announced his intention to run for the State Assembly and has filed with the commission the name and address of his campaign treasurer and campaign depository, but has not yet filed his petition. Company X mails to candidate A a check in the amount of \$200.00 payable to candidate A to aid his campaign, although no statement as to this purpose is included with the check. Company X has made a reportable contribution to candidate A in the amount of \$200.00.

2. Example 2: "Candidate B" has been elected to the office of freeholder in a county in New Jersey. All the preelection and post-election reports relating to his campaign have been filed and the business respecting the campaign has been wound up and all expenses in connection with the campaign have been paid. A group of friends, including a number of prominent local politicians, arrange a dinner in his honor to commemorate his years of faithful service to the party. Cash and other gifts of total value of \$200.00 are given to him in the course of the dinner. There is no intention that these gifts be used for political purposes and they are not so used. The dinner and the gifts are not contributions to candidate B for political purposes and are not required to be reported.

19:25-11.3 Computation of contributions: political committees and candidates

Candidates and political committees must report as contributions the total amount of contributions and the name, address and amount of contributions made by any contributor who contributed in the aggregate more than \$100.00.

19:25-11.4 Computation of contributions: continuing political committees

(a) The computation of contributions to a continuing political committee shall include, without limitation, contributions, loans, rental, investment or other income or member-

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ship fees, assessments or dues made to the committee which relate to election activity as described in N.J.A.C. 19:25-1.7 and may be reportable depending on the nature of the continuing political committee to which the contribution is made.

(b) If the committee is a political party committee, the contributions are reportable in full, along with the name and address of contributors whose contributions aggregate more than \$100.00 during the calendar year.

(c) If the committee is a major purpose continuing political committee, the contributions are reportable in full, along with the name and address of contributors whose contributions aggregate more than \$100.00 during the calendar year.

(d) If the committee is a multi-purpose continuing political committee, the contributions are reportable in the same proportion as the activities of the committee are related to election activity, along with the name and address of contributors whose contributions allocated as outlined above aggregate more than \$100.00 during the calendar year.

(e) If the committee is a peripheral continuing political committee, contributions are not reportable*[,] unless * [earmarked for election activity, in which case they are reportable in full.]* *:

1. The contribution is earmarked for election-related activity, in which case it is reportable in full.*

19:25-11.5 Contribution of goods or services

(a) Where contribution of goods is made for election-related purposes, the value of the contribution shall be the fair market value of the goods to the candidate or committee receiving them.

(b) The value of contributions made in the form of personal services shall be the actual amount of compensation paid by the contributor to the individuals actually performing said services for the performance of said services. The person contributing such services shall furnish to the campaign treasurer through whom such contribution is made a statement setting forth the actual amount of compensation paid by the contributor to the individual actually performing such services. If any such individual also performed for the contributor other services during the same period, and the manner of payment was such that payment for the services contributed cannot readily be segregated from contemporary payment for the other services, the contributor shall in his statement to the campaign treasurer so state and shall either:

1. Set forth his best estimate of the dollar amount of payment to each such individual which is attributable to the contribution of his paid personal services, and shall certify the substantial accuracy of the same; or

2. If unable to determine such amount with sufficient accuracy, set forth the total compensation paid by him to each such individual for the period of time during which the services contributed by him were performed.

(c) Voluntary personal services as described in N.J.S.A. 19:44A-3(f) are not a contribution under the act:

1. Example 1: "E" is a certified public accountant, who, in aid of the candidacy of candidate A has undertaken to set up the necessary books and records to reflect the financial operations of the campaign of candidate A. E employs in his office several accountants, bookkeepers and clerical personnel who perform some of the work required to maintain the financial records for the campaign of candidate A. The services of E do not constitute a contribution to candidate A since they are voluntary personal services. The value of the services of the accountants and other employees of E, estimated as described in (b) above, are a contribution to candidate A. The value of

the use of special or extraordinary office equipment, such as photocopying equipment or computers, by E or his employees in connection with the campaign is also a contribution to candidate A.

19:25-11.6 Anonymous contributions

(a) Except as otherwise provided in (b) below, no contribution or expenditure shall be made anonymously, or in a fictitious name, or by one person or group in the name of another for an election-related purpose, and no person shall contribute or purport to contribute to any candidate or committee funds or property not actually belonging to him and in his full custody and control, or which have been given or furnished to him by any other person or groups for the purpose of making a contribution thereof.

(b) The following are not deemed to be anonymous contributions within the meaning of the act or of these regulations:

1. Group contributions by persons who are members of the contributing group;

2. Proceeds of a public solicitation, which means any activity by or on behalf of any candidate, political committee or continuing political committee whereby either members of the general public are personally solicited for cash contributions not exceeding \$20.00 from each person so solicited and which are contributed on the spot by the person so solicited to the person so soliciting or through a receptacle provided for the purpose of depositing contributions, or members of the general public are generally solicited for the purchase of items having some tangible value as merchandise, ***or for the purpose of a ticket to a fund raising event,*** at a price not exceeding \$20.00 per item, ***or per ticket,*** which price is paid on the spot in cash by the person so solicited to the person so soliciting, when the net proceeds of such solicitation are to be used by or on behalf of such candidate, political committee or continuing political committee.

3. An anonymous contribution to a person or organization which engages in election-related activity shall not be deemed to be a contribution to aid the passage or defeat of a public question within the meaning of the prohibition on anonymous contributions contained in sections 14 or 20 of the Act (N.J.S.A. 19:44A-14, 20) unless the contribution is made for the express purpose of election-related activity, or is made to a person or organization whose primary purpose is to engage in election-related activity. Any person or organization which engages in election-related activity and receives anonymous contributions must report the aggregate amount of all anonymous contribution(s) for purposes of its reports filed pursuant to the act. For purposes of this section, any person or organization shall be deemed to engage in election-related activity as its primary purpose for any calendar year in which expenditures for such activity constitute more than 50 percent of its total expenditures.

19:25-11.7 Contributions for pre-candidacy activity

When an individual becomes a candidate, all funds received or payments made in connection with his or her testing the waters activity prior to becoming a candidate shall be considered contributions or expenditures under the act and shall be reported in accordance with the applicable reporting requirements in the first report filed by such candidate's campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received and all expenditures made in connection with the individual's testing the waters activity prior to becoming a candidate. Contributions received by an individual prior to

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becoming a candidate for nomination for or election to the Office of Governor, which contributions are not in compliance with the act, shall be returned to the contributor within 10 days after the individual becomes a candidate. The individual shall keep records of all refunds made.

19:25-11.8 Currency contributions

(a) Except as provided in (b) below, no contributions of money shall be made in currency, except contributions in response to a public solicitation.

(b) Cumulative currency contributions of up to \$100.00 may be made to a candidate, political committee or continuing political committee if the contributor submits, with his contribution, a written record containing the name and address of the contributor, the date and amount of the contribution and the signature of the contributor.

SUBCHAPTER 12. REPORTING OF EXPENDITURES; INDEPENDENT EXPENDITURES

19:25-12.1 General provisions

Except as otherwise provided, every expenditure to aid or promote the nomination, election or defeat of any candidate or candidates for public office, or to aid or promote the passage or defeat of a public question in any election must be reported.

19:25-12.2 Expenditures for election-related activity

(a) Candidates and political committees shall maintain records with respect to all expenditures in aid or furtherance of election-related activity and shall report such expenditures in accordance with the provisions of N.J.A.C. 19:25-9 (preelection and post-election reports).

(b) When a candidate, political committee, an individual seeking party office or a continuing political committee makes or authorizes an expenditure on behalf of a candidate, the committee or individual shall provide written notification to the candidate pursuant to N.J.A.C. 19:25-9.6 or 19:25-10.4.

(c) Payment by cash for expenditures is not unlawful; in case of such payments, receipts must be obtained from the ultimate payees and accurate records must be maintained by the campaign treasurer and included in the report for such candidate to reflect the identity of each payee, the date and amount of payment and a brief statement of the purposes of such expenditure. Expenditures incurred by lawful payment to workers on election day are expenditures on behalf of candidates.

19:25-12.3 Computation of expenditures; political committees and candidates

Every expenditure by a political committee or a candidate is determined to be an expenditure for election-related activity as described in N.J.A.C. 19:25-12.1.

19:25-12.4 Computation of expenditures by continuing political committees

(a) The calculation of expenditures by a continuing political committee shall include all expenditures as defined in the act and this chapter, and shall include all contributions including in-kind contributions made for election purposes.

(b) Expenditures shall be reported as follows:

1. If the committee is a political party committee as defined in this chapter, every expenditure is determined to be an expenditure for election related-activity as described in N.J.A.C. 19:25-12.1 and is reportable in full;

2. If the committee is a major purpose continuing political committee as defined in this chapter, every expenditure is determined to be an expenditure for election-related activity as described in N.J.A.C. 19:25-12.1 and is reportable in full;

3. If the committee is a multi-purpose continuing political committee as defined in this chapter, the following expenditures shall be reported:

i. All contributions, including in-kind contributions, made with respect to a candidate or public question; and

ii. All expenditures which are reasonably related to election activity for:

(1) Fund raising and solicitation expenses incurred in whole or in part for election-related activities; and,

(2) A prorated portion of general organizational and administration expenses incurred for election-related activity.

4. If the committee is a peripheral continuing political committee, no reporting shall be required with respect to expenditures, including contributions and in-kind contributions, unless:

i. The committee is engaged in fund raising and solicitation expenses with respect to election-related activity; or,

ii. The amount of contributions by such committee for any calendar year exceeds \$10,000. In such cases, the activity is reportable in full.

5. Nothing in 4 above shall be construed so as to permit the nonreporting of earmarked contributions, as described in N.J.A.C. 19:25-7.6, received or made by a continuing political committee.

6. Any group of two or more persons which is not required to file quarterly reports as a continuing political committee by virtue of the operation of the act or of this chapter may nevertheless have preelection and post-election reporting obligation as a political committee with respect to any election as to which it becomes:

i. An independent political committee contributing ***or expending*** more than \$1,000 or

ii. Is a political committee which is not independent contributing ***or expending*** any amount, by virtue of election-related activity including fund raising, with respect to a candidate or public question.

19:25-12.5 Public question reporting threshold

A political committee which is a political committee solely as to one or more public questions with respect to any election shall not be subject to the reporting or other requirements of the Act if the total amount of its expenditures for such election does not exceed \$2,500.

19:25-12.6 "Street money" expenditures

(a) For purposes of this section the term "street money" includes all payments to workers involved in get-out-the-vote drives on or close to election day or payments to challengers or poll watchers, or other payments related to election day efforts on behalf of candidates, political committees for candidates or for public questions, or for political party committees. The term includes payments made to campaign workers, party organizations or other committees either by check payable to such named persons or organizations, or by delivery of cash to such persons or organizations, and includes payments intended for further transfer to election day workers or other ultimate payees.

(b) "Street money" expenditure must be reported in accordance with the provisions of the act and of this chapter, and must be properly and reasonably allocated among the candidates and public questions for whose benefit they are

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made or incurred. In addition to the other reporting requirements imposed by the provisions of the act and of this chapter, the reports to the commission shall include the name, address and amount of payment for each person who receives \$25.00 or more of street money, as either an initial, intermediate or ultimate payee.

19:25-12.7 Independent expenditures

(a) Independent expenditures shall be subject to all of the reporting and disclosure requirements of the act. Every person or political committee making an independent expenditure and required to report under the act shall include in the reports required under the act a sworn statement on a form provided by the commission that such independent expenditure was not made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of, the candidate or any person or committee acting on behalf of the candidate.

(b) Any advertisement which is an independent expenditure shall include a clear and conspicuous statement that the advertisement is not authorized by any candidate and shall state the name and address of the person or organization making the expenditure.

19:25-12.8 Reporting of independent expenditures

(a) Any person, not acting in concert with any other person or committee, who expends personally from his own funds without being reimbursed more than \$1,000 to support or defeat a candidate or more than \$2,500 to aid the passage or defeat of a public question shall be required to report all such expenditures in accordance with (b) below.

(b) Expenditures required to be reported pursuant to (a) above shall be reported either:

1. To the campaign treasurer of the candidate or political committee, or organizational treasurer for a continuing political committee, on whose behalf such expenditure or contribution was made, or to his or her deputy, who shall cause the same to be included in his or her report to the commission subject to the provisions of sections 8 and 16 of the act; or
2. Directly to the commission at the same time and in the same manner as a political committee subject to the provisions of section 8 of the act.

19:25-12.9 Expenditures for pre-candidacy activity

When an individual becomes a candidate, all funds received or payments made in connection with his or her testing the waters activity prior to becoming a candidate shall be considered contributions or expenditures under the act and shall be reported in accordance with the applicable reporting requirements in the first report filed by such candidate's campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received and all expenditures made in connection with the individual's testing the waters activity prior to becoming a candidate.

SUBCHAPTER 13. ALLOCATION OF EXPENDITURES

19:25-13.1 Allocation

(a) Where an expenditure is made on behalf of two or more candidates, the expenditure must be allocated between such candidates in a reasonable manner so as to fairly reflect the relative value to each of the candidates of such expenditure. The initial allocation should be made by the committee or candidates on a reasonable basis, and in advance of the expenditure where possible. All documents and financial records

relating to the allocation and the expenditure should be retained:

1. Example: "Committee for A and B" is conducting a political campaign on behalf of candidate A and candidate B. The committee proposes to expend \$100.00 for the purchase of a quantity of bumper stickers containing the slogan "Vote for A and B". The committee determines that the stickers are of equal value to each of the candidates. Thus \$50.00 of the expenditure should be allocated to candidate A and \$50.00 should be allocated to Candidate B. Financial records and a record of the facts on which the allocation is based must be retained.

SUBCHAPTER 18. (Reserved)

SUBCHAPTER 20. FINANCIAL DISCLOSURE BY LOBBYISTS AND LEGISLATIVE AGENTS

19:25-8.1 through 19:25-8.15 recodified as 19:25-20.1 through 19:25-20.15.

SUBCHAPTER 21. SEVERABILITY CLAUSE

19:25-21.1 Severability clause
(No change in text.)

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Payment of Prevailing Wages in Authority Projects

Readoption: N.J.A.C. 19:30-3

Proposed: June 4, 1984 at 16 N.J.R. 1334(a).
Adopted: July 12, 1984 by James J. Hughes, Jr., Executive Director, New Jersey Economic Development Authority.
Filed: July 16, 1984, as R.1984, d.320, **without change**.

Authority: N.J.S.A. 34:1B-1 et seq., specifically 34:1B-5k and 1.

Effective Date: July 16, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): July 16, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption follows.

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SUBCHAPTER 3. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

19:30-3.1 Definitions

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

“Authority” means the New Jersey Economic Development Authority in but not of the Department of Commerce and Economic Development.

“Construction Contract” shall mean any contract or subcontract for construction, reconstruction, demolition, alteration, or repair work, or maintenance work, undertaken in connection with a Project and paid for in whole or in part with funds received through the assistance of the Authority.

“Executive Director” means the Executive Director of the Economic Development Authority.

“Prevailing Wage Rate” means the prevailing wage rate established by the Commissioner of the New Jersey Department of Labor from time to time in accordance with the provisions of N.J.S.A. 34:11-56.30 for the locality in which the Project is located.

19:30-3.2 Payments of prevailing wages in Projects receiving assistance

Every recipient of assistance from the Authority for Projects, as defined in N.J.S.A. 34:1B-3, as a condition for receipt of such assistance, shall in all construction contracts in the amount of \$2,000 or more, require that wages paid to workers employed in the performance of the construction contracts be not less than the prevailing wage rate for such work.

19:30-3.3 Assurances required

(a) Every recipient of assistance from the Authority shall deliver a certificate to the Authority (or designated agent for the Authority), upon completion of the Project, signed by an authorized representative of the recipient, representing and confirming that:

1. It has complied and has caused its contractors and subcontractors to comply with the requirements of N.J.A.C. 19:30-3.2 and attaching true copies of all such construction contracts with contractors and subcontractors; or

2. That it has not entered into any construction contracts subject to the provisions of N.J.A.C. 19:30-3.2.

19:30-3.4 Contract provisions required

(a) Each recipient of assistance from the Authority shall in all construction contracts in the amount of \$2,000 or more require that:

1. Contractors and subcontractors permit the Authority, or its designated agent, complete access to payroll records and other records for purposes of determining compliance with the provisions of this subchapter.

2. Contractors and subcontractors keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract and to preserve such records for two years from the completion date of the Project.

19:30-3.5 Executive Director to enforce compliance

The Executive Director may require applicants for Authority assistance and recipients of Authority assistance to make such additional representations to the Authority and to enter into such covenants and agreements with the Authority that

are necessary to carry out the purposes of this subchapter. The Executive Director shall take such steps as are necessary to ensure compliance with this subchapter.

19:30-3.6 Effective date

The provisions of this subchapter shall apply to all Projects for which financial assistance initially has been authorized by a resolution of the members of the Authority adopted on or after September 1, 1979. Projects authorized by such official action of the members of the Authority prior to September 1, 1979 shall be exempt from the provisions of this subchapter.

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Targeting of Authority Assistance

Readoption with Amendment: N.J.A.C. 19:30-4

Proposed: May 7, 1984 at 16 N.J.R. 1064(a).

Adopted: July 3, 1984 by James J. Hughes, Jr., Executive Director, New Jersey Economic Development Authority.

Filed: July 16, 1984 as R.1984 d.321, with technical changes not requiring additional public notice and comment.

Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5K and 1.

Effective Date: July 16, 1984.

Expiration Date pursuant to Executive Order No. 66(1978): July 16, 1989.

Summary of Public Comments and Agency Responses:

One written comment was received from an attorney who is counsel to a number of parties as owners, developers and purchasers of properties in New Jersey, which have utilized New Jersey Economic Development Authority financial assistance. The comment expressed the view that the financial assistance eligibility requirement that an office building have a single user occupying a minimum of 20,000 square feet in order to be exempt from the targeting rule (see 19:30-4.4(a)1.xii.), could be reduced or eliminated while still maintaining the Authority's purpose of creating jobs and increasing the local tax base.

The agency response is that the targeting rule was intended to encourage applicants to consider locating their projects in those municipalities that have been designated as most in need of assistance. The suggestion to further reduce the eligibility requirements for office building projects to locate in non-targeted municipalities could place targeted communities at an undue disadvantage. This would be contrary to the purpose behind the targeting rule.

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Reasons for Making Changes:

The change is to be made at 19:30-4.4(a)1.xi., to correct an error in citing a passage from the Internal Revenue Code. The proposed readoption included a reference to a section of the Code, in which facilities which are exempt from certain restrictions on Industrial Development Bond use are described. These types of facilities are to be exempt from the targeting rule also, and the reference to the Code is included as the source of the exemption guideline. The types of facilities described in the Code are listed in the targeting rule, so one need not consult the Code to ascertain what types of facilities these are.

The error occurred due to a revision in the Internal Revenue Code which changed the citation of the passage to which the rule makes reference. The change in the agency rule is therefore made for clarification.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions shown in brackets with asterisks *[thus]*).

SUBCHAPTER 4. TARGETING OF AUTHORITY ASSISTANCE

19:30-4.1 Assistance to be provided for projects in economically distressed localities

New Jersey Economic Development Authority financial assistance for projects as defined in N.J.S.A. 34:1B-3 shall be available only to projects located in economically distressed municipalities.

19:30-4.2 Executive Director to establish list of economically distressed municipalities

(a) The Executive Director shall from time to time, but at least once each year, establish a list of economically distressed municipalities where Authority financial assistance will be available. In establishing such a list, the Executive Director shall include municipalities which meet the following criteria:

1. Municipalities qualified for State aid under the provisions of L.1978, c.14;

2. Municipalities which meet three of the four following standards:

- i. Unemployment rate above the State average;
- ii. Per capita income lower than the State average;
- iii. Ratables per capita less than the State average;
- iv. A total number of unemployed persons of 1,000 or more.

(b) A municipality shall remain on the list of economically distressed municipalities for a period of one year after the municipality ceases to meet the above criteria.

19:30-4.3 Projects to be considered under special circumstances

Notwithstanding the provisions of N.J.A.C. 19:30-4.1, the Authority will review applications for assistance and will consider providing financial assistance for projects which will have a beneficial impact on municipalities threatened with or suffering from a substantial natural or economic disaster; or projects located in a designated blighted area; or projects which will employ a significant number of disadvantaged persons, as determined by a contract with a State or local manpower program, or hotel and motel projects which will provide significant benefits to the expansion of business or tourism.

19:30-4.4 Projects exempted

(a) Notwithstanding the provisions of N.J.A.C. 19:30-4.1:

1. The following projects shall be eligible for Authority financial assistance, regardless of location:

- i. Agriculture, forestry and fishing;
- ii. Construction industry;
- iii. Manufacturing;
- iv. Transportation, communication, electric, gas and sanitary sewers;
- v. Wholesale trade;
- vi. Motion picture production, distribution and allied services;
- vii. Research, development, medical and commercial testing laboratories;
- viii. Proprietary hospitals, nursing homes and outpatient care facilities;
- ix. Data processing, business, secretarial and vocational schools, except vocational high schools;
- x. Computer and data processing services;
- xi. Facilities described in Section 103*[c]* *b*(4) and (5) of the Internal Revenue Code (6 U.S.C. 103*[c]* *b*(4) and (5)), which include:

(1) Airports, docks, wharves, mass commuting facilities, parking facilities, storage or training facilities directly related to any of the foregoing available to the general public;

(2) Convention or trade show facilities; and

(3) Industrial pollution control projects.

xii. An office building in which a single user occupies a minimum of 20,000 square feet of total rental square feet.

(b) Projects eligible for financial assistance under this section must also meet other applicable standards and policies.

19:30-4.5 Effective date

The provisions of this subchapter shall apply to all projects for which financial assistance initially has been authorized by a resolution of the members of the Authority on or after July 1, 1979.

EMERGENCY ADOPTION

ENVIRONMENTAL PROTECTION

EMERGENCY

ADOPTION

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Finfish Purse Seine Fishing of Menhaden

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 7:25-22.2

Emergency New Rule Adopted: June 27, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Gubernatorial Approval

(See: N.J.S.A. 52:14B-4(c)): July 9, 1984.

Emergency New Rule Filed: July 10, 1984, as R.1984 d.315.

Authority: N.J.S.A. 23:2B-6 and 23:3-51.

Emergency New Rule Effective Date: July 10, 1984.

Emergency New Rule Expiration Date: September 10, 1984.

DEP Docket No. 035-84-06.

Interested persons may submit in writing data, views, or arguments relevant to the proposal on or before September 5, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Paul E. Hamer, Chief
Bureau of Marine Fisheries
Star Route
Absecon, New Jersey 08201

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. 130-4.4(d)).

The concurrent proposal is known as PRN 1984-425.

The emergency adoption and concurrent proposal follows:

Summary

The emergency adoption and concurrent proposed regulation defines purse seine fishing, defines the area in which it

may be conducted, and prohibits menhaden purse seine fishing on Saturdays, Sundays and certain holidays. It also requires vessels engaged in the fishery to be properly equipped to minimize slicks from fish loading activities, prohibits disposal of litter or garbage at sea, and makes the licensee responsible for cleanup of any fish which are spilled. A final provision prohibits disturbance of channel markers, fixed fishing gear, and certain leased shellfish areas.

This emergency adoption and concurrent proposal is similar to a proposal which appeared in the July 2, 1984 Register at 16 N.J.R. 1668(a).

Social Impact

The primary purpose of this regulation is to lessen the conflict of menhaden purse seining upon recreational fishermen in the 0.6 mile corridor along the State's shorelines. From the standpoint of the near-shore recreational fishermen, this regulation will have a very substantial positive social impact, since it will eliminate these large vessels operating large nets from the immediate recreational fishing area.

Economic Impact

This regulation will have a negative economic impact upon the menhaden industry, increasing license fees and increasing fishing costs by precluding commercial fishing from an area formerly providing a significant portion of the catch. Offsetting this negative impact, however, there will be a positive impact on the suppliers of recreational fishing equipment and bait. Further positive economic impact will result from the prohibition against discarding refuse, accompanied by imposition of responsibility on the licensee for any cleanup of spilled fish, thereby reducing beach cleaning costs and the associated negative economic effects of soiled beaches in shoreline communities.

During meetings that the Division of Fish, Game and Wildlife sponsored, representatives of the principal companies which harvest menhaden in New Jersey, stated that the increased costs involved with these regulations would be acceptable in order to resolve their conflicts with recreational fishermen and, thereby, avoid possible closure of the industry in New Jersey waters.

Environmental Impact

Prohibiting menhaden purse seine fishing within 0.6 nautical miles of the shoreline, jetties, and piers will protect a portion of the menhaden stock from commercial exploitation while it is in this 0.6 mile corridor and allow predatory fishes and birds to feed on the menhaden in this zone undisturbed. It will also create a better environment for recreational fishermen who fish in this 0.6 mile corridor by reducing conflict with the commercial menhaden vessels and making predatory fishes more readily available because of reduced disturbance. Prohibiting menhaden fishing on weekends and holidays, when the largest numbers of recreational fishermen are fishing, will also help to reduce conflict and, thereby, improve the environment for recreational fishing.

Prohibiting the disposal of refuse, requiring subsurface discharge and treatment of fish-pump effluent, and holding the licensee responsible for cleaning up any spilled fish will also have a positive environmental effect.

ENVIRONMENTAL PROTECTION

EMERGENCY ADOPTION

Full text of the emergency new rule and concurrent proposal follows.

7:25-22.2 Purse seine fishing of menhaden

(a) Persons licensed to fish for menhaden with a purse seine or shirred net in the marine waters of New Jersey pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52 shall abide by the following rules:

1. Fishing, for the purpose of this section, shall be defined as having a purse seine in the marine waters of this State.

2. Fishing shall be restricted to the Atlantic Ocean, and Delaware, Raritan and Sandy Hook Bays, not closer than 0.6 nautical miles of any point along the shore, jetties or fishing piers. It will be incumbent upon the captain of a menhaden purse seine vessel to determine the possibility of drifting inside the 0.6 nautical mile limit established herein while fishing before setting his net. Drifting into the 0.6 nautical mile restricted area along the shore, or around a pier, will not be considered a viable defense.

3. No fishing shall be conducted on Saturdays, Sundays, and the days on which Memorial Day, Independence Day or Labor Day are officially observed by the State of New Jersey.

4. All pump outlets, except normal engine cooling water, shall discharge below the vessel's water line.

5. All discharge from fish pumps must be treated with a United States Coast Guard approved anti-foaming agent.

6. No refuse, litter or garbage of any kind, or any quantity of dead fish shall be thrown overboard or released from the vessel or its net(s).

7. The licensee is responsible for cleaning up any fish which are released from split or torn nets and must initiate such cleanup no later than 24 hours after the incident begins. Such cleanup shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines and marshes.

8. No stakes, markers, or buoys designating channels, crab pots, lobster pots, fish pots, or traps, or staked leased shellfish grounds, including, but not limited to that portion of Delaware Bay north and west of a line from Fourteen Foot light to Deadman Shoal light (Bug light) and thence to Dennis Creek light, shall be disturbed by the act of fishing.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Annual Departmental Review of Fee Schedule for Water Supply Allocation Permits

N.J.A.C. 7:19-3

Public Notice

The Department of Environmental Protection, pursuant to N.J.A.C. 7:19-3.5(a), reviewed the Water Supply Allocation Fee Schedule, set forth at N.J.A.C. 7:18-3.9, prior to March 1, 1984. The Department concluded that revenue from the existing fee schedule, when applied to current Fiscal Year 1984 and future Fiscal Year 1985 operations adequately covers the actual cost of the non-agricultural water supply allocation permit program established by N.J.A.C. 7:19-1, 2 and 3.

Take notice that the Department, pursuant to N.J.A.C. 7:19-3.5(c), has determined that there shall be no change in the existing fee schedule at this time.

This notice is published as a matter of public information.



(b)

DIVISION OF WATER RESOURCES

Amendment Procedure for Sussex County Water Quality Management Plan

Public Notice

Notice is hereby given that Sussex County has submitted for approval the plan amendment procedure for the Sussex County Water Quality Management (WQM) Plan, according to the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4). This procedure provides for the amendment of the Sussex County WQM Plan as necessary to maintain the Plan as a technically sound

and legally defensible document for the implementation of WQM objectives. This WQM Plan was adopted pursuant to the "New Jersey Water Quality Planning Act" (N.J.S.A. 58:11A-1 et seq.) which also authorizes the New Jersey Department of Environmental Protection and county and regional agencies designated by the Governor to develop and implement areawide WQM Planning programs.

This notice is being given to inform the public that a plan amendment procedure has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan, the "New Jersey Water Quality Planning Act," and the amendment procedure is located at the office of NJDEP, Division of Water Resources, Bureau of Planning and Standards located at 25 Arctic Parkway in the Township of Ewing, Mercer County. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within thirty days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendments. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to George Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.



(c)

PARKS AND FORESTRY

Island Beach Northern Natural Management Plan

Public Notice

Take notice that on June 11, 1984 pursuant to the provisions of the Natural Arcas System Act, N.J.S.A. 13:1B-15.12a, and the natural areas regulations found at N.J.A.C. 7:2-11, the Island Beach Northern Natural Area Management Plan, dated May, 1984, was adopted as the Division of Parks and Forestry's plan for administrating this natural area.



LAW ENFORCEMENT AGENCY

MISCELLANEOUS NOTICES

**STATE LAW
ENFORCEMENT
PLANNING AGENCY**

(a)

**Speedy Trial Program, Backlog Reduction
Authority: P.L. 1984; Chap. 58**

Fund Applications

Public Notice

The 1985 State Budget includes \$750,000 for criminal case backlog reduction, appropriated for administration by the State Law Enforcement Planning Agency (SLEPA). Funds will be awarded to applicants recommended by the Statewide Speedy Trial Coordinating Committee (STCC) to the SLEPA Governing Board.

Grant application forms setting forth the procedures to apply for backlog reduction funds are available from SLEPA.

At its meeting on June 21, 1984, the STCC determined that all counties and State agencies involved in the administration of criminal justice may apply for these funds. While some jurisdictions have a small backlog, it may be that some funds are needed to maintain current progress. However, the Committee also determined that a priority must be placed on those counties with the greatest need for backlog reduction assistance. Those needs will be determined from a number of factors, principally including the information contained on the Overview of Criminal Calendar Performance.

The criteria for backlog reduction fund grants will mainly look to supplying jurisdictions with resources to support increased trials of old cases. These may include retired judges, assistant prosecutors, deputies attorney general, public defenders, or "pool" private counsel. Grants will be considered for activities such as case inventories plea cutoff moratoriums, and other special conferencing programs to reduce backlog. Additional Grand Juries to reduce pre-indictment backlogs will also be considered, as will be mechanisms to reduce backlogs in investigative reports. Of course, other innovative activities can be considered. Applications must include specific backlog reduction goals.

During the initial planning for fund applications, applicants should consider that applications must include a full discussion of the reasons for current delay and backlog. It will add very favorably to applications if they contain the results of a survey and an analysis of a sample of older cases to determine the nature and frequency of various reasons for delay. Such a study can be rather quickly pursued by members of support staffs and the results should be fully discussed in executive session of the Local Speedy Trial Planning Committee.

Applications will be preliminarily reviewed by a State level Screening Committee. In order for the grant to be approved at the STCC meeting on September 13, applications will be due by August 15. The Screening Committee may require an oral presentation.

Applications or questions should be directed to:
Donald J. Apai, Acting Director
State Law Enforcement Planning Agency
CN 083
Trenton, N.J. 08625
Telephone: (609) 292-3820

TREASURY-GENERAL

(b)

**DIVISION OF BUILDING AND
CONSTRUCTION**

Architect-Engineer Selection

Notice of Assignments

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M563	Renovation of Cottage #2 Greystone Park Psychiatric Hospital Greystone Park, NJ	L.J. Mineo, Jr, AIA	\$ 50,000.00
E137	Investigation of Dam Marie Katzenbach School for the Deaf West Trenton, NJ	Site Engineers, Inc.	\$ 2,000.00 Study
H738	Removal/Replacement of Asbestos Boiler Plant Montclair State College	A.D. Jilajian & Assoc.	\$ 28,000.00
T164	Building Renovation Study Main Office Building DOT Fernwood Complex W. Trenton, NJ	Scrimenti, Shive, Spinelli, Perantoni	\$ 35,000.00 Study
C255	Metal Storage Building Central Office - Whittlesey Road., Department of Corrections Trenton, NJ	Richard M. Horowitz, AIA	Unknown
M562	Roof Replacement SNF Building Glen Gardner Center for Geriatrics Glen Gardner, NJ	Matthew L. Rue, AIA	\$100,000.00
Competitive Proposals			
	Matthew L. Rue, AIA	5.79%	
	Eugene F. O'Connor, AIA	11.76%	
	Richard M. Horowitz, AIA	12.74%	
M904	Energy Conservation Renovations Marlboro Psychiatric Hospital Marlboro, NJ	John C. Morris Associates	\$300,000.00
Competitive Proposals			
	John C. Morris Associates	7.78%	
	London, Kantor & Umland	10.40%	
	Wagner Associates	13.90%	
E138	Fire/Water Lines Marie Katzenbach School for the Deaf W. Trenton, NJ	Trenton Engineering Co.	\$325,000.00

MISCELLANEOUS NOTICES

LAW AND PUBLIC SAFETY

Competitive Proposals

Trenton Engineering Co.	14.30%
Van Cleef Engineering Assoc.	14.75%
Thomas Tyler Moore Assoc., Inc.	24.50%

C242	Second Egress & Enclosure of Stairwells Cottages & Administration Bldg. Youth Correctional Institute Annandale, NJ	George J. Williams Associates	\$450,000.00
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Competitive Proposals

Matthew L. Rue, AIA	9.47%
George J. Williams & Assoc.	9.50%
Vincent E. Paolicelli & Assoc.	9.743%

ATTORNEY GENERAL'S OPINION

(a)

ATTORNEY GENERAL

Formal Opinion No. 1-1984

July 11, 1984

Colonel Clinton L. Pagano
Superintendent
Division of State Police
Department of Law and Public Safety
River Road
P.O. Box 7068
West Trenton, New Jersey 08625

FORMAL OPINION NO.1-1984

Dear Superintendent Pagano:

You have asked for our opinion as to whether the requirement of certain statutes, that persons appointed to the uniformed law enforcement and firefighting services shall be between 21 and 35 years of age, is valid under the Age Discrimination in Employment Act (ADEA).¹ That Act provides that it shall be unlawful "to fail or refuse to hire . . . any individual [between the ages of 40 and 70] . . . because of such individual's age." 29 U.S.C. §§ 623(a)(1) and 631(a).

The constitutionality of applying the ADEA to the States was upheld by the United States Supreme Court in *EEOC v. Wyoming*, 103 S.Ct. 1054 (1983). As a result of this decision, it was concluded in *Formal Opinion No. 5-1983* that the applicable provisions of the State uniformed services pension statutes which require the mandatory retirement of their members prior to age 70 were invalid and unenforceable under the ADEA. For the following reasons, you are advised that maximum hiring ages established by the noted statutes for the uniformed law enforcement and firefighting services are similarly invalid and unenforceable.²

It is settled that a restriction which uniformly bars the employment of persons age 40 and older is a *prima facie* violation of the ADEA. *EEOC v. County of Allegheny*, 705

F.2d 679, 680 (3rd Cir. 1983). Such a hiring age ceiling is permissible under the Act only if demonstrated to be a bona fide occupational qualification (BFOQ) within the meaning of 29 U.S.C. § 623(f)(1), which provides that it shall not be unlawful for an employer to take any action otherwise prohibited "where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age." Although the BFOQs subject to this exception are not further defined by the statute, the Equal Employment Opportunity Commission (EEOC), which is charged with the enforcement of this statute, has promulgated a regulation which states that a BFOQ will be valid only where:

(1) the age limit is reasonably necessary to the essence of the business, and either (2) that all or substantially all individuals excluded from the job involved are in fact disqualified, or (3) that some of the individuals so excluded possess a disqualifying trait that cannot be ascertained except by reference to age. [29 C.F.R. § 1625.6(b).]

The regulation further provides that, "[i]f the employer's objective in asserting a BFOQ is the goal of public safety, the employer must prove that the challenged practice does indeed effectuate that goal and that there is no acceptable alternative which would better advance it or equally advance it with less discriminatory impact." *Ibid*.

Two reported decisions have upheld maximum hiring ages for law enforcement personnel under these BFOQ standards. In *EEOC v. Missouri State Highway Patrol*, 555 F. Supp. 97 (W.D. Mo. 1982), the court held that a maximum hiring age of 32 for State troopers validly furthered public safety by maximizing the career length of the average trooper, since "[t]he safest patrolman is one who has acquired several years of experience," and "[a]n experienced patrolman is best able" to serve as an administrator, the job most senior troopers performed, after approximately 11 years experience as a trooper with line duties. 555 F. Supp. at 106. Similarly, in *Poteet v. City of Palestine*, 620 S.W.2d 181 (Tex. Civ. App. 1981), the court upheld the refusal of a municipal police department to consider applications from persons older than age 40 on the ground that the court had "a factual basis for believing" that it would be impossible or impracticable to assess the physical fitness of persons older than age 36 on an

¹Identical maximum hiring restrictions are imposed by State statute with respect to State Police, see *N.J.S.A.* 53:1-9, State motor vehicle inspectors, see *N.J.S.A.* 39:2-6.1, as well as with respect to paid municipal firefighters and municipal police officers. *N.J.S.A.* 40A:14-12,127.

²In *EEOC*, the potential impact of the ADEA on a state's mandatory retirement policy was held to be an insignificant intrusion into the area of integral state operations under the Tenth Amendment to the United States Constitution. The court noted that a state would still be in a position to assess

the fitness of its employees because the Act only requires the state to achieve its goals in a more individualized manner through a demonstration that age is a bona fide occupational qualification for the particular job involved. The invalidation of uniform maximum entry level ages by the ADEA is no greater an intrusion into the area of integral state operations since in this case the state may also demonstrate that a maximum entry level age is a bona fide occupational qualification for certain jobs in the uniformed law enforcement and firefighting services.

ATTORNEY GENERAL'S OPINION

ATTORNEY GENERAL

individualized basis and that, accordingly, "[the] public safety would be jeopardized to some degree by eliminating the employer's hiring policy" 620 S.W.2d at 184-185.

However, the validity of such maximum hiring ages in the law enforcement field has been decisively rejected by several other courts. In *EEOC v. County of Los Angeles*, 706 F.2d 1039 (9th Cir. 1983) cert. den. 104 S.Ct. 984-985 (1984), the Court of Appeals recognized that police work is physically arduous and requires strength, ability and good reflexes, but affirmed the conclusion of the district court that a maximum hiring age of 35 for county sheriffs and fire department helicopter pilots was invalid since the ability to perform these tasks, as well as the prospective risk from such ailments as heart disease, could be detected by the use of simple, inexpensive and extremely reliable physical performance tests. 706 F.2d at 1043-1044. The same conclusion was reached in *EEOC v. County of Allegheny*, supra, and *Rodriguez v. Taylor*, 428 F. Supp. 1118 (E.D. Pa. 1976), damage award vacated 569 F.2d 1231 (3rd Cir. 1977), cert. den. 436 U.S. 913 (1978), where the courts invalidated maximum hiring ages of 40 for police officers and municipal security officers on the ground that there was no evidence that substantially all persons over this age would be unable to safely and efficiently perform the duties of these jobs or that it would be impossible to test applicants individually.

It is our opinion that the results reached by these latter cases are more consistent with the applicable provisions of the ADEA. First, there appears to be a valid distinction, as recognized by the court in *EEOC v. County of Los Angeles*, between the physical demands of inter-city bus driving, where age restrictions have been upheld, and police work. The validity of a hiring age restriction for the uniformed services must be considered in light of the fact that the physical demands of such positions, and hence the degenerative consequences of age, are less subtle than those involved in bus driving and are thus easier to objectively ascertain. See *Aaron v. Davis*, 414 F. Supp. 453, 462 (E.D. Ark. 1976). Moreover, the overwhelming weight of authority, involving law enforcement and the related profession of fire fighting, holds that the ability of particular individuals to perform these jobs may adequately be determined on the basis of existing medical testing procedures, and has rejected the contention accepted by the court in *Poteet v. City of Palestine* that an employer need only show that it had a reasonable basis for believing that such procedures would be inadequate. See *EEOC v. County of Los Angeles*, supra; *EEOC v. County of Allegheny*, supra; *Rodriguez v. Taylor*, supra; *Orzel v. City of Wauwatosa Fire Dept.*, 697 F.2d 743, 755 (7th Cir.) cert. den. 104 S.Ct. 484 (1983), *EEOC v. City of St. Paul*, 671 F.2d 1162, 1166 (8th Cir. 1982); *Johnson v. Mayor and City Council of Baltimore*, 515 F. Supp. 1287, 1298-99 (D. Md. 1981), cert. den. 455 U.S. 944 (1982); *Aaron v. Davis*, supra, 414 F. Supp. at 463.

In addition, the conclusion reached by the court in *EEOC v. Missouri State Highway Patrol*, 555 F. Supp. at 106, that a hiring age restriction may constitute a BFOQ because it provides the most collectively experienced police force appears, in essence, to be a restatement of the argument that an age restriction may be valid on the ground that it ensures the maximum return on the economic investment made by the State in training new recruits. See *Smallwood v. United Airlines*, 661 F.2d 303, 307 (4th Cir. 1981) cert. den. 456 U.S. 1007 (1982). However, it is settled that such economic considerations may not be used to establish an age restriction as a

BFOQ. *Ibid.*; *EEOC v. County of Los Angeles*, supra, 706 F.2d at 1042; 29 C.F.R. § 860.103(h); cf. *City of Los Angeles Dept. of Water & Power v. Manhart*, 435 U.S. 702, 716-717 (1978) (cost-justification defense not available in Title VII action). Finally, there is no suggestion that the maximum hiring age restriction in the uniformed services is based upon any specific medical or other factual findings regarding the ability of persons above the prescribed age to perform his or her duties. However, it is established that such age restrictions must "be based on something more than mere speculation or the subjective belief" that persons older than a prescribed age are incapable of handling the physical demands of a job, and that in the absence of specific factual proof thereof an age limit will not be sustained. *Orzel v. City of Wauwatosa Fire Dept.*, supra, 697 F.2d at 755; accord, *EEOC v. County of Allegheny*, supra, 705 F.2d at 681; *EEOC v. County of Santa Barbara*, 666 F.2d 373, 376 (9th Cir. 1982).

You are therefore advised that the requirement of statutes that appointees to the uniformed law enforcement and fire-fighting services shall be no older than 35 are invalid and unenforceable under the ADEA.³ A maximum hiring age may be validly adopted in an amended format only when it can be shown that all or substantially all of the persons above a prescribed maximum hiring age are unable to perform the duties of the position or that it is impossible to assess the fitness of individual applicants over the prescribed age on an individual basis.

Very truly yours,

IRWIN I. KIMMELMAN
Attorney General

³The ADEA by its terms protects only persons between the ages of 40 to 70 against discrimination in employment. The New Jersey statutory scheme establishes a maximum hiring age for the uniformed services at 35. It would be unreasonable though to assume that the legislature intended a maximum hiring age to apply for persons between 35 and 40 when persons up to 30 years over the age of 40 are not subject to a comparable limitation. A statute should be interpreted sensibly and not to reach an anomalous or irrational result. *Suter v. San Angelo Foundry & Mach. Co.*, 81 N.J. 150 (1979); *Federal Paper Bd. Co., Inc. v. Borough of Bogota*, 129 N.J. Super. 308 (App. Div. 1974). Moreover, a statute may be deemed to be severable only where the offensive portion can be excised without impairing the principal object of the statute as a whole. *110-112 Van Wagenen Avenue Co. v. Julian*, 101 N.J. Super. 230, 235 (App. Div. 1968). In the instant situation, the application of maximum hiring ages to a limited group of persons between the ages of 35 and 40 would not only be unreasonable but also inconsistent with the apparent purpose of the statute to prohibit the appointment of all persons of whatever age over 35.

ADDITIONAL COMMUNITY AFFAIRS

PROPOSAL

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Actions Regarding Housing Sponsors

Proposed New Rules: N.J.A.C. 5:80-7

Authorized By: New Jersey Housing and Mortgage Finance Agency, Feather O'Connor, Secretary.
Authority: N.J.S.A. 55:14K-34(f) (L.1983, c.530).

Interested persons may submit in writing, data, views or arguments relevant to the proposed on or before September 5, 1984. These submissions and any inquiries about submissions and response, should be addressed to:

Richard H. Godfrey Jr.
Assistant Executive Director
New Jersey Housing and
Mortgage Finance Agency
3625 Quakerbridge Road
CN 070
Trenton, NJ 08625-0070

At the close of the period for comments, the Housing and Mortgage Finance Agency may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The adoption of these rules becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-436.

The agency proposal follows:

Summary

Under the New Jersey Housing and Mortgage Finance Agency Law of 1983, Chapter 530 (the "Act"), the Agency is authorized to adopt rules and regulations to define the housing sponsor's role in the operation of the housing project. Section 5 of the Act states that the agency must adopt regulations which provide for consultation with housing sponsors regarding the formulation of Agency rules and regulations governing the operation of housing projects.

In defining the housing sponsor's role, circumstances under which a housing sponsor may be removed must also be addressed. Section 7b of the Act grants the Agency the authority to remove officers and directors of the housing sponsor and appoint various persons including officers or employees of the Agency to manage the affairs of the housing project. This authority, which is in addition to other powers and remedies which the Agency may have at law or by agreement, may only be exercised with regard to material matters and after reasonable notice to the sponsor and reasonable opportunity to correct violations in accordance with regulations adopted by the Agency.

The proposed new rules shall generally apply to the Agency's actions with regard to consulting with the housing sponsors and to removing housing sponsors.

Social Impact

The proposed regulations essentially balance the interest of the sponsor to have major input in the control of the project against the Agency's need to protect the tenants, bondholders

and the collateral of the loan. As a result, it allows the Agency to provide low and moderate income housing in an effective manner.

Economic Impact

The proposal will insure the viability of Agency financed projects.

Full text of the proposed new rule follows.

SUBCHAPTER 7. ACTIONS REGARDING HOUSING SPONSORS

5:80-7.1 Consultation with housing sponsors

(a) Prior to the adoption, amendment, or repeal of any regulation governing the operation of Agency-financed housing projects, the Agency shall:

1. Give housing sponsors 30 days notice regarding any intended action to either adopt, amend, or repeal a rule or regulation governing the operation of Agency-financed housing projects.

2. The 30 days notice shall consist of a clear and concise explanation of the purpose and effect of the intended action.

3. Any housing sponsor wishing to submit data, views, or arguments concerning the intended action may do so in writing not more than 30 days from the date of the notice of intended action.

4. The Agency will consider all submitted data, views, or arguments from housing sponsors before acting.

5. The Agency shall respond in writing to each housing sponsor submitting data, views, or arguments concerning the intended action. To satisfy this requirement, the Agency may send the housing sponsors the presentation that will be submitted to the Agency Board.

6. No regulation governing the operation of a housing project shall be effective unless adopted in substantial compliance with this policy.

7. Upon substantial compliance with this policy, the proposed regulation shall be submitted to the Agency Board for approval. Once the Board approves the regulation or rule, it will be submitted to the Office of Administrative Law for publication in the New Jersey Register pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30.

5:80-7.2 Removal of housing sponsors and other remedies

(a) Wherever possible, the Agency will permit, provide for and encourage the right of local housing sponsors to exercise their own initiative and competence in the administration of their assets and the conduct and operation of housing projects, and exercise their rights and responsibilities to the fullest extent permitted by law. The provisions of the Act pertaining to the regulation and removal of housing sponsors shall be for the purposes of protecting the collateral for any loan or loans; implementing or enforcing any condition, requirement or criterion for loans or any agreement between the housing sponsor and the Agency; securing the rights and remedies of lenders and bondholders; and protecting the interests of tenants at the projects.

(b) The Agency will exercise its remedies and powers under Section 7b(6) of the Act only with regard to material violations and after reasonable notice and reasonable opportunity to correct the violation is provided to the housing sponsor in accordance with the procedures set forth in (d) and (e) below.

(c) Material violations of the Act shall include, but are not limited to the following events, and shall generally be suffi-

ADDITIONAL PROPOSAL

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cient to give rise to the exercise of remedies under Section 7b(6) of the Act in accordance with the procedure set forth in (e) below.

1. Violation of subsidy contract as declared by HUD which is not corrected to HUD's satisfaction within 60 days.

2. Failure to submit final cost certification within seven months of substantial completion of construction.

3. Failure to submit a rent determination and annual operating budget at least 30 days prior to the end of the fiscal year.

4. Failure to submit the proposed name of a qualified management firm at least 30 days prior to the end of an existing contract or 120 days prior to initial occupancy of the project.

5. Failure to submit an accountant engagement agreement at least 30 days prior to the end of the fiscal year and/or failure to submit the certified annual audit within five months after the close of the fiscal year.

6. Three months arrears of debt service.

7. Failure to maintain Repair and Replacement Account at required levels.

8. Occurrence of a material default pursuant to any mortgage, mortgage note or regulatory agreement.

9. Failure of a sponsor to comply with any material provisions of any agreement between the Agency and the housing sponsor.

10. Failure of a sponsor to exercise the level of skill, knowledge, judgment and practice which is commonly expected with respect to the management operations of such projects as determined by the Agency.

11. Any act or occurrence which jeopardizes the effective operation of the project as determined by the Agency.

12. Any act or course of conduct which the Agency determines to be inconsistent with the policies set forth in the Act, any other relevant statutes or regulations or any conduct which the Agency determines to be harmful to the best interests of the housing project.

(d) It is the obligation of the Agency to give written notice to a sponsor that a condition exists which is of sufficient gravity to warrant exercise of remedies under Section 7(b)(6). The Agency shall provide written notice of the specific material violation(s) to the sponsor, and may suggest courses of action to correct the violation(s).

(e) The housing sponsor shall take the following corrective action:

1. Within 15 days of the receipt of the notice described in (d) above, the sponsor shall submit a statement to the Director of Management of the Agency setting forth its proposal for curing the violations indicated and a definite time schedule for the corrective actions.

2. If the sponsor is unable to develop a statement within 15 days, he shall submit a written request for an extension of time to prepare the plan to the Director of Management within the 15 day period.

3. The Director of Management may grant extensions of time for submission of a statement outlining the actions that the sponsor intends to take for up to an additional 30 days.

4. During that time period, the Agency staff shall be available to meet with the sponsor in order to assist him in the development of a program of corrective actions.

5. Upon receipt of the proposal from the sponsor, the Director of Management may either accept the improvement plan or suggest alternatives or modifications to the plan in writing to the sponsor.

6. If the sponsor is unwilling to accept the modifications suggested by the Director of Management, then the sponsor

may request in writing within 10 days that the matter be referred to the Executive Director of the Agency or his or her designee, for decision.

7. Once the commitments by the sponsor are accepted by the Agency, or an agreement is reached between the Agency and the sponsor, or a decision is made by the Executive Director, the sponsor shall immediately implement the corrective actions within the time period specified in the improvement plan.

(f) Any violations of the project improvement plan shall be subject to the following:

1. Any failure by the sponsor to implement the corrective actions as approved by Agency staff shall be grounds for implementing the remedies set forth in Section 7b(6) of the Act.

2. The Executive Director shall bring the matter of such failures and a recommendation of remedy to the Members of the Agency Board at the next public meeting scheduled to allow sufficient time for notice to the sponsor.

3. The Agency staff shall provide at least seven days written notice to the sponsor that the failure to implement or abide by the recommended corrective actions is being brought to the attention of the Members of the Agency Board and that removal of the sponsor may be requested.

(g) The following hearing procedure shall govern in matters concerning removal of the housing sponsor:

1. If it appears that removal of the sponsor is warranted, then the Executive Director will so advise the members of the Agency Board at the next meeting at which time a final determination will be made.

2. If the sponsor disagrees with the outcome, then within 10 days of the Agency Board's decision, the sponsor will be afforded an opportunity to request a hearing on the matter.

3. All requests for hearings will be referred to the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1.

(h) Pursuant to the Act, persons appointed to administer the affairs of the project after removal of a housing sponsor shall only serve for a period co-existent with the duration of the original violation giving rise to the need for the corrections or until the Agency is assured in a satisfactory manner that the violation or violations of a similar nature will not recur. Upon correction of the violation in a satisfactory manner, the housing sponsor may submit a request to the Agency for restoration of control back to sponsors. The Agency will respond to such request within 30 days. During that period in which the Agency is considering the housing sponsor's request, the term of the persons appointed to administer the affairs of the project will continue to serve for that period.

5:80-7.3 Other remedies and rights

The regulations in this subchapter are intended and shall not be deemed to abridge any other rights or remedies of the Agency or the sponsor.

5:80-7.4 Waiver

Upon a vote by the members of the Agency Board that there is an immediate need to take action and a finding that failure to take immediate action could jeopardize the health and safety of tenants at the housing project or cause substantial harm to the financial viability or physical structure of the project, the Agency may waive the regulations set forth above and immediately implement appropriate action. Forty-eight hour notice will be given to housing sponsors prior to any action taken by the Board under this provision.

INDEX OF ADOPTED RULES

The *Index of Adopted Rules* contains rules which have been promulgated subsequent to the most recent update of the New Jersey Administrative Code. **Rules which are being promulgated in this Register, and which appear in the Table of Rules in this issue, do not appear in this index. These rules will appear in next month's Index of Adopted Rules.**

The rules in this index are listed in order of their N.J.A.C. citations. Accompanying the N.J.A.C. citation for each rule is a brief description of the rule's content, the Register citation for its proposal notice, its Office of Administrative Law (OAL) document citation (which should be used if ordering a copy of the rule from OAL), and the Register citation for its adoption. At the bottom of the listing for each Title is the date of the most recent Code update for that Title.

The *Index of Adopted Rules* appears in the first Register of each month, complementing the *Index of Proposed Rules* which appears in the second Register of each month. Together,

these indices make available to a Code and Register subscriber all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activities from the initial proposal through final promulgation.

For any rule not yet published in a Code update, the full text of the proposal notice as published in the Register, plus the full text of any changes published with the adoption notice in the Register, constitute an official copy of the promulgated rule. If the full text of either the proposed rule or any changes does not appear in the Register, it is available for a fee from:

Administrative Filings
CN 301
Trenton, New Jersey 08625

To be certain that you have a copy of each proposed rule which may have been adopted but which does not yet appear in the most recent Code update, you should retain each Register beginning with June 4, 1984.

HOW TO USE THE TABLE OF CITATIONS

Generally, the key to locating a particular adopted rule is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research.

The N.J.A.C. citation itself indicates the extent of the changes to a rule. Every citation includes, at a minimum, the numerical designation of the title and chapter (1:30), and may include subchapter and section designations (1:30-1.1). In general, the less specific the citation, the more extensive the rule change. For example, 1:30 means that much or all or chapter 30 of title 1 has been modified; 1:30-1 means that several sections of subchapter 1 of 1:30 have been revised; and 1:30-1.1 means that only section 1 of 1:30-1 has been changed.

An N.J.A.C. citation that includes several section numbers (1:30-1.1, 1.3, 1.4) or several different subchapter and section numbers (1:30-1.1, 2.1, 4.3) means that similar or related changes have been made to those provisions. Additionally, a citation may designate an entirely new rule rather than an amended one.

In general, each rule is listed separately and chronologically. However, where an adoption notice contained several related rule adoptions or amendments within a single chapter, all of those changes may be under a single entry. Therefore, to be certain that you have found all of the changes to a given rule, be sure to scan the citations above and below that rule to find any entries which might contain related rule adoptions, including the one you are researching.

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT CITATION	ADOPTION NOTICE (N.J.R. CITATION)
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1:6A-3.1	Special education hearings: applications for emergency relief	16 N.J.R. 780(a)	R.1984 d.258	16 N.J.R. 1468(a)
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2:3-2	Readopted: Livestock for Breeding and Herd Replacements	16 N.J.R. 294(a)	R.1984 d.226	16 N.J.R. 1469(b)
2:5-2	Readopted: Equine Embargo rules	16 N.J.R. 578(a)	R.1984 d.221	16 N.J.R. 1471(a)
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2:71-2.28-2.31	Fruits and vegetables; fees for inspection and grading	16 N.J.R. 946(a)	R.1984 d.301	16 N.J.R. 1966(a)
2:76-1.2	Agricultural development areas	16 N.J.R. 947(a)	R.1984 d.274	16 N.J.R. 1714(a)
2:76-2.2	Agricultural management practices	16 N.J.R. 948(a)	R.1984 d.275	16 N.J.R. 1714(b)
2:76-3	Farmland preservation programs	16 N.J.R. 579(a)	R.1984 d.229	16 N.J.R. 1471(c)
2:76-4	Municipally-approved farmland preservation	16 N.J.R. 582(a)	R.1984 d.230	16 N.J.R. 1475(a)
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3:1-13.1	Insurance tie-in prohibition	16 N.J.R. 586(a)	R.1984 d.209	16 N.J.R. 1338(a)
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5:23-4.5	Fire protection subcode official and local fire service	16 N.J.R. 950(a)	R.1984 d.303	16 N.J.R. 1968(b)
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6:20-3.1	Correction: Determining tuition rates (public schools)	15 N.J.R. 2089(a)	R.1984 d.205	16 N.J.R. 1969(b)
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7:14A-14	NJPDES: oil and grease effluent limitations	15 N.J.R. 1313(b)	R.1984 d.234	16 N.J.R. 1746(a)
7:15	Correction: Water quality management planning and implementation process	15 N.J.R. 765(b)	R.1984 d.110	16 N.J.R. 1988(a)
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7:23-1, 2	Readopted: rules on Flood Control Bond Grants	16 N.J.R. 668(a)	R.1984 d.277	16 N.J.R. 1765(a)
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7:26-13A	Hazardous Waste Facilities Siting Commission rules	16 N.J.R. 408(b)	R.1984 d.304	16 N.J.R. 1989(a)
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8:33H-3.11	Long-term care beds for former psychiatric patients	16 N.J.R. 806(a)	R.1984 d.276	16 N.J.R. 1784(a)
8:43B-10	Pharmaceutical services in hospital facilities	16 N.J.R. 107(a)	R.1984 d.248	16 N.J.R. 1506(a)
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8:71	Additions to generic drug list	16 N.J.R. 202(a)	R.1984 d.220	16 N.J.R. 1595(a)
8:71	Additions to generic drug list	16 N.J.R. 202(a)	R.1984 d.286	16 N.J.R. 1994(a)
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10:63-1.6	Long-term care: authorization process	15 N.J.R. 1917(a)	R.1984 d.210	16 N.J.R. 1351(a)
10:66-1.2	Independent Clinic Services Manual: "Specialist" redefined	16 N.J.R. 811(a)	R.1984 d.271	16 N.J.R. 1788(a)
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10:81-11.18	PAM: minimum support assessment	16 N.J.R. 828(a)	R.1984 d.243	16 N.J.R. 1605(b)
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10:82-5.11	AFDC: supplemental payments-retrospective budgeting	16 N.J.R. 832(a)	R.1984 d.240	16 N.J.R. 1608(a)
10:85-4.1, 9.4	General Assistance: increase in allowance standards; legally responsible relative schedules	16 N.J.R. 833(a)	R.1984 d.241	16 N.J.R. 1610(a)
10:94-5.6	Medicaid "cap" income eligibility standard	16 N.J.R. 684(a)	R.1984 d.244	16 N.J.R. 1611(a)
10:125	Capital Funding for community-based facilities	16 N.J.R. 835(a)	R.1984 d.305	16 N.J.R. 1994(b)
10:140	Development Disabilities Council: priority funding areas	16 N.J.R. 837(a)	R.1984 d.287	16 N.J.R. 1996(a)

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10A:33	Juvenile detention commitment programs	16 N.J.R. 1160(a)	R.1984 d.299	16 N.J.R. 1996(b)
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11:General information	Unauthorized insurers which qualify as eligible surplus lines insurers	_____	R.1984 d.296	16 N.J.R. 2001(a)

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13:29-1.7	Board of Accountancy: readopted conditional credit rule	16 N.J.R. 1025(a)	R.1984 d.311	16 N.J.R. 2003(b)
13:29-1.13	Board of Accountancy: readopted fee schedule	16 N.J.R. 1026(a)	R.1984 d.312	16 N.J.R. 2004(a)
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13:39	Pharmaceutical internships and externships: readopted Approved Training rules	16 N.J.R. 843(a)	R.1984 d.228	16 N.J.R. 1613(a)
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