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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 18, 1992
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 16, 1992

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **May 20, 1992.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 57(1992)
Tribute to Wayne Dumont, Jr.

Issued: March 19, 1992.
Effective: March 19, 1992.
Expiration: Indefinite.

WHEREAS, Wayne Dumont, Jr., was born in Paterson on June 25, 1914 and was graduated from Montclair Academy, Lafayette College in Easton, Pennsylvania and the University of Pennsylvania Law School; and

WHEREAS, he played minor league baseball for the former St. Louis Browns and later moved to Phillipsburg in 1940 where he began practicing law; and

WHEREAS, he served for six years as commandant of the New Jersey Military Academy at Sea Girt after having volunteered in World War II and enlisted and was later commissioned in the infantry; and

WHEREAS, after 31 years of service he retired from the Army National Guard as a lieutenant colonel in 1974; and

WHEREAS, he first graced our State capitol in 1951 after being elected to represent Warren County as a State Senator; and

WHEREAS, he was re-elected to the Senate for three successive terms in 1955, 1959, and 1963, during which time he served as Senate Majority Leader, Senate President and Acting Governor; and

WHEREAS, after a two-year absence following an unsuccessful gubernatorial bid he returned to the Senate in 1967 where he remained until his retirement in July 1990; and

WHEREAS, he was responsible for sponsoring well over 500 bills during his legislative career including the State's first school aid bill and farmland preservation law; and

WHEREAS, he was respected and widely admired and well known for his independent thinking and courageous stands on issues; and

WHEREAS, he is considered to be our State's first "full-time legislator", working tirelessly for the people of New Jersey on issues ranging from the Environment to Education; and

WHEREAS, his sincere dedication and commitment to public and community service never detracted from his love and devotion to his family and friends; and

WHEREAS, his son, Wayne Hunt Dumont, carried on his father's tradition of distinguished public service by serving as United States Attorney for New Jersey from December 1981 to August 1985, and by presently serving as a member of the State Commission on Investigation; and

WHEREAS, in spite of his significant stature among his colleagues and admirers, he was the embodiment of humility and sincerity, and a friend to all who had the privilege to know him; and

WHEREAS, it is fitting and appropriate for the State of New Jersey to mark the passing of Wayne Dumont, Jr., a great statesman and a public servant who always put New Jersey first;

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

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours beginning on Friday, March 20, 1992, through and including Sunday, March 22, 1992 in recognition and mourning of the passing of a distinguished legislator and leader, Wayne Dumont, Jr.

2. This Order shall take effect immediately.

RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Examination Charges
Travel Expenses
Proposed Amendment: N.J.A.C. 3:1-6.6

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

Authority: N.J.S.A. 17:1-8 and 8.1; 17:9A-335 and 375; 17:10-11 and 23; 17:11A-45(g); 17:11B-11 and 13; 17:12B-172; 17:15-4; 17:15A-26; 17:15B-14 and 17; 17:16C-15; 17:16D-7 and 8; 45:22-10 and 11.

Proposal Number: PRN 1992-161.

Submit comments by May 20, 1992 to:
Robert M. Jaworski, Deputy Commissioner
Division of Regulatory Affairs
Department of Banking
20 West State Street, CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposal would amend the Department's rule setting the amount of fees charged for examining banks, savings banks, savings and loan associations, credit unions, trust companies, trust departments, holding companies, licensees, and others. The Department has found that the cost of examinations has grown and the cost for travel has not been adequately reflected in the examination fee. The amendments would establish a fee of $15.00 per day for travel expenses to help defray costs currently borne by the Department. The amount of the fee for the examination itself would remain unchanged.

Social Impact

These amendments will increase the total amount which is billed to each in-State entity examined by the Department. This shifts the burden of paying for this regulatory service from the general taxpaying public to the entities themselves, who benefit economically from engaging in financial service activities in this State.

Economic Impact

The proposed amendments will have a negative economic impact on the entities which are examined by the Department as they will have to pay $15.00 per day per examiner more than they are currently paying. To the extent that the proposed changes have a negative impact on these entities, they will have a corresponding positive impact on the Department and the State.

Regulatory Flexibility Analysis

Most of the entities affected by these proposed amendments are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The changes would increase the costs to these businesses; however, the increases are necessary to reimburse the State for the costs associated with these services. Because the travel expense fee is based on the services provided and not on the size of the business, the Department does not differentiate the amount of the fee based on the size of the business. The Department also notes that examinations of smaller entities usually take fewer days than examinations of larger ones, hence the total amount of travel fees charged smaller entities will typically be less.

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

3:1-6.6 Examination charge

(a) The individual per diem per person examination charge for an examination of a bank, savings and loan association or holding company shall be $300.00, **plus $15.00 for travel expenses.**

(b) The individual per diem per person examination charge for an examination of a licensee, credit union, trust company or trust department of a bank, savings bank or savings and loan association, or any person not specified in this section shall be $325.00, **plus $15.00 for travel expenses.**

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Proposed Readoption: N.J.A.C. 5:23

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

Authority: N.J.S.A. 52:27D-123.

Proposal Number: PRN 1992-149.

Submit written comments by May 20, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX: (609) 633-6729

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules for the New Jersey Uniform Construction Code, N.J.A.C. 5:23, are scheduled to expire on March 1, 1993.

The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Through continuous revision over the past five years, these rules have remained current. Therefore, N.J.A.C. 5:23 is proposed for readoption without change.

P.L. 1975, c.217, as amended, specifically N.J.S.A. 52:27D-123, requires the Commissioner of Community Affairs to adopt a State Uniform Construction Code to govern all building construction in the State. This Code includes, in addition to the administrative rules, the barrier-free, asbestos hazard abatement, radon hazard and elevator safety subcodes, indoor air quality standards and procedures for buildings occupied by public employees; as well as the building, plumbing, fire protection, electrical, energy, mechanical, indoor air quality, one and two-family dwelling, and manufactured housing subcodes, which are adoptions of codes and standards issued by nationally recognized codewriting organizations.

The purpose of these rules is to establish standards and procedures for the regulation of building construction. Thus, the chapter includes subchapters concerned with administration and enforcement (including, *inter alia*, permit and certificate of occupancy requirements, variations, inspections, fees, compliance and enforcement, measures for dealing with unsafe structures and appeal procedures, subcodes, procedures and requirements for State, local and private enforcing agencies, standards and procedures for licensing of code enforcement officials and inspectors and tax exemptions for automatic fire suppression systems). The subchapters containing technical requirements were added for areas in which no nationally-recognized codes exist that could be adopted by reference.

Social Impact

Readoption of the rules, which includes readoption of the subcodes adopted by reference, will insure continuity in construction code enforcement throughout the State. Failure to readopt these rules would result in incalculable harm to purchasers and occupants of buildings, and to fire fighters and the general public, since there would no longer be any control over the construction and alteration of buildings and there would be no administrative safeguards against unsafe building practices.

Economic Impact

The proposed readoption includes no new costs. The chapter contains performance standards for construction in New Jersey. While such standards impose certain basic requirements, the methods and materials used to achieve the standard may vary within these requirements. In this way,

flexibility in compliance, allowing for a range of costs, is possible. Specific costs cannot be determined, due to the wide variety in types of construction projects undertaken, and in the material and manpower sources available; however, the costs of building and compliance would be derived from the market rates for materials and labor. The costs incurred by the builder for a particular project would be passed on to the consumer, or owner, of the unit being constructed or remodeled.

Regulatory Flexibility Analysis

The readoption will continue the imposition of standards on all phases of construction and on all components of the building industry (builders, plumbers, electricians, suppliers, etc.), many of which are small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The costs are derived from the market rates for materials and labor for the particular project, which may include the cost of professional, technical and other services, such as those of attorneys, engineers, planners, architects and other licensed personnel. The Department has determined that no exemptions based on business size should be provided in the rules, in the interest of maintaining public safety.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:23.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Administration and Enforcement Process; Increase in Size

Proposed Amendment: N.J.A.C. 5:23-2.5

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1992-136.

Submit comments by May 20, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625-0802

The agency proposal follows:

Summary

N.J.A.C. 5:23-2.5 of the Uniform Construction Code, entitled "Concerning Increase in Size", contains requirements for upgrading the existing portions of a building when additions are made. The requirements are applied when the percentage of the additions in floor area relative to the existing building floor area exceeds a threshold. The Department has become aware that this section is not being applied uniformly throughout the State, and also feels this section needs amendment due to revisions to the model codes regarding smoke detectors in single-family dwellings. Increases of 25 percent or more in R-3 or R-4 dwellings, or of five percent or more in other types of structures, will subject the entire building to the requirements of N.J.A.C. 5:23 in respect to means of egress, fire safety and ventilation.

The "floor area" used to determine the percentage of the addition has been computed in one of two ways. The first way uses the gross floor area of all floors combined; the second way, often referred to as the "footprint" method, uses the gross floor area of the largest floor only. The amendment makes it clear when each value should be used. For buildings built before January 1, 1977 (the effective date for the Uniform Construction Code) the more restrictive method of calculating floor area is applied, since the building may have been subject to less restrictive requirements upon its original construction. Buildings that were erected on or after January 1, 1977 would use the gross floor area of all floors combined.

The amendment also clarifies the requirements for smoke detectors when additions are made to single-family detached dwellings. Currently, the rule states that, when additions of five up to 25 percent are made to single-family dwellings, the entire dwelling must be provided with smoke detectors, as required in detached single family residences of Use Group R-3. The amendment makes it clear that these detectors may be hardwired or battery-operated. This is consistent with Interpretation No. 4, issued by the Department in 1978. Because of a lapse in distribution of this Interpretation, many inspectors have been requiring that detectors be installed consistent with the requirements for new structures. The Department feels that requiring hardwired detectors in the locations required in the Building Code represents a hardship for homeowners who are putting rather modest additions on their homes, especially in light of the many revisions made to this section since 1977.

Social Impact

The social impact of this amendment is to provide a reasonable level of life safety for occupants when buildings undergo additions. In addition, the amendment is intended to provide uniform enforcement of the requirements when there is an addition to an existing structure.

Economic Impact

The proposed amendment will have a positive economic impact by providing a more efficient and uniform enforcement when additions to buildings are made. Single-family detached dwelling owners in particular will benefit, since they will not be required to make extensive and costly renovations to the existing part of the dwelling to accommodate hardwired smoke detectors required for new structures, when undergoing a modest addition.

Regulatory Flexibility Analysis

This amendment, an exemption to the rule concerning increase in size, specifies that either hard-wired or battery operated smoke detectors are required in single-family dwellings, depending upon the date of construction and the size of any increase in floor area relative to the existing floor area. This provision makes clear that battery-operated smoke detectors can be used in certain circumstances, which is a benefit to the building owner, since such systems are less expensive and can be installed by the owner, as opposed to a hard-wired system, which requires installation by an electrician. This requirement, since it affects the public safety, must apply equally to all owners of single-family homes, whether or not they are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In fact, most owners of such buildings are individuals or small businesses. This amendment will not have any discernible impact on small businesses, apart from its effect on building owners generally. Since the amendments would relax existing requirements, affected small businesses would benefit to the same extent as large business owners.

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

5:23-2.5 Concerning increase in size

(a) If the structure is increased in floor area or height, the entire structure shall be made to conform with the requirements of the regulations in respect to means of egress, fire safety, light and ventilation.

1. This requirement shall not apply to increases of less than five percent to the floor area **of a building of any use group,** unless the construction official and appropriate subcode officials determine in writing that the application of this requirement is necessary in the public interest.

2. This requirement shall not apply to increases of less than 25 percent of the floor area in any detached owner-occupied single family [residence] **dwelling** of Use Group R-3 **or R-4;** provided however, that [all such structures exempted under this paragraph shall comply with all code requirements for automatic fire detection systems applicable to detached single family residences of use Group R-3.] **smoke detectors meeting the requirements of NFiPA 74 shall be installed and maintained in each story within the dwelling unit, including basements, in the immediate vicinity of the bedrooms and in all bedrooms. Such detectors may be either single station or multiple station interconnected units and may be battery operated or AC powered.**

(b) For the purpose of applying the requirements of this section, the floor area shall be the gross floor area of all floors combined for buildings erected on or after January 1, 1977, and shall be the gross floor area of the largest floor only for buildings erected prior to January 1, 1977. Habitable attics, habitable basements and garages not separated by fire walls shall be included in the gross

floor area of the building. Mezzanines and penthouses shall not be included in the gross floor area of the building.

Recodify existing (b) as (c) (No change in text.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Asbestos Hazard Abatement Subcode

Proposed Amendments: N.J.A.C. 5:23-2.17, 8.1 and 8.2

Proposed Recodification with Amendments: 5:23-8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.13, 8.14 and 8.15

Proposed Recodification with Amendments (effected as Repeals and New Rules): 5:23-8.3 as 8.13; 8.5 as 8.14; 8.16 as 8.10(d); 8.17 as 8.6; 8.18 as 8.11; 8.19 as 8.10(a)-(c); 8.20 as 8.12; 8.22 as 8.18; 8.23 as 8.21; and 8.24 as 8.20

Proposed New Rule: N.J.A.C. 5:23-8.19

Proposed Repeals: N.J.A.C. 5:23-8.12 and 8.21

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

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1992-134.

A **public hearing** will be held on Monday, May 11, 1992, 10:00 A.M. in Room 134 at:

Department of Community Affairs
101 South Broad St.
Trenton, N.J. 08625

Those wishing to testify are asked to notify Amy Fenwick Frank, of the Department, by telephone 609-292-7899, or in writing at the above address. The services of a sign language interpreter will be made available, if they are requested in advance. Please make the request of Ms. Frank, at the above address.

Submit written comments by June 19, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
101 South Broad St., CN 802
Trenton, N.J. 08625
FAX: 609-633-6729

The agency proposal follows:

Summary

The Department proposes to amend the asbestos removal provisions of the Uniform Construction Code. The amendments include a number of changes to substantially overhaul and update the Asbestos Hazard Abatement Subcode (subchapter 8 of the Uniform Construction Code). The amendments are based on advances in the state of the art for asbestos removal and the Department's experience in enforcing the existing regulations over the last several years. A balanced *ad hoc* committee which included asbestos safety control monitoring firms, asbestos abatement contractors, and public members worked for many months to make recommendations to the Department regarding revisions to this subchapter.

These amendments have two principal objectives:

1. Set forth clear and comprehensive rules governing the removal of asbestos from buildings which remain partially occupied while removal takes place. These requirements have heretofore been determined on a permit by permit basis.

2. Eliminate any possibility that the existing or proposed rules endorse or require the use of any patented system or procedure in connection with asbestos removal.

The Uniform Construction Code does not, at present, permit the removal of asbestos from occupied buildings as a matter of right. All removals from such buildings have been done under the variation provisions of the code. Measures adequate to protect occupants have been developed on a case-by-case basis for each project where removal from an occupied building has taken place. The Department believes that the public interest would be better served by the adoption of uniform rules for such removals and that the state of the art which has been developed through the case-by-case approach will now support such rules.

The current rules reflect work practices and methods which were developed for use in low rise unoccupied buildings, such as schools. Those practices and methods, generally referred to as a "negative air system," involve a specific scheme of ventilating an asbestos work area and isolating it with an air pressure differential. Air is drawn into the work area through the entrance to the work area and a specific exhaust rate from the work area is relied upon to create a lower air pressure inside the work area thereby confining any released asbestos fibers to the work area. The Department believes that the lack of positive control inherent with this system makes it inappropriate for use in occupied buildings. Asbestos fibers may escape the work area undetected. Additionally, the National Institute of Building Sciences has found, and reported in its "Asbestos Guide Specifications," that these current practices cannot, in fact, maintain work area negative air pressure differentials in taller buildings. Accordingly, these amendments include a number of isolation and control measures designed to eliminate the possibility that fibers will escape the work area and migrate to occupied portions of the building and to ensure that negative air pressure is maintained at all times in all work areas.

The National Institute of Building Sciences, in the same publication already mentioned, advises that a New Jersey contractor has been granted a patent on a specific scheme of ventilating an asbestos work area and isolating it with an air pressure differential which is called the "negative air system." The Institute further advises that the holder of the patent is selling licenses to use the system and is prosecuting unlicensed users of the system. The Department has been advised that there are strong similiarities between procedures which have been required for many years by the current rules and those which are the subject of the "negative air system" patent. While the "negative air" patent is the most comprehensive patent the Department is aware of, there are other patented devices or practices involving asbestos removal extant. These amendments contain changes and clarifications which make it clear that the rules do not require or endorse any patented system or technique for asbestos removal.

The major changes to the subchapter include: a new section setting forth the requirements for asbestos hazard abatement in occupied buildings, the replacement of the section on minor work with a new operations and maintenance section, changes in the section on glovebag techniques, asbestos safety technician certification requirements, including education and experience, and a new requirement that asbestos be removed prior to the demolition of buildings not otherwise subject to the subchapter. Additionally, the sections of this subchapter have been recodified. A table showing the old and new citations is included at the beginning of the text of the proposed rules.

Specific requirements establishing pressure differentials which must be maintained between the area outside the work area and the work area itself have been added to the subchapter. The Uniform Construction Code currently uses specified pressure differentials in connection with smoke evacuation systems, stairwells, laboratories and other building configurations where public safety is protected by controlling the flow of air from one area to another. This approach now is being applied in asbestos removal work to prevent the accidental release of asbestos fibers from the work area into the rest of the building, which is possible with the "negative air system."

A higher pressure differential number is specified for asbestos abatement in occupied buildings than that which is proposed for unoccupied buildings. Pressure will be monitored and action required if the pressure differential falls below a certain level. This requirement reflects an advance in the safety of asbestos removal projects because it alerts the contractor to a potential problem before there can have been an asbestos fiber release from the containment area. The approach required by the present rules relies solely on air monitoring, which detects fiber migration only after it has occurred. The Department is very interested in receiving comments on the proposed pressure differentials requirements. Specifically, the Department would like comments on the following points:

1. The proposed levels of pressure differential;

2. Whether there should be a separate precommencement pressure differential requirement, and, if so, what the number should be; and

3. Whether the Department should continue to specify a required number of air exchanges per hour within the work area or whether this requirement has been made obsolete by the inclusion of a pressure differential requirement.

There is also a change to subchapter 2 of the Uniform Construction Code to provide for the removal of asbestos-containing material from all buildings to be demolished.

The following is a section-by-section review of the significant changes. The citations given are the old citations. The new citations are included in parentheses.

N.J.A.C. 5:23-8.2, Definitions. Definitions of "amended water," "authorized personnel," "certificate of completion," "flame-resistant polyethylene sheet," "glovebag work area enclosure," "occupied building," "strippable coating," and "water column" have been added. "Minor work" has been renamed "operations and maintenance activity" and "large asbestos hazard abatement project" is now known as simply "asbestos hazard abatement project." "Asbestos hazard abatement project" is now defined as the removal of more than 10 square feet or more than 25 linear feet of asbestos-containing material. This change is made to bring the regulations into conformity with the National Emission Standards of Hazardous Air Pollutants (40 CFR Part 61). "Primary seal" has been eliminated because this term no longer is used. Instead, the rules now use simply "critical barrier." Finally, the definition of "separation barrier" has been corrected.

N.J.A.C. 5:23-8.5, Minor asbestos hazard abatement project (new N.J.A.C. 5:23-8.14, Operations and maintenance activities). As explained above, the threshold for projects to be subject to all of the requirements of this subchapter is now set as the removal of more than 10 square feet or more than 25 linear feet of asbestos-containing material. The removal of less than this amount may be undertaken as part of an operations and maintenance activity. Requirements for recordkeeping and for the wet removal of any such material are contained in this section.

N.J.A.C. 5:23-8.6, Variations (new N.J.A.C. 5:23-8.4). The requirements and fees for obtaining a variation are set forth in this section, including new provisions for obtaining a variation for dry removal of asbestos-containing material.

N.J.A.C. 5:23-8.7, Construction permit for asbestos abatement (new N.J.A.C. 5:23-8.5). This section has been modified to include provisions for permits to allow occupancy during abatement.

N.J.A.C. 5:23-8.16, Duties of asbestos safety technician. This section has been combined with N.J.A.C. 5:23-8.19, Asbestos safety technician: certification requirements, to form a new section, N.J.A.C. 5:23-8.10, which contains all of the requirements for, and duties of, asbestos safety technicians.

N.J.A.C. 5:23-8.18, Asbestos safety control monitor (new N.J.A.C. 5:23-8.11). This section has been amended to require that asbestos safety control monitoring firms obtain insurance equivalent to that which is required of other third party inspection agencies under the Uniform Construction Code.

N.J.A.C. 5:23-8.19, Abatement in occupied buildings. A new section, N.J.A.C. 5:23-8.19, has been added that describes the provisions under which abatement may be permitted in occupied buildings. These provisions include notification requirements, air monitoring requirements, and contingency plans based on air and pressure monitoring results. (N.B. The term "occupied buildings" as it is used in subchapter 8 means buildings that are occupied at the time that asbestos removal is done. This should not be confused with an "occupiable space" such as a classroom, where asbestos removal is being done in a building that is unoccupied at the time that the removal work is in progress.)

N.J.A.C. 5:23-8.21, Appeals. This section is being repealed because appeals are covered under the administrative portion of the Uniform Construction Code.

N.J.A.C. 5:23-8.22, Demolition (new section N.J.A.C. 5:23-8.18). This section, and subchapter 2 of the Uniform Construction Code, have been modified to show that demolition in all buildings containing asbestos must be performed in accordance with U.S. Environmental Protection Agency standards.

Social Impact

These amendments are intended to make the existing rules governing asbestos hazard abatement clearer and to improve the efficiency and safety with which asbestos removal jobs are conducted.

Economic Impact

It is not anticipated that these proposed changes will generally increase the cost of asbestos hazard abatement except in occupied buildings. The proposed pressure differential requirements for removal from occupied buildings will increase the care needed to establish the containment which isolates the work area and increase the cost of that portion of the job. The Department believes, however, that the cost of establishing the containment constitutes no more than five percent of the cost of an asbestos removal job, so that even major increases in that portion of the work would not greatly increase the cost of the job. More importantly, these minor cost increases would be associated only with removals from occupied buildings. The Department believes that the rules proposed are absolutely essential to protect the health of the occupants of these buildings. Provisions to allow asbestos removal in occupied buildings may actually lessen the economic burden on some agencies and school districts.

Regulatory Flexibility Analysis

The proposed amendments and new rule govern the activities of approximately 65 asbestos safety control monitoring firms, most of which can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules provide standards which guide the monitoring firms as they supervise the contractors in the removal/abatement of asbestos from public buildings such as schools, day care centers, libraries and government offices. The cost of these standards is discussed in the Economic Impact above. Since most of the firms affected by the rules are small businesses, and the safety of the public is involved, the Department has determined that no differentiation based on business size is appropriate.

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

SUBCHAPTER 8
Recodification Table

Old Cite	Title	New Cite
8.1	Title; scope; intent	8.1
8.2	Definitions	8.2
8.3	Pre-project procedures	8.13
8.4	Enforcement; licensing; special services	8.3
8.5	Minor asbestos hazard abatement project (Operations and maintenance activities)	8.14
8.6	Variations	8.4
8.7	Construction permit for asbestos abatement	8.5
8.8	Inspections; violations	8.7
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8.12	Precautions and procedures/small projects	Deleted
8.13	Asbestos encapsulation and enclosure	8.16
8.14	Glove bag technique	8.17
8.15	Disposal of asbestos waste	8.22
8.16	Duties of asbestos safety technician	8.10(d)
8.17	Coordination with other permits	8.6
8.18	Asbestos safety control monitor	8.11
8.19	Asbestos safety technician	8.10(a)-(c)
8.20	Application of asbestos	8.12
8.21	Appeals	Deleted
8.22	Demolition	8.18
8.23	Air monitoring methodology	8.21
8.24	Removal of non-friable asbestos	8.20
NEW	Occupied buildings	8.19

5:23-2.17 Demolition or removal of structures

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

(d) Asbestos abatement: Before a structure can be demolished or removed, the owner or agent shall document that the requirements of USEPA 40 CFR 61 subpart M have been or shall be met. A permit to demolish or remove the structure shall not be issued until the owner or agent notifies the enforcing agency that all friable asbestos or asbestos-containing material that will become friable during demolition or removal has been properly abated.

SUBCHAPTER 8. ASBESTOS HAZARD ABATEMENT SUBCODE

5:23-8.1 Title; scope; intent

(a) This part of the regulations, adopted pursuant to P.L.1975, c.217, the Uniform Construction Code Act (N.J.S.A. 52:27D-119 et

seq.) and entitled Asbestos Hazard Abatement Subcode shall be known and may be cited throughout the regulations as N.J.A.C. 5:23-8 and when referred to in this subchapter, may be cited as "this subchapter."[.]

1. In addition, the New Jersey Departments of Health and Labor have jointly adopted regulations pursuant to P.L.1984, c.217, the Asbestos Control and Licensing Act (N.J.S.A. 34:5A-32 et seq.) and are cited as N.J.A.C. 8:60, and N.J.A.C. 12:120, respectively. These regulations provide for: a standardized training course for all asbestos workers; licensing of asbestos abatement contractors; and issuing asbestos [working] **worker** performance permits for asbestos abatement workers.

i. (No change.)

ii. Copies of N.J.A.C. 12:120 may be obtained from the New Jersey Department of Labor, Division of Workplace Standards, Asbestos Control and Licensing, CN 054, Trenton, New Jersey 08625-0054. These rules provide that any asbestos abatement project, excluding [minor asbestos hazard abatement projects] **an operations and maintenance activity,** must be conducted by a licensed contractor pursuant to the referenced rules, including projects involving buildings and structures which are not within the scope of this subchapter.

2. The New Jersey Department of Environmental Protection **and Energy** has authority to enforce regulations regarding the transport and disposal of asbestos-containing materials pursuant to N.J.S.A. 13:1D-9 and 13:1E-1 et seq. These rules are cited as N.J.A.C. 7:26.

i. (No change.)

3. All samples collected and submitted for analysis for asbestos pursuant to this subchapter shall be analyzed for asbestos in accordance with N.J.A.C. 5:23-[8.23]**8.21.**

(b) (No change.)

(c) This subchapter, which pertains to educational facilities and public buildings as defined in N.J.A.C. 5:23-8.2, shall control matters relating to: construction permits for asbestos abatement; fees; licenses; certification; work permits; reports required; documentation; inspections by the asbestos safety technician; air monitoring; enforcement responsibilities; and remedies and enforcement. This subchapter controls the abatement of asbestos from a building. A construction permit for renovation or demolition shall be required pursuant to N.J.A.C. 5:23-2 for any other work performed subsequent to the asbestos abatement project.

1. Any private building [which] **that** houses a day care center, nursery or educational facility shall be [under the jurisdiction of] **subject to** this subchapter when an asbestos hazard abatement project takes place within the building or any part of the building regardless of the remoteness of the facility or its size relative to the building. [A small or large] **An** asbestos hazard abatement project shall have a construction permit from the [administrative authority having jurisdiction] **enforcing agency.**

2. All common areas in a [State-leased] building**, or part thereof, leased by a public entity,** such as, but not limited to, building entrances and lobbies, rest rooms, cafeterias, hallways, stairwells, and elevators where **public** employees [from the State-leased portion of the building] may normally transverse and all areas with mechanical equipment that serve the [State-leased] areas **occupied by the public employees,** shall be [under the jurisdiction of] **subject to** this subchapter when an asbestos hazard abatement project takes place within the building or any part of the building.

3. (No change.)

4. Projects involving the removal of non-friable, miscellaneous asbestos-containing material [for] **from** interior spaces [are under the jurisdiction of] **shall be subject to** this subchapter where the method chosen to remove the non-friable material [will] **may** cause the building environment to become contaminated with airborne **asbestos** fibers [such as grinding the surface of vinyl asbestos floor tiles]. Removal shall be in accordance with N.J.A.C. 5:23-[8.24]**8.20.**

(d) Until further action is taken, this [Subcode] **subchapter** remains advisory for all other buildings and structures in the State.

(e) This subchapter seeks to provide and ensure public safety, health, and welfare insofar as they are affected by asbestos and asbestos-containing materials. It is not intended to, nor shall it be construed to, conflict with or impede the operation of the asbestos work standards issued by the Occupational Safety and Health Administration, 29 CFR Section 1910.1001 et seq., 29 CFR Section 1926.58 and N.J.A.C. 12:100-12, the Asbestos Subchapter of the New Jersey Safety and Health Standards for Public Employees[, N.J.A.C. 12:100 et seq]. The purpose of this subchapter is to assure that work is performed in a safe manner as a pre-condition to the issuance of a certificate of occupancy.

1.-2. (No change.)

3. Asbestos [which] **that** is, or [which] **that** can readily become, friable was a widely used construction material. Its removal, replacement, repair, enclosure or encapsulation shall be considered construction work and **shall** therefore [requires] **require** a construction permit issued pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27[d]**D**-119 et seq.). Asbestos and asbestos-containing materials were, in many cases, used in order to satisfy important code requirements pertaining to fire safety. Accordingly, where asbestos was used originally to satisfy fire code requirements, it shall not be removed unless it is replaced as part of the project, with material or assembly which has equivalent fire resistive or heat resistive characteristics. Additionally, any encapsulation materials or methods shall conform to the construction requirements of the Uniform Construction Code.

5:23-8.2 Definitions

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

. . .

"Amended water" means water to which a surfactant has been added.

. . .

"Authorized personnel" means the owner, the owner's representative, asbestos abatement contractor personnel, asbestos safety control monitor personnel, emergency personnel, or a representative of any Federal, state, or local regulatory agency or other personnel related to the project.

"Certificate of Completion" shall mean the certificate issued by the asbestos safety control monitor signifying that the asbestos hazard abatement work has been completed in conformance with N.J.A.C. 5:23-8.

"Construction permit for asbestos abatement" means required official approval to commence any [large and small] asbestos hazard abatement project. This permit is issued by the [administrative authority having jurisdiction] **enforcing agency.**

. . .

"Critical barrier" means two layers of six mil polyethylene sheeting that completely seals off the work area to prevent the distribution of fibers to the surrounding area, such as the opening between the top of a wall and the underside of ceiling construction, electrical outlets, nonremovable lights, HVAC systems, windows, doorways, entranceways, ducts, grilles, grates, diffusers, wall clocks, speaker grilles, floor drains, sink drains, etc.

. . .

"Engineering controls" means all methods used to maintain low **fiber counts in** work [area fiber counts] **areas and occupied spaces**, including**, but not limited to,** air management [and], barriers to [assure] **ensure** public safety**, and methods to confine airborne asbestos fibers to the work area.**

. . .

"Flame-resistant polyethylene sheet" means a single polyethylene film in the largest sheet size possible to minimize seams, six mil thick, conforming to requirements set forth by the National Fire Protection Association Standard 701, Small Scale Fire Test for Flame-Resistant Textiles and Films.

. . .

"Glove bag" means a [plastic] **polyethylene** bag especially designed to [contain] **enclose** sections of [pipe] **equipment** for the purpose of removing [short lengths of] damaged asbestos-**containing** material without releasing fibers into the air.

"Glovebag work area enclosure" means the enclosure that defines the work area for glovebag activity.

"HEPA" means High Efficiency Particulate [Absolute] **Air** filter, capable of filter efficiency of 99.97 percent down to 0.3 um (microns).

"[Large asbestos] **Asbestos** hazard abatement project" means the [asbestos-containing material which involves] removal, enclosure, or encapsulation [within one year] of [160] **more than 10** square feet [or more] of asbestos-containing material used on [an] **any** equipment, wall, or ceiling area; or [involves] the removal or encapsulation, using a liquid material applied by a pressurized spray, [within one year] of **260 more than 25** linear feet [or more] of asbestos-containing material on covered piping.

...

["Minor asbestos hazard abatement project" means corrective action using recommended work practices to minimize the likelihood of fiber release from damaged areas of asbestos ceilings, pipe and boiler insulation which involves the removal, repair, encapsulation or enclosure of 25 square feet or less of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, of 10 linear feet or less of asbestos-containing material on covered piping within one year from the start of the initial abatement work. The repair, enclosure and encapsulation by methods other than pressurized spray of any amount of asbestos-containing material, used to cover piping, shall also be a minor asbestos hazard abatement job.]

...

"NESHAP" means the National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61).

"NIOSH" means the National Institute for Safety and Health.

...

"Occupied building" means a building or structure where occupancy is permitted in certain areas outside of the required containment during an asbestos hazard abatement project.

"Operations and maintenance activity" means corrective action not intended as asbestos abatement. The amount of friable asbestos containing material that can be abated per project is 10 square feet or less or, if on covered piping, 25 linear feet or less.

...

"[Primary seal/critical barrier" means two layers of 6 mil polyethylene sheeting that completely seals off the work area to prevent the distribution of fibers to the surrounding area, such as the opening between the top of a wall and the underside of ceiling construction, electrical outlets, nonremovable lights, HVAC systems, windows, doorways, entranceways, ducts, grilles, grates, diffusers, wall clocks, speaker grilles, floor drains, sink drains, etc.]

...

"Polyethylene sheet" means a single six mil thick polyethylene film.

...

"Public building" means any building or structure or part thereof, owned, leased or managed by [a public entity, in which any public employees of the State, any county or any municipality, including any department, division, bureau, board, council, agency or authority of the State, county or municipality, or of any special district or authority, are regularly present for purposes of work or training] **the State or any of its departments, divisions, bureaus, boards, councils, authorities, or other agencies; or by any county, municipality, or any agency or instrumentality thereof.**

...

"Separation barrier" means a [constructed wall with no door that separates the clean area from the work area having a fire rating, if applicable, and shall not interfere with the means of egress. Polyethylene sheeting (minimum 2 layers of 6 mil) shall be placed on the work side of the barrier so that it completely seals off the work area to prevent the distribution of fibers to the surrounding area] **wall constructed to isolate the clean area from the work area and to support the polyethylene sheets.**

["Small asbestos hazard abatement project" means the removal, enclosure, or encapsulation within one year of more than 25 and less than 160 square feet of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of more than 10 and less than 260 linear feet of asbestos-containing material on covered piping.]

...

"Strippable coating" means a water-based latex material, which is either available in aerosol cans or pre-mixed for spray application, formulated to adhere gently to surfaces and to be removed cleanly by peeling off at the completion of the abatement project.

...

"Water column (w.c.)" means a unit of measurement for pressure differential.

[5:23-8.3 Pre-project procedures

Before an asbestos abatement project begins, the owner shall have evaluated whether or not the scope of work for a specific project will require that all surfaces in the work area are to be HEPA vacuumed and/or wet-wiped. This is in order to remove any dust which may contain asbestos and might, therefore, interfere with the final inspection and final air clearance level needed to reoccupy the building. The surfaces to be cleaned shall include, but not be limited to, all horizontal and vertical surfaces and such inside spaces as room ventilators, storage lockers, and utility and storage closets. The cleaning shall be accomplished by trained employees of the building owner as delineated in this subchapter before the asbestos abatement project begins or it shall be made part of the scope of work of an asbestos abatement project to be completed by the licensed contractor.]

5:23-[8.4]**8.3** Enforcement; licensing; special technical services

(a) Except as is otherwise provided in (b)1 below, the provisions of this subchapter shall be enforced by municipal enforcing agencies utilizing [Asbestos Safety Control Monitors] **asbestos safety control monitors** [()**or by** the New Jersey Department of Community Affairs, hereafter cited as the Department, if applicable[)], and shall be administered and enforced uniformly throughout the State. This subchapter shall be in addition to existing regulations already adopted pursuant to the Uniform Construction Code Act (P.L.1975, c.217 as amended) and known as the Regulations for the Uniform Construction Code (N.J.A.C. 5:23). This subchapter contains administrative [procedure] **procedures** for the inspection of asbestos abatement work involving[:] removal[;], encapsulation[;], enclosure[;], repair[;], renovation, or demolition work which disturbs asbestos.

1. (No change.)

(b) [Except as is otherwise provided in (b)1 below, the] **The** joint regulations adopted by the New Jersey Department of Health and Labor, which are cited as N.J.A.C. 8:60 and N.J.A.C. 12:120, respectively, provide the licensing requirements of contractors who perform any of the functions of application, enclosure, removal or encapsulation.

1. Rules concerning licenses are as follows:

i. A licensed contractor shall be required for [a large] **an** asbestos hazard abatement project [or a small asbestos hazard abatement job].

ii. A licensed contractor shall not be required for [a minor asbestos hazard abatement project] **an operations and maintenance activity.**

2. Nothing herein shall be construed as limiting the ability of the Department of Labor to cite contractors for violations of the provisions of this subchapter.

(c) (No change.)

[5:23-8.5 Minor asbestos hazard abatement project

(a) Minor asbestos hazard abatement project, as defined in N.J.A.C. 5:23-8.2 involves asbestos abatement work which may be performed without application or notice to the administrative authority having jurisdiction. Mechanical, electrical, plumbing or general construction work which involves the incidental disturbance of asbestos-containing material shall be considered a minor asbestos hazard abatement project. Examples of minor work include, but are not limited to, corrective action which includes removal, repair, encapsulation and enclosure of asbestos-containing insulation on pipes, beams, walls or ceilings, etc.; disturbance or routine maintenance activities which may involve asbestos-containing material; clean up of asbestos debris from a floor; and maintenance activities which may include the removal of asbestos-containing

material, if required in the performance of another maintenance activity not intended as asbestos abatement, or minor repair to damaged insulation which do not require removal.

1. Exception: Although the enclosure of any amount of asbestos-containing material used to cover pipe does not require a permit for asbestos abatement pursuant to this subchapter it shall be considered construction work. A construction permit, therefore, may be required by the administrative authority having jurisdiction pursuant to N.J.A.C. 5:23-2.

(b) Minor asbestos hazard abatement work requires general isolation of the work area from the surrounding environment, proper clean-up procedures, and shall be conducted by those who have successfully completed a maintenance/custodial or worker training course approved by the New Jersey Department of Health. Anyone who performs minor work must have access to shower facilities after performing asbestos related work. Any public employee physically involved in maintenance or abatement activities of asbestos-containing material, and who may thus be exposed to airborne fibers, shall wear, as a minimum a powered air purifying respirator (PAPR).

(c) Work practices used either singly or in combination to effectively reduce asbestos exposure during maintenance and renovation operations shall employ wetting methods, glove bags, and mini-enclosures as may be appropriate.

1. Preparation of the area before renovation or maintenance activities, regardless of the abatement method that will be used, shall include the wet-wiping and/or HEPA vacuuming of all objects that are to be removed from the work area to protect them from asbestos contamination. If the situation warrants, objects that cannot be removed shall be wet-wiped, HEPA-vacuumed and covered completely with a minimum of two layers of six mil polyethylene plastic sheeting before the work begins.

2. Wetting methods requirements are as follows:

i. Wetting methods shall be used whenever asbestos-containing materials are disturbed.

ii. Asbestos material shall be wetted using amended water or another wetting agent applied by means of an airless sprayer to minimize the disturbance of asbestos-containing material. Asbestos-containing material shall be wetted from the initiation of the maintenance or renovation operation that disturbs asbestos-containing material. The wetting agents shall be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is wet and remains wet until final disposal.

3. Glove bag work practices requirements are as follows:

i. The glove bag procedures delineated in N.J.A.C. 5:23-8.14 shall be followed when removing asbestos-containing material from pipes, pipe fittings and elbows. Air monitoring shall not be required unless the glove bag procedures pose a potential hazard.

4. Mini-enclosures requirements are as follows:

i. In order to reduce the size of the containment area, a mini-enclosure may be built around a work area. This might appropriately be done, for example, when the removal of asbestos is from a small ventilation system or from a short length of duct in which a glove bag is either not large enough or not of the proper shape to enclose the work area. Such enclosures shall be constructed of a minimum of two layers of six mil polyethylene plastic sheeting and shall be small enough to restrict entry into the asbestos work area to one or two workers. For example, a mini-enclosure can be built in a small utility closet when asbestos-containing material is to be removed from it.

ii. A mini-enclosure is not required for incidental disturbance of asbestos-containing material.

iii. The enclosure shall be constructed using the following steps:

(1) Affixing plastic sheeting to the walls with spray adhesive and/or high quality duct tape;

(2) Covering the floor with plastic and sealing the plastic covering of the floor to the plastic on the walls; and

(3) Sealing any penetrations which may occur due to pipes, electrical conduits and the like with a minimum of two layers of six mil polyethylene plastic sheeting and tape.

iv. If a small change room (approximately three feet square) is required, then it shall be made of a minimum of two layers of six mil polyethylene plastic sheeting supported by at least two by four inch lumber. The change room shall be adjacent to the mini-enclosure. A change room shall be required when it is necessary to allow persons who enter to vacuum off and remove disposable protective coveralls before leaving the work area.

(d) Specific records of each minor asbestos hazard abatement project shall be kept on file at a central location by the owner of the facility and shall be open for review and audit by the administrative authority having jurisdiction and for public inspections during normal business hours.

1. The information required shall be:

i. Exact locations of the work area within the building.

ii. Type of abatement work conducted;

iii. Scope of work;

iv. Type of replacement material used (if applicable);

v. Date;

vi. Name(s) and address(es) of personnel; and

vii. Location of the disposal site.

2. A copy of this information shall be sent to the administrative authority having jurisdiction each time a minor asbestos hazard abatement project takes place.

(e) A certificate of occupancy or completion is not required for a minor asbestos hazard abatement project.]

5:23-[8.6]**8.4** Variations

(a) No variations from the requirements of this subchapter shall be made except upon written approval from the [administrative authority having jurisdiction] **enforcing agency**[, after receiving a recommendation in writing from the asbestos safety control monitor firm]. **The application for a variation shall be filed by the owner or his agent and forwarded to the enforcing agency with the recommendation of the asbestos safety control monitor.** Any variation shall be consistent with N.J.A.C. 5:23-2.

[1. Exception: When a building or part of a building is required to be occupied during an asbestos hazard abatement project, a written release shall be requested from the department, and obtained by the authorized asbestos safety control monitor firm. The Department of Community Affairs shall review the application and approve or deny within 20 business days from receipt of the application. A copy of the plans and specifications must accompany the variation request from the authorized asbestos safety control monitor firm to the department along with the number of intended occupants and their purpose, location within the building and the time of day the occupants will be in the building. A variation for occupancy shall not be required for maintenance or security personnel. In addition, a variation request for occupancy is not required for a cleared area in a multi-phase project, which has received a Temporary Certificate of Occupancy from the administrative authority having jurisdiction when such occupancy applies to contractors or related personnel involved with post abatement activity.

i. The fee for an application for a variation for occupancy shall be $432.00 and shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".]

(b) An application for a variation pursuant to this section shall be filed in writing with the [administrative authority having jurisdiction] **enforcing agency** and shall include specifically:

1. A statement of the requirements of [the subcode] **this subchapter** from which a variation is sought;

2. A statement of **the** manner by which strict compliance with said provisions would result in practical difficulties:

3. A statement of **the** nature and extent of such practical difficulties; [and]

4. A statement of feasible alternatives to the requirements of [the subcode] **this subchapter** which would adequately protect the health, safety and welfare of the occupants or intended occupants and the public generally and which would adequately prevent contamination of the environment. Plans describing any relevant aspects of the variation requested, as pertaining to the layout of the work area, work procedures, exit requirements, or safety, shall be submitted with the statement of feasibility[.]; **and**

5. The appropriate fee.

(c) When the Department is the enforcing agency, the fee for an application for a variation from this subchapter shall be $432.00 and shall be paid by check or money order payable to the "Treasurer, State of New Jersey."

(d) Variation for a dry removal shall be requested as follows:

1. When an asbestos abatement project cannot meet the requirements for the standard procedures for using amended water for the removal of asbestos-containing material, the building owner shall file with the Department an application for a variation for dry removal. The application for a variation shall be filed by the owner or his agent and forwarded to the Department with the recommendation of the asbestos safety control monitor. The Department shall review the application and approve or deny it in writing stating the reasons for denial.

i. The application shall contain:

(1) A certification that the project will be in accordance with the notification and work practices of NESHAP;

(2) A statement as to why dry removal is necessary;

(3) A list of the precautions required to be undertaken in order to protect the work area and building environment; and

(4) The fee for an application for a variation for dry removal shall be $432.00 and shall be paid by check or money order payable to "Treasurer, State of New Jersey."

(e) The validity of an approved variation shall be determined as follows:

1. Any approved variation shall become invalid if the authorized work is not commenced within 12 months after the approval of the variation, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work.

5:23-[8.7]**8.5** Construction permit for asbestos abatement

(a) It shall be unlawful to undertake [a large or small, but not a minor,] **an** asbestos hazard abatement project unless the owner of the facility, or an authorized representative on behalf of the owner, first files an application in writing with the [administrative authority having jurisdiction] **enforcing agency** and obtains the required permit. This permit shall serve as notice for public record in the office of the [administrative authority having jurisdiction] **enforcing agency.** All work shall be monitored and controlled by the asbestos safety control monitor[,] who will advise the [administrative authority having jurisdiction] **enforcing agency** of its findings.

1. The enclosure of any amount of asbestos-containing material used to cover pipes shall not require a permit for asbestos abatement pursuant to this subchapter, but it may be considered construction work.

2. A construction permit shall be obtained when required by the enforcing agency pursuant to N.J.A.C. 5:23-2.

(b) All asbestos abatement work shall be conducted in unoccupied buildings, unless [the work area can be properly separated and sealed off from the occupied portion of the building as approved by the New Jersey Department of Community Affairs] **a written statement signed by the asbestos safety control monitor denoting portions of the building that may be occupied is filed as required by N.J.A.C. 5:23-8.19(c)8.**

1. The asbestos safety control monitor shall not be required to file such a written statement denoting the occupancy of the building by maintenance personnel who are properly trained and/or security personnel essential to the building operation.

2. The asbestos safety control monitor shall not be required to file such written statement denoting occupied portions of the building for a cleared area in a multi-phase project that has received a Temporary Certificate of Occupancy from the enforcing agency when such occupancy applies to contractors or related personnel involved with post-abatement activity. [The type of asbestos abatement work to be performed and the amount of asbestos to be removed, encapsulated, enclosed or repaired shall be the governing factor in determining whether it is considered a large asbestos hazard abatement project, a small asbestos hazard abatement project or a minor asbestos hazard abatement project.]

[1.]**(c)** The Department or a municipality utilizing an [Asbestos Safety Control Monitor] **asbestos safety control monitor** which has been authorized by the Department to enforce the Asbestos Hazard Abatement Subcode within its jurisdiction[,] shall be the sole enforcing agency for asbestos hazard abatement work.

[(b)]**(d)** The application for a construction permit for asbestos abatement shall be subject to the following:

1. (No change.)

2. The application for a construction permit for asbestos abatement shall be required to include the following:

i.-iii. (No change.)

iv. [Plans] **Four sets of plans** and specifications [(not less than three sets)] indicating: the scope of the proposed work; [whether the project is a small or large asbestos hazard abatement project;] type and percentage of the asbestos; [listing] the total amount of square and/or linear footage of asbestos-containing material to be abated; the provisions proposed to contain the asbestos-containing material during abatement work [showing] **including,** but not limited to, separation barriers, [primary seal/] critical barriers, and the route of travel [of] **for** removing asbestos waste from the work area; a copy of the site plan; and a floor plan indicating exits. **The approved plans and specifications shall be distributed as follows: one set each to the construction official, asbestos safety control monitor, building owner, and project site.**

v. Documentation that all buildings[, except as approved by the Department] will be unoccupied at the time an asbestos abatement project takes place**, except as approved by the asbestos safety control monitor as delineated in N.J.A.C. 5:23-8.19.** [A building may be occupied only if the work area can be properly separated and sealed off from the occupied portion of the building and a variation for occupancy is obtained from the Department pursuant to N.J.A.C. 5:23-8.6.]

vi.-vii. (No change.)

viii. The method of air analysis used pursuant to N.J.A.C. 5:23-[8.23]**8.21** for determining the final clearance level in order to reoccupy the building.

3. It shall be the responsibility of the owner or his agent to file with the [administrative authority having jurisdiction] **enforcing agency,** in the event of any change in [(b)]**(d)**2i, iii and vi above. Such change shall be filed as an amendment to the application and shall be forwarded to the [department] **Department** as set forth in [(f)]**(h)** below. The replacement firm shall assume all responsibilities for the asbestos abatement work to continue, while the preceding firm still bears responsibility for its action.

[(c)]**(e)** The issuance of a construction permit for asbestos abatement shall be subject to the following:

1.-2. (No change.)

3. A written release of the plans and specifications by the [Asbestos Safety Control Monitor] **asbestos safety control monitor.**

4. Cursory plan review shall be done by the [authority having jurisdiction] **enforcing agency** to determine the need of replacement material for maintaining the structural integrity of a building; if required, a separate construction permit shall be issued by the authority having jurisdiction. In addition, a review shall be done to ensure that means of egress is maintained in occupied buildings.

[(d)]**(f)** The issuance of the construction permit for asbestos abatement authorizes preparation of the work area. This initial preparation of the work area shall be observed by the asbestos safety technician to ensure compliance with this subchapter. No actual asbestos abatement work shall commence until:

1. A pre-commencement inspection has been conducted and approved by the asbestos safety technician [or another certified asbestos safety technician designated by the asbestos safety control monitor].

[(e)]**(g)** A permit, once issued, [remains] **shall remain** valid only as long as all of the information contained in the application remains correct and is adhered to. Any change [requires] **shall require** an amendment to the application before the change takes place. Failure to adhere to these requirements may result in a stop work order.

[(f)]**(h)** The owner or his or her agent shall notify the Department in writing within three business days of the issuance of the construction permit for asbestos abatement, if the [administrative authority] **enforcing agency** is a municipal enforcing agency and not the Department. Such notice shall be supplied in the form of a copy of the

completed application for a construction permit for asbestos abatement and a copy of the permit.

1. (No change.)

Recodify existing (g) as (i) (No change in text.)

5:23-8.6 Coordination with other permits

(a) When a building owner or an authorized representative on behalf of the owner submits an application for a construction permit for repair, renovation, or demolition work, the following information shall be required to be given to the construction official having jurisdiction before a construction permit is issued:

1. An architect/engineer certification concerning whether asbestos will be disturbed and to what extent it will be disturbed during the planned construction work.

i. Where minor work not requiring an architect/engineer is involved then this certification will be required of the contractor undertaking the work.

(b) When it is certified that asbestos may become disturbed in a building or structure subject to this subchapter, an assessment performed by the New Jersey Department of Health, county or local health department, or by a private business entity authorized by the New Jersey Department of Health shall be required, unless the requirement for an assessment has been waived.

1. Boiler and water storage tank removal projects which require the removal of asbestos insulation from the boiler, water storage tank and piping shall not require an assessment before a permit is issued by the enforcing agency.

2. If the assessment indicates that the work and the disturbance which will result from it has made asbestos hazard abatement work necessary, then the construction official shall inform the building owner, or his agent, that all asbestos abatement work shall conform to this subchapter.

i. The work which will cause the disturbance will not be permitted to proceed until the hazard abatement work is complete or the asbestos-containing material clearly presents no further hazard.

ii. The construction official shall issue a partial permit for work which clearly will not disturb or interfere with the asbestos hazard abatement work.

5:23-[8.8]**8.7** Inspections; violations

(a) Pre-commencement inspections shall be conducted as follows:

1. (No change.)

2. The asbestos safety technician[,] shall ensure that:

i.-iv. (No change.)

3.-4. (No change.)

(b) (No change.)

(c) Clean-up inspections shall be conducted as follows:

1.-2. (No change.)

3. The asbestos safety technician[,] shall ensure that:

i. (No change.)

ii. All removed asbestos-**containing material** has been properly placed in a locked secure container outside of the work area.

4. If all is in order, and acceptable air results have been achieved, the asbestos safety technician[,] shall issue a written notice of authorization to remove barriers from the work area.

(d) Final inspections shall be conducted as follows:

1. Upon notice by the owner or by the contractor and within 48 hours after the removal of the critical barriers, a final inspection shall be made to ensure the absence of any visible signs of asbestos or asbestos-containing materials and that all removed asbestos and asbestos-contaminated materials have been properly disposed of off-site in accordance with the rules of the New Jersey Department of Environmental Protection **and Energy**, N.J.A.C. 7:26-1, which is referenced in N.J.A.C. 5:23-[8.15]**8.22**.

2. The Department reserves the right to make a final inspection in addition to the required final inspection conducted by the asbestos safety technician before a certificate of occupancy is issued by the [administrative authority having jurisdiction] **enforcing agency**.

(e) **The** Department inspections shall be conducted as follows:

1. The Department shall make **scheduled and/or** unannounced periodic inspections of any work area involving asbestos abatement work **for the purpose of enforcing this subchapter**.

(f) Violations: The asbestos safety technician shall ensure that the work conforms to this subchapter. If it is found that the asbestos abatement work is being conducted in violation of this subchapter, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to comply with the corrective action required, or if the contractor or any of their employees habitually and/or excessively violate the requirements of any rule, then the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, then the asbestos safety technician shall notify the [administrative authority having jurisdiction who] **enforcing agency, which** shall issue a stop work order to the contractor, have the work area secured until all violations are abated, and assess a penalty of $500.00 which shall not be reduced or settled for any reason.

5:23-[8.9]**8.8** Certificate of occupancy; certificate of completion

(a) Certificate of occupancy requirements are as follows:

1. It shall be unlawful to re-occupy the portion of a building [which] **that** was vacated during an asbestos hazard abatement project until a certificate of occupancy has been issued by the [administrative authority having jurisdiction] **enforcing agency**. The certificate of occupancy shall be issued upon receipt of a certificate of completion issued by the [Asbestos Safety Control Monitor] **asbestos safety control monitor** and verified by the [administrative authority having jurisdiction] **enforcing agency** that the building or a portion of a builidng is in conformance with all applicable requirements of the Uniform Construction Code and that any walls, floors, trim, doors, furniture or other items damaged during the work shall be repaired and refinished to match existing materials.

2. The application for a certificate of occupancy shall be in writing and submitted in such form as the Department may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

i. The application shall include the following:

(1)-(2) (No change.)

(3) Certificate of [completion] **Completion** submitted by the asbestos safety control monitor;

3. (No change.)

(b) Certificate of Completion requirements are as follows:

1.-3. (No change.)

4. A Certificate of [completion] **Completion** shall be issued only if:

i.-ii. (No change.)

iii. All requirements of this [subcode] **subchapter** have been met.

iv. An acceptable final air monitoring level has been attained pursuant to N.J.A.C. 5:23-[8.23]**8.21** and **documentation of that air level has been** submitted in writing.

5:23-[8.10]**8.9** Fees

(a) The [administrative authority having jurisdiction who] **enforcing agency that** issues the construction permit and the certificate of occupancy for an asbestos hazard abatement project shall establish by regulation/ordinance the following flat fee schedule:

1.-2. (No change.)

(b) The authorization and reauthorization fees for the asbestos safety control monitor are delineated in N.J.A.C. 5:23-[8.18]**8.11**.

(c) The application fee for certification as an asbestos safety technician is delineated in N.J.A.C. 5:23-[8.19]**8.10**.

(d) All fees shall be paid by check or money order, payable to "Treasurer, State of New Jersey".

5:23-8.10 Asbestos safety technician

(a) Any candidate for certification as an asbestos safety technician shall submit an application to the Department accompanied by the required application fee established in (c) below. The requirements for certification as an asbestos safety technician are as follows:

1. At least 24 college credits in academic sciences, including biology, chemistry, industrial hygiene, environmental science, physics, geology or related fields; or one year of work experience which included performing environmental assessment activities, which may be substituted for this education requirement;

2. Successful completion of a course in air monitoring methods consisting of a minimum of 30 contact hours that shall include hands-on experience with using and calibrating various types of air monitoring equipment; or six months of work experience performing air monitoring including at least 30 hours of on-the-job training, which may be substituted for this education requirement.

3. Successful completion of an approved training course for asbestos worker/supervisors approved by the New Jersey Department of Health pursuant to N.J.A.C. 12:120 and N.J.A.C. 8:60;

i. One year of experience in monitoring asbestos abatement activities may be substituted for completion of an approved training course;

ii. Six months of experience monitoring asbestos abatement may be substituted for completion of an approved training course if the individual is an industrial hygienist certified by the American Board of Industrial Hygiene;

4. Successful completion of a course for asbestos safety technicians approved by the New Jersey State Department of Health;

5. Successful passing of an examination for asbestos safety technicians approved by the New Jersey Department of Health (pursuant to N.J.A.C. 12:120-6.12 and 8:60-6.12).

(b) The Department shall renew the certification following submission of an application, payment of the required fee pursuant to (c) below, and verification by the Department that the applicant meets the requirements for the certification in this section.

1. Every two years any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Department that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Department shall renew the certification previously issued for a term of two years. The renewal date shall be 45 days prior to the expiration date. The expiration dates shall be July 31 or January 31.

2. The Department shall issue, upon application, a duplicate certification upon a finding that the certification has been issued and the applicant is entitled to such certification to replace one which has been lost, destroyed, or mutilated. Payment of a fee as established by N.J.A.C. 5:23-8.10(c) shall be required.

3. The Department may establish by rule continuing education requirements as deemed necessary for the renewal of a certification.

(c) No application for certification or recertification shall be acted upon unless said application is accompanied by a $40.00 fee.

(d) Duties of the asbestos safety technician shall be as follows:

1. The asbestos safety technician shall perform all air sampling specified in this subchapter, as delineated in N.J.A.C. 5:23-8.21 and shall be thoroughly familiar with this subchapter. He or she shall inform the department who his or her employer is at the time of his or her application for certification, and shall notify the department in writing within 10 working days of any change in status or employer. He or she shall have access to all areas of the asbestos removal project at all times and shall continuously inspect and monitor the performance of the contractor to verify that said performance complies with this subchapter while work is in progress. The asbestos safety technican shall be on site from the initial preparation of the work area through the approved final visual inspection, and shall perform all inspections pursuant to N.J.A.C. 5:23-8.7.

2. The asbestos safety technician shall direct the actions of the contractor verbally and in writing to ensure compliance with this subchapter. The asbestos safety technician shall require that all workers present a valid asbestos worker performance permit issued by the New Jersey Department of Labor before entering the work area. The asbestos safety technician shall have the authority to test the seal of the respirator of each person who enters the work area to ensure a proper fit. In matters of negligence and/or flagrant disregard for the safety of any person, including the possibility of contaminating the building environment and the emergence of an unsafe condition at the work area, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to take the corrective action, or if the contractor or any of his or her employees continually violates the requirements of any regulation, then the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, the asbestos safety technician shall notify the enforcing agency, who shall issue a Stop Work Order to the contractor and have the work area secured until all violations are abated.

3. The asbestos safety technician shall calculate, based on the actual available output (not the rated output) of the air filtering units, the required number of air pressure differential filtration units for each work area. This calculation shall be made whenever the volume of the work area changes. The asbestos safety technician shall inform the owner, contractor, and the abatement project designer of any discrepancies between the number of units required and those in operation within the work area. If problems are identified and not corrected, the asbestos safety technician shall inform the enforcing agency who shall take necessary measures to ensure corrective action;

4. The asbestos safety technician shall monitor pressure differential by manometers, magnehelics, or other appropriate low pressure monitoring devices for each work area. One or more separate monitoring systems shall be installed for every 10,000 square feet of separation surface adjacent to the work area. Pressure monitoring shall be representative of all adjacent areas. The pressure differential shall meet the minimum requirement set forth in N.J.A.C. 5:23-8.15(b)9 or 8.17(b)4 or 8.19(c)4ii, as appropriate.

5. The asbestos safety technician shall ensure that the contractor smoke tests all the glovebags to be utilized before the commencement of the project. The asbestos safety technician shall personally witness the smoke testing of at least 25 percent of these glovebags.

6. Upon receipt of testing results indicating that concentrations above the acceptance criteria established in N.J.A.C. 5:23-8.21 have occurred during the abatement project, the asbestos safety technician shall immediately direct corrective action and verbally report these results within 24 hours to the contractor, the owner and the abatement project designer. Such verbal notification shall be followed by written notification to the contractor, the owner and the abatement project designer. A copy shall be sent to the enforcing agency and the Department within three business days from receipt of the results.

7. The asbestos safety technician shall monitor the removal of all asbestos-contaminated waste from the work area to ensure that it takes place in conformance with N.J.A.C. 5:23-8.22, in the following manner:

i. Direct removal by a collector/hauler registered with the New Jersey Department of Environmental Protection and Energy pursuant to N.J.A.C. 7:26 and pursuant to New Jersey Department of Transportation rules at N.J.A.C. 16:49.

ii. Indirect removal by placement in a locked and secure container, for temporary storage, awaiting the New Jersey Department of Environmental Protection and Energy registered waste hauler.

8. The asbestos safety technician shall keep an up-to-date and comprehensive daily log of on-site activities. The log shall be updated continuously. The name of the project, name of the asbestos safety technician, and date shall be recorded daily. Each entry shall contain the event, the time of event and shall be initialed by the asbestos safety technician. One section of the log shall contain observations concerning contractor compliance with activities required under this subchapter listing all deficiencies encountered. In addition, the log shall list the name of each person entering the work area. The log shall be a bound book and all entries shall be in ink. The log shall be kept at the project site and shall be made available upon request at all times to the owner, the abatement project designer and to appropriate local and State agencies.

9. The asbestos safety technician shall prepare a comprehensive final report to include daily logs, required inspection reports, observations and air monitoring results. This report shall be made part of the official record filed by the asbestos safety control monitor.

(e) Penalties: The Department may suspend or revoke a certification, or assess a civil penalty of not more than $500.00, for each offense, if the Department determines that an individual:

1. Has violated the provisions of the Uniform Construction Code regulations;
2. Has obtained a certification by fraud or misrepresentation;
3. Has aided or abetted in practice as an asbestos safety technician any person not authorized to practice as an asbestos safety technician under the provisions of this subchapter.
4. Has fraudulently or deceitfully practiced as an asbestos safety technician.
5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;
6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;
7. Has been found to have accepted or failed to report an offer of a bribe or other favors in a proceeding under this act or other appropriate law of this or any other state or jurisdiction;
8. Has failed to comply with any order issued by the Department;
9. Has made a false or misleading written statement, or has made a willful material omission in any submission to the Department;
10. Has failed to enforce this subchapter; or
11. Has performed the duties of an asbestos safety technician without being certified as such.

(f) In addition to, or as an alternative to, revoking or suspending a certification or assessing a penalty, the Department may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants such a letter. Such letter shall be made a part of the certification file of the individual. A copy of such action shall be sent to an officer of the asbestos safety control monitor firm employing the individual.

(g) Conviction of a crime or an offense shall constitute grounds for revocation or suspension of a certification.

5:23-8.11 Asbestos safety control monitor

(a) An asbestos safety control monitor may be an individual, partnership, corporation, or other business entity organized for the purpose of enforcing and administering this subchapter.

1. Each asbestos safety control monitor shall enter into a contract for each asbestos hazard abatement project with the building owner or his authorized agent. The contract shall specify: the scope of the project with the provision that the asbestos safety control monitor shall carry out all the rules and responsibilities established by this subchapter, how the asbestos safety control monitor is to be paid for its services and the name of the employee who shall serve as the representative of the asbestos safety control monitor authorized to review and approve all documents related to the administration of this subchapter.

2. Each asbestos safety control monitor authorized by the Department shall organize its operation to effectively fulfill the requirements of this subchapter. Each person assigned to perform the duties of an asbestos safety technician shall be certified as an asbestos safety technician by the Department.

3. The asbestos safety control monitor shall report to the Department through its designee and shall be subject to the orders and directives of the Department in matters relating to the enforcement of this subchapter.

(b) The Department shall authorize the establishment of an asbestos safety control monitor:

1. No person shall undertake the services described in this section or enter into any contract pursuant to this subchapter without first receiving the authorization of the Department.

i. Except that applicants who have received notice from the Department that their application is complete and suitable for processing may begin to promote or otherwise make their anticipated availability known provided that the applicant discloses in writing at the time of undertaking any such activity that he has not yet been authorized by the Department.

2. Applicants for authorization as an asbestos safety control monitor shall submit an application on the prescribed form, with the required fee pursuant to (h) below, and any additional information the Department may require.

3. Following a determination by the Department that an application is complete and suitable for processing, the Department shall review and evaluate the information contained in the application and such other information as the Department shall deem necessary to enable it to make an accurate and informed determination of approval or disapproval. Within 30 days following the receipt of a completed application, the Department shall make its determination as to whether authorization as an asbestos safety control monitor shall be granted or denied, and shall notify the applicant. In the event of denial, the Department shall provide the applicant with a written explanation of the reasons for denial.

4. The application for authorization shall contain information relating to:

i. The financial integrity of the applicant as evidenced by a reviewed financial statement prepared by an independent certified public accountant;

ii. The qualifications of the management and technical personnel of the applicant, including a statement that all technical personnel who are to be assigned as asbestos safety technicians are certified by the Department;

iii. The type of analysis done (for example, NIOSH 7400) and the laboratory(ies) that do the procedures. If the applicant does its own lab analysis, it shall list the type of equipment used and the personnel using it, with their qualifications. All laboratories shall be accredited by the National Institute of Standards and Technology (NIST). The laboratory shall be a current proficient participant in the American Industrial Hygiene Association Proficiency Analytical Testing Program or any other recognized equivalent program for PCM. All laboratory analysis shall be performed in accordance with N.J.A.C. 5:23-8.21;

iv. The names of all technical personnel, including asbestos safety technicians with their certification numbers, and their range of salaries and other compensation;

v. The policies and procedures of the applicant for the hiring, training, education, and supervision of all technical personnel involved in the supervision and performance of duties pursuant to this subchapter;

vi. The prior experience of the applicant in performing similar or related functions;

vii. The capability of the applicant to review plans and specifications and to inspect asbestos abatement work to ensure that the completed work is in compliance with this subchapter;

viii. A statement that the applicant is not affiliated with, or infuenced or controlled by any producer, manufacturer, supplier or vendor of products, supplies or equipment used in asbestos hazard abatement; and

ix. Proof of insurance as required pursuant to N.J.A.C 5:23-8.11(c)3v.

5. Authorization shall be valid for a period of one year. The expiration dates shall be March 31 or September 30.

6. Applications for reauthorization shall be filed with the Department at least 60 days prior to the scheduled expiration for the current authorization from the Department. The asbestos safety control monitor shall make current the information previously submitted to the Department. The asbestos safety control monitor shall provide additonal information as the Department may request. The application shall be accompanied by the fee established pursuant to (h) below. The Department may conduct such additional investigations of the applicant as it may deem necessary.

i. Within 30 days following receipt by the Department of an application for reauthorization, the Department shall make its determination as to whether the asbestos safety control monitor continues to meet the requirements of the regulations. In the event of disapproval, the Department shall provide the asbestos safety control monitor with a written explanation of the reasons for such disapproval. Each reauthorization shall expire one year from the date of the current authorization from the Department.

ii. The Department, on its own motion or at the request of any asbestos safety control monitor, may grant a temporary reauthorization of such agency for a period not to exceed 60 days.

(c) Records shall be maintained by the asbestos safety control monitor of all inspections, applications, approved plans, air tests, log sheets and any other information that may be required by the enforcing agency or the department. These records shall be open to department audit and shall not be destroyed or removed from

the offices of the asbestos safety control monitor without the permission of the department.

1. The asbestos safety control monitor shall provide the Department with written notification of any change in personnel within 30 days.

2. The enforcing agency shall be the sole agent for the collection of all fees and penalties from the property owner, the designated agent or anyone in their employ.

3. Each asbestos safety control monitor shall have the following responsibilities:

i. To maintain an adequate number of certified staff to enforce the Asbestos Hazard Abatement Subcode for the projects contracted;

ii. To review and approve the plans and specifications, release them in writing, and forward them to the enforcing agency for issuance of a permit;

iii. To be subject to the department's rulings, directives and orders;

iv. To provide adequate supervision to its employees to ensure conformance to the provisions of this subchapter;

v. To carry liability insurance equal to that required of private enforcing agencies pursuant to N.J.A.C. 5:23-4.14(a)5;

vi. To process and return all documents, plans, specifications, and applications within the time frame specified by this subchapter.

vii. To provide technical assistance to the building owner in the preparation of a construction permit application;

viii. To provide written notification of the start of a project to the department a minimum of 10 days prior to the start of the project and telephone notification to the department by the asbestos safety technician on the first day of the start of the project;

ix. To perform all required inspections and reinspections pursuant to this subchapter;

x. To perform all tests required by this subchapter;

xi. To give testimony at a hearing or in court, as required by the construction official or the Department;

xii. To prepare all reports required by this subchapter or as may be required by the Department from time to time;

xiii. To meet its obligations under its contract with the building owner;

xiv. To issue and maintain documentation and certification, including, but not limited to, plan release, permit application and permit issued by the enforcing agency (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion, violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work;

xv. To ensure the attendance of all technical and supervisory employees at required training and orientation programs; and

xvi. Upon completion of an asbestos hazard abatement project, the asbestos safety control monitor shall submit a final comprehensive report consisting of, but not limited to, plan release, permit application and permit issued by the enforcing agency (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion, violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work. The final report shall be submitted to the building owner within 60 days of issuance of the Certificate of Completion. A copy of the final report shall be made available to the Department upon request.

(d) Whenever an asbestos safety control monitor enters into a contract to provide asbestos safety control monitoring services in connection with an asbestos hazard abatement project, the asbestos safety control monitor shall not have any economic relationship with another party involved with the project. Laboratory services needed by the asbestos safety control monitor shall not be provided by any laboratory that has any economic relationship with the abatement contractor.

1. The asbestos safety control monitor may perform air monitoring required pursuant to the related OSHA requirements only through a contract with the building owner.

(e) Penalties, suspension and revocation procedures are as follows:

1. In addition to any other remedies provided by the Uniform Construction Code regulations, N.J.A.C. 5:23, the department may suspend or revoke its authorization of any asbestos safety control monitor or assess a civil penalty of not more than $500.00 per violation, if the department determines that the authorization or reauthorization was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of this subchapter, or that a change of facts or circumstances makes it unlikely that the asbestos safety control monitor can continue to discharge its responsibilities under this subchapter in a satisfactory manner, or any provision of this subchapter has been violated, or that the asbestos safety control monitor has been negligent or has emerged in misconduct in the performance of any of its duties, or that the asbestos safety control monitor has failed, over a period of time, to maintain a minimally acceptable level of competence.

i. During the period of suspension, the affected asbestos safety control monitor shall not be authorized to discharge any of its responsibilities under this subchapter unless otherwise specified in the notice of suspension or order of the Department.

2. The Department shall notify such asbestos safety control monitor of its suspension or revocation in writing. Copies of the notice of suspension shall be forwarded by the Department to all building owners with implementing contracts with the affected asbestos safety control monitor. The suspension shall be effective on the date the affected asbestos safety control monitor receives the notice of suspension or on any later date that may be designated in the notice of suspension.

3. The Department may revoke its approval of any asbestos safety control monitor without previously suspending its authorization. In such event, the Department shall send a written notice to the affected asbestos safety control monitor of its intention to consider revocation of its authorization stating the grounds therefore. The notice shall be sent to the affected asbestos safety control monitor and to all building owners with implementing contracts with the affected asbestos safety control monitor.

i. No such asbestos safety control monitor shall reapply for approval as an asbestos safety control monitor until the expiration of one year from the date of the order of revocation.

4. Upon the suspension or revocation of approval of an asbestos safety control monitor, any building owner with an implementing contract with the asbestos safety control monitor shall have the right to terminate its contract with such asbestos safety control monitor and be free of all obligations thereunder and to enter into an implementing contract with any other asbestos safety control monitor.

(f) In addition or as an alternative to revoking or suspending an authorization, or assessing a penalty, the department may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the department, warrants such a response. Such letter shall be made part of the authorization file of the firm.

(g) Conviction of a crime or an offense shall constitute grounds for revocation or suspension of an authorization.

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the Department under this subchapter for approval as an asbestos safety control monitor shall pay a fee of $3,250 for the authorization which is sought.

2. Once authorized, the asbestos safety control monitor shall pay a fee of six percent of the gross revenue earned solely from asbestos safety control monitoring activities. This fee shall be payable quarterly, accompanied by a completed form prescribed by the Department, and is due within one month of the close of the indicated quarter according to the following schedule: First quarter—January 1 to March 31; second quarter—April 1 to June

30; third quarter—July 1 to September 30; and, fourth quarter—October 1 to December 31. The monies obtained from the preparation of plans and specifications and payments for laboratory services shall not be included in the calculation of this quarterly fee.

3. Reauthorization fee: Any asbestos safety control monitor submitting an application to the department under this subchapter for reapproval as an asbestos safety control monitor shall pay a fee of $1,625.

5:23-8.12 Application of asbestos

(a) This section shall apply to the application of asbestos, except as provided in (a)1 below.

1. This section shall not apply to asbestos materials which are applied in solid, non-friable form, such as floor tiles or cement pipe.

(b) The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos application work.

1. No person may cause or allow surface coating by spraying on any building structure, facility, installation or internal or external portion thereof, using asbestos or any friable material containing in excess of 0.25 percent by weight of asbestos. See N.J.A.C. 7:27-17.

2. The direct application of asbestos material during construction or renovation of structures, facilities or installations by means such as troweling by hand shall be prohibited.

3. The only permissible applications of asbestos-containing materials during construction or renovation of structures, facilities or installations shall be those in which the asbestos is securely bound into a solid matrix before the application is performed, such as floor tiles in which asbestos is a minor component.

5:23-8.13 Pre-project procedures

Before an asbestos abatement project begins, the owner shall have evaluated whether or not the scope of work for a specific project will require that all surfaces in the work area are to be HEPA vacuumed and/or wet-wiped. This is in order to remove any dust which may contain asbestos and might, therefore interfere with the final inspection and final air clearance level needed to reoccupy the building. The surfaces to be cleaned shall include, but not be limited to, all horizontal and vertical surfaces and such inside spaces as room ventilators, storage lockers, and utility and storage closets. The cleaning shall be accomplished by trained employees of the building owner as delineated in this subchapter before the asbestos abatement project begins or it shall be made part of the scope of work of an asbestos abatement project to be completed by the licensed contractor.

5:23-8.14 Operations and maintenance activities

Operations and maintenance activity, as defined in N.J.A.C. 5:23-8.2, involves asbestos abatement work that may be performed without application or notice to the enforcing agency. Mechanical, electrical, plumbing or general construction work that involves the incidental disturbance of asbestos-containing material shall also be considered an operations and maintenance activity. Examples include, but are not limited to, corrective action which includes removal, repair, encapsulation and enclosure of asbestos-containing insulation on pipes, beams, walls or ceilings; disturbance or routine maintenance activities which may involve asbestos-containing material; clean up of asbestos debris from a floor; and maintenance activities that may include the removal of asbestos-containing material, if required in the performance of another maintenance activity not intended as asbestos abatement, or minor repairs to damaged insulation which do not require removal. Asbestos hazard abatement projects shall not be broken down into smaller component parts in order to qualify as an operation and maintenance activity.

(b) Specific records of each operations and maintenance activity shall be kept on file at a central location by the owner of the facility and shall be open for review and audit by the enforcing agency and for public inspections during normal business hours.

1. The information required shall be:

i. Location/name/number of building;

ii. Exact locations of the work area within the building;

iii. Type of abatement work conducted;

iv. Scope of work;

v. Type of replacement material used (if applicable);

vi. Date;

vii. Name(s) and address(es) of personnel; and

viii. Location of the disposal site.

(c) A certificate of occupancy or completion is not required for an operations and maintenance activity.

(d) Requirements concerning wetting methods are as follows:

1. Wetting methods shall be used whenever asbestos-containing materials are disturbed.

2. Asbestos materials shall be wetted using amended water applied by means of an airless sprayer to minimize the disturbance of asbestos-containing material. Asbestos-containing materials shall be wetted from the initiation of the maintenance or renovation operation that disturbs asbestos-containing material. The wetting agents shall be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is water-soaked and remains wet until final disposal.

(e) Asbestos-containing material shall be disposed of as specified in N.J.A.C. 5:23-8.22.

5:23-[8.11]**8.15** [Precautions and procedures during a large asbestos] **Asbestos** hazard abatement projects

(a) No asbestos hazard abatement work including preparation shall be performed or continued without having a certified asbestos safety technician at the work area.

[(a)]**(b)** Protective clothing [and], equipment, **and general procedures** for asbestos abatement shall be subject to the following requirements:

1. **Only authorized personnel shall be permitted in the work area.** The contractor shall provide the required respirators and protective clothing to all who may inspect or visit the work area;

2. The protective clothing and equipment requirements set forth in this section shall be used to prevent the contamination **by persons engaged in asbestos abatement projects** of areas and buildings accessible to or used by the public [by persons engaged in asbestos abatement projects];

3. [No specific] **All persons entering the work area shall wear** protective clothing. [is required; however, all] **All** clothing worn during removal operations shall be disposed of as contaminated waste. The requirement that clothing be disposed of as contaminated waste shall not include rubber boots, respirators, eye protection, hard hats, and other protective clothing, which can be easily cleaned.

4. (No change.)

5. [All tape shall be a high-quality duct tape. All spray-on adhesives, glue, and other barrier securing materal shall also be high quality product] **All tape, spray-on adhesives, glove bags, glue, and other materials used in the abatement process shall be of sufficiently high quality to serve their intended purpose;**

6. The contractor shall have available sufficient inventory of protective clothing, respirators, filter cartridges, [plastic] **polyethylene** sheeting [of size and thickness], duck tape, spray-on adhesives, and air filters. [Personal] **Sufficient personal** protective equipment [inventory] shall [allow] **be available** for [inspector and visitor] usage **by authorized personnel;**

7. The contractor shall have available shower stall(s) and sufficient plumbing for these showers including hot and cold running water and sufficient hose length and drain systems or an acceptable alternate such as a portable decontamination trailer with showers. Waste shower water shall be added to asbestos-contaminated waste **material** before disposal in [an approved] **a permitted asbestos waste** landfill or **it shall be** solidified using an approved polymer to prevent leaks or accidental spills within a facility or during transport for disposal to [an approved] **a permitted asbestos waste** landfill **or it shall be filtered using a five μ filter and disposed of in the sanitary drain, if allowed by local treatment works by regulation or in writing;**

8. The contractor shall have available **adequate** ladders and/or scaffolds [of adequate length and sufficient quantity so that all work surfaces may be easily reached by] **and sufficient temporary lighting**

equipped with ground fault circuit interruptors for the asbestos safety technician and all others who may inspect the work;

9. The contractor shall have available **HEPA filter equipped** air filtering equipment capable of filtering asbestos fibers to 0.3 μm at 99.97 percent efficiency and of sufficient quantity and capacity to cause a complete air change or total air filtration within the work area **at least** once every 15 minutes [to effectively reduce the work site fiber count]. **Nothing in this subchapter shall be construed to limit the maximum exhaust capacity from the work area. If the situation warrants, the specifications for the abatement project may require additional air changes per hour. The exhaust capacity from the work area shall be sufficient to establish a pressure differential between the work area and all adjacent spaces greater than or equal to 0.03 inches. w.c. for unoccupied buildings and greater than or equal to 0.05 inches w.c. for occupied buildings.**

i. Pressure differential shall be monitored by manometers, magnehelics, or other appropriate low pressure monitoring devices. The asbestos safety technician shall zero and level the gauges each time a reading is taken.

ii. One or more separate pressure monitoring systems shall be installed by the asbestos safety control monitor firm near the entrance(s) to the work area and between the work area and any interior spaces from which make-up air is drawn.

iii. In unoccupied buildings, if the pressure differential drops below 0.01 inches w.c., the asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the pressure loss and the contractor shall institute corrective action as indicated.

iv. In occupied buildings, the procedures set forth in N.J.A.C. 5:23-8.19 shall be followed.

10. Air shall flow into the work area through all openings, including the decontamination chamber and waste exit ports, [and] any areas in the work area where air leakage may occur, **and other controlled makeup air inlets**. Air [should] **shall** exhaust through the air pressure differential filtration unit by means of flexible or solid duct leading outside the building. If air exhaust outside the building is not feasible, the asbestos safety technician shall determine where the exhaust shall be emitted outside the work area; **however, in such cases, this must be no closer than 40 feet to an HVAC intake**. The air-filtering equipment should be positioned at a maximum distance from the decontamination chamber to maximize filtration of airborne fibers. Sufficient air shall be exhausted by [HEPA filtered vacuum cleaner or] **an** approved HEPA equipped vacuum truck or HEPA equipped air filtration units when necessary to provide air pressure differential. Air pressure differential filtration units shall be in operation at all times;

11. [No asbestos hazard abatement work including preparation can be performed without having a certified asbestos safety technician at the work area.] **Asbestos-containing material shall be disposed of as specified in N.J.A.C. 5:23-8.22.**

[(b)](c) Decontamination procedures are as follows:

1. The contractor shall provide an adequate decontamination unit consisting of a serial arrangement of rooms or spaces adjoining the work area or a decontamination trailer. Each airlock shall be clearly identified and separated from the other by [plastic] **polyethylene** crossover sheet doors designed to minimize fiber and air transfer as people pass between areas. A minimum of two layers of [6 mil plastic] **polyethylene** sheeting shall be required for floors, walls, and the ceiling for on-site constructed decontamination units. [Plastic] **Polyethylene** crossover sheet doors shall have at least three layers of [6 mil plastic sheetings] **polyethylene sheeting** and be weighted so as to fall into place when people pass through the area. Decontamination chamber doors shall be of sufficient height and width to enable replacement of equipment that may fail and to safely stretcher or carry an injured worker from the site without destruction of the chamber or unnecessary risk to the integrity of the work area. Such doors must be at least 4 feet wide, and the distance between sets of [flaps] **doors** must be at least 4 feet.

i. As an alternative to the use of polyethylene crossover sheet doors, any other suitable method to accomplish this end shall be acceptable, if it is approved by the asbestos safety control monitor. Alternative doors shall swing in both directions.

2. The decontamination areas shall consist of the following:

i. Clean room: In this room persons remove and leave all street clothes and put on clean disposable coveralls. [Approved] **Appropriate NIOSH approved** respiratory protection equipment is also picked up in this area. No asbestos contaminated items are permitted in this room.

ii.-iii. (No change in text.)

3. [The contractor in] In order to prevent contamination of the environment, **the contractor** shall be responsible for controlling access at the work area and shall maintain a daily log of personnel entering the work area. A list of names of workers shall be posted with their start and stop times for each day. In addition, the contractor shall [assure] **ensure** that all **persons** who enter the work area [(hereafter referred to as person)] shall observe the following work area entry and exit procedures:

i. Person enters clean room and remove street clothing, puts on **protective clothing and** a respirator, and passes through shower room into equipment room.

ii.-iii. (No change.)

iv. Before leaving the work area, the person shall remove all gross contamination and debris from the coveralls using a vacuum with a high efficiency particulate [absolute] **air** (HEPA) filter. In practice, this is usually carried out by one person assisting another.

v.-viii. (No change.)

4. The contractor shall [assure] **ensure** that filters in [dual] cartridge type respirators used during the preparation and abatement phase of the project [shall be] **are** removed, wetted and discarded as contaminated waste. [A] **All** new [filter] **filters** shall be in place in the respirator prior to reuse. For powered air purifying respirators or supplied air respirators, the [manufacturer] **manufacturer's instructions** shall be [consulted] **followed** about the proper decontamination sequence.

5. (No change.)

6. Nondisposable footwear shall remain inside the contaminated area until completion of the [visit] **activity**, and shall be thoroughly cleaned at that time.

[(c)](d) Preliminary preparations in the work area shall be conducted as follows:

1. The contractor shall provide and post in clearly visible locations, **appropriate** caution **and/or danger** signs indicating that asbestos work is being conducted and that unprotected persons should not enter;

2. Employees of the contractor permitted pursuant to N.J.A.C. 8:60 and N.J.A.C. 12:120 or persons employed by the building owner[,] who have successfully completed a maintenance/custodial or worker training course approved by the New Jersey Department of Health[, unless the room and objects within it are shown to be uncontaminated by asbestos in which case other employees of the building owner or contractor may be used,] shall clean with wet cloths and/or with HEPA vacuums as appropriate all [items] **objects** that can be removed from the work area without disrupting the asbestos **-containing** material. [This] **Objects** shall include furniture, equipment, drapes, and curtains. The cloths used for cleaning shall be disposed of as asbestos contaminated waste. **If the room and objects within it are shown to be uncontaminated by asbestos, then other employees of the building owner or contractor may remove such objects**;

3. The contractor shall install or build [an approved] **a** decontamination facility **in accordance with this section**;

4. The contractor shall arrange for [the shut] **shutting** down and [seal] **sealing** off [of] all [lighting,] **electrical,** heating, cooling, **and** ventilating or other air handling systems. **However, if approved by the asbestos safety control monitor, the fluorescent lighting and the receptacles in the work area may be used if these are properly protected by ground fault circuit interruptors**;

5. (No change.)

[(d)](e) Isolation and barrier construction in the work area shall be conducted as follows:

1. (No change.)

2. All vertical and horizontal surfaces except those of asbestos-containing materials shall be sealed with watertight polyethylene [plastic] sheeting except as provided in [(d)] (e)3 below;

3. The only permissible exception to total enclosure shall be:
i.-ii. (No change.)
iii. Staircases; and
iv. Controlled makeup air inlets into the work area.
4. [Barriers] **Polyethylene sheeting shall be** used to isolate contaminated from uncontaminated areas [shall be constructed of plastic polyethylene sheeting]. This [plastic] **polyethylene** sheeting shall be replaced or repaired immediately if torn or damaged. [The minimum acceptable thickness for covering walls shall be 6 mil plastic sheeting. A double layer of 6 mil plastic] **One layer of polyethylene sheeting shall be required for walls and two layers of polyethylene** sheeting shall be used to seal open space between work areas and non-contaminated areas and for all floors [except stairs].

[(e)](**f**) Initial activity in the work area shall be conducted in the following order:

1. Remove filters from all heating, ventilating, and air conditioning systems. **Wet the filters** and place them in [6 mil plastic bags] **polyethylene** bags, double bagged with visible labels, for disposal as asbestos-containing waste [and securely sealed by knotting the bag or by sealing the bag with high quality tape, all excess air shall be squeezed out of the bag before sealing to prevent punctures during disposal]. **Squeeze all excess air out of the bag before sealing to prevent puncture during disposal. Secure bags by twisting, folding over, and sealing them with duct tape.** [These bags should be handled in the same manner as removed asbestos;]
2. The contractor shall[:] wet clean and/or HEPA vacuum all non-removable non-asbestos items such as radiators and suspended light fixtures in the work area, including built-in equipment; and cover with two [thickness of 6 mil plastic] **layers of polyethylene** sheeting taped securely in place;
3. The contractor shall detach and wet clean removable electrical, heating, and ventilating equipment and other items which may be connected to the asbestos surfaces. These items shall be removed from the work area and returned and reattached to their proper place when the work area has been decontaminated and final air testing **has** provided satisfactory results;
4. The contractor shall seal all **floor, wall, and ceiling penetrations with suitable material such as expanding foam insulation before covering the surfaces with polyethylene sheeting. The contractor then shall seal all** openings between the work area and uncontaminated areas including, [(]but not limited to[)], windows, doorways, elevator openings, skylights, corridor entrances, floor and sink drains, air ducts, grills, grates and diffusers with **critical barriers consisting of** two layers of [6 mil plastic] **polyethylene** sheeting taped securely in place or stapled or fastened by spray-on adhesives, glue beads, or horizontal wood battens or the equivalent. Floor drains shall be sealed individually and then covered as all other floor surfaces with two [thicknesses of 6 mil plastic] **layers of polyethylene** sheeting. [Temporary walls may be constructed in order to facilitate barrier construction] **Separation barriers may be constructed to support the critical barriers. Separation barriers shall not block any required means of egress**;
5. For floor covering two layers of [6 mil] polyethylene sheeting shall be used. The first layer of floor sheeting shall extend up the wall at least 12 inches. The second layer shall be extended up sidewalls at least 24 inches. Sheeting shall be sized so as to minimize the number of seams necessary. No seams shall be located at the joints between walls and floors;
6. Wall sheeting shall consist of one layer of [6 mil] polyethylene sheeting. It shall be installed to minimize joints and shall overlap floor sheeting by at least 18 inches. No seams shall be located at the corners. [Plastic wall] **Wall** coverings shall be taped first to the upper most edge of the wall and shall hang straight down;
7. When a strippable coating is used in place of polyethylene sheeting, it must be manufactured for the specific application required for walls, floors, or windows.
i. When dry, the strippable coating must have a class A rating as a building material and must meet the following requirements when tested in accordance with ASTM E-84: flame spread no greater than 20, fuel contributed 0, and smoke developed no more than 110.
ii. The strippable coating shall be applied uniformly in such a manner as to achieve a minimum uniform final thickness of six mil for each layer required pursuant to this subchapter.
iii. Manufacturer's specifications shall be followed for the method of application and for the protection of the applicators and building occupants.
iv. Use of the product shall be authorized in advance by the asbestos safety control monitor firm. The material shall be delivered to the project site in unopened, factory-labeled containers.
[7.]**8.** As all existing ventilating systems in work area are to be sealed throughout the removal operation, an alternative system shall be utilized. Install approved HEPA [filtration] **equipped air pressure differential** units with filters in place. HEPA [filtration] **equipped air pressure differential** units shall be of sufficient number and capacity to ensure that total air volume is exchanged **at least** once every 15 minutes and **an acceptable differential pressure is established and maintained. These units** shall be [U.L. listed] **rated by the manufacturer** as to their **actual working** air capacity[;].
[8. When air pressure differential is required in order to reduce the possible escape of contaminated air, this ventilating system shall be installed and operating prior to commencement of asbestos abatement.]

[(f)](**g**) Sequence of asbestos removal activities shall be [conducted] as follows:

1. The asbestos-containing material shall be sprayed with water containing an additive to enhance penetration (amended water) or removal encapsulant. All wetting agents shall be tested on a small area before use to ensure effectiveness. A fine low-pressure spray of this solution shall be applied to prevent fiber disturbance preceding removal. The removal encapsulant or amended water shall be sprayed on as many times and as often as necessary to ensure that the asbestos material is adequately wetted throughout (especially that asbestos nearest the substrate) to prevent dust emission. No dry removal of asbestos is allowable **unless a variation for dry removal is obtained from the Department pursuant to N.J.A.C. 5:23-8.4**.
2. As a method of organizing the asbestos removal work, workers shall begin working on the areas nearest to the decontamination unit and work towards the HEPA [filtration] **equipped air pressure differential** units. **If this is not feasible, the asbestos safety control monitor firm shall approve an alternative to this requirement.**
3. Asbestos-containing material located more than [15] **30** feet above the floor shall be [dropped] **placed** into inclined chutes, or [dropped] **placed** onto scaffolding, or containerized at that height for eventual disposal. Asbestos-containing materials shall not be dropped or thrown to the floor from [15] **30** feet or greater. For materials located at heights greater than 40 feet above the floor, [a dust-tight,] **an** enclosed chute shall be constructed to transport removed material directly to containers located on the floor **or, alternatively, a vacuum transport system may be employed**.
4. The wet material from each section shall be packed and sealed into labeled six mil [plastic] **polyethylene** bags[,] **and** double bagged with visible labels, prior to starting the next section. Water-soaked fallen material shall be picked up while wet [to prevent water loss due to evaporation].
5. Contaminated material containing sharp edged items shall be cut to **manageable** size while adequately wet, [placed in small cardboard boxes] **singly bagged and then placed in suitable leak-tight and puncture-proof containers or wrapped individually in two separate polyethylene sheets** and double bagged[, or singly bagged and then placed in temporary fiber drums. 40 CFR 61.22 (j) prescribes a leak-tight container, the integrity of which is the contractor's responsibility].
6. Bags and drums shall be marked with the label prescribed by [Section 61.22 (c) of the] **40 CFR 61.22(c) of the US EPA, 29 CFR 1926 of OSHA, and 49 CFR—Parts 100-199 of the US DOT Hazardous Waste Hauling** regulations. The outside of all containers shall be wet-cleaned or HEPA vacuumed before leaving the work area.
7. After completion of this removal phase (stripping), all surfaces from which asbestos has been removed shall be scrubbed using nylon

or bristle brushes and wet sponged or cleaned by an equivalent method to remove visible asbestos-containing material. During this work, the surfaces being cleaned shall be kept wet using amended water or a removal encapsulant. All disposable equipment shall be packaged for disposal. Containers shall be washed with amended water or a removal encapsulant and shall have all exterior particulate matter removed prior to removal from the contaminated area.

8. All accessory equipment shall be moved to the equipment room [in sealed polyethylene (six mil minimum)] and decontaminated for removal.

9. All free water (in contaminated areas) shall be retrieved and added to asbestos-contaminated waste and/or placed in plastic lined leak-tight drums and/or solidified with an acceptable polymer **or it shall be filtered using a five μ filter and disposed of in the sanitary drain, if allowed by local treatment works by regulation or in writing.**

10. (No change.)

[(g)](**h**) Final clean-up of the work area shall be conducted as follows [in the order listed]:

1. The contractor shall first clean all surfaces in the work area using a fine spray or mist of amended water or removal encapsulant applied to all surfaces followed by the wet-wiping procedure using disposable cloths. These cloths shall be disposed of or rinsed thoroughly on a frequency sufficient to eliminate visible accumulation of debris. [Allow] **The contractor shall allow** all surfaces to dry before re-entering the work area and proceeding to [step No.] (**h**)2 below [of this procedure].

i. [Notify] **The contractor shall notify** the asbestos safety technician in writing that a pre-sealant inspection is requested.

2. (No change.)

3. The [plastic] **polyethylene** sheeting used to protect floors, walls, fixtures and equipment shall be carefully removed and rolled up, with the contaminated portion on the inside, and packaged for disposal. Tape and any other debris shall also be disposed of in sealed [plastic] **polyethylene** bags labeled as asbestos-contaminated waste.

4. (No change.)

5. [Plastic] **The polyethylene sheeting** used to maintain critical barriers between work areas and clean area such as those in doorways, windows and air vents shall be sprayed with encapsulant, but not removed until air monitoring is completed and satisfactory results have been obtained.

6. After completion of the cleaning operations the contractor shall:

i. Notify the asbestos safety [control monitor] **technician** that a clean-up inspection can be performed to ensure all visible asbestos has been removed and the area is dust free;

ii. Request **final** air **clearance** monitoring of the work area.

7. After the work area is found to be in compliance with the acceptance criteria, the following tasks shall be performed by the contractor:

i. All critical barriers shall be [unsealed] **removed and bagged in polyethylene bags for disposal**;

ii.-iii. (No change in text.)

8.-9. (No change.)

(i) Special precautions shall be implemented, where appropriate, including, but not limited to, the following examples:

1. Asbestos abatement projects involving ceiling tile and T-grid components, elevators, carpet, contaminated soil and projects in tunnels, crawl spaces, plumbing access panels, and/or involving live electrical panels or live steam lines are likely to present unique conditions that will require special precautions in addition to the procedures described in this section. In instances where special precautions need to be instituted, they shall be described in plans and specifications approved by the asbestos safety control monitor firm.

[5:23-8.12 Precautions and procedures during a small asbestos hazard abatement project

(a) Small asbestos hazard abatement projects shall be carried out according to the following procedures which require that all asbestos abatement work be performed by a licensed contractor and that the employees have valid work permits issued by the New Jersey Department of Labor. A construction permit shall be required. An asbestos safety control monitor authorized by the New Jersey Department of Community Affairs shall ensure compliance with the rules except air monitoring will not be required. However, a final air sample(s) shall be taken pursuant to N.J.A.C. 5:23-8.23.

1. Exception: The Asbestos safety control monitor may require air monitoring and the installation of a decontamination unit consisting of a serial arrangement of rooms or spaces adjoining the work area or a decontamination trailer when the type of asbestos abatement work to be performed may involve a highly friable asbestos-containing material, or when the asbestos containing material contains a high percentage of asbestos by weight, or when the asbestos containing material becomes highly friable due to the asbestos abatement procedure. If the owner or his agent believes that such measures are not necessary, the owner or his agent may appeal the requirement to the New Jersey Department of Community Affairs.

(b) The following minimum level of precautions and procedures shall be employed:

1. The contractor shall provide the required respirators and protective clothing to all who may inspect or visit the work area;

2. Prior to the start of the project adequate warning signs of asbestos dust hazard shall be posted outside of all work areas where work on asbestos-containing materials will be conducted;

3. Prior to the start of the project adequate warning signs of asbestos dust hazard shall be posted outside of all work areas where work on asbestos-containing materials will be conducted. Work areas where asbestos-containing materials will be disturbed must be isolated from the surrounding environment. This enclosure is extremely important where work is to be performed adjacent to occupied areas. Furniture and movable equipment shall be removed from the work area. Proper cleaning of these items using cloths wetted with amended water or removal encapsulant, and/or HEPA vacuuming shall be performed by employees of the contractor permitted under N.J.A.C. 8:60 and N.J.A.C. 12:120 or persons employed by the building owner, who have successfully completed a maintenance/custodial or worker training course approved by the New Jersey Department of Health, unless the room and items within it are shown to be uncontaminated. The work area shall then be sealed off from the surrounding area with polyethylene sheeting having a thickness of six mil. The material and building conditions involved in each project need to be evaluated carefully to develop a proper enclosure;

4. Only personnel essential to the asbestos abatement work project shall be present in the work area. This may necessitate that the work not be done during normal work hours, so as to avoid exposure to people who usually occupy the area;

5. Release of asbestos fibers from material to be abated can be controlled by thoroughly wetting the materials. Before removal of asbestos-containing material from covered pipes, boilers, hot water heaters, etc. all asbestos-containing material must be thoroughly wetted with amended water, using a fine low-pressure sprayer. Wetting agents shall be tested on a small area first before full scale use to ensure effectiveness;

6. After wetting the material which is to be removed, every effort shall be made to minimize disturbance of the material. Under special conditions, glovebags can also be used to minimize building contamination;

7. Fans or blowers shall not be used to ventilate tunnels, basement areas or manholes before or during asbestos removal or repair work unless HEPA filter equipped. Note: Other safety precautions may be required for work in confined spaces such as these.

8. All gross contamination of people or their disposable clothing shall be removed using a HEPA vacuum before leaving the work area. The suits shall be discarded after cleaning up the work area with the HEPA vacuum.

9. The work area must be thoroughly HEPA-vacuumed and wet mopped before any plastic sheeting is taken down. All contaminated clothing, cleaning rags, mops, etc. must be treated and disposed of as asbestos waste;

10. All asbestos waste shall be picked up while wet and shall be placed in 6 mil plastic bags, double bagged with visible labels for disposal as asbestos-containing waste, and securely sealed by knotting the bag or by sealing the bag with high quality tape.

11. When work is completed, all plastic sheeting used to protect walls, floors, and equipment shall be carefully wet-cleaned and removed in a manner that keeps the contaminated area inside. Sheets of plastic can be rolled up, ends tucked in, and placed in 6 mil bags, double bagged with visible labels for disposal of asbestos-containing waste, and securely sealed by knotting the bags. The outside of all containers shall be wet-cleaned or HEPA vacuumed before leaving the work area;

12. A final air sample shall be taken.

13. Asbestos waste must be disposed of in accordance with the regulations of the New Jersey Department of Environmental Protection, N.J.A.C. 7:26-1 et seq.

14. Outside contractors, who will be working in an area where asbestos materials are located, should be advised of its presence and cautioned to prevent disturbance of the material and possible exposure to the workers.

(c) Asbestos repair projects in tunnels, crawl spaces and plumbing access spaces are likely to present unique conditions which will require modification of the procedures described in this section. In all instances, every effort should be made to minimize airborne fibers and contamination of surrounding areas by enclosing the work area effectively.

(d) Asbestos repair or removal projects should not be conducted when the building is in general use.]

Recodify existing N.J.A.C. 5:23-8.13 as **5:23-8.16** (No change in text.)

5:23-[8.14]**8.17** Glove bag technique

(a) The removal of asbestos-**containing material** by use of the glove bag shall be limited to [the removal of asbestos-containing] **not more than 500 linear feet of** insulation from **equipment, such as, but not limited to,** pipe fittings, elbows [and], pipe **and ducts contained in a glove bag work area enclosure. The glove bag work area enclosure shall be either an enclosure, built out of polyethylene sheeting around the glove bag, or the entire room if no enclosure is built.**

(b) The preparation of the work area for glove bag removal shall include the following:

1. (No change.)

2. The work area where the technique is to be utilized shall be roped off and [warning] **appropriate caution and/or danger** signs posted on the perimeter to prevent unauthorized personnel from entering the work area.

3. All necessary materials and supplies shall be brought into the work area before any removal begins.

4. One air change every 15 minutes shall be provided in a glovebag work area enclosure. A minimum pressure differential of 0.02 w.c. shall be maintained at all times.

5. Any person physically involved in abatement activity shall wear protective clothing and an adequate respirator.

(c) The following is a list of equipment and tools for the removal of asbestos by the glove bag technique:

1. [The glove bag which consists of a six mil bag fitted with long sleeve gloves, a tool pouch and two-inch opening used for water application;] **Glove bag(s) in suitable number, size and configuration for the specific abatement project. The glove bag is an air-tight, tear-resistant enclosure, designed to enclose an object from which asbestos-containing material is to be removed, constructed of a minimum of six mil polyethylene or other suitable material with inward projecting longsleeve gloves, a tool pouch and facilities for water application and a HEPA equipped vacuum attachment.**

2.-6. (No change.)

7. A roll of six mil polyethylene; **and**

8. (No change.)

(d) Removal procedures shall be conducted as follows:

1. A visual inspection of the pipe where the work will be performed shall be made to determine if any damaged pipe covering (**such as** broken lagging, **or** hanging [etc.]) exists. If there is **damage**, then the [damaged] **affected** portion of the pipe shall be wrapped in polyethylene [plastic] and fully secured with duct tape. This procedure will prevent excessive airborne fiber concentrations from occurring during the glove bag work caused by pipe lagging, hanging several feet or even several yards away which may be jarred loose by the activity. All dust and debris on the floor and other surfaces which has accumulated due to the abatement project and **which** contains asbestos shall be cleaned up as necessary. If the pipe is undamaged, one layer of duct tape shall be placed around the pipe at each end [of] where the glove bag will be attached. This permits a good surface to which to seal the ends of the glove bag, and it minimizes the chance of releasing fibers when the tape at the ends of the glove bag is peeled off at the completion of the project.

2.-4. (No change.)

5. Place the glove bag around the section of pipe to be worked on and staple the top together through the reinforcing duct tape. Staple at intervals of approximately one inch. Next, fold the stapled top flap back and tape it down with a strip of duct tape. This should provide an adequate seal along the top. Next, duct tape the ends of the glove bag to the pipe itself, previously covered with [plastic] **polyethylene** or duct tape (see (d)1 above). The bottom seam of the glove bag shall be sealed with high quality duct tape or equivalent to prevent any leakage from the bag that may result from a defect in the bottom seam.

6. **Before the commencement of the project, the contractor shall smoke test all the glove bags to ensure that they do not leak. The asbestos safety technician shall personally witness the smoke testing of at least 25 percent of these glove bags.** Using the smoke tube and aspirator bulb **or other smoke generating device**, place the tube into the wetting agent sleeve (two-inch opening to glovebag). [By squeezing the bulb, fill] **Fill** the bag with visible smoke. Remove the smoke tube and twist the wetting agent sleeve [closed] **to close it.** While holding the wetting agent sleeve tightly, gently squeeze the glovebag and look for smoke leaking out, especially at the top and ends of the glovebag. If leaks are found, they shall be taped closed using duct tape and the bag shall be re-tested.

7.-8. (No change.)

9. If the section of pipe is covered with [an aluminum] **a protective** jacket, this is removed first, using the wire cutters to cut any bands and the tin [snaps] **snips** to remove the [aluminum] **jacket.** It is important to fold the sharp edges in to prevent cutting the bag when it is placed in the bottom. A box may be put in the bottom of the bag when the tools are placed in, and the metal placed in the box to further protect the bag from being cut.

10. (No change.)

11. Once the ends are cut, the section of insulation should be split from end to end using the utility knife. The cut should be made along the bottom of the pipe and the wetting agent continuously supplied. Again, care should be taken when using the knife not to puncture the bag. Some insulation may have wire to be clipped as well. Again, a box may be used as in [step nine] (d)9 above to protect the bag from puncture.

12.-17 (No change.)

18. [From outside the bag, pull the tool pouch away from the bag. Place duct tape over the twisted portion and then cut the tool bag from the glovebag, cutting through the twisted/taped section. In this manner, the contaminated tools may be placed directly into the next glovebag without cleaning. Alternatively, the tool pouch with the tools can be placed in a bucket of water, opened underwater, and the tools cleaned and dried without releasing asbestos into the air. Rags and the scrub brush cannot be cleaned in this manner and should be discarded with the asbestos waste. If more than one adjacent section of pipe is to be removed, the glovebag may be loosened at each end and slid along the pipe to the next section. In this case, the tools would remain in the bag for continued use.] **Remove all the tools from the tool pouch and draw them out into one of the arm sleeves, twist the sleeve tightly, and seal with tape, and cut the sleeve away from the bag, cutting through the tape. In this manner, the contaminated tools may be placed directly into the next glovebag without being cleaned. Alternatively, the sleeve with the tools in it can be placed in a bucket of water, opened**

underwater and dried without releasing asbestos into the air. Rags and scrub brushes cannot be cleaned in this manner and should be discarded with the asbestos-contaminated waste. If more than one adjacent section of pipe insulation is to be removed, the glovebag may be loosened at each end and slid along the pipe to be used again on the next section. In this case, the tools would remain in the bag for continued use. No more than two uses of a glovebag shall be permitted.

19.-21. (No change.)

22. Place any contaminated articles or [,] debris[, etc.] into the bag with the waste.

23. Twist the top of the bag closed, fold this over, and seal with duct tape. [Place this bag into a second six-mil disposable bag, and seal as in the above manner.] Label the bag with [a warning label] **labels prescribed by 40 CFR 61.22(c) of the USEPA, 29 CFR 1926 of OSHA and 49 CFR-Parts 100-199 of the US DOT Hazardous Waste Hauling regulations.**

24. Asbestos-containing **waste** material shall be disposed of as specified in N.J.A.C. 5:23-[8.15]**8.22**.

25. Air sampling shall be conducted after completion of glovebag projects **pursuant to N.J.A.C. 5:23-8.21** to determine if undetected leakage occurred. Once the area has been found to be safe for re-entry by unprotected personnel, the barriers may be removed.

5:23-8.18 Demolition

(a) Before a structure can be demolished or removed, the owner or his agent shall document that the requirements of the USEPA 40 CFR 61 subpart M have been or shall be met. A permit to demolish or remove the structure shall be obtained pursuant to N.J.A.C. 5:23-2 and this permit shall not be issued until the owner or his agent notifies the enforcing agency that all friable asbestos or asbestos-containing materal that will become friable during demolition or removal has been been properly abated in accordance with the procedures listed in this section.

(b) The removal of asbestos shall require a construction permit in accordance with N.J.A.C. 5:23-8.5.

(c) Asbestos abatement shall be done in accordance with all applicable provisions of this subchapter.

(d) Air monitoring samples during the removal phase and final air samples after removal shall be required for an asbestos abatement project.

1. Results of .02 fibers/cc or less shall be attained by phase contrast microscopy (PCM) prior to demolition;

2. If the demolition does not take place within 30 days of obtaining the fiber level above, the building or portion of a building to be demolished will be resampled to ensure compliance with (d)1 above;

3. If air levels above .02 fibers/cc are obtained in either of the above cases, the areas where the asbestos removal took place must be recleaned and resampled until they do meet the required level.

4. If the work area is to remain unoccupied prior to demolition or is to be occupied only by workers wearing appropriate NIOSH-approved respiratory protection equipment, then final air testing shall not be required.

5:23-8.19 Abatement in occupied buildings

(a) The requirements of this section are intended to prevent contamination and exposure of building occupants to asbestos fibers.

(b) The building owner shall notify building occupants in writing 20 business days prior to the commencement of an asbestos abatement project. The building owner shall outline in writing any procedures and/or precautions that are deemed necessary in order to protect the health, safety and welfare of the occupants. This notification shall include, but not be limited to: relocation plans, if any; entrances and exits that may temporarily be blocked and alternate routes to be used; the name and telephone number of the owner's representative for the occupant to call in case of an emergency or to answer any questions with regard to the project. This notification shall accompany the application for a construction permit for asbestos abatement and shall be filed with the enforcing agency.

1. This notification shall be posted seven days prior to the preparation of the work area, in visible locations, for the benefit of the affected occupants of the work place, and in areas immediately adjacent to the asbestos abatement project. It shall be the owner's responsibility to ensure that these postings are maintained throughout the project.

2. When circumstances require immediate removal of asbestos-containing material, notification shall be provided to the building occupants as soon as possible.

3. Nothing in this section shall be interpreted as prohibiting the building owner from providing additional notification.

(c) A building or structure or part thereof may be occupied during an asbestos abatement project when all of the following conditions are met:

1. Isolation conditions include a requirement that the work area be physically separated from occupied areas by separation barriers of rigid construction consisting of nominal two inch by four inch studs spaced 16 inches on center and covered with a minimum of one-half inch plywood or comparable metal framing and 1/2 inch gypsum board covering. All seams shall be caulked to render the barrier air tight before two layers of polyethylene sheeting are applied on both sides. The polyethylene sheeting shall overlap at the seams. All penetrations around conduits, pipes, ducts or other openings between the work area and adjacent spaces shall be sealed, using materials determined to be suitable in accordance with the applicable subcode. A separate means of egress for abatement personnel, materials and equipment shall be maintained. Adequate fire evacuation routes shall exist for all building occupants at all times.

i. Whenever the building in which this work area is located exceeds four stories in height and when stair, elevator or similar shafts lie within or adjacent to the separation barriers or the work area, then special seals shall be installed. Such seals shall be constructed in the same manner as the separation barriers and shall create a space not less than two inches in depth in front of the entire access area which space is sealed on both sides and positively pressurized with HEPA filtered air so that the pressure in the sealed space is .02 inches w.c. greater than that in the work area or the shaft.

ii. All HVAC systems located in the work area shall be shut down. If HVAC equipment is located in the work area and must be operated to service other areas of the building, then the HVAC equipment shall be isolated from the remainder of the work area by an enclosure constructed in a manner similar to the separation barriers and the space between the equipment and the seal shall be positively pressurized with HEPA filtered air to at least .05 inches w.c. greater than the work area.

iii. Where return air ductwork which must be kept operating is located within the work area, then it shall be isolated from the work area by an enclosure forming an annular space around the duct which is positively pressurized with HEPA filtered air to at least .02 inches w.c. greater than the work area. The enclosure shall be constructed in a manner similar to that required for separation barriers.

iv. All electrical systems in the work area shall be shut down. Their use may be approved by the asbestos safety control monitor if they are properly protected by ground fault circuit interruptors and provided that such other precautions as may be necessary are taken to ensure the safety of all who are in the work area.

2. Engineering controls shall be implemented as follows:

i. The asbestos safety technician shall verify exhaust capacity through appropriate field measurement and record these results in writing. The verification of exhaust flow rate via use of devices for monitoring pressure drop across filters on air filtration devices shall not be a substitute for appropriate field measurement. All exhaust from the work area shall be directed to the exterior of the building. If exhaust to the exterior of the building is not feasible, exhaust from the work area shall be directed into a second set of in-line air filtration devices, which, then, shall be permitted to be discharged into designated spaces approved by the asbestos safety control monitor.

ii. The contractor shall install a sufficient number of HEPA filter equipped air filtration units to cause a complete air change or total air filtration within the work area at least once every 15 minutes. (Nothing in this subchapter shall be construed to limit the maximum exhaust capacity from the work area or to prohibit additional air changes per hour.) The exhaust capacity from the work area shall be sufficient to establish a pressure differential between the work area and all adjacent spaces greater than or equal to 0.05 inches w.c. (Nothing in this subchapter shall be construed to limit the maximum pressure differential established between the work area and occupied spaces.)

(1) Make up air shall not be drawn through openings in the separation barriers in buildings greater than four stories in height, unless those openings are equipped with systems or devices which will not permit air flow except toward the work area and the air filtration and exhaust units located in the work area.

3. Work area protection shall be assured as follows:

i. Floors shall be covered with two layers of polyethylene sheeting which shall overlap at the seams and which shall be applied to the floor, individually sealed. The first layer shall extend up the wall at least 12 inches. The second floor layer shall be installed and extend up sidewalls at least 24 inches.

ii. Walls shall be covered with one layer of polyethylene sheeting individually sealed to the wall. The layer shall hang straight down overlapping the second layer of floor sheeting on the wall by at least 18 inches.

iii. Sheeting shall be sized to minimize the number of seams. No seams shall be located at the joints between walls and floors. As a minimum, no seam shall stop within 12 inches of a corner and sheeting shall overlap at least 12 inches between seams of adjacent layers.

iv. When a strippable coating is used in place of polyethylene sheeting, it shall be used in accordance with N.J.A.C. 5:23-8.15(f)7 and the product shall be applied during minimal occupancy.

v. If the occupied portion of the building includes sleeping areas or if the building is greater than four stories in height, only noncombustible materials or fire retardant lumber tested in accordance with the ASTM standard E84, approved flame-resistant polyethylene, fire retardant expanding foam insulation, or similar materials, shall be used for preparation work, including critical barriers, separation barriers, wall and floor coverings, the decontamination chamber(s), and the sealing of penetrations.

4. Monitoring shall be conducted as follows:

i. Air sampling shall be done as follows:

(1) At a minimum, two samples per work shift for every 10,000 square feet of occupied space adjacent to the work area shall be collected and analyzed. Air samples shall be taken in areas where the greatest potential for fiber migration exists. This shall include the entrance(s) to the work area and any other interior spaces from which make-up air is drawn. Additional samples shall be taken for areas such as stairwells, communicating shafts, elevators, plenums, ducts which pass through the work area and which are in service, and unusual room and building configurations. If air levels exceed the permitted fiber count, the applicable requirements of the contingency plan in (c)5 below shall be followed.

(A) At least one air sample shall be collected and analyzed during the work shift inside the work area. The results of this test will not, however, trigger the requirements of the contingency plan.

(2) A secure chain of custody for air samples shall be established by the asbestos safety control monitor firm. The final disposition of samples (whether they should be retained or disposed of after analysis and if retained, who keeps them) must be determined prior to the commencement of asbestos abatement.

(3) The services of a testing laboratory, as delineated in N.J.A.C. 5:23-8.21(a)1 and 2, shall include a microscope and laboratory technician at the project site in order that verbal reports on air samples can be obtained immediately. The laboratory technician shall be listed in the Asbestos Analyst Registry of the American Industrial Hygiene Association for PCM analysis. The owner shall provide a safe and clean space for the analysis of samples separate and distinct from the work area. Air samples are to be analyzed via NIOSH 7400 and verbal results made available for a determination regarding continued occupancy.

(4) Ten percent of all abatement samples shall be re-analyzed at a laboratory for quality control purposes.

(5) Daily occupancy shall be allowed when the results of all the air samples are less than or equal to 0.010 fibers/cc by Phase Contrast Microscopy. If air levels exceed 0.010 fibers/cc, the contingency plan during abatement in (c)5 below shall be followed.

(6) In the case of reoccupancy and final clearance, all air samples used to determine reentry shall be analyzed by and at an accredited laboratory.

ii. Pressure monitoring shall be carried out as follows:

(1) Pressure differential shall be monitored by manometers, magnehelics, or other appropriate low pressure monitoring devices. The asbestos safety technician shall zero and level the gauges each time a reading is taken.

(2) One or more separate pressure monitoring systems shall be installed by the asbestos safety control monitor firm near the entrance(s) to the work area and between the work area and any interior spaces from which make-up air is drawn.

(3) Written documentation of pressure differential shall be provided by the asbestos safety technician either by continuous readout devices or periodic readings of display. Periodic readings shall be recorded during the abatement process and, in addition, the asbestos safety technician and the contractor supervisor will ensure, prior to the completion of the work shift, the integrity of the containment site before workers depart.

(4) The pressure differential shall be greater than or equal to 0.1 inches w.c. at the pre-commencement inspection (at the time of approval immediately prior to the start of abatement work).

(A) As an alternative to providing a pressure differential greater than or equal to 0.1 inches w.c. for the pre-commencement inspection, a smoke test may be conducted to demonstrate that the work area has been isolated properly and that pressure differentials have been established to prevent fiber migration from the work area.

(5) Daily Occupancy shall be allowed when the pressure differential is equal to or exceeds 0.05 inches w.c. If the air pressure differential drops below 0.05 inches w.c., the contingency plan during abatement in (c)5 below shall be followed.

5. Contingency plan during abatement shall be implemented as described below. These are the minimum requirements which shall be enforced by asbestos safety control monitors. These requirements shall not limit the asbestos safety control monitors from instituting additional requirements, if necessary, for the protection of the building occupants.

i. If the pressure differential drops below 0.05 inches w.c., the following procedures shall be implemented:

(1) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the pressure loss.

(2) The contractor shall institute corrective action such as: additional sealing, critical barrier maintenance and construction, changing of exhaust unit filters, adjustment of make-up air, operation of additional exhaust units or other necessary measures to reestablish an acceptable pressure differential.

ii. If the pressure differential drops below 0.01 inches w.c., the following procedures shall be implemented:

(1) The contractor shall cease abatement activity in the work area.

(2) The asbestos safety control monitor shall notify the building owner to evacuate the pressurized space(s). The pressurized space(s) shall include all space outside the work area which is pressurized to maintain the required pressure differential relative to the work area and is isolated from the rest of the building in terms of air flow. The pressurized space may include the entire building exclusive of the work area or any part of the building that is pressurized to isolate it from the work area.

(3) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls and determine the source of the pressure loss.

(4) The contractor shall institute corrective action such as: additional sealing, critical barrier maintenance and construction,

changing of exhaust unit filters, adjustment of make-up air, operation of additional exhaust units or other necessary measures to reestablish an acceptable pressure differential.

(5) Reoccupancy shall not be permitted in any area unless a pressure differential of 0.05 inches w.c. or greater is reestablished.

(6) If a pressure differential of 0.05 inches w.c. or greater is not reestablished within 24 hours of the first reading below 0.01 inches w.c., then the building shall be evacuated.

iii. If air levels exceed 0.010 f/cc, the following procedures shall be implemented:

(1) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the high air level.

(2) An additional/second PCM air sample shall be taken. The additional/second PCM sample may be split, and if the result of the air sample is less than or equal to 0.010 f/cc the contingency plan is terminated. If the result of the air sample exceeds 0.010 f/cc, the contractor, in consultation with the asbestos safety control monitor, shall choose the option of cleaning and retesting by PCM analysis or analyzing the split sample by TEM analysis. If the result of the TEM analysis exceeds 0.010 f/cc, then cleaning shall be undertaken.

(3) The decision as to the timing of the cleaning activity shall be made by the asbestos safety control monitor firm in consultation with the building owner and the contractor.

(4) Cleaning shall include, but not be limited to, wet wiping and misting the air. Cleaning the affected area shall be continued outside of containment and PCM sampling shall also be continued until the result in the area is equal to or less than 0.010 f/cc by either PCM or TEM analysis.

(5) If laboratory analysis of air samples does not yield a reading less than or equal to 0.010 f/cc within 24 hours of receipt of the first test result above 0.010 f/cc, then the building shall be evacuated.

(6) Reoccupancy shall not be permitted in any area where PCM analysis reveals results greater than 0.010 f/cc, unless TEM results indicate asbestos fibers are equal to or less than 0.010 f/cc. In the case of reoccupancy, all air samples used to make the determination to allow reentry shall be analyzed by an accredited laboratory.

iv. If a power outage occurs during active abatement work, the building occupants shall be evacuated until the air samples determine that the occupied spaces are safe, and power has been restored. If a power outage occurs when the building is unoccupied, occupancy will not be permitted until air samples determine that the spaces to be occupied are safe and power has been restored.

6. Security shall be required as follows:

i. In high risk areas, the owner shall provide a 24 hour security guard to ensure protection against damage or vandalism to separation barriers, engineering systems, monitoring devices, or other equipment.

ii. The owner shall provide continuous unlimited access for the asbestos safety technician in all occupied spaces for installation, maintenance, and data collection from monitoring systems.

7. Waste removal shall be accomplished as follows:

i. The waste removal route of travel shall be designated on the abatement plans and shall be separate and distinct from the normal route of travel used by building occupants. Waste removal shall occur during the time of least amount of building occupancy. If the route of travel is to be used the following day by building occupants, the waste removal route is to be wet wiped using amended water and HEPA vacuumed prior to allowing occupancy of the area.

ii. The waste removal routes shall be protected by one layer of polyethylene sheeting on floors, windows, doors and HVAC.

iii. The waste removal process shall be continually monitored visually and through air sampling by the asbestos safety technician.

iv. No dumpster shall remain on the premises overnight, unless the dumpster is locked and labeled to indicate that it contains asbestos-contaminated waste.

8. A written statement shall be signed by the asbestos safety control monitor denoting that an asbestos abatement will occur during building occupancy and verifying that the above requirements will be maintained. This written statement shall accompany the application for a construction permit for asbestos abatement and shall be filed with the enforcing agency. This statement shall include the areas to be occupied during the abatement and the number of occupants.

5:23-8.20 Removal of non-friable asbestos-containing material

(a) This section applies to all non-friable, miscellaneous asbestos-containing material.

1. When the removal method will cause the building environment to become contaminated with airborne asbestos fibers caused by a combination of mechanical and manual tasks, such as grinding the surface of vinyl asbestos floor tiles, then complete separation of the worksite from the rest of the building shall be required and the precautions and procedures as delineated in N.J.A.C. 5:23-8.15 shall be followed. A construction permit for asbestos abatement pursuant to this subchapter shall be required.

2. When the removal method will not contaminate the building environment with airborne asbestos fibers, such as when an electric heating appliance is used to loosen vinyl asbestos floor tiles or when the "Recommended Work Practices for the Removal of Resilient Floor Coverings" (latest edition) by the Resilient Floor Covering Institute are followed in removing floor tile, sheet vinyl flooring and the associated adhesives, then general isolation of the work area from the surrounding environment by the closing of doors and windows in the removal areas, when feasible, safe work practices and proper clean-up procedures shall be required. A contractor licensed by the New Jersey Department of Labor shall be required pursuant to N.J.A.C. 12:120 to perform this work. A construction permit pursuant to N.J.A.C. 5:23-2 shall be required.

(b) The disposal of non-friable asbestos-containing material and/or asbestos-contaminated waste shall conform to the New Jersey Department of Environmental Protection and Energy requirements specified in N.J.A.C. 7:26.

(c) Exception: This section shall not apply to non-friable asbestos-containing material found on the exterior of the building such as asbestos siding, transite and asbestos cement board, asbestos roof shingle, felts and build up roofing materials. Safe work practices shall be employed to minimize asbestos fiber exposure during the tear-off period and, in particular, for asbestos shingle roofs, work precautions described in the National Institute for Occupational Safety and Health (NIOSH) Heath Hazard Evaluation Report No. HETA 84-321-1590 shall be followed. A construction permit pursuant to N.J.A.C. 5:23-2 shall be required. Disposal of this waste shall be in accordance with N.J.A.C. 5:23-8.22.

5:23-8.21 Air monitoring methodology

(a) Air sampling specified in this section shall be performed by the asbestos safety technician in accordance with the procedures specified in this subchapter and shall be analyzed by a laboratory pursuant to 40 CFR 763.90.

1. For phase contrast microscopy (PCM) analysis, laboratories shall be currently enrolled in the American Industrial Hygiene Association Proficiency Analytical Testing Program or an equivalent recognized program.

2. Analysis by PCM shall use the NIOSH 7400 method delineated in "Fibers" publication in the NIOSH Manual of Analytical Methods, 3rd edition, 2nd supplement, August 1987 or the latest edition. Maximum turnaround time from sample collection through data reporting shall be 24 hours.

3. For transmission electron microscopy (TEM) analysis, laboratories shall participate in the National Institute of Standards and Technology—National Voluntary Laboratory Accreditation Program (NIST-NVLAP) and shall certify that the analysis they performed was according to the protocol listed in Appendix A to Subpart E of 40 CFR 763. Maximum turnaround time from sample collection through data reporting shall be 72 hours.

4. All pumps shall be calibrated prior to initial sampling using a primary standard. Pumps shall be re-calibrated with a minimum of a secondary standard before and after each sample is collected. Protocols shall be established for periodic calibration, using a primary standard. The frequency of primary recalibration checks shall be initially high, until experience is accumulated to show that it can be reduced while maintaining the required sampling accuracy.

Records shall be kept of all calibrations and shall be part of the daily log.

(b) Air sampling while abatement is in progress shall comply with the following procedures:

1. A minimum of three samples per shift shall be collected. One stationary sample shall be collected within the clean room of the decontamination unit and two samples collected adjacent to the work area but remote from the decontamination unit entrance. In the selection of adjacent areas to be monitored, preference shall be given to rooms adjacent to critical barriers and/or work area. Testing results shall not indicate that concentrations above 0.01 fibers per cubic centimeter have occurred outside the containment barrier or above 0.02 fibers per cubic centimeter within the clean room of the decontamination chamber during the abatement project.

2. For abatement projects in occupied buildings, additional samples shall be taken in spaces adjacent to the work area and inside the work area and analyzed on-site by PCM as required by N.J.A.C. 5:23-8.19(c)4. The contingency plan in N.J.A.C. 5:23-8.19(c)5 shall be followed if test results indicate that this is necessary.

(c) Post abatement visual inspections and air monitoring shall comply with the following procedures:

1. Within 48 hours after clean-up for post-removal air testing, and before the removal of critical barriers, a thorough and complete visual inspection and a subsequent final air test shall be performed. This test is required to establish safe conditions for the removal of critical barriers and to permit the beginning of reconstruction activity, if required. Sufficient time following clean-up activities shall be allowed so that all surfaces shall be dry during monitoring. Air pressure differential filtration units shall be in use during this monitoring. Post removal testing shall begin when all work area surfaces are completely dry.

2. Aggressive air sampling shall be employed using propeller-type fans and leaf blowers. The fans shall be placed in each room to be sampled so as to cause settled fibers to rise and enter the air. Prior to air monitoring, floors, ceilings, and walls shall be swept with the exhaust of a one-horsepower leaf blower. The areas which would be subject to dead-air conditions shall be swept clean. The fans used shall be capable of creating a minimum air velocity of 500 feet per minute. These fans may be of the oscillating type. The sampling pump and sampling media shall be placed in the abatement area on a random basis to provide unbiased and representative samples. Stationary fans shall be placed in locations which will not interfere with air monitoring equipment. Fan air shall be directed toward the ceiling. One fan shall be used for each 10,000 cubic feet of the work area. The leaf blower and its use must meet the criteria set forth in EPA document 560/5-85-024, "Guidance for Controlling Asbestos—Containing Materials in Buildings," appendix section M.1.5, or any replacement criteria set forth by the EPA. Their use should be restricted to general occupancy areas that are contained, and they should not be used in any space with an open dirt, sand or gravel floor.

(d) Post abatement sampling and analysis for an asbestos hazard abatement project shall be performed as per EPA 40 CFR 763.90i. Samples collected within the affected work area shall be analyzed by TEM.

(e) Post abatement sampling and analysis for an asbestos hazard abatement project utilizing the glovebag technique and encapsulation shall be as follows:

1. One sample per 10,000 square feet of work area with a minimum of five samples shall be required. Samples collected within the affected work area may be analyzed by PCM to confirm completion of an asbestos abatement project using the methodology specified in NIOSH 7400.

(f) For TEM analysis, the project shall be considered complete when the results of samples collected in the affected work area comply with 40 CFR 763.90 and Appendix A to Subpart E. Maximum turnaround time from sample collection through data reporting shall be 72 hours.

(g) For PCM analysis, the project shall be considered complete when the results of samples collected in the affected work area show that the concentration of fibers for each of the five samples is less than or equal to 0.01 fibers per cubic centimeter.

(h) When the air analysis results for projects covered by this subchapter show asbestos fiber concentrations above the acceptance criteria, then clean-up shall be repeated until compliance is achieved by re-cleaning all surfaces using wet methods and operating all HEPA equipped air pressure differential units to filter the air.

5:23-[8.15]**8.22** Disposal of asbestos waste

(a) This subsection shall apply to the [removal] **disposal** of **friable/non-friable** asbestos-**containing material and asbestos-contaminated waste** from the [job] **project** site [and the disposal of asbestos waste] **in accordance with New Jersey Department of Environmental Protection requirements specified in N.J.A.C. 7:26**.

1. Disposal of asbestos waste shall be conducted as follows:

i. (No change.)

ii. All asbestos waste materials destined for disposal [in New Jersey] shall be wetted and packaged in permanently sealed, leak-tight containers (such as six mil [plastic] **polyethylene** bags, double bagged with visible labels) in accordance with 40 CFR [61.20-25] **61.140-158 (Subpart M)** before it can be legally transported and disposed of [in New Jersey]. No haulage of loose asbestos is permitted.

iii. (No change.)

iv. The notification of (a)i above shall include the following:

(1)-(5) (No change.)

(6) A copy of any written notification required by 40 CFR [61.22 to 61.25] **61.146 and 61.155**.

v. (No change.)

[5:23-8.16 Duties of the asbestos safety technician

(a) The asbestos safety technician shall perform all air sampling specified in this subchapter, and shall be thoroughly familiar with this subchapter. He or she shall inform the Department who his or her employer is at the time of his or her application for certification, and shall notify the Department in writing within 10 working days of any change in status or employer. He or she shall have access to all areas of the asbestos removal project at all times and shall continuously inspect and monitor the performance of the contractor to verify that said performance complies with this subchapter while work is in progress. The asbestos safety technician shall be on site from the initial preparation of the work area through the approved final visual inspection.

(b) The asbestos safety technician shall direct the actions of the contractor verbally and in writing to assure compliance. The asbestos safety technician shall require that all workers present a valid asbestos worker performance permit issued by the New Jersey Department of Labor before entering the work area. The asbestos safety technician shall have the authority to test the seal of the respirator of each person who enters the work area to ensure a proper fit. In matters of gross negligence and/or flagrant disregard for the safety of others, including the possibility of contaminating the building environment and the appearance of an emergent unsafe condition at the work area, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to take the corrective action, or if the contractor or any of his or her employees habitually and/or excessively violate the requirements of any regulation, the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, the asbestos safety technician shall notify the administrative authority having jurisdiction who shall issue a Stop Work Order to the contractor and have the work area secured until all violations are abated.

(c) Upon receipt of testing results indicated that concentrations above the acceptance criteria pursuant to N.J.A.C. 5:23-8.23 have occurred during the abatement project, the asbestos safety technician shall immediately direct corrective action and verbally report these results within 24 hours to the contractor, the owner and the abatement project designer. Such verbal notification shall be followed by written notification to the contractor, the owner and the abatement project designer. A copy shall be sent to the administrative authority having jurisdiction and the Department within three business days from receipt of the results.

(d) The asbestos safety technician shall keep an up-to-date and comprehensive daily log of on-site activities. One section of the log shall contain observations concerning contractor compliance with activities required under this subchapter listing all deficiencies encountered. In addition, the log shall list the names of each person entering the work area. The log shall be kept at the job site and shall be made available upon request at all times to the owner, the abatement project designer and to appropriate local and State agencies.

(e) The asbestos safety technician shall prepare a comprehensive final report to include daily logs, required inspection reports, observations and air monitoring results. This report shall be made part of the official record filed by the asbestos safety control monitor.

(f) During the removal phase the duties of the asbestos safety technician shall be as follows:

1. Air monitoring outside the work area shall be provided throughout removal operations to ensure that no outside contamination is occurring, pursuant to N.J.A.C. 5:23-8.23;

2. If the contractor's barriers or other control methods are observed to malfunction, and if the contractor does not immediately correct the problems upon notification, the asbestos safety technician shall inform the administrative authority having jurisdiction who shall take immediate measures needed to ensure corrective action. In such a situation, sampling of a minimum of three additional samples per day shall be performed by the asbestos safety technician;

3. A series of smoke tests shall be performed by the asbestos safety technician at all sources of make up air including the decontamination unit entrance to ensure continuous air pressure differential. This test shall be performed before each work shift and every four hours thereafter until the work stops;

4. The asbestos safety technician shall calculate the required number of air pressure differential filtration units for each work area. This calculation shall be made whenever the volume of the work area changes. The asbestos safety technician shall inform the owner, contractor and the abatement project designer of any discrepancies between the number of units required and those in operation within the work area. If problems are identified and not corrected, the asbestos safety technician shall inform the administrative authority having jurisdiction who shall take necessary measures to ensure corrective action;

5. The asbestos safety technician shall test and record the exhaust volume (CFMs) of the air pressure differential units prior to the beginning of any abatement project. In addition, the asbestos safety technician shall read and record the pressure drop across the filter from the magnetic gauge or manometer off the air filtration units at the beginning of every shift and every four hours thereafter to ensure a complete air change or total air filtration within the work area once every 15 minutes to effectively reduce the work area fiber count;

6. A record shall be maintained in the daily log of all on-site observations, inspections and required activities of the contractor, asbestos safety technician and the owner;

7. The asbestos safety technician shall supervise the removal of all asbestos waste from the work area to ensure that it takes place in one of the following manners:

i. Direct removal by a collector/hauler registered with the New Jersey Department of Environmental Protection; or

ii. Indirect removal by placement in a locked and secure container, for temporary storage, awaiting the New Jersey Department of Environmental Protection registered waste hauler.

(g) The asbestos safety technician shall perform post-removal air testing in accordance with the following procedures:

1. Within 48 hours after clean-up for post-removal air testing, and before the removal of critical barriers, a thorough and complete visual inspection and a subsequent final air test shall be performed. This test is required to establish safe conditions for the removal of critical barriers and to permit the beginning of reconstruction activity, if required. Sufficient time following clean-up activities shall be allowed so that all surfaces shall be dry during monitoring. Air pressure differential filtration units shall be in use during monitoring. Post-removal testing shall begin when all work area surfaces are completely dry.

2. Aggressive air sampling shall be employed using propeller-type fans and/or leaf blowers. The fans shall be placed in each room to be sampled so as to cause settled fibers to rise and enter the air. Prior to air monitoring, floors, ceilings, and walls shall be swept with the exhaust of a one-horsepower leaf blower. Particular attention shall be made to ensure that areas which would be subject to dead-air conditions are swept. The fans used shall be capable of creating a minimum air velocity of 500 feet per minute. These fans may be of the oscillating type. Stationary fans shall be placed at a height of two meters (approximately 79 inches) in locations which will not interfere with air monitoring equipment. Fan air shall be directed toward the ceiling. One fan shall be used for each 10,000 cubic feet of the work area. The sampling pump and sampling media shall be placed in the abatement area on a random basis to provide unbiased and representative samples. The leaf blower and its use must meet the criteria set forth in EPA document 560/5-85-024, "Guidance for Controlling Asbestos-Containing Materials in Buildings," appendix section M.1.5., or any replacement criteria set fourth by the EPA. Their use should be restricted to general occupancy areas that are contained, and they should not be used in any space with an open dirt, sand or gravel floor.

3. Evaluation criteria: If test results exceed the value delineated in N.J.A.C. 5:23-8.23, the asbestos safety technician, or his or her employer, shall so inform the contractor, the owner and the abatement project designer. If these criteria have not been met, the contractor shall be required to re-clean all surfaces using wet cleaning methods and provide HEPA filtration units to exhaust air during the re-cleaning process. This process of re-cleaning, allowing surfaces to dry and re-testing shall be repeated until compliance is achieved.

(h) Final inspections shall be conducted by the asbestos safety technician as follows:

1. Upon notice by the owner or agent and after the removal of the critical barriers, a final inspection shall be conducted to ensure the absence of any visible signs of asbestos, or asbestos-containing material or work related materials; and

2. The asbestos safety technician shall ensure that all asbestos waste and asbestos-contaminated waste have been removed from the project site in a Department of Environmental Protection registered vehicle by a registered waste hauler as delineated in N.J.A.C. 5:23-8.15.

5:23-8.17 Coordination with other permits

(a) When a building owner or an authorized representative on behalf of the owner submits an application for a construction permit for repair, renovation, or demolition work, the following information shall be required to be given to the construction official having jurisdiction before a construction permit is issued:

1. An architect/engineer certification concerning whether asbestos will be disturbed and to what extent it will be disturbed during the planned construction work.

i. Where minor work not requiring an architect/engineer is involved then this certification will be required of the contractor undertaking the work.

(b) When it is certified that asbestos may become disturbed in a building or structure subject to this subchapter, an assessment performed by the New Jersey Department of Health, county or local health department, or by a private business entity authorized by the New Jersey Department of Health shall be required, unless the requirement for an assessment has been waived.

1. Boiler and water storage tank removal projects which require the removal of asbestos insulation from the boiler, water storage tank and piping shall not require an assessment before a permit is issued by the administrative authority having jurisdiction.

2. If the assessment indicates that the work and the disturbance which will result from it has made asbestos hazard abatement work necessary, then the construction official shall inform the building owner, or his agent, that all asbestos abatement work shall conform to this subchapter.

i. The work which will cause the disturbance will not be permitted to proceed until the hazard abatement work is complete or the asbestos-containing material clearly presents no further hazard.

ii. The construction official shall issue a partial permit for work which clearly will not disturb or interfere with the asbestos hazard abatement work.

5:23-8.18 Asbestos safety control monitor

(a) The Department shall authorize the establishment of an asbestos safety control monitor:

1. No person shall undertake the services described in this section or enter into any contract pursuant to this subchapter without first receiving the authorization of the Department.

i. Except that, applicants who have received notice from the Department that their application is complete and suitable for processing may begin to promote or otherwise make their anticipated availability known provided that the applicant discloses in writing at the time of undertaking any such activity, that he has not yet been authorized by the Department.

2. Applicants for authorization as an asbestos safety control monitor shall submit an application, with the required fee pursuant to (f) below, and any additional information the Department may require.

3. Following a determination by the Department that an application is complete and suitable for processing, the Department shall review and evaluate the information contained in the application and such other information as the Department shall deem necessary to enable it to make an accurate and informed determination of approval or disapproval. Within 30 days following the receipt of a completed application, the Department shall make its determination as to whether authorization as an asbestos safety control monitor shall be granted or denied, and shall notify the applicant. In the event of denial, the Department shall provide the applicant with a written explanation of the reasons therefor and provide for a hearing pursuant to N.J.A.C. 5:23-8.21.

4. The authorization application shall contain information relating to:

i. The financial integrity of the applicant and any of its principal officers;

ii. The qualifications of the management and technical personnel of the applicant, including a statement that all technical personnel who are to be assigned as asbestos safety technicians are certified by the Department;

iii. The applicant shall indicate the type of analysis done (for example, NIOSH 7400) and the laboratory(ies) that do the procedures. If the applicant does its own lab analysis, then it shall list the type of equipment used and the personnel using it, with their qualifications. All laboratories shall, for bulk sample analysis, be accredited by the National Institute of Standards and Technology (NIST). Laboratories shall be enrolled in the American Industrial Hygiene Association Proficiency Analytical Testing Program for PCM. The TEM analysis, laboratories shall certify that the analysis they performed was according to the protocol listed in Appendix A to Subpart E which is referenced in section N.J.A.C. 5:23-8.23;

iv. The range of salaries and other compensation of all technical personnel of the applicant;

v. The policies and procedures of the applicant for the hiring, training education and supervision of all technical personnel;

vi. The prior experience of the applicant in performing similar or related functions;

vii. The capability of the applicant to review plans and specifications and to inspect asbestos abatement work to ensure that the completed work is in compliance with this subcode;

viii. A statement that the applicant is not affiliated with, influenced or controlled by any producer, manufacturers, supplier or vendor or products, supplies or equipment used in asbestos hazard abatement.

5. Authorization shall be valid for a period of one year.

6. Applications for reauthorization shall be filed with the department at least 60 days prior to the scheduled expiration for the current authorization from the department. The asbestos safety control monitor shall make current the information previously submitted to the department. The asbestos safety control monitor shall provide additional information as the department may request. The application shall be accompanied by the fee established pursuant to (f) below. The department may conduct such additional investigations of the applicant as it may deem necessary.

i. Within 30 days following receipt by the department of an application for reauthorization, the department shall make its determination as to whether the asbestos safety control monitor continues to meet the requirements of the regulations. In the event of disapproval, the department shall provide the asbestos safety control monitor with a written explanation of the reasons for such disapproval. Each reauthorization shall expire one year from the date of the current authorization from the department.

ii. The department may, on its own motion or at the request of any asbestos safety control monitor, grant a temporary reauthorization of such agency for a period not to exceed 60 days.

(b) An asbestos safety control monitor may be an individual, partnership, corporation, or other business entity organized for the purpose of enforcing and administering this subcode.

1. Each asbestos safety control monitor shall enter into a contract for each asbestos hazard abatement project with the building owner. The contract shall specify: the scope of the project and provide that the asbestos safety control monitor shall carry out all the rules and responsibilities established by this subcode; how the asbestos safety control monitor is to be paid for their services and the name of the employee who shall serve as the responsible official and representative of the asbestos safety control monitor authorized to review and approve all documents related to the administration of this subcode.

2. Each asbestos safety control monitor authorized by the department shall organize its operation to effectively fulfill the requirements of this subcode. All personnel assigned to perform the duties of an asbestos safety technician shall be certified as an asbestos safety technician by the department prior to the date of authorization. Certification as an asbestos safety technician by the department shall be required for all personnel assigned to perform the duties of an asbestos safety technician in the future prior to their being allowed to perform such duties.

3. The asbestos safety control monitor shall report to the department through their designated responsible official and shall be subject to the orders and directives of the department in matters relating to the enforcement of this subcode.

(c) Records shall be maintained by the asbestos safety control monitor of all inspections, applications, plans reviewed, air tests, and any other information that may be required by the municipal construction official or the department. These records shall be open to department audit and shall not be destroyed or removed from the offices of the asbestos safety control monitor without the permission of the department.

1. The asbestos safety control monitor shall provide the department with the following:

i. A copy of each permit application and permit, (if a firm is the duly authorized agent of the owner), plan release, and any variation request submitted to the administrative authority having jurisdiction and determination of same by the construction official within three business days of the issuance, that they are contracted for;

ii. A list of names, certification numbers, addresses and telephone numbers of all technical personnel employed. Notification of any change in personnel shall be submitted in writing to the department within 30 days.

iii. A copy of the certificate of completion within three business days of its issuance.

2. The administrative authority having jurisdiction shall be the sole agent for the collection of all fees and penalties from the property owner, his designated agent or anyone in his employ.

3. Each asbestos safety control monitor shall have the following responsibilities:

i. To maintain an adequate number of certified staff to enforce the Asbestos Hazard Abatement Subcode;

ii. To review plans and specifications, and release in writing, and forward to the administrative authority having jurisdiction for issuance of a permit, and to the department within three days after release;

iii. To be subject to the department's rulings, directives and orders;

iv. To provide adequate supervision, so that its employees are prompt and diligent in discharging their duties:

v. To carry general liability insurance, at least in the amount of $500,000 for each person and each occurrence;

vi. To process and return all documents, plans, specifications, and applications within the time frame specified by this subcode.

vii. To provide technical assistance to building owner in the preparation of a construction permit application;

viii. To perform all required inspections and reinspections;

ix. To perform all tests required by this subcode;

x. To give testimony at a hearing or in court, as required by the construction official or department;

xi. To prepare all reports to the department as are required by this subcode or as may be required from time to time:

xii. To meet its obligations under its contract with the building owner;

xiii. To issue documentation and certification, such a written Pre-Commencement Inspections as required by this subcode;

xiv. To ensure the attendance of all technical and supervisory employees at required training and orientation programs;

xv. Upon completion of an asbestos hazard abatement project the asbestos safety control monitor shall submit a final comprehensive report consisting of but not limited to plan release, permit application and permit issued by the administrative authority having jurisdiction (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion and violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work. The report shall be submitted within 30 business days of issuance of the Certificate of Completion. Copies of the final report shall be submitted to the building owner and the department.

(d) Whenever an asbestos safety control monitor enters into a contract to provide asbestos safety control monitor services, in connection with an asbestos hazard abatement project, then the asbestos safety control monitor shall not have any economic relationship with another party involved with the project, except for a sub-contract for laboratory services needed by the asbestos safety control monitor to perform its duties under this subchapter.

(e) Suspension and revocation procedures are as follows:

1. In addition to any other remedies provided by the Uniform Construction Code regulations, N.J.A.C. 5:23, the department may suspend or revoke its authorization of any asbestos safety control monitor or assess a civil penalty of not more than $500.00 per violation, if the department determines that the authorization or reauthorization was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of this subchapter, or that a change of facts or circumstances make it unlikely that the asbestos safety control monitor can continue to discharge its responsibilities under this subchapter in satisfactory manner, or that the asbestos safety control monitor has violated this subchapter.

i. During the period of suspension the affected asbestos safety control monitor shall not be authorized to discharge any of its responsibilities under this subcode unless otherwise specified in the notice of suspension or order of the department.

2. The department shall notify such asbestos safety control monitor of its suspension or revocation in writing. Copies of the notice of suspension shall be forwarded by the department to all building owners with implementing contracts with the affected asbestos safety control monitor. The suspension shall be effective on the date the affected asbestos safety control monitor receives the notice of suspension or on any later date that may be designated in the notice of suspension.

3. The department may revoke its approval of any asbestos safety control monitor without previously suspending its authorization. In such event, the department shall send a written notice to the affected asbestos safety control monitor of its intention to consider revocation of its authorization, stating the grounds therefor, and establishing a time and a place for a hearing on the question. The notice shall be sent to the affected asbestos safety control monitor and to all building owners with implementing contracts with the affected asbestos safety control monitor.

i. No such asbestos safety control monitor shall reapply for approval as an asbestos safety control monitor until the expiration of one year from the date of the order of revocation.

4. Upon the suspension or revocation of approval of an asbestos safety control monitor, any building owner with an implementing contract with the asbestos safety control monitor shall have the right to terminate its contract with such asbestos safety control monitor and be free of all obligations thereon and to enter into an implementing contract with any other asbestos safety control monitor.

(f) The department, in addition or as an alternative to revoking or suspending an authorization, or assessing a penalty, may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the department, warrants such a response. Such letter, in addition to any other filing requirements, shall be made part of the authorization file of the firm.

(g) Conviction of a crime or an offense in connection with the practice as an Asbestos Safety Control Monitor shall constitute grounds for revocation or suspension of an authorization.

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the Department under this subcode for approval as an asbestos safety control monitor shall pay a fee of $3,250 for the authorization that is sought, plus an amount equal to eight percent of the gross revenue earned from asbestos safety control monitor activities, payable quarterly. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

2. Reauthorization fee: Any asbestos safety control monitor submitting an application to the Department under this subcode for reapproval as an asbestos safety control monitor shall pay a fee of $1,625 plus an amount equal to six percent of the gross revenue of four consecutive quarters starting with the previous year's last quarter. The fee shall be payable quarterly with the first quarter due with the application. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

5:23-8.19 Asbestos safety technician: certification requirements

(a) The department establishes standards and procedures for the certifying of asbestos safety technicians and requires all persons performing duties with respect to this subcode to be certified as provided in this subcode.

(b) No person shall act to enforce this subchapter without first holding a certification from the department.

1. Any individual who holds a certification as an Asbestos Safety Monitor from the New Jersey Department of Health and who applies within one year from the date of the issuance of that certification shall be entitled to certification as an Asbestos Safety Technician upon submittal of a proper application, the successful completion of a mandatory training course for asbestos safety technicians required by the Department of Community Affairs, and the required fee.

(c) It shall be a violation of this subcode for any person to hold or perform the duties of an asbestos safety technician for which a certification is required herein, or for any person to represent himself as qualified for such position, or to use any title or otherwise represent himself as certified or authorized to act under the code if the person does not possess a certification. A violation of this section shall subject the person to a penalty of not more than $500.00 for each offense.

1. It shall be a violation of this subcode for any asbestos safety control monitor to offer employment to a person to act as an asbestos safety technician or to retain for employment any person who is not certified in accordance with this subcode. Further, it shall be a violation of this subcode for an asbestos safety control monitor to continue an individual in employment, in a position for which a certification is required pursuant to this subcode, if such person is not certified in accordance with this subcode. Violation of this section shall be deemed a failure to perform within the meaning

of N.J.A.C. 5:23-8.17(b)ii and be subject to a penalty of not more than $500.00 for each offense.

(d) Any candidate for certification as an asbestos safety technician shall submit an application to the department accompanied by the required application fee established in (i) below. The requirements for certification as an asbestos technician are as follows:

1. At least two years of college in academic sciences, that is, biology, chemistry, industrial hygiene, environmental science, or related fields; or one year experience which included performing environmental assessment activities may be substituted for this education requirement;

2. Successful completion of a course in air monitoring methods. This course could have been part of an academic curriculum or as a continuing education course. The course should have consisted of a minimum of 30 contact hours and include hands-on experience with using and calibrating various types of air monitoring equipment; or six months of employment experience performing air monitoring which included at least 30 hours of on-the-job training may be substituted for this education requirement;

3. Successful completion in an approved training course for asbestos worker/supervisors certified by the New Jersey Department of Health pursuant to N.J.A.C. 12:120 and N.J.A.C. 8:60; or two years of experience in monitoring asbestos abatement activities may be substituted for completion of a certified training course; or one year experience monitoring asbestos abatement if the individual is an industrial hygienist certified by the American Board of Industrial Hygiene;

4. Successful completion of a special course for asbestos safety technicians approved by the New Jersey State Department of Health;

5. Successful passing of a special Examination for asbestos safety technicians approved and administered by the New Jersey Department of Health (pursuant to N.J.A.C. 12:120-6.12 and 8:60-6.12).

(e) The department may renew the certification following submission of an application, payment of the required fee pursuant to (i) below, and verification by the department that the applicant meets the requirements for the certification in this section.

1. Every two years any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the department that the applicant has met such continuing educational requirements as may be established by the Commissioner. The department shall renew the certification previously issued for a term of two years. The renewal date shall be 45 days prior to the expiration date. The expiration dates shall be July 31 or January 31.

2. The department shall issue, upon application, a duplicate certification upon a finding that the certification has been issued and the applicant is entitled to such certification to replace one which has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner shall be required.

3. The department may establish continuing education requirements as deemed necessary for the renewal of a certification.

(f) The department may suspend or revoke a certification, or assess a civil penalty of not more than $500.00, if the department determines that the holder:

1. Has violated the provisions of the Uniform Construction Code regulations;

2. Has obtained a certification by fraud or misrepresentation, or the person named in the certification has obtained it by fraud or misrepresentation;

3. Has aided or abetted in practice as an asbestos safety technician any person not authorized to practice as an asbestos safety technician under the provisions of this subcode;

4. Has fraudulently or deceitfully practiced as an asbestos safety technician;

5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;

6. Has failed, over a period of time, to maintain a minimally acceptable level of competence.

7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under this act or other appropriate law of this or any other state or jurisdiction.

8. Has failed to comply with any order issued by the department;

9. Has made a false or misleading written statement, or has made a material omission in any submission to the department; or

10. Has failed to enforce this subchapter.

(g) The department, in addition or as an alternative, as the case may be, to revoking or suspending a certification, or assessing a penalty, may issue a letter or warning, reprimand, or censure with regard to any conduct which, in the judgment of the department, warrants a letter of warning, reprimand or censure. Such letter, in addition to any other filing requirements, shall be made a part of the certification file of the individual.

(h) Conviction of a crime or an offense in connection with the practice as an asbestos safety technician shall constitute grounds for revocation or suspension of a certification.

(i) No application for certification shall be acted upon unless said application is accompanied by a fee as follows:

1. An application fee shall be $40.00;

2. A renewal application fee shall be $40.00.

5:23-8.20 Application of asbestos

(a) This section shall apply to the application of asbestos, except as provided in (a)1 below.

1. This section shall not apply to asbestos materials which are applied in solid, non-friable form, such as floor tiles or cement pipe.

(b) The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos application work.

1. No person may cause or allow surface coating by spraying on any building structure, facility, installation or internal or external portion thereof, using asbestos or any friable material containing in excess of 0.25 percent by weight of asbestos. See N.J.A.C. 7:27-17.

2. The direct application of asbestos material during construction or renovation of structures, facilities or installations by means such as troweling by hand shall be prohibited.

3. The only permissible applications of asbestos-containing materials during construction or renovation of structures, facilities or installations shall be those in which the asbestos is securely bound into a solid matrix before the application is performed, such as floor tiles in which asbestos is a minor component.

5:23-8.21 Appeals

(a) An appeal may be made to the department for any of the following reasons:

1. Denial of the release of plans;
2. Denial of the release of specifications;
3. Denial of an application for a construction permit;
4. Refuse to act on an application for a construction permit;
5. Refuse to grant a variation;
6. Refuse to grant a Certification of Completion;
7. Failure to act on an application for a Certificate of Completion;
8. Failure to act on an application for a Certificate of Occupancy;
9. Denial of an application for a Certificate of Occupancy;
10. Issue an Order to Stop Work;
11. Assessment of a penalty;
12. Rejection of or suspension of or revocation of authorization as an asbestos safety control monitor;
13. Rejection of or suspension of or revocation of certification as an asbestos safety technician.

(b) The application for appeal shall be made to the department within 20 business days of the receipt of written notice of the denial or other decision of the enforcing agency.

(c) The application for appeal shall be in writing, filed with the department briefly setting forth the appellant's position. Such application shall state the name and address of the appellant, the address of the building or site in question, the permit number, and shall reference the specific sections of the regulations in question, and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information that he may deem appropriate to his cause.

1. The enforcing agency shall make available to the department the full record of the application, which shall include a detailed explanation of the reasons for the denial of the appellant's request.

(d) The time for appeal may be extended prior to a meeting upon application to the department.

(e) Should the applicant be dissatisfied with the decision of the department, the case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Such hearings shall be governed by the provisions of the Administrative Procedure Act, (See N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1), and the time provisions applicable.

5:23-8.22 Demolition

(a) The friable asbestos that is present in a building or portion of a building that is to be demolished, shall be removed from that building or portion of a building prior to the demolition of that building.

1. This section applies only to buildings and portions of buildings that will not be reoccupied prior to demolition.

(b) A permit for the removal of asbestos shall be obtained from the administrative authority having jurisdiction.

(c) The permit for the removal of asbestos shall be obtained in the following manner:

1. A plan review must be conducted by the administrative authority having jurisdiction. The following shall be available for the plan review:

i. An asbestos hazard assessment prepared by the New Jersey Department of Health, or by a county or local department of health, or a private individual who has received accreditation as an inspector under the United States Environmental Protection Agency's Model Accreditation Program as referenced in 40 CFR 763. The accreditation will be issued by an EPA approved training agency, and that accreditation will include the place of training, accreditation number and its expiration date; accreditations are issued for one year. This assessment shall be required unless the requirement for an assessment has been waived by any of the above. This requirement can be met by removing all suspect material as asbestos-containing waste.

ii. Uncertified plans and specifications as follows:

(1) Plans and specifications (not less than three sets) indicating: the scope of the proposed work; whether the project is a small or large asbestos hazard abatement project; listing the total amount of square and/or linear footage of asbestos-containing material to be abated; the provisions proposed to contain the asbestos-containing material during abatement work showing, but not limited to, separation barriers, primary seal/critical barriers, route of travel of removing asbestos waste from the work area; a copy of the site plan; and a floor plan indicating exits.

(2) Any deviations from the regulations of this subchapter suggested by the building owner or his agent will be evaluated during the plan review stage of the permit application procedure;

(3) The regulations of this subcode shall be followed unless modifications are specifically agreed to in writing by the plan reviewer or the regulations are modified by this section.

2. The plans and specifications will be released in writing by the asbestos safety control monitor.

3. The issuance of a construction permit for asbestos abatement shall be subject to the following:

i. A written release of the plans and specifications by the asbestos safety control monitor;

ii. The name, address and license number of the asbestos contractor pursuant to N.J.A.C. 12:120 Asbestos Licenses and Permits under the jurisdiction of the New Jersey Department of Labor;

iii. The name, and address of the asbestos safety control monitor authorized by the New Jersey Department of Community Affairs who will be responsible for continuously monitoring the asbestos abatement part of the demolition project; and documentation that the building will be unoccupied at the time an asbestos abatement job takes place;

iv. The name and address of the analytical testing laboratory;

v. The name and address of the New Jersey Department of Environmental Protection registered waste hauler and of the New Jersey Department of Environmental Protection registered landfill where the asbestos waste will be deposited;

vi. The scheduled starting and completion dates for the asbestos abatement project.

(d) The requirements for actual asbestos removal will be the same as for asbestos abatement projects that are performed in buildings that are not to be demolished.

(e) Air monitoring samples during removal shall be required for a large asbestos abatement project, and a small asbestos abatement project if it has been determined by the asbestos safety control monitor to be required during the plan review. Final air samples after removal will be required for large and small asbestos abatement projects.

1. Results of .02 fibers/cc or less shall be attained by phase contrast microscopy (PCM) prior to demolition;

2. If the demolition does not take place within thirty days of obtaining the fiber level above the building or portion of a building to be demolished will be resampled to ensure compliance with (e)1 above;

3. If air levels above .020 fibers/cc are obtained in either of the above cases the areas where the asbestos removal took place must be recleaned and resampled until they do meet the required level.

5:23-8.23 Air monitoring methodology; acceptance criteria

(a) Air sampling specified in this section, except as is otherwise provided in (b) below, shall be performed by the asbestos safety technician in accordance with the procedures specified in this subchapter and shall be analyzed by a laboratory pursuant to 40 CFR 763.90.

1. For phase contrast microscopy (PCM) analysis, laboratories shall be enrolled in the American Industrial Hygiene Association Proficiency Analytical Testing Program.

2. For transmission electron microscopy (TEM) analysis, laboratories shall certify that the analysis they performed was according to the protocol listed in Appendix A to Subpart E of 40 CFR 763.

(b) Air sampling while abatement is in progress shall comply with the following procedures:

1. A minimum of three samples per day shall be collected. One stationary sample shall be collected within the clean room of the decontamination unit and two samples collected adjacent to the work area but remote from the decontamination unit entrance. In the selection of adjacent areas to be monitored, preference shall be given to rooms adjacent to critical barriers and/or work area. Testing results shall not indicate that concentrations above 0.01 fibers per cubic centimeter have occurred outside the containment barrier or above 0.02 fibers per cubic centimeter within the clean room of the decontamination chamber during the abatement project.

2. All pumps shall be calibrated prior to initial sampling using a primary standard. Pumps shall be re-calibrated with a minimum of a secondary standard before and after each sample is collected. Protocols shall be established for periodic calibration, using a primary standard. The frequency of primary recalibration checks shall be initially high, until experience is accumulated to show that it can be reduced safely. Records shall be kept of all calibrations.

3. Analysis shall be by PCM and shall be by the methodology specified using the NIOSH 7400 method entitled "Fibers" publication in the NIOSH manual of Analytical Methods, 3rd edition, 2nd supplement, August 1987. Maximum turnaround time from sample collection through data reporting shall be 24 hours.

i. TEM analysis may also be permitted if a proper methodology meeting nationally recognized standards is to be used. This shall need specific approval from the Asbestos Safety Control Monitoring firm prior to the commencement of the asbestos abatement project. Maximum turnaround time from sample collection through data reporting shall be 72 hours.

(c) Final clearance level, sampling and analysis method for small and large asbestos abatement projects for local education agencies, as defined in section N.J.A.C. 5:23-8.2, shall be performed as follows:

1. Samples collected within the affected work area shall be analyzed by TEM except as delineated below:

i. Until October 7, 1989, an owner or his or her agent may analyze air monitoring samples collected for clearance purposes by PCM to

confirm completion of an asbestos abatement project that is less than or equal to 3,000 square feet or 1,000 linear feet.

ii. From October 8, 1989 to October 7, 1990, an owner or his or her agent may analyze air monitoring samples collected for clearance purposes by PCM to confirm completion of an asbestos abatement project that is less than or equal to 1,500 square feet or 500 linear feet.

iii. After October 8, 1990, an owner or his or her agent may analyze air monitoring samples collected for clearance purposes by PCM to confirm completion of an asbestos abatement project that is less than or equal to 160 square feet or 260 linear feet (small asbestos hazard abatement project).

iv. To determine the amount of asbestos-containing material pursuant to this section, the owner or his or her agent shall add the total square or linear footage of asbestos-containing material within the containment barriers used to isolate the work area for the asbestos abatement project. Contiguous portions of material subject to such project conducted concurrently or at approximately the same time within the same building shall not be separated to qualify for the exceptions delineated above.

(d) Final clearance level, sampling and analysis method for small and large asbestos abatement projects for buildings other than for local education agencies, as defined in N.J.A.C. 5:23-8.2, shall be as follows:

1. One sample per 10,000 square feet of work area with a minimum of five samples shall be required. Samples collected within the affected work area space may be analyzed by PCM to confirm completion of an asbestos abatement project using the methodology specified in NIOSH 7400. Maximum turnaround time from sample collection through data reporting shall be 24 hours.

(e) For TEM, the project shall be considered complete when the results of samples collected in the affected work area comply with 40 CFR 763.90 and Appendix A to Subpart E. Maximum turnaround time from sample collection through data reporting shall be 72 hours.

(f) For PCM, the project shall be considered complete when the results of samples collected in the affected work area show that the concentration of fibers for each of the five samples is less than or equal to a limit of quantitation for PCM of 0.01 fibers per cubic centimeter.

(g) When the air analysis results for projects covered by this subchapter show asbestos fiber concentrations above the acceptance criteria, then clean-up shall be repeated until compliance is achieved by re-cleaning all surfaces using wet methods and operating all HEPA air filtration units to filter the air.

5:23-8.24 Removal of non-friable asbestos-containing material

(a) This section applies to all building, non-friable, miscellaneous asbestos-containing material.

1. When the removal method will cause the building environment to become contaminated with airborne fibers caused by a combination of mechancial and manual tasks, such as grinding the surface of vinyl asbestos floor tiles, then complete separation of the worksite from the rest of the building shall be required and the precautions and procedures as delineated in N.J.A.C. 5:23-8.11 shall be followed. A construction permit for asbestos abatement pursuant to this subchapter shall be required.

2. When the removal method will not contaminate the building environment with airborne fibers, such as when an electric heating appliance is used to loosen vinyl asbestos floor tiles, then general isolation of the work area from the surrounding environment, safe work practices and proper clean-up procedures, including having access to shower facilities after performing the asbestos-related work, shall be required. A contractor licensed by the New Jersey Department of Labor shall be required pursuant to N.J.A.C. 12:120 to perform this work. A construction permit pursuant to N.J.A.C. 5:23-2 shall be required.

(b) The disposal of non-friable asbestos-containing waste shall conform to the requirements specified in N.J.A.C. 5:23-8.15.

(c) Exception: This section shall not apply to non-friable asbestos-containing material found on the exterior of the building such as asbestos siding, transite and asbestos cement board, asbestos roof shingle, felts and built up roofing materials. Safe work practices shall be employed to minimize asbestos fiber exposure during the tear-off period and, in particular, for asbestos shingle roofs, work precautions described in the National Institute for Occupational Safety and Health (NIOSH) Health Hazard Evaluation Report No. HETA 84-321-1590 shall be followed. A construction permit pursuant to N.J.A.C. 5:23-2 shall be required. Disposal of this waste shall be in accordance with N.J.A.C. 5:23-8.15.]

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Subcodes; Enforcing Agencies, Duties, Powers, Procedures; Licensing

Proposed Amendments: N.J.A.C. 5:23-5
Proposed Recodification with Amendments: N.J.A.C. 5:23-3.10 as 5:23-4.3A

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1992-130.

Submit comments by May 6, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802

The agency proposal follows:

Summary

This proposal is the product of a comprehensive review of the subchapter concerning "Licensing" by the program administrators who have been made aware, by applicants, of many ambiguities and possible misconstructions of existing language. Most of the amended language in this proposal corrects altered titles and names, corrects grammar and punctuation, and updates and corrects internal citations. There are certain changes, however, which will have a substantive effect; most notably, the trainee registration fee will be increased from $10.00 to $20.00 to more adequately cover the Department's costs. Additionally, it is made clear that application fees are non-refundable. It is also made clear that, in those cases where experience requirements are reduced for persons with bachelor's or associate's degrees, the experience must be subsequent to the receipt of the degree. Subject matter areas of the degree obtained have been broadened to those "significantly" related to building construction, rather than "directly" related.

The classification of enforcing agencies, which is directly related to the classification or the licensing of the personnel employed by them, has not been changed, but it has been moved from subchapter 3 ("Subcodes") to subchapter 4 ("Enforcing Agencies; Duties; Powers; Procedures"), where it more properly belongs. Additionally, N.J.A.C. 5:23-5.3, Types of license, has been deleted and the appropriate text in subsection (a) added as new to the recodified N.J.A.C. 5:23-4.3A. (Since specific authorizations to review were already contained in the enforcing agency classification rule, they were not transferred from N.J.A.C. 5:23-5.3.)

Social Impact

As a result of the clarifications and the more comprehensible language changes proposed, both applicants and code officials will have a clearer understanding of trainee registration and licensure matters, as well as a better understanding of classification requirements for Uniform Construction Code Enforcing Agencies. The Department will similarly benefit in that applicants and code officials will be likely to submit more accurate and complete filings. The change from subject matter areas "directly" related to construction to those "significantly" related enlarges the potential field of applicants, while maintaining an appropriate standard.

Economic Impact

The technical changes to the subchapter should have no direct economic effect; however, clarity should save time for applicants and for the Department. The examination fees will continue to be those

submitted to the Department by the administrators of the examination program.

As a result of the $10.00 increase to the initial and renewal Trainee Inspector application fees, the Department will gain from $50.00 to $150.00 per year, depending on the number of applications received. It is anticipated this minor increase will not significantly impact individual applicants.

Regulatory Flexibility Statement

These proposed amendments are intended to clarify code provisions concerning licensing of individuals as enforcement officials and inspectors, and will have no discernible impact on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no Regulatory Flexibility Analysis is required.

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

5:23-[3.10]**4.3A** Enforcing agency classification

(a) Local enforcing agencies shall be classified as RCS (specialty in residential and small commercial structures), ICS (specialty in industrial and commercial structures) or HHS (specialty in high-rise/hazardous structures). The classification of the enforcing agency shall be determined by the highest class of structures for which the construction official and each subcode official in a municipality is licensed to do plan review.

Redesignate (a)-(e) as **(b)-(f)** (No change in text.)

5:23-5.1 Title; scope; intent

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

(c) This subchapter shall control all matters relating to qualifications for and licensing of all code enforcement officials engaged in or to be engaged in the administration and enforcement of the New Jersey Uniform Construction Code, including types of licensed code enforcement officials; procedures for application, [insurance] **issuance,** denial and revocation of licenses; **the** approval of [training] **testing** and/or educational programs offered to meet the requirements for licensing of code enforcement officials or construction board of appeals members; application fees for a license; and enforcement of penalties for violations of this subchapter.

(d) The Uniform Construction Code has been adopted to ensure public safety, health, and welfare insofar as they are affected by building construction. In order for the code to be enforced adequately and effectively, code officials will need to have sufficient knowledge and competence to administer and interpret the code's standards. This can best be achieved through the creation of an education and training program and the development of licensing requirements.

1. It is the purpose of this subchapter to establish standards and procedures for the licensing of [code] **Uniform Construction Code** enforcement officials, [including but not limited to construction officials and building, electrical, fire protection and plumbing subcode officials and inspectors,] and to require all persons performing duties with respect to the inspection of building construction for any political subdivision within this State, or in a private capacity, to be licensed as provided in this subchapter.

5:23-5.2 Unit established; hearings

(a) Rules concerning licensure of code enforcement officials are:

1. Established: There is hereby established in the Bureau of Technical Services, Division of Housing and Development, **a** Licensing Unit. The Unit shall consist of such employees of the Department of Community Affairs as may be required for the efficient [operation] **implementation** of this subchapter.

2. Powers and duties: The [office] **unit** shall have the following responsibilities in addition to all others provided in this subchapter.

i. To issue such licenses as may be called for herein when warranted [and to affix the seal of the Commissioner thereon];

ii.-iii. (No change.)

(b) (No change.)

5:23-5.3 Types of licenses

[(a) Local enforcing agencies shall be classified as R.C.S. (specialty in residential and small commercial structures), I.C.S. (specialty in industrial and commercial structures) or H.H.S. (specialty in high-rise/hazardous structures). The classification of the enforcing agency shall be determined by the highest class of structures for which the constructional official and each subcode official in a municipality is licensed to do plan review.

1. An enforcing agency R.C.S. is authorized to review plans for all class III structures up to the limits established in N.J.A.C. 5:23-3.10, except those reserved to the State by the provisions of N.J.A.C. 5:23-3.11, and to issue construction permits, carry out field inspection activity, issue certificates of occupancy and undertake all other responsibilities of an enforcing agency provided for and required by these regulations for all structures, provided that where required by N.J.A.C. 5:23-4.24(a) the plans for such structure have been released by the Department of Community Affairs.

2. An enforcing agency I.C.S. is authorized to review plans for all class III and class II structures up to the limits established in N.J.A.C. 5:23-3.10, except those reserved to the State by the provisions of N.J.A.C. 5:23-3.11, and to issue construction permits, carry out field inspection activity, issue certificates of occupancy and undertake all the other responsibilities of an enforcing agency provided for and required by these regulations for all structures, provided that where required by N.J.A.C. 5:23-4.24(a) the plans for such structure have been released by the Department of Community Affairs.

3. An enforcing agency H.H.S. is authorized to review plans, issue construction permits, carry out field inspection activity, issue certificates of occupancy and undertake all the other responsibilities of an enforcing agency provided for and required by these regulations for all structures, except those reserved to the State by the provisions of N.J.A.C. 5:23-3.11.

4. If all of the appropriate officials of a local enforcing agency have not been licensed in one of the specialties provided for in this subchapter, the local enforcing agency shall be classified as an enforcing agency I.C.S. until October 1, 1978, and as an enforcing agency R.C.S. thereafter until January 1, 1981, after which time no official may hold office who is not licensed.]

[(b)]**(a)** Rules concerning [classification of] code enforcement [officials] **licensure categories** are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for and shall be licensed in the following specialties:

i. Building [inspectors] **inspector:** Building inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1) (No change.)

(2) Building inspector with a specialty in industrial and commercial structures (I.C.S.): Building inspectors I.C.S. are authorized to review plans for [structure] **structures** in classes II and III, and to carry out field inspection activities for structures in classes I, II and III.

(3) (No change.)

ii. (No change.)

iii. Fire protection inspector: Fire protection inspectors are authorized to carry out field inspection and plan review work pursuant to **the** regulations subject to the limitations specified herein.

(1)-(3) (No change.)

iv. Plumbing inspector: Plumbing inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1) Plumbing [inspectors] **inspector** with a specialty in high-rise and hazardous structures (H.H.S.): Plumbing inspectors H.H.S. are authorized to review plans and carry out field inspection for structures in classes I, II and III.

(2) (No change.)

v. Inplant inspector: Inplant inspectors are authorized to carry out field inspections and plan review work [for] **of** premanufactured components pursuant to this subchapter.

vi. Elevator inspector with a specialty in high-rise and hazardous structures (H.H.S.): Elevator inspectors H.H.S.[,] are authorized to review plans and carry out the elevator device inspections, or to witness tests[,] required by this chapter in all structures.

2. Administrative licenses: In addition to the basic required technical [license] **licenses** specified in N.J.A.C. 5:25-5.3(b)**1**, a person may apply for the administrative licenses specified herein.

i.-vi. (No change.)

5:23-5.4 Licenses required

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

(d) Enforcing agencies[, including private on-site inspection and plan review agencies,] may establish code enforcement trainee positions subject to the following rules.

[1. Private on-site inspection and plan review agencies may establish code enforcement trainee positions with the approval of the construction official of the municipality to which the trainee is to be assigned subject to the same terms and conditions as a trainee employed be a public enforcing agency as listed below.]

[2.]**1.** Persons applying for a trainee position with an enforcing agency must be officially registered with the Department of Community Affairs on the form provided by the Licensing Unit of the Bureau of Technical Services prior to being hired as a trainee.

i. Trainees shall renew their registration yearly and shall notify the Department of Community Affairs, Bureau of Technical Services, Licensing **Unit**, of any change in employment status or address within one month of [any] **the** change. A non-refundable processing fee of [$10.00]**$20.00** is required for the initial Trainee Registration Request and for each subsequent renewal request.

[3.]**2.** Persons meeting the following experience requirements shall be eligible to [be employed] **register** as trainees:

i. Fire protection inspector trainee—a minimum of one year of experience in the fire service (other than as an apprentice or [trainee] **person in training**) with fire prevention, fire protection or firefighting responsibilities**, or with one year experience in building construction as a journeyman, contractor, or design draftsperson relative to the fire protection subcode.**

ii. Building inspector trainee—a minimum of one year **of** experience in building construction as a journeyman, inspector, contractor[,] or design[er] draftsperson relative to the building subcode.

iii. Plumbing inspector trainee—a minimum of one year of experience as a journeyman plumber, [or as a] contractor, or design[er] draftsperson relative to the plumbing subcode.

iv. Electrical inspector trainee—a minimum of one year of experience as a journeyman electrician, [or as a] contractor or [designer] **design** draftsperson relative to the electrical subcode.

v. Persons who have graduated from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, or who possess an associate's degree in code enforcement, or have a current New Jersey **registration**/license [to practice] as an architect or engineer [at the time of application] shall be exempt from the experience requirement for trainee employment.

[4.]**3.** Trainees [must] **shall** be evaluated by their supervisors on a quarterly basis. This evaluation [must] **shall** include a brief description of the trainee's code enforcement activities and an assessment of the trainee's performance in these activities. Trainees who receive satisfactory evaluation ratings by their supervisors and who occupy enforcing agency trainee positions while registered with the Department may use the trainee experience toward satisfying the experience requirement for licensure in accordance with [N.J.A.C. 5:23-5.5] **this subchapter**. The effective date of [their] **the** trainee experience begins at the time [they are] **the person is** hired as a registered trainee by an authorized agency.

[5.]**4.** (No change in text.)

[6.]**5.** The supervisor of the trainee [must] **shall** possess a valid code enforcement license in the same subcode as the registered trainee working under his **or her** direct supervision.

i.-ii. (No change.)

[7.]**6.** To remain employed by an enforcing agency, a trainee must enroll in, and successfully complete, the appropriate approved course[(s) as required in N.J.A.C. 5:23-5.5] within two years of the effective date of his **or her** employment. Trainees who fail to successfully complete the appropriate course[(s)] within two years of the effective date of their employment [will] **shall** not be permitted to renew their registration until successful completion is achieved.

[8.]**7.** (No change in text.)

(e) Rules concerning effect are:

1. It shall be a violation of these regulations [on and after October 1, 1978, in the case of] **for any** construction [and] **or** subcode [officials and technical inspectors for any person] **official or technical inspector** to represent himself **or herself** to be qualified for a position that the person does not currently hold, or to use a title or otherwise represent himself to be qualified for a position that the person does not currently hold, or to use a title or otherwise represent himself as licensed or authorized to act under the code if that person does not possess [a license] **the required license.** In addition to any other remedy available under law, such shall be deemed a violation of this section subject to penalty of not more than $500.00 for each offense.

2.-4. (No change.)

5:23-5.5 General license requirements

(a) [Any] **A** candidate for a license of any type issued pursuant to this subchapter shall submit an application to the Licensing Unit, Bureau of Technical Services, accompanied by the required **nonrefundable** application fee established in N.J.A.C. 5:23-5.22. The application shall include such information and documentation as the Commissioner may require pursuant to this subchapter.

(b) After receipt of the required [non-refundable] **nonrefundable** fee, the Department shall determine, by examination of the application and review of [any] supporting documents, including [any] **substantial** evidence of **acceptable** experience, **successful test results,** training and/or education submitted, whether an applicant is qualified for a license of the type and specialty for which the application has been made. If the application is satisfactory, the Commissioner shall issue a license to the applicant. This license will show that the person has met the established requirements and is eligible to be employed in this State in accordance with the provisions of this chapter.

1. (No change.)

2. Upon receipt of an incomplete application, the **non-refundable** application fee shall be collected and a letter of acknowledgment forwarded to the applicant setting forth the manner in which the application is incomplete.

3. The applicant shall submit a complete application within 18 months of receipt of the letter of acknowledgment. If a complete application is not submitted within the 18-month period, the application shall be deemed abandoned, no further action shall be taken on it by the Department and a new application and non-refundable fee shall be required if the applicant desires to re-apply.

4. Only test results for test modules passed within three years [of the date] **prior to, or at the time** of, application shall be accepted toward fulfilling the requirements for the license sought. However, results of passed tests taken prior to July 1, 1991 of test module 6B-Elevator General shall be accepted toward fulfilling the requirements for elevator inspector H.H.S. licensure, if application is received by the Department within three years of issuance of the test results or by June 30, 1992, whichever is later.

5. No credit shall be given by the Department for any experience not involving the construction or alteration of buildings**, or its equivalent, as determined by the Department.**

6. No credit shall be given by the Department for any journeyman experience unless documentation of the completion of a formal or informal apprenticeship program, or its equivalent**, as determined by the Department,** is provided. [The] **In general, the** Department makes reference to the U.S. Department of Labor's National Apprenticeship Program for assigning the length of time required to complete an apprenticeship program in a given trade.

7. Credit for part-time work experience shall be given by the Department on a proportional basis. **The Department has established a 35-hour work-week as the standard full time equivalent. No additional credit will be given for hours in excess of 35 per week, regardless of any amount of overtime which an applicant claims to have worked.**

(c) (No change.)

(d) Special provisions:

[1. Applicants for a technical license as building inspector R.C.S., building inspector I.C.S., plumbing inspector I.C.S., fire protection inspector I.C.S. or electrical inspector I.C.S. who were enrolled in the required educational courses pursuant to N.J.A.C. 5:23-5.5 and 5:23-5.6 during the period from December 31, 1980 to February 1, 1982 may be granted such license(s) without having to successfully complete the National Certification Examination required by N.J.A.C. 5:23-5.9 if the applicant applies or re-applies for the license(s) by December 31, 1984 and is determined by the Department to be otherwise qualified.

2. An applicant for a technical license as building inspector R.C.S., building inspector I.C.S., fire protection inspector I.C.S., plumbing inspector I.C.S. or electrical inspector I.C.S. who applied for such license(s) prior to February 1, 1982 but whose application was rejected and who received formal notice of ineligibility dated not earlier than December 31, 1980 and not later than February 1, 1982, or who, in conjunction with proceedings before the Office of Administrative Law, executed letters of waiver or settlement stipulations during the period from December 1, 1980 through February 1, 1982, may be licensed in accordance with directives or requirements of the Department set forth in any such notice of ineligibility, letter of waiver or settlement stipulation, if such applicant reapplies for the license(s) by December 31, 1984 and is otherwise qualified.

3. An applicant for a technical license as building inspector H.H.S., fire protection inpsector H.H.S., plumbing inspector H.H.S. or electrical inspector H.H.S. who enrolled in the respective approved H.H.S. course prior to January 17, 1984 may be granted such H.H.S. license(s) without having to complete the National Certification Examination required by N.J.A.C. 5:23-5.9 if such applicant applies for the license(s) by December 31, 1984 and is otherwise qualified.

4. An applicant for a technical license as building inspector H.H.S., fire protection inspector H.H.S., plumbing inspector H.H.S. or electrical inspector H.H.S. who applied for such license(s) during the period from February 1, 1982 to January 17, 1984 but whose application was rejected or who received a formal notice of ineligibility dated no later than April 30, 1984, or who executed a letter of waiver or settlement stipulation pursuant to a proceeding before the Office of Administrative Law during the period from February 1, 1982 to April 30, 1984, shall be eligible to be licensed upon compliance with the directives or requirements of the Department set forth in such notice of ineligibility, letter of waiver or settlement stipulation if such applicant reapplies for the license by December 31, 1984 and is otherwise qualified.]

Recodify existing 5. as **1.** (No change in text.)

5:23-5.6 Construction official requirements

(a) A candidate for a license as a construction official shall meet the following qualifications:

1. Possession of the qualifications established herein for at least one of the [four] **five** subcode official licenses; provided, however, that any person qualified as a fire protection subcode official must also have experience for the applicable period of time specified by N.J.S.A. 52:27D-126b; and

2. Successful completion of an approved construction official educational program as required by N.J.A.C. 5:23-5.20 prior to or at the time of application.

3. A provisional license shall be issued to any person provided that such person is licensed **or is simultaneously licensed** as a subcode official. Such person shall have successfully completed the educational program required herein within 24 months of issuance of the provisional license.

5:23-5.7 Subcode official [requirement] **requirements**

(a) A candidate for a license as a building, electrical, fire protection, plumbing or elevator subcode official shall meet the following qualifications:

1. (No change.)

2. Successful completion of an approved subcode official educational program **as** established in N.J.A.C. 5:23-5.20 prior to**, or at the time of,** application; and

3. Completion of such additional experience in the subcode of qualification as may be required, beyond that needed for licensure as a technical inspector, to provide at least the following total experience:

i. (No change.)

ii. Five years of experience in construction, design or supervision in building construction work, provided that such persons possess**, prior to this experience,** at least a bachelor's degree from an accredited institution of higher education in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction; or

iii. (No change.)

4. (No change.)

5. A provisional license shall be issued to any person who possesses the required experience listed above provided that such person is licensed **or is simultaneously licensed** as a technical inspector **in the same subcode area**. Such person shall have successfully completed the educational program required herein within 24 months of issuance of the provisional license.

6.-7. (No change.)

5:23-5.8 Building inspector H.H.S. requirements

(a) A candidate for a license as a building inspector H.H.S. shall meet one of the following educational and/or experience requirements;

1. Seven years of experience consisting of [some combination of the following:] **one of the following, or a combination thereof:**

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, and two years of **subsequent** experience in construction, design, inspection or supervision in a field of construction currently regulated by the building subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and three years of **subsequent** experience in the construction, design, inspection or supervision of construction work regulated by the building subcode[,]**;** or

4. Possession of a current New Jersey **registration**/license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as a building inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved [education] **educational** program meeting the requirements established in N.J.A.C. 5:23-5.20 for building inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] significantly related to building construction, **or who possess a current New Jersey registration/license as an architect or engineer** shall be exempted from the educational program requirements for building inspector H.H.S.

2.-3. (No change.)

5:23-5.9 Building inspector I.C.S. requirements

(a) A candidate for a license as a building inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of [some combination of the following] **one of the following, or a combination thereof:**

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, and one year of **subsequent** experience in construction, design, inspection or supervision in a field of construction currently regulated by the building subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and two years of

subsequent experience in the construction, design, inspection or supervision of construction work regulated by the building subcode; or

4. Possession of a current New Jersey **registration/**license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as a building inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for building inspector I.C.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, **or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for building inspector I.C.S.

2.-3. (No change.)

5:23-5.10 Building inspector R.C.S. requirements

(a) A candidate for a license as a building inspector R.C.S. shall meet one of the following educational and/or experience requirements:

1. Three years of experience consisting of [some combination of the following] **one of the following, or a combination thereof:**

ii.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and one year of **subsequent** experience in the construction, design, inspection or supervision of construction work regulated by the building subcode; or

4. Possession of a current New Jersey **registration/**license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as a building inspector R.C.S. shall also meet the following requirements [prior to application]:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for building inspector R.C.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, **or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for building inspector R.C.S.; and

2. (No change.)

5:23-5.11 Electrical inspector H.H.S. requirements

(a) A candidate for a license as an electrical inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of [some combination of the following:] **one of the following, or a combination thereof:**

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, and two years of **subsequent** experience in construction, design, inspection or supervision in a field of construction currently regulated by the electrical subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education[,] and three years of **subsequent** experience in the construction, design, inspection or supervision of construction work regulated by the electrical subcode; or

4. Possession of a current New Jersey **registration/**license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as an electrical inspector H.H.S. shall also meet the following requirements [prior to application]:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for electrical inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or in engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, **or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for electrical inspector H.H.S.; and

2.-3. (No change.)

5:23-5.12 Electrical inspector I.C.S. requirements

(a) A candidate for a license as an electrical inspector I.C.S. shall meet one of the following educational and/or experience requirements.

1. Five years of experience consisting of [some combination of the following:] **one of the following, or a combination thereof:**

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, and one year of **subsequent** experience in construction, design, inspection or supervision in a field of construction currently regulated by the electrical subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and two years of **subsequent** experience in the construction, design, inspection or supervision of construction work regulated by the electrical subcode; or

4. Possession of a current New Jersey **registration/**license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as a electrical inspector I.C.S. shall also meet the following requirements [prior to application]:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for electrical inspector I.C.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, **or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for electrical inspector I.C.S.; and

2. (No change.)

5:23-5.13 Fire protection inspector H.H.S. requirements

(a) A candidate for a license as a fire protection inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of [some combination of the following:] **one of the following, or a combination thereof:**

i. Experience in the fire service (other than as an apprentice or [trainee] **as a person in training**), with fire prevention, fire protection or firefighting responsibilities; or

ii.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science **or fire science technology, or in** architecture or engineering, or in architectural[,] **or** engineering [or fire science] technology or in [a] **any other** major area of study [directly] **significantly** related to building construction **or fire science**, [plus] **and** two years of **subsequent** experience in **responsibilities regulated by the fire protection subcode and/or experience in** the fire service with fire prevention, fire protection or firefighting responsibilities; or

3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science, or fire science technology, and three years of **subsequent** experience in **responsibilities regulated by the fire protection subcode and/or experience in** the fire service with fire prevention, fire protection or firefighting responsibilities; or

4. Possession of a current New Jersey **registration/license** [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as a fire protection inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for fire protection inspector H.H.S.; provided, however, that persons having an associate's degree in code enforcement, fire science, or fire science technology, or a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction **or fire science, or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for fire protection inspector H.H.S.

2.-3. (No change.)

5:23-5.14 Fire protection inspector I.C.S. requirements

(a) A candidate for a license as a fire protection inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting [some combination of the following] **one of the following, or a combination thereof**:

i. Experience in the fire service (other than as an apprentice or [trainee] **as a person in training**) with fire prevention, fire protection, or firefighting responsibilities; or

ii.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science[,] **or fire science technology, or in** architecture or engineering, or in architectural[,] **or** engineering [or fire science] technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction **or fire science,** and one year of **subsequent** experience **in responsibilities regulated by the fire protection subcode and/or experience** in the fire service with fire prevention, fire protection or firefighting responsibilities; or

3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science, or fire science technology, and two years of **subsequent** experience in **responsibilities regulated by the fire protection subcode and/or experience in** the fire service with fire prevention, fire protection or firefighting responsibilities; or

4. Possession of a current New Jersey **registration**/license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as a fire protection inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for fire protection inspector I.C.S.; provided, however, that persons having an associate's degree in code enforcement, fire science or fire science technology, or a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction **or fire science, or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for fire protection inspector I.C.S.

2. (No change.)

[3. Possession of, or eligibility for, the fire protection inspector R.C.S. license.]

5:23-5.15 Fire protection inspector R.C.S. requirements

[(a)] Issuance of the fire protection inspector R.C.S. license [will] **shall** be discontinued after July 31, 1991. All licenses issued on or before that date shall cease to be valid after July 31, 1993.

[(b) A candidate for a license as a fire protection inspector R.C.S. shall meet one of the following educational and/or experience requirements:

1. Three years of experience consisting of some combination of the following:

i. Experience in the fire service (other than as an apprentice or trainee) with fire prevention, fire protection or firefighting responsibilities; or

ii. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the fire protection subcode; or

iii. Experience as a construction contractor in a field of construction currently regulated by the fire protection subcode; or

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in a major area of study directly related to building construction; or

3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science or fire science technology, and one year of experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

4. Possession of a current New Jersey license to practice as an architect or engineer at the time of application.

(c) A candidate for a license as a fire protection inspector R.C.S. shall also meet the following requirements prior to application:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for fire protection inspector R.C.S.; provided, however, that persons having an associate's degree in code enforcement, fire science or fire science technology or a bachelor's degree in fire science, architecture or engineering or in architectural, engineering or fire science technology or in major area of study directly related to building construction shall be exempted from the educational program requirements for fire protection inspector R.C.S.]

5:23-5.16 Plumbing inspector H.H.S. requirements

(a) A candidate for a license as a plumbing inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of [some combination of the following] **one of the following, or a combination thereof**:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, and two years of **subsequent** experience in construction, design, inspection or supervision in a field of construction currently regulated by the plumbing subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and three years of **subsequent** experience in the construction, design, inspection or supervision of construction work regulated by the plumbing subcode; or

4. Possession of a current New Jersey **registration**/license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as a plumbing inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for plumbing inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, **or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for plumbing inspector H.H.S.

2.-3. (No change.)

5:23-5.17 Plumbing inspector I.C.S. requirements

(a) A candidate for a license as a plumbing inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of [some combination of the following] **one of the following, or a combination thereof**:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major

area of study [directly] **significantly** related to building construction, and one year of **subsequent** experience in construction, design, inspection or supervision in a field of construction currently regulated by the plumbing subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and two years of **subsequent** experience in the construction, design, inspection or supervision of construction work regulated by the plumbing subcode; or

4. Possession of a current New Jersey **registration**/license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for a license as a plumbing inspector I.C.S. shall also meet the following requirements [prior to application]:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for plumbing inspector I.C.S.; provided, however, that persons having a [college] **bachelor's** degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, **or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for plumbing inspector I.C.S.

2. (No change.)

5:23-5.18 Inplant inspector requirements

(a) A candidate for a license as an inplant inspector shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of [some combination of the following] **one of the following, or a combination thereof**:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in **fire science or fire science technology, or in** architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction **or fire science,** and three years of **subsequent** experience in any one or more of the fields regulated by the above enumerated subcodes; or

3. Possession of a current New Jersey **registration**/license [or registration to practice engineering or architecture at the time of application] **as an architect or engineer**.

(b) A candidate for a license as an inplant inspector shall have successfully completed examinations as required by N.J.A.C. 5:23-5.23 [prior to application].

5:23-5.19 Elevator inspector H.H.S. requirements

(a) A candidate for a license as an elevator inspector of high-rise and hazardous structures (H.H.S.) shall meet the following educational and/or experience requirements:

1. Seven years **of** experience consisting of [some combination of the following] **one of the following, or combination thereof**:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study [directly] **significantly** related to building construction, and two years of subsequent experience in construction, design, inspection or supervision in a field of construction regulated by the elevator subcode; or

3. (No change.)

4. Possession of a current New Jersey **registration**/license [to practice] as an architect or engineer [at the time of application].

(b) A candidate for licensure as an elevator inspector H.H.S. shall also meet the following requirements [prior to application]:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for elevator inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in [a] **any other** major area of study [directly] **significantly** related to building construction, **or who possess a current New Jersey registration/license as an architect or engineer,** shall be exempted from the educational program requirements for elevator inspector H.H.S. Additionally, any individual who has successfully completed an educational program determined by the Department as equivalent to that established in N.J.A.C. 5:23-5.20 shall also be exempted from the educational program requirements for elevator inspector H.H.S., provided application for licensure is received by the Department on or before June 30, 1992.

2. (No change.)

5:23-5.21 Renewal of license

(a) The Department may issue the appropriate license following submission of an application, payment of the required **non-refundable** fee, and verification by the [Office of Code Enforcement Official License] **Licensing Unit of the Bureau of Technical Services** that the applicant meets the requirements for **renewal of** the license established herein.

(b) Every two years, any license already issued shall be renewed upon submission of an application, payment of the required **non-refundable** fee, ad verification by the [Office of Code Enforcement Official License] **Licensing Unit of the Bureau of Technical Services** that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Department shall renew the license previously issued, for a term of two years. The renewal [date shall be] **process shall begin** 90 days prior to the expiration dates, which shall be July **31** or January 31.

(c) The [department] **Department** shall issue, upon application, a duplicate license of the appropriate type and specialty, upon a finding that the license has been issued, and **that** the applicant is entitled to such license to replace one [which] **that** has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner shall be required.

(d) Continuing education requirements are as follows:

1. The following continuing education requirements are based upon the type(s) of license(s) held, and not upon employment positions held. Continuing Education Units (CEU's) will be approved by the Bureau of Technical Services. [(1.0] **One** CEU **equals** 10 contact hours.[)] CEU's will be awarded for technical and administrative licenses.

i.-iii. (No change.)

2. If an individual adds an inspector license in a new subcode area to an existing license, the continuing education requirements for the new subcode area are calculated in proportion to the time remaining on the existing license.

i. If there is less than two years, but more than one year, remaining on the existing license, then the technical CEU requirements are 0.5 [CEU] **CEU's** for the new subcode area.

ii. (No change.)

3. If an individual adds administrative [license(s)] **licenses** to an existing license, the continuing education requirements are as follows:

i. For those adding both a subcode official and construction official license:

(1) If there is less than two years, but more than one year, remaining on the existing license, then the administrative CEU requirement is 0.5 [CEU] **CEU's** for renewal of the new licenses.

(2) (No change.)

ii. (No change.)

(e) (No change.)

(f) After revocation of a license upon any of the grounds set forth in these [regulations] **rules**, the Licensing Unit may not renew or reinstate such license; however, a person may file a new application for a license with the [department] **Department**.

(g) The [department] **Department** shall not issue a new license to an applicant whose license was previously revoked unless and until the following conditions are met:

1. (No change.)

2. If the applicant was convicted of a crime related in any way to code enforcement, the [department] **Department** shall have determined in light of the factors set forth in N.J.A.C. 2A:168A-2, that the applicant has been fully rehabilitated and that licensing the applicant would not be detrimental to the public welfare;

3.-4. (No change.)

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a **non-refundable** fee as specified herein.

1. [An] **A non-refundable** application fee of $40.00 shall be charged in each of the following instances:

i. Application for anyone given technical license specialty, or for the Inplant Inspector [or Facility Fire Protection Supervisor] license.

ii.-iii. (No change.)

2. [An] **A non-refundable** application fee of $20.00 shall be charged for each administrative license applied for separately from a technical license.

3.-4. (No change.)

5. Persons who have become ineligible [for an] **to retain their** administrative license by reason of failure to remove the provisional status of such license within the prescribed two-year period must submit a **non-refundable application** fee of $20.00 [for restoration of each such] **in order to reapply for said** administrative license **without recourse to any further provisional status privilege.**

6. Registration and examination fees for the certification of construction code officials: The fee schedule **shall be as** submitted by the administrative agency of the examination program [shall be subject to the review and approval of] **to** the Department. [Once approved by the Department, said fee schedule shall remain in effect until further notice. Notice of the fee schedule shall be published in the New Jersey Register.]

5:23-5.23 Examination requirements

(a) Examinations shall be held, at least twice annually, to establish eligibility for the following license specialties; building inspector R.C.S., building inspector I.C.S., building inspector H.H.S., electrical inspector I.C.S., electrical inspector H.H.S., fire protection inspector I.C.S., fire protection H.H.S., fire protection inspector I.C.S., fire protection inspector H.H.S., plumbing inspector I.C.S., plumbing inspector H.H.S., elevator inspector H.H.S. and inplant inspector.

Recodify existing (b)-(c) as **1.-2.** (No change in text.)

[(d)](**b**) Requirements for specific licenses are as follows:

1. Examination requirement for the building inspector R.C.S.:

i. Successful completion of examination module 1A—Building One and Two Family Dwelling.

2. Examination requirements for building inspector I.C.S.:

[i. Prerequisite: successful completion of building inspector R.C.S. examination requirements or possession of the building inspector R.C.S. license.]

[ii.]**i.** Successful completion of examination modules 1B—Building General and 4A—Mechanical One and Two Family Dwelling.

3. Examination requirements for building inspector H.H.S.:

[i. Prerequisite: successful completion of building inspector I.C.S. examination modules or possession of the building inspector I.C.S. license.]

[ii.]**i.** Successful completion of examination module 1C—Building Plan Review.

4. (No change.)

5. Examination requirements for electrical inspector H.H.S.:

[i. Prerequisite: successful completion of electrical inspector I.C.S. examination requirements or possession of an I.C.S. license.]

[ii.]**i.** Successful completion of examination module 2C—Electrical Plan Review.

6. (No change.)

7. Examination requirements for fire protection inspector H.H.S.:

[i. Prerequisite: successful completion of examination requirements for fire protection inspector I.C.S. or possession of a fire protection inspector I.C.S. license.]

[ii.]**i.** Successful completion of examination module 3C—Fire Protection Plan Review.

8. (No change.)

9. Examination requirements for plumbing inspector H.H.S.:

[i. Prerequisite: successful completion of examination requirements for plumbing inspector I.C.S. or possession of a plumbing inspector I.C.S. license.]

[ii.]**i.** Successful completion of examination module 5C—Plumbing Plan Review.

10.-11. (No change.)

[(e)](**c**) Rules concerning notice of examination are:

1. Notice of examinations shall be given by announcements [displayed] **available** [at the offices of the department] **from the Licensing Unit** and at such other places as the [department] **Department** may determine to be appropriate.

Recodify (f)-(h) as (**d**)-(**f**) (No change in text.)

5:23-5.25 Revocation of licenses and alternative sanctions

(a) The [department] **Department** may revoke a license, suspend a license for not more than 60 days and/or assess a civil penalty of not more than $500.00, if the [department] **Department** determines that the [holder] **person involved**:

1. (No change.)

2. Has obtained a license by fraud or misrepresentation[, or the person named in the licensed has obtained it by fraud or misrepresentation];

3. Has aided or abetted in practice as a licensed **code** enforcement official [or inspector] any person not authorized to practice as a licensed code enforcement official [or inspector] under the provisions of these regulations;

4. Has fraudulently or deceitfully practiced as a licensed code enforcement official [or inspector];

5.-11. (No change.)

(b) (No change.)

(c) Conviction of a crime, or conviction of an offense in connection with [the practice] **one's performance** as a licensed code enforcement official [or inspector], shall constitute grounds for revocation or suspension of a license.

(d) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Protected Tenancy; Planned Real Estate Development Full Disclosure Conversions in Qualified Counties; Engineering Surveys

Proposed New Rules: N.J.A.C. 5:24-3
Proposed Amendments: N.J.A.C. 5:26-9.1 and 9.2

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

Authority: N.J.S.A. 45:22A-35; P.L. 1991, c.509, section 25.

Proposal Number: PRN 1992-170.

Submit comments by May 20, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX Number (609) 633-6729

The agency proposal follows:

Summary

On January 18, 1992, Governor Florio signed the "Tenant Protection Act of 1992," P.L. 1991, c.509, which shall be effective June 1, 1992. This act extends protected tenancy to qualified tenants in buildings converted or being converted to condominiums, cooperatives or other planned real estate developments who were not eligible for protected tenancy as either senior citizens or disabled persons. The Act, and these proposed rules, establishes this protected tenancy only for counties that meet specified requirements as to size and density of population or that have experienced a "county rental housing shortage" as defined in the Act. At present, the only county in which the Act applies is Hudson.

These proposed rules establish an administrative process for implementing the Act that is integrated with the existing process for the administration of the Senior Citizens and Disabled Protected Tenancy Act. Such an integrated administrative process is required by P.L. 1991, c.509. In qualified counties, a single notice may be used by a developer, and a single application for protection may be filed by a tenant, in order to satisfy the requirements of both acts.

The Department is proposing to amend the Planned Real Estate Development Full Disclosure rules to require compliance with the applicable requirements of both protected tenancy acts. A developer who fails to comply with any such requirement will thus be subject to civil penalties, to issuance of a cease and desist order and, if that order is not complied with, to revocation of registration.

The Department is also incorporating into the rules a provision of P.L. 1991, c.509 that is applicable to conversions in all counties. This provision requires the engineering survey to be conducted by a professional engineer, and requires that professional engineer to certify whether the building complies with the standards established under the Hotel and Multiple Dwelling Law and the Uniform Fire Safety Act and to list outstanding violations. The statute extends to the engineer, with respect to the certification and list, the same tort immunity as is provided by law to public employees.

Social Impact

By integrating, to the greatest extent feasible, the compliance and application requirements of the two protected tenancy acts, the Department will make the administrative process easier for developers, tenants and public officials alike. By expressly requiring compliance with the protected tenancy laws and rules in the Planned Real Estate Development Full Disclosure rules, the Department will have a practical means of requiring developers of buildings in Hudson County that have already been registered for conversion to provide to their tenants the information and forms required by P.L. 1991, c.509, so that the tenants will have an opportunity to apply for protected tenancy by the June 1, 1993 statutory deadline.

Economic Impact

Tenants in converted buildings in counties which experience housing shortages caused by massive conversions (currently, Hudson County) will be more easily able to claim the rights granted them by the Act and will not be summarily displaced from their units. These tenants will receive economic benefits from being able to remain in their units, many of which are subject to municipal rent control. Conversely, there will be a negative economic impact on the building owners, who will not be able to sell the tenanted units to prospective owner-occupants, who generally are in a higher income category. The portion of the Act being implemented by N.J.A.C. 5:26-9.1(a)3iii requires the developer to pay for another engineering survey, if the Department finds a discrepancy between any survey submitted by a tenant and one submitted by the developer. The actual economic impact of this requirement cannot be accurately assessed at this time, but would be related to the current market rate for engineering surveys and the size and complexity of the development.

Regulatory Flexibility Statement

P.L. 1991, c.509 ("the Act") is intended to provide uniform protection to tenants in converted buildings in counties which experience housing shortages caused by massive conversions (currently, Hudson County) through regulation of the conversion process, including rent control. Eligibility standards are included. There were over 20,000 units converted in Hudson County in the past year, all involving small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since only small businesess are involved (which are impacted as described in the Economic Impact above), and there is no differentiation allowed by the Act, the Department has determined that differential provisions based on business size are not appropriately contained in the rules.

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

SUBCHAPTER 3. PROTECTED TENANCY IN QUALIFIED COUNTIES

5:24-3.1 Introduction

(a) This subchapter is adopted pursuant to the Tenant Protection Act of 1992, P.L. 1991, c.509 (N.J.S.A. 2A:18-61.40 et seq.), hereinafter referred to as "the Act."

(b) All terms defined in the Act shall have the same definitions as in the Act when used in this subchapter.

5:24-3.2 Applicability

(a) This subchapter is applicable to persons domiciled in a "qualified county," which means any county with a population in excess of 500,000 and a population density in excess of 8,500 per square mile, according to the most recent Federal decennial census, or any other county for which the Commissioner of Community Affairs finds that there has occurred a significant decline in the availability of rental dwelling units due to conversions and that, during the immediate preceding 10 year period, the aggregate number of rental units subject to registration of conversion exceeded 10,000 during any three consecutive years and exceeded 5,000 during at least one of those years.

(b) The following counties are qualified counties:

1. Hudson.

5:24-3.3 Application forms and procedure

(a) Application for protected tenancy under this subchapter shall be made on the form prescribed in N.J.A.C. 5:24-2.2 for applications for Senior Citizens and Disabled Protected Tenancy. A single form shall be sufficient for both applications.

1. Forms used in municipalities in a qualified county shall be entitled "Application for Protected Tenancy" and shall include a question as to whether the applicant is seeking to qualify for Senior Citizens and Disabled Protected Tenancy.

(b) The application procedure for protected tenancy under this subchapter shall be as set forth in N.J.A.C. 5:24-2.3, except that a person who is applying for protected tenancy only under this subchapter shall not be required to furnish proof of age.

1. If the applicant furnishes proof of being either at least 75 years of age or disabled, in the manner set forth in N.J.A.C. 5:24-2.3(b)1, proof of income shall not be required.

(c) Application forms used in qualified counties shall indicate that applications for protection under the Act must be filed on or before:

1. The date of registration of conversion by the Department, or

2. June 1, 1993, whichever is later.

(d) Notice of the date by which applications for protected tenancy under the Act must be filed shall be in addition to notice of the time requirements for filing applications for Senior Citizens and Disabled Protected Tenancy set forth in N.J.A.C. 5:24-2.3(a).

5:24-3.4 Administration

(a) Unless the municipality provides otherwise by ordinance, the agency or officer administering the "Senior Citizens and Disabled Protected Tenancy Act," P.L. 1981, c.226, and the implementing rules set forth in subchapter 2, of this chapter, shall administer this subchapter.

(b) Principal residence shall be determined in accordance with N.J.A.C. 5:24-2.4.

(c) Eligibility shall be determined in accordance with N.J.A.C. 5:24-2.5, except that all references to conditional eligibility shall be inapplicable.

(d) Subsequent ineligibility shall be determined in accordance with N.J.A.C. 5:24-2.6.

(e) Administrative hearings shall be provided and conducted in accordance with N.J.A.C. 5:24-2.7.

(f) Procedural requirements for owners shall be as set forth in N.J.A.C. 5:24-2.9.

1. No separate filing or issuance of notices under both N.J.A.C. 5:24-2.9 and under this section shall be required if the forms and information provided to tenants make appropriate references both to Senior Citizens and Disabled Protected Tenancy and to protected tenancy under this subchapter and the Act.

2. An owner of a building in a qualified county who has previously complied with N.J.A.C. 5:24-2.9 shall comply with the procedural requirements of N.J.A.C. 5:24-2.9(a)-(c) again, in order to provide appropriate notice to persons who have not received Senior Citizens and Disabled Protected Tenancy.

(g) The administrative agency shall comply with subsections (a)-(c) of N.J.A.C. 5:24-2.10 and shall, additionally, inform each tenant who is denied protected tenancy under the Act and this subchapter of his right to remain in his dwelling unit until the owner shall have complied with the requirements of P.L. 1975, c.311 and of N.J.A.C. 5:24-1.6. The notice to the tenant shall include an explanation of the meaning of "comparable housing," as defined in P.L. 1975, c.311 and in N.J.A.C. 5:24-1.2(b)6.

1. Separate certifications or lists for purposes of the Act and for purposes of the Senior Citizens and Disabled Protected Tenancy Act shall not be required, except that, in a municipality in a qualified county, the list of determinations shall indicate the statute under which an applicant has qualified for protected tenancy.

(h) The fee schedule established in accordance with N.J.A.C. 5:24-2.11 shall apply to submissions of tenant lists and to hearings under the Act and this subchapter.

(i) In the event that any person in a qualified county who has applied for, or has previously been determined to be eligible for, protected tenancy as a senior citizen or disabled person, is found to be ineligible or no longer eligible for such protected tenancy, the person's application, as modified by the facts set forth in any determination, shall be treated as an application for protected tenancy under the Act and this subchapter.

5:26-9.1 Requirements

(a) In addition to the requirements set forth in N.J.A.C. 5:26-4.2 (Contents of public offering statement), the developer shall, in the case of conversion from a residential rental or hotel use to a condominium, cooperative [or], time-sharing venture, **or other planned real estate development,** include in the public offering statement the following information:

1.-2. (No change.)

3. An engineering survey, in the form set forth in the appendix, prepared by a licensed **professional** engineer [or architect], which shall include mechanical, structural, electrical and engineering reports to disclose the condition of the building, as well as an energy audit, in a form approved by the Agency, setting forth the energy efficiency of the building.

i. The engineer who prepares the survey shall certify to the Agency whether, in his judgment, the building is in compliance with the code standards adopted under the Hotel and Multiple Dwelling Law and set forth at N.J.A.C. 5:10 and with the code standards adopted under the Uniform Fire Safety Act and set forth at N.J.A.C. 5:18, and shall list all outstanding violations then existing in accordance with his observation and judgment.

ii. As provided by P.L. 1991, c.509, the engineer shall be immune from tort liability with regard to such certification and list in the same manner and to the same extent as if he were a public employee protected by the New Jersey Tort Claims Act.

iii. As further provided in P.L. 1991, c.509, in the event of any discrepancy between the engineering survey submitted by the developer and an engineering survey submitted by any tenant(s), the Agency may have another engineering survey done for it at the developer's sole cost and expense.

4. A statement of the effect on prospective owners of the New Jersey Statute Governing Removal of Tenants (N.J.S.A. 2A:18-61.1 et seq.), **the Senior Citizens and Disabled Protected Tenancy Act (N.J.S.A. 2A:18-61.22 et seq.) and, if the building is located in Hudson County, the Tenant Protection Act of 1992 (N.J.S.A. 2A:18-61.40 et seq.),** and [any] **the** rules promulgated thereunder **at N.J.A.C. 5:24.**

5:26-9.2 [Nonrepeal] **Compliance with statutes and rules governing tenant removal and protected tenancy**

(a) [Nothing contained herein shall diminish the obligation of the] **The** developer [to] **shall** conform to the requirements of the New Jersey Statute Governing Removal of Tenants, **P.L. 1974, c.49 and P.L. 1977, c.419** (N.J.S.A. 2A:18-61.1 et seq.) and [any] **the** rules promulgated thereunder **at N.J.A.C. 5:24-1.1 et seq.**

(b) The developer shall conform to the requirements set forth in the Senior Citizens and Disabled Protected Tenancy Act, P.L. 1981, c.226 (N.J.S.A. 2A:18-61.22 et seq.) and the rules promulgated thereunder at N.J.A.C. 5:24-2.1 et seq.

(c) If the building is located in Hudson County, the developer shall conform to the requirements of the Tenant Protection Act of 1992, P.L. 1991, c.509 (N.J.S.A 2A:18-61.40 et seq.) and the rules promulgated thereunder at N.J.A.C. 5:24-3.

(a)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure: Advance Directives for Health Care Act

Proposed Amendments: N.J.A.C. 5:100-2.3, 2.4 and 2.5

Authorized By: Thomas P. Brown, Acting Ombudsman for the Institutionalized Elderly.

Authority: N.J.S.A. 52:27G-1 et seq., specifically 52:27G-5 and 5.1.

Proposal Number: PRN 1992-178.

Submit comments by May 20, 1992 to:

Goldie Torres Colonna, General Counsel
Office of the Ombudsman for the Institutionalized Elderly
28 West State Street, Room 305
CN 808
Trenton, NJ 08625-0808

The agency proposal follows:

Summary

The Office of the Ombudsman proposes to amend N.J.A.C. 5:100, Ombudsman Practice and Procedure, in accordance with the provisions of a recently adopted law, the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., P.L. 1991, c.201 ("the Act"), the Federal Patient Self Determination Act, P.L. 101-508, and the Superior Court of New Jersey, Appellate Division's decision in *Gleason v. Abrams,* Docket No. A-6361-89T3, decided July 31, 1991. These laws are intended to recognize the personal right of individuals to make voluntary, informed choices about the course of their health care and to assure that this right is guaranteed through the execution of an "advance directive." The New Jersey Act extends to all health care institutions and agencies licensed or certified by the State of New Jersey, including nursing homes, residential health care facilities, home health agencies, mental health institutions and hospitals.

The New Jersey Act changes the role of the Office of the Ombudsman in cases where individuals have executed a valid "advance directive." Under the Act, the Ombudsman is required to conform and implement procedures which would comply with the new law. This means that, where there is a proposal to withhold or withdraw life-sustaining medical treatment from an individual with a valid "advance directive" who is presently incapable of making his or her own treatment decisions, the Ombudsman's Office need not be contacted. Instead, the facility may consult with its in-house ethics committee to assist with making the appropriate decision.

The requirement of the Act necessitates amending N.J.A.C. 5:100-2.3, 2.4 and 2.5, to bring them into compliance with the New Jersey Advance Directives for Health Care Act. The Ombudsman is also complying with the requirement by the New Jersey Superior Court, Appellate Division's decision in *Gleason v. Abrams*, to amend N.J.A.C. 5:100-2.3(d)2 to provide for two physicians, in conformity with *Matter of Farrell*, 108 *N.J.* 335, 354 (1987).

Social Impact

The proposed amendments to N.J.A.C. 5:100-2.3, 2.4 and 2.5 represent the Office's compliance with the recently adopted Advance Directives for Health Care Act. The adoption of the proposed amendments will allow care providers and families more autonomy by eliminating the need to contact the Office in cases where a valid directive exists.

The proposed amendment to N.J.A.C. 5:100-2.3(d)2 serves to satisfy the New Jersey Superior Court, Appellate Division's decision in *Gleason v. Abrams,* Docket No. A-6361-89T3, which required that the Office amend its regulations to conform with *Matter of Farrell,* 108 *N.J.* 335, 354 (1987). This proposed amendment will require facilities to secure the services of two physicians to determine a resident's capacity to make health care decisions if that resident's capacity to make those decisions is questionable.

Both proposed amendments should clarify the Ombudsman's current role in health care decision making.

Economic Impact

Adoption of the proposed amendments regarding advance directives will have no economic impact on residents who reside in New Jersey's long-term care facilities.

Facilities may incur some minimal costs, since facilities will be required to review residents' advance directives to determine validity. There may also be some costs incurred by facilities to educate residents and residents' families about the provisions of the Act.

The Office foresees no significant economic impact on facilities as a result of the amendment to N.J.A.C. 5:100-2.3(d)2. The amendment requires two physicians to determine a resident's capacity to make a fully informed decision. Facilities or residents may incur some costs for the additional physician's fee. There will be no significant economic impact on the Office.

Regulatory Flexibility Analysis

The proposed amendments will result in minimal increases in the recordkeeping and reporting requirement already placed upon facilities, some of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These costs may be incurred in instances where facilities wish to determine the validity of a resident's advance directive and where facilities need to educate residents and families about the provisions of the Act. These costs can be minimized if facilities elect to utilize the services of the Office to review advance directives, or provide in-services concerning the Act, at no cost to the facilities.

Facilities may incur some small costs in cases where two physicians are needed to determine a resident's competency; however, these costs can be minimized if facilities use already established procedures for obtaining outside consulting services. There is no capital cost to facilities under the proposed amendments. Because these amendments are necessary to comply with the Act and the *Gleason* decision, lesser requirements or exemptions for small businesses are not provided.

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

5:100-2.3 Duty to report

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

(d) The reporting procedures set forth in this section shall not apply when:

1. The resident is under age 60; or

2. The resident, being fully informed and having the capacity to make a health care decision, chooses to withhold or withdraw life-sustaining treatment. [The resident's attending physician] **Two non-attending physicians** shall make the determination of whether the resident is fully informed and has the capacity to make a health care decision. The physician['s]**s'** determinations shall be based on the physician['s]**s'** reasonable medical judgements and shall be documented on the resident's chart; or

3. The resident has a fully executed and valid Advance Directive ("Living Will") or Proxy Directive ("Durable Power of Attorney for Health Care"); or

Recodify existing 3. and 4. as **4. and 5.** (No change in text.)

5:100-2.4 Procedure for residents incapable of making health care decisions, who are in a persistent vegetative state

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

(d) The Office shall then inquire into the resident's intent, if any, pertaining to the surrogate decisionmaker's proposal to withhold or to withdraw the life-sustaining treatment. In making its intent inquiry, the Office shall:

[1. Inquire into whether there exists a written advance directive in the form of a Living Will or Durable Power of Attorney executed by the resident;]

[2.]**1.** Inquire into whether there exists any [other] declaration or designation including an oral declaration or designation;

Recodify existing 3. and 4. as **2. and 3.** (No change in text.)

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

5:100-2.5 Procedure for residents incapable of making health care decisions, who are not in a persistent vegetative state

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

(d) The Office shall then inquire into the resident's intent, if any, pertaining to the surrogate decisionmaker's proposal to withhold or to withdraw the life-sustaining treatment. In making its intent inquiry, the Office shall:

[1. Inquire into whether there exists a written advance directive in the form of a Living Will or Durable Power of Attorney executed by the resident;]

[2.]**1.** Inquire into whether there exists any [other] declaration or designation including an oral declaration or designation;

Recodify existing 3. and 4. as **2. and 3.** (No change in text.)

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

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Size and Possession Limits

Proposed Amendment: N.J.A.C. 7:25-18.1

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 23:2B-6.

DEPE Docket Number: 11-92-03.

Proposal Number: PRN 1992-167.

A **public hearing** on the proposal will be held on May 6, 1992, 6:30 P.M. at:

Ocean County Extension Center
1623 Whitesville Road (Route 527)
Toms River, New Jersey 08755

Submit written comments by May 20, 1992 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment prohibits the filleting of any flatfish at sea in order to prevent circumvention of size limits on summer flounder, commonly called fluke, and winter flounder. Fillets from flatfish cannot be identified to species except through highly sophisticated and expensive laboratory protein analysis.

Under the proposed amendment, mates on party boats licensed to carry 15 or more passengers will be given the opportunity to continue their practice of filleting summer flounder at sea upon the owner's obtaining a Special Summer Flounder Fillet Permit for that particular vessel. This permit system is proposed to reduce social and economic impacts of the amendment on these employees while retaining enforceability of size limits. The permit system and the inclusion of vessels licensed to carry 15 or more passengers were recommended by a special committee comprised of industry representatives, Marine Fisheries Council members and Division of Fish, Game and Wildlife staff. Under the proposed amendments, permitted vessels cannot discard flatfish parts or carcasses while fishing, flatfish carcasses cannot be mutilated to the extent that its length or species cannot be determined; flatfish carcasses must be retained until the vessel has docked; summer flounder fillets cannot be less than seven inches; flatfish carcasses from a previous trip must be disposed of prior to fishing on a subsequent trip; and violations of the permit system will include permit suspensions.

Social Impact

The purpose of the proposed amendment is to prevent individuals from circumventing existing minimum size limits on summer flounder and winter flounder. Adoption of this amendment will prevent the filleting of any species of flatfish at sea except by mates on party boats whose owner has been issued a Special Summer Flounder Fillet Permit. This amendment may occasion some slight adverse social impact to those recreational fishermen aboard private boats and party and charter boats licensed to carry less than 15 passengers who wish to fillet, or have filleted

by mates, their fish before returning to the dock. This impact should not be substantial as facilities exist for shoreside cleaning of fish and waste disposal. Where not available, facilities such as cleaning tables, running water and waste disposal containers could easily be set up without significant problems. Although this amendment may cause some minor difficulty where there are no shoreside facilities for cleaning of fish or disposal of waste, this difficulty is outweighed by the importance of the rule in preventing circumvention of size limits and the small cost of establishing these facilities. There may be additional social impacts to those fishermen aboard party and charter boats not eligible to obtain a Special Summer Flounder Fillet Permit, because they will have to wait at dockside after the trip if they want a mate to fillet their fish. This impact should be reduced, however, because there would be a maximum of 14 fishermen waiting to have fish filleted and a competent mate should be able to fillet the catch in a timely manner. Vessels licensed to carry 15 or more passengers will be eligible for the Special Summer Flounder Fillet Permit and their mates may fillet summer flounder at sea. Minor social impacts may occur by requiring vessels to retain flatfish carcasses in that small changes in storage facilities aboard vessels will be required. These impacts should be minor because large plastic containers similar to trash cans should suffice as storage facilities for carcasses.

The filleting of summer flounder at sea on commercial trawlers fishing in Federal waters has been prohibited since 1988. Since virtually the entire commercial fleet fishes Federal waters, the commercial fishery will not be perceptibly affected by this amendment.

In addition, this amendment will increase compliance with summer flounder and winter flounder size limits which will ease the burden of enforcement.

Economic Impact

The proposed amendment should have a minimal economic impact. There should be no economic impact on recreational or commercial fishermen. Although some recreational fishermen may be inconvenienced by not being able to fillet at sea, it will not result in any economic impact. Since 1988, filleting summer flounder at sea has been prohibited on commercial trawlers fishing in Federal waters. Since most fish, including flatfish, are landed whole by the commercial fleet, there is no anticipated economic impact.

Vessel owners obtaining a Special Summer Flounder Fillet Permit may experience a small economic impact because of increased storage needs to keep flatfish carcasses. Because it is anticipated that the increased storage needs could be met by obtaining inexpensive large plastic containers similar to trash cans, the economic impact on these party boats is expected to be minor.

One segment of the fishing community that may experience a slight adverse economic impact is the party and charter boat industry, specifically mates working aboard vessels not eligible (those licensed to carry less than 15 passengers) to obtain a Special Summer Flounder Fillet Permit. Party boat captains have advised the Department that mates on these vessels receive tips based upon cleaning or filleting their customer's catch which have historically constituted a significant portion of the mates' income. Adoption of this amendment would prevent mates from filleting any species of flatfish until the vessel docks, but would not prohibit the cleaning of other species such as bluefish, weakfish or sea bass. Although flatfish may be filleted upon reaching the dock, it is likely that some customers would be anxious to go home and may not wait to have their fish filleted. This could result in a slight adverse economic impact to mates aboard these vessels from lost revenue. However, this economic impact is not anticipated to be significant. There would be a maximum of 14 fishermen waiting to have fish filleted and a competent mate should be able to fillet the catch in a timely manner, thereby reducing waiting time and decreasing the number of fishermen not willing to wait for dockside filleting. Owners of vessels licensed to carry 15 or more passengers will be eligible to obtain a Special Summer Flounder Fillet Permit and fillet flatfish at sea, therefore mates aboard these vessels should experience no adverse economic impacts.

Some long term economic benefits can be expected from the adoption of this proposal. Increasing compliance of summer flounder and winter flounder size limits should result in stronger year classes by allowing more fish to spawn. Because both species are important commercially and very popular aboard party and charter boats, any population increases should support larger economic gains throughout the fishery.

Environmental Impact

The proposed amendment will result in a positive environmental impact. By providing the mechanism to enforce existing size limits on summer flounder and winter flounder, both resources will receive benefits. Summer flounder is one of the most popular recreational fish in New Jersey and is highly sought by commercial fishermen as well. Population levels have suffered a decline over the past several years, to the extent that it was necessary to institute size limits in 1985. Because of the limited success of this measure, the Atlantic States Marine Fisheries Commission and Mid-Atlantic Fishery Management Council are considering additional management measures. Winter flounder is also a popular recreational and commercial species. In order to protect stocks, a size limit was instituted in 1991 and further management recommendations will be forthcoming from the Atlantic States Marine Fisheries Commission.

Both summer flounder and winter flounder resources are being managed through size limits to protect spawning stocks. If a large percentage of fish survive to spawn at least once, the opportunity to increase year class strength on a continuing basis is enhanced and the possibility of recruitment failure is decreased. It is essential, therefore, that compliance with size limits for both species be enhanced to allow for a maximum number of fish to spawn.

Regulatory Flexibility Analysis

The proposed amendment applies to all recreational fishermen, party and charter boat operators and commercial fishermen while on or fishing in the marine waters of New Jersey. Most of the commercial fishermen and party and charter boat operators would be considered small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Commercial fishermen will be largely unaffected by this amendment because of the current industry practice of landing fish whole. Although compliance with this amendment may involve some inconvenience to charter boat businesses catering to recreational fishermen that normally fillet flatfish at sea, no additional recordkeeping is involved and there will be no need for additional professional services or significant capital costs for compliance. In addition, unpermitted charter boat businesses will still have the opportunity to serve their clients by filleting flatfish at the dock. In order to avoid any economic hardship, party boats have been given the opportunity to continue their practice of filleting summer flounder at sea upon obtaining a Special Summer Flounder Fillet Permit. Except for the possible need of increasing storage space to retain the carcasses of filleted fish until landing, there will be no need for increased capital costs for compliance. No additional recordkeeping is involved and there is no need for additional professional services.

In developing the proposed amendment, the Department has balanced the need to protect the environment against the economic impact of this amendment and has determined that to reduce the impact of this amendment further would endanger the environment, public health or public safety. Therefore, no exemption from coverage is provided for small businesses.

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

7:25-18.1 Size and possession limits

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

(e) Except as provided in (f) below, a person shall not remove the head, tail or skin, or otherwise mutilate to the extent that its length or species cannot be determined, any summer flounder, winter flounder or other species of flatfish, except after fishing has ceased and such species have been landed to any ramp, pier, wharf or dock or other shore feature where it may be inspected for compliance with the appropriate size limit.

(f) Special provisions applicable to a Special Summer Flounder Fillet Permit are as follows:

1. A party boat owner may apply to the Commissioner for a permit for a specific vessel, known as a Special Summer Flounder Fillet Permit to fillet summer flounder (fluke) at sea;

2. For purposes of this section, party boats are defined as vessels that can accommodate 15 or more passengers as indicated on the Certificate of Inspection issued by the United States Coast Guard for daily hire for the purpose of recreational fishing;

3. The Special Summer Flounder Fillet Permit shall be subject to the following conditions:

i. Once fishing commences, no flatfish parts or carcasses shall be discarded overboard; only whole live flatfish may be returned to the water;

ii. No carcasses of any flatfish shall be mutilated to the extent that its length or species cannot be determined;

iii. All flatfish carcasses shall be retained until such time as the vessel has docked and been secured at the end of the fishing trip adequate to provide a law enforcement officer access to inspect the vessel and catch;

iv. No fillet of any summer flounder shall be less than seven inches in length;

v. Flatfish carcasses from the previous trip shall be disposed of prior to commencing fishing on a subsequent trip;

vi. Violation of any of the provisions of the Special Summer Flounder Fillet Permit shall subject the violator to the penalties established pursuant to N.J.S.A. 23:2B-14 and shall result in a suspension or revocation, applicable to both the vessel and the owner, of the Special Summer Flounder Fillet Permit according to the following schedule:

(1) First offense: 30 days suspension, imposed during the period from May through October; any remaining period of suspension not occurring prior to November 1 of any particular year shall be applied during the next year beginning May 1;

(2) Second offense: 90 days suspension, imposed during the period from May through October; any remaining period of suspension not occurring prior to November 1 of any particular year shall be applied during the next year beginning May 1; and

(3) Third offense: Revocation of permit, rendering the vessel and the owner not eligible for permit renewal regardless of vessel ownership.

vii. Prior to the suspension or revocation of the Special Summer Flounder Fillet Permit, the permittee has the right to a hearing, upon the permittee's request to the Department. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

[(e)](g) Any person violating the provisions of (a) (b) [or] (d), **or (e)** above shall be liable to a penalty of $20.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

Recodify existing (f)-(j) as **(h)-(l)** (No change in text.)

[(k)](m) Any person violating the provisions of [(g)] **(i)** through [(j)] **(l)** above shall be liable [to] **for** a penalty of $100.00 for each fish taken or possessed. Each fish **taken or possessed** shall constitute a separate and distinct offense.

[(l)](n) Pursuant to the provisions of N.J.S.A. 23:5-45.1c, except in Delaware Bay and the Delaware River and tributaries, the possession of one "trophy sized" striped bass, measuring not less than 38 inches in length, will be allowed in addition to the one fish allowed under the provision of N.J.S.A. 23:5-45.1(a) in accordance with the following provisions:

1.-4. (No change.)

5. Any fish possession tag not utilized during the calendar year in which it was issued will be valid for subsequent years except during those period in which the Department has closed the State's waters to harvesting as provided below at [(l)] **(n)**11;

6.-11. (No change.)

12. The quota described in [(1)] **(n)**11 above shall be 63,800 pounds until such time as another quota is duly promulgated by the Atlantic States Marine Fisheries Commission.

13. Upon promulgation of any change in the quota described in [(l)] **(n)**11 above, the Division will provide notice thereof in the Newark Star Ledger, the Asbury Park Press and The Press (of Atlantic City).

[(m)] **(o)** Any person violating the striped bass size or possession limits as provided for in N.J.S.A. 23:5-45.1, or [(f)] **(h)** and [(l)] **(n)** above shall be liable [to] **for** a penalty of $100.00 per fish for the first offense and a penalty of $200.00 per fish for each subsequent offense.

Recodify existing (n)-(o) as **(p)-(q)** (No change in text.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Notice of Extension of Public Comment Period
Annual Adjustment of Solid Waste Fees
Proposed New Rule: N.J.A.C. 7:26-4.6

Take notice that the Department of Environmental Protection and Energy (the "Department") is extending until May 4, 1992 the comment period for the proposed rule amendments published at 23 N.J.R. 3690(a) on December 16, 1991 (DEPE Docket Number 044-91-11). The comment period originally closed on January 15, 1992.

Interested persons may submit written comments until May 4, 1992 to:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(b)

SITE REMEDIATION

Notice of Additional Public Hearing and Extension of Public Comment Period
Cleanup Standards for Contaminated Sites
Proposed New Rules: N.J.A.C. 7:26D

Take Notice that the Department of Environmental Protection and Energy (the "Department") will hold an additional public hearing concerning the proposed new rules published at 24 N.J.R. 373(a) on February 3, 1992 (DEPE Docket Number 01-92-01). The proposed new rules establish cleanup standards for contaminated sites. The additional public hearing will be held on Wednesday, May 13, 1992, beginning at 10:00 A.M., at:

Newark City Hall, Council Chambers
Second Floor
920 Broad Street
Newark, New Jersey

The Department requests that persons expecting to present testimony at the additional public hearing pre-register. **To pre-register,** please contact:

Site Remediation Program
Department of Environmental Protection and Energy
CN 028
401 East State Street
Trenton, New Jersey 08625
Attention: Cleanup Standards Public Hearing

or call the Site Remediation Program at (609) 292-1250.

Take further notice that the Department is extending until May 27, 1992 the comment period for the proposed new rules. The comment period was originally scheduled to end on May 4, 1992. Interested persons may submit written comments to:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(c)

OFFICE OF ENERGY

Notice of Administrative Correction
Low Emissions Vehicle Program
Proposed New Rules: N.J.A.C. 7:27-26

Take notice that the Department of Environmental Protection and Energy has discovered, in the notice of proposal for N.J.A.C. 7:27-26 published in the April 6, 1992 New Jersey Register at 24 N.J.R. 1315(a),

some incorrect addresses for those entities from which copies of the proposal notice and the documents incorporated by reference therein can be obtained. This notice of administrative correction provides the correct addresses, and is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the correct addresses follows:

Atlantic County Health Department
201 South Shore Road
Northfield, New Jersey 08225

Middlesex County Air Pollution Control Program
County Annex Building
841 Georges Road
New Brunswick, New Jersey 08902

Warren County Health Department
319 West Washington Avenue
P.O. Box 377
Washington, New Jersey 07822

New Jersey Department of Environmental Protection and Energy
Office of Energy
401 East State Street, 7th Floor
Trenton, New Jersey 08625

New Jersey Department of Environmental Protection and Energy
Bureau of Enforcement Operations
Northern Regional Office
1259 Route 46
Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection and Energy
Bureau of Enforcement Operations
Southern Regional Office
20 East Clementon Road, 3rd Floor North
Gibbsboro, New Jersey 08026

New Jersey Department of Environmental Protection and Energy
Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

New Jersey Department of Environmental Protection and Energy
Bureau of Enforcement Operations
Central Regional Office
Horizon Center, Building 300
Route 130
Robbinsville, New Jersey 08691

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Collection Regulatory Reform

Proposed New Rules: N.J.A.C. 14:3-11

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1E-1 et seq., 48:2-21, 48:13A et seq. and P.L. 1991, c.381, sections 6, 7, 9 and 19.
DEPE Docket Number: 12-92-03.
Proposal Number: PRN 1992-166.

A **public hearing** concerning this proposal will be held on Wednesday, May 6, 1992:

401 East State Street
Public Hearing Room, First Floor
Trenton, New Jersey

Submit written comments by May 20, 1992 to:

Samuel A. Wolfe
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Solid Waste Collection Regulatory Reform Act, P.L. 1991, c.381 (the "Act") was enacted on January 15, 1992 by the Legislature of the State of New Jersey. Its purpose is to ensure the economic viability and competitiveness of the solid waste collection industry as a means to safeguard the integrity of the State's long-term solid waste management strategy, the solid waste collection industry and the interests of consumers. It is the intent of the Act to foster competition within the industry and to establish a responsible State supervisory role to ensure safe, adequate and proper solid waste collection service at competitive rates. The proposed rules implement several significant provisions of the Act.

Section 9 of the Act requires the Department of Environmental Protection and Energy (as successor to the Board of Public Utilities under Reorganization Plan No. 002-1991, section 6) to promulgate rules establishing solid waste collection rate bands. The purpose of these rate bands is to govern the rates and charges that may be imposed by solid waste collectors for solid waste collection services in New Jersey for each of the four one year periods ("Transition Years") beginning on the effective date of the Act. The rate bands set maximum limits on the amount by which a collector may increase or decrease the Uniform Tariff service charge. By requiring the establishment of rate bands to be in effect during the Transition Years, the Legislature has provided a means of making a smooth transition to the eventual termination of public utility rate regulation of solid waste collectors.

N.J.A.C. 14:3-11.7 establishes the rate bands. The rate bands allow larger percentage increases or decreases in the Uniform Tariff service charge in each succeeding transition year. Under N.J.A.C. 14:3-11.7(c)5, a solid waste collector may implement an adjustment of rates within the applicable rate band, upon 10 days prior written notice to each affected customer.

Section 7 of the Act requires a solid waste collector to file revised tariff sheets when proposing to extend collection services into a new area or to provide new solid waste collection services. N.J.A.C. 14:3-11.8(b) establishes the procedures to implement this requirement.

Section 8 of the Act provides that before solid waste collectors shall adjust their disposal rates or charges due to increases or decreases in rates or charges at disposal facilities, they shall file revised uniform tariff sheets. N.J.A.C. 14:3-11.8(a)2 establishes the procedures implementing this requirement. Section 8 of the Act also requires that when a disposal facility's rates or charges are decreased, that the solid waste collector pass the full amount of that decrease along to its customers by filing the required revised tariff sheets within five days of such a decrease; N.J.A.C. 14:3-11.8(a)3 codifies this requirement. Finally, Section 8(b) of the Act allows, but does not require, a solid waste collector who has lowered his disposal costs due to decreased waste flows resulting from materials recovery to pass that net savings along to its customers in the form of lower disposal costs by filing revised uniform tariff sheets. N.J.A.C. 14:3-11.8(c) establishes the procedures implementing this requirement. N.J.A.C. 14:3-11.8(c)1 also prohibits disposal facilities from implementing initial or revised disposal rates until solid waste collectors have been given 14 days written notice of such disposal rates. Any adjustments in disposal rates made pursuant to Section 8(b) of the Act and N.J.A.C. 14:3-11.8(c) must be made on a county by county basis in proportion to the tonnages disposed of at the various disposal facilities utilized by the solid waste collector.

Section 10(b)(2) of the Act authorizes the Department (as successor to the Board of Public Utilities, as noted above) to order a solid waste collector to refund, with interest, rates or charges that the Department finds to be excessive. N.J.A.C. 14:3-11.10 defines the calculation of the interest rate applicable to the rate band and outlines the required procedure for filing the revised tariff sheets required after a readjustment of rates or charges pursuant to Section 10(b)(2) of the Act.

Section 12 of the Act allows solid waste collectors to petition for changes in the rates and charges in the uniform tariff only in cases of financial hardship, exigent circumstances or significant increases in

energy costs. N.J.A.C. 14:3-11.8(d) implements this provision of the Act. Petitioning solid waste collectors have the burden of proof to demonstrate that it is charging at the maximum permitted by the applicable rate bands and the petitioner without an increases cannot earn a just and reasonable return.

N.J.A.C. 14:3-11.9 requires solid waste collectors to report rate changes and other pertinent information to DEPE during the transition years. As provided in Section 10(c) of the Act, these reports are to be submitted semi-annually during the first two transition years, and annually during the last two transition years.

Section 4 of the Act mandates that the DEPE assess an annual fee of $100.00 to defray the costs of supervising the solid waste collection industry. N.J.A.C. 14:3-11.6 implements this provision.

Within the next four months, proposed rules will define the parameters and measurements of competitive pricing and effective competition pursuant to Sections 6 and 20 of the Act. This will include rules which will forbid practices constituting overcharging, undercharging and predatory pricing.

Social Impact

The proposed new rules will have a positive social impact. The Solid Waste Collection Rate Reform Act recognizes the need to deregulate the solid waste collection industry in order to spur increased competition in the collection industry. Increased pricing flexibility is provided to the collection industry while the DEPE monitors a phase-out of traditional rate regulation. Adoption of these new rules will have the positive effect of not overregulating the industry while maintaining regulatory authority and enforcement powers to deter anti-competitive activities.

Economic Impact

The proposed new rules will have a significant impact on the solid waste collectors, their customers and the pricing competitiveness of the collection industry. The solid waste collection industry will have limited pricing flexibility during the regulatory transition period of 48 months. Pricing flexibility will be accomplished through application of the rate bands which will permit collectors to charge uniform tariff service rates and charges within a prescribed range. This in turn will allow customers to receive collection services based on competitive pricing. Upon completion of the transition period the solid waste collection industry will have complete pricing flexibility subject to residual authority provided to the DEPE. During the transition period and thereafter, customers will have the ability to negotiate directly with solid waste collectors for the cost of services. The intent of the law is for market factors to provide competitive pricing in the industry and to protect ratepayers.

The rate bands will have a beneficial impact on solid waste collectors by eliminating the costs associated with rate increase petitions. Competitive market forces, rather than traditional rate regulations, will be counted on to determine what is an acceptable level of rates. Competitive forces will also determine whether a particular collector can sustain or expand its existing customer base. The monitoring by the DEPE of the collection industry will determine the extent of competition and the effectiveness of the rate bands as a substitute for traditional cost of service rate regulation.

The effect of the rate bands on individual customers is uncertain at this time as prices charged by collectors will be a function of competitive forces existing in the particular region being serviced. However, it is expected that as competition increases during the transition period, and in conjunction with the widening of rate bands, customers will on average experience a greater selection of collectors charging competitive prices. In addition, as customers become aware of the range of prices available to them, the DEPE believes that the customers' bargaining position with respect to negotiating the cost of collection services will increase so as to further bring collection prices to a competitive level.

The rule requires that all solid waste collectors pay an annual fee of $100.00. These fees are to help defray the costs incurred by the DEPE for ongoing monitoring of the collection industry during the transition period, publication of collection rates in newspapers and review of revised tariff sheets and verification forms. Also, the legislation provides that three years after implementation, the DEPE will provide a report to the Governor and the Legislature evaluating the success of deregulation and its effect on promoting effective competition, among other things. Although the fees do not cover the costs of all these activities of the DEPE, it is believed that the fees represent a fair allocation of the costs of regulatory oversight and that they do not impose an undue financial burden on the collection industry.

Regulatory Flexibility Analysis

The proposed new rules will significantly decrease the amount of paperwork required of small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., by eliminating the need for the solid waste collectors to file rate increase petitions and deregulating the asset financing review currently required. Once the rate bands are in effect, adjustments to the uniform tariff service charge beyond those permitted by the rate bands may only be granted where exigent circumstances are demonstrated. There are 560 solid waste collectors in the State with the majority being classified as small businesses. The elimination of rate petitions will have particular benefit to small collectors since in the past they were generally less able to address the regulatory requirements of rate filings and to absorb operating losses during a pending rate petition. The proposed rules also set forth additional reporting and notification requirements. During the transition period, each collector shall report to the DEPE the amount and frequency of variation from the rates or charges set forth in the uniform tariff. This reporting requirement should not pose a significant burden on small as well as large collectors since collectors maintain most of this data for their own accounting purposes. Collectors are further directed to notify their customers in writing that solid waste collection services are available on a competitive basis and to also provide a copy of the Customer Bill of Rights. This notification requirement creates an insignificant burden on collectors since the notice does not require the compilation of any data and may be mailed or provided with regular customer bills.

Full text of the proposed new rules follows:

SUBCHAPTER 11. SOLID WASTE COLLECTION REGULATORY REFORM

14:3-11.1 Purpose

(a) The purpose of this subchapter is to:

1. Establish rules and procedures for regulatory reform and the eventual termination of traditional public utility rate regulation of the solid waste collection industry; and

2. Establish a responsible State supervisory role to ensure safe, adequate and proper solid waste collection service at competitive rates.

14:3-11.2 Authority

These rules are promulgated pursuant to the authority vested in the DEPE by N.J.S.A. 48:13A et seq., 13:1E-1 et seq., 48:2-21 and P.L. 1991, c.381, Sections 6, 7, 9 and 19 and shall be construed in conformity with, and not in derogation of, such statutes.

14:3-11.3 Scope

These rules shall govern the pricing practices of the solid waste collection industry and will provide for the compilation of data to monitor the extent and effect of competition in the solid waste collection industry.

14:3-11.4 Rates

(a) The rates or charges that may be imposed by solid waste collectors shall be determined in accordance with the provisions of P.L. 1991, c.381. The Act provides the method of determining the rates bands which defines the parameters by which a solid waste collector may increase or decrease its rates.

(b) No petition for rate increases, except as provided by Section 12 of P.L. 1991, c.381 and N.J.A.C. 14:3-11.8(d), may be submitted after April 13, 1992.

14:3-11.5 Definitions

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

"Act" means P.L. 1991, c.381, known as the Solid Waste Collection Regulatory Reform Act.

"CPI" means the averaged Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics for the New York Urban and Philadelphia area for all urban consumers for the calendar year period just ended.

"DEPE" means the Department of Environmental Protection and Energy.

"Materials recovery" means the processing and separation of solid waste utilizing manual or mechanical methods for the purpose of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Materials recovery facility" means a transfer station or other authorized solid waste facility at which nonhazardous solid waste, which materials is not source separated by the generator thereof prior to collection, is received for on-site processing and separation utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Rate Adjustment Annual Report Form" means the form developed by the DEPE, which will include, but not be limited to, requests for the following information: rate changes by customer class, and customer turnover.

"Rate bands" means the minimum/maximum parameters established under N.J.A.C. 14:3-11.7(c) by which a solid waste collector may adjust the service fee of their uniform tariff during the transition period.

"Septic waste" means pumping from septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

"Solid waste" means garbage, refuse, and other discarded material resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

"Solid waste collection" means the activity related to pickup and transportation of solid waste from its source or location to an authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

"Solid waste collection services" means the services provided by persons engaging in the business of solid waste collection.

"Solid waste collector" means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L. 1970, c.40 (N.J.S.A. 48:13A-6 and 48:13A-9).

"Solid waste disposal" means the storage, treatment, utilization, processing or final disposal of solid waste.

"Solid waste disposal services" means the services provided by persons engaging in the business of solid waste disposal.

"Solid waste facility" means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

"Transition period" means the 48 month successive period commencing on April 14, 1992 and terminating on April 13, 1996.

"Transition year" means the successive 12-month period commencing on April 14 of that year. The first transition year commences April 14, 1992.

"Uniform tariff" means a tariff filed in the form required by N.J.A.C. 14:11-7.8, using the component rate structures and formulas provided by N.J.A.C. 14:11-7.7 and 7.8(b) through (d) and containing the certification required by N.J.A.C. 14:11-7.8(e).

"Verification Form" means the form developed by the DEPE, which will include, but not be limited to, requests for the following information: service rates, disposal rates, and rate band effects on fees.

14:3-11.6 Fees and charges

(a) Every solid waste collector shall pay an annual fee of $100.00. The annual fee shall be paid within 30 days from the date of the invoice issued by the DEPE. The annual fee will cover part of the costs of supervising the solid waste collection industry.

(b) All checks for payment of the fees and charges established pursuant to (a) above shall be made payable to the order of the Treasurer, State of New Jersey.

1. Payment of such fees and charges shall be mailed to DEPE, Bureau of Revenue, 428 East State Street—4th Floor, CN 402, Trenton, New Jersey 08625-0402.

(c) No rate band adjustment, petition, report, notice, document, or other paper will be accepted for filing nor action taken by the DEPE, unless the annual fee set forth in (a) above shall have been paid as required by law.

(d) Nonpayment of the annual fee set forth in (a) above shall result in suspension or revocation of the Certificate of Public Convenience and Necessity, subject to the notice and hearing requirements of N.J.S.A. 52:14B-9.

14:3-11.7 Rate band determination

(a) Every person engaged in the business of solid waste collection in the State of New Jersey shall have a Uniform Tariff on file with the DEPE.

(b) The transition period represents the consecutive 48 month period commencing April 14, 1992 and terminating April 13, 1996. The transition year periods are as follows:

Transition Period

Year One	April 14, 1992 through April 13, 1993
Year Two	April 14, 1993 through April 13, 1994
Year Three	April 14, 1994 through April 13, 1995
Year Four	April 14, 1995 through April 13, 1996

(c) Rate bands shall be determined as follows:

1. A solid waste collector who has filed a Uniform Tariff, which has not been rejected by the DEPE, may adjust its uniform tariff service charge within the rate bands. Solid waste collectors not in compliance with N.J.A.C. 14:11-7.6 through 7.9 are not permitted by law to make adjustments to their rates or charges.

2. During the transition period, every solid waste collector shall submit a Verification Form by April 14, which reflects the rate band adjustments for the forthcoming Transition Year.

3. Except as provided in (c)4 below, annual rate band adjustments shall be made in accordance with the following:

i. In Year One, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI;

ii. In Year Two, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)3i above.

iii. In Year Three, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)3ii above.

iv. In Year Four, a solid waste collector may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)3iii above.

4. In the event a solid waste collector files an initial Uniform Tariff pursuant to Section 5 of the Act during any year of the Transition Period, such solid waste collector is entitled to the rates approved by the DEPE in accordance with its initial Uniform Tariff. No additional rate band adjustments for uniform tariff services charges shall be permitted in the transition year of filing, except as provided in N.J.A.C. 14:3-11.8. Rate band adjustments to the uniform tariff service rates or charges for the subsequent Transition Years will be as follows:

i. If an initial Uniform Tariff is filed and approved in Transition Year One, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year One.

(1) In Year Two, a solid waste collector who filed such an initial Uniform Tariff in Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of five percent plus the annual percentage change in the CPI.

(2) In Year Three, a solid waste collector who filed such an initial Uniform Tariff in Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI plus the total percentage permitted by (c)4i(1) above.

(3) In Year Four, a solid waste collector who filed such an initial Uniform Tariff in Year One, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)4i(2) above.

ii. If an initial Uniform Tariff is filed in Transition Period Year Two, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year Two.

(1) In Year Three, a solid waste collector who filed such an initial Uniform Tariff in Year Two, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the sum of 10 percent plus the annual percentage change in the CPI.

(2) In Year Four, a solid waste collector who filed such an initial Uniform Tariff in Year Two, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI plus the total percentage permitted by (c)4ii(1) above.

iii. If an initial Uniform Tariff is filed in Transition Period Year Three, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year Three.

(1) In Year Four, a solid waste collector who filed such an initial Uniform Tariff in Year Three, may either increase or decrease the uniform tariff service charge, provided that the percentage increase or decrease is no greater than the annual percentage change in the CPI.

iv. If an initial Uniform Tariff is filed in Transition Period Year Four, there is no additional rate band adjustment for the uniform tariff service rates or charges in Year Four.

5. A petition for an initial Uniform Tariff filed pursuant to (c)4 above shall conform to the provisions of N.J.A.C. 14:1-6.15.

6. In no event shall initial Uniform Tariff sheet(s) filed pursuant to (c)4 above be deemed effective unless and until the DEPE shall have approved them in writing.

7. During the Transition Period, any adjustment within the established rate band may be applied to one or more individual customers; provided that the adjustment is within the applicable rate band pursuant to this subsection. Before a solid waste collector may implement such an adjustment, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

i. The date on which the adjustment becomes effective;

ii. The amount of the new rates and charges;

iii. A copy of the applicable rate schedule; and

iv. A statement that customers have the right at any time to choose an alternate solid waste collector and that collection services are available to customers on a competitive basis.

8. Upon expiration of the Transition Period, a solid waste collector shall have the discretion to adjust their service charge to a sum which shall result in competitive pricing. The DEPE within its authority pursuant to the Act, will supervise the solid waste collection industry to promote effective competition and prohibit anti-competitive practices of undercharging and overcharging.

14:3-11.8 Adjustments in addition to rate bands

(a) The following pertain to disposal cost adjustments:

1. Before a solid waste disposal facility may implement an initial rate or a revised rate, whether interim or final, granted by order the DEPE, such solid waste disposal facility shall give at least 14 days written notice of such initial or revised rate to all solid waste collectors authorized to use such solid waste disposal facility.

2. A solid waste collector may not implement an adjustment to the disposal fee of its Uniform Tariff until the solid waste collector has filed with the DEPE:

i. Two copies of revised tariff sheet(s) in the form prescribed by N.J.A.C. 14:11-7.8 reflecting the changes in the disposal costs received at an authorized solid waste disposal facility; and

ii. Two copies of the completed Verification Form.

3. In the event of a decrease in disposal rates or charges received at an authorized solid waste facility, a solid waste collector shall adjust its rates or charges by the full amount of such decrease and file with the DEPE within five days of such decrease, two copies of its revised tariff sheet(s) and Verification Form reflecting the decrease.

4. Two copies of the revised tariff sheet(s) and Verification Form shall be filed, as follows, with:

Bureau of Rates and Tariffs
Division of Solid Waste Management
840 Bear Tavern Road—CN 414
Trenton, NJ 08625

i. Filings shall include a self-addressed stamped envelope for the return of a stamped and dated copy of the filing.

ii. The stamped, dated copy of the filing shall constitute proof of filing.

iii. Before a solid waste collector may implement an adjustment pursuant to this subsection on (b), (d) or (e) below, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

(1) The date on which the adjustment becomes effective;

(2) The amount of the new rates and charges;

(3) A copy of the applicable rate schedule; and

(4) A statement that customers have the right at any time to choose an alternate solid waste collector and that collection services are available to customers on a competitive basis.

(b) The following pertain to extension of services and expansion of service:

1. Solid waste collectors filing revised Uniform Tariff sheet(s) for the purpose of extending the area of solid waste collection service or providing new or additional types of solid waste collection service, not already provided for in the collector's filed Uniform Tariff, shall provide the following:

i. Two copies of the revised Uniform Tariff sheet(s) together with an explanation of the type of revision or change being sought; and

ii. Two copies of a statement of the proposed effective date of the revised Uniform Tariff, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the DEPE.

2. Proposed revised Uniform Tariff sheet(s) filed pursuant to (b)1 above shall conform to the provisions of N.J.A.C. 14:1-6.15.

3. In no event shall a revised Uniform Tariff filed pursuant to this subsection be deemed effective unless and until the DEPE shall have approved it in writing.

4. Rate band adjustments for revised Uniform Tariff sheet(s) filed pursuant to this subsection shall be made in accordance with N.J.A.C. 14:3-11.7(c)4.

(c) The following pertain to materials recovery adjustments:

1. A solid waste collector may implement an adjustment to its disposal charges of its Uniform Tariff resulting from any net savings in disposal costs due to decreased waste flows resulting from material recovery provided the solid waste collector shall have filed with the DEPE.

i. Two copies of the revised tariff sheet(s) in the form prescribed by N.J.A.C. 14:11-7.8 reflecting the net savings in disposal costs; and

ii. Two copies of a completed Verification Form.

2. Any adjustment in disposal costs made pursuant to this subsection shall be made on a county by county basis in proportion to the tonnages reported by transfer stations and materials recovery facilities, for each county for which the solid waste collector has a uniform tariff.

(d) The following pertain to petitions for increase based on hardship or exigent circumstances:

1. A solid waste collector may petition the DEPE for increases in its Uniform Tariff service charges only in the event of financial

hardship, exigent circumstances or significant increases in energy costs.

2. The petitioner has the burden of proof to demonstrate that:

i. It is charging at the maximum permitted by the applicable rates band; and

ii. The increase is necessary so as to provide petitioner with an opportunity to earn a just and reasonable return.

3. A petition for changes in a uniform tariff service charge pursuant to (d)1 above shall conform to the provisions of N.J.A.C. 14:1-6.16 and shall be subject to all provisions pursuant to N.J.S.A. 48:2-21 et seq. and the regulations promulgated thereunder.

4. In the event a petition for a change in rates or charges pursuant to this subsection is granted by an order of the DEPE, such change may not be implemented until the solid waste collector has filed two copies of its revised tariff sheet(s) and Verification Form in accordance with N.J.A.C. (a)4 above.

(e) The following pertain to contracts of sale for collection services:

1. In every instance where a solid waste collector enters into a contract or agreement with a customer for the provision of collection services:

i. Such solid waste collector shall comply with the provisions of N.J.A.C. 14:3-9.6; in no event shall a solid waste collector implement any rates or perform any services pursuant to such a contract unless and until the DEPE shall have approved the same in writing;

ii. Such contract shall be at the uniform tariff service charge on file for the solid waste collector and any adjustments to the contract rate shall be within the applicable rate bands pursuant to N.J.A.C. 14:3-11.7(c);

iii. If any contract includes services which would be new services or would be an expanded service area, the solid waste collector shall file revised Uniform Tariff sheet(s) pursuant to (b) above; in no event shall a solid waste collector implement any rates or perform any services under a contract requiring new or expanded services unless and until the DEPE shall have approved the revised Uniform Tariff sheet(s) filed pursuant to (b) above; and

iv. All contracts entered into pursuant to this subsection shall contain a provision which permits the party contracting to receive collection services to terminate such contract upon 30 days written notice.

14:3-11.9 Notification/reporting requirements

(a) For the Transition Period Year One, the DEPE will notify each solid waste collector of the rate band for the period commencing April 14, 1992 by March 31, 1992. Thereafter, DEPE will notify each solid waste collector of the rate bands in effect for the forthcoming transition period by February 14, of the preceding transition year.

(b) Every six months commencing October 1, 1992 for Transition Years One and Two, every solid waste collector shall file with the DEPE, a Rate Adjustment Annual Report Form. The Rate Adjustment Annual Report Form shall be made available to each solid waste collector from the DEPE. For Transition Years Three and Four, the Rate Adjustment Annual Report Form shall be filed once a year. Report due dates are as follows:

Year One	October 1, 1992
	April 1, 1993
Year Two	October 1, 1993
	April 1, 1994
Year Three	April 1, 1995
Year Four	April 1, 1996

14:3-11.10 Refunds

(a) If the DEPE orders a solid waste collector to pay a refund pursuant to Section 10(b)(2) of the Act, the solid waste collector shall pay said refund, plus simple interest at a rate equal to 400 basis points over the short-term applicable Federal Rate established by the Internal Revenue Service under 26 U.S.C. 1274, in effect on the date of the order.

(b) Any solid waste collector whose rates or charges have been adjusted pursuant to Section 10(b)(2) of the Act shall file with the DEPE, revised Uniform Tariff sheet(s) and a Verification Form reflecting such adjustment, in accordance with N.J.A.C. 14:3-11.8(a)4; and

(c) Whenever a solid waste collector implements an adjustment pursuant to (a) above, every customer affected thereby shall receive 10 days prior written notice of the adjustment, which notice shall include:

1. The date on which the adjustment becomes effective;
2. The amount of the new rates and charges;
3. A copy of the applicable rate schedule; and
4. A statement that customers have the right at any time to choose an alternate solid waste collector and that collection services are available to customers on a competitive basis.

HEALTH

(a)

HEALTH FACILITIES RATE SETTING

Residential Alcoholism Treatment Facilities (RATF) Manual

Cost Accounting and Rate Evaluation Guidelines

Occupancy Penalties

Proposed Amendments: N.J.A.C. 8:31C-1.5 and 1.6

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1992-100.

Submit comments by May 20, 1992 to:

Charles O'Donnell, Director
Health Facilities Rate Setting
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Currently, a facility's approved costs are reduced if the occupancy is below 70 percent. This penalty is applied to all cost centers.

This may represent a double penalty if there are operating costs screened out through the standard establishment of medians and reasonableness limits. Therefore, the Department is recommending the elimination of this occupancy penalty in order to avoid the potential for a double reduction in a facility's approved costs. This change will affect rates beginning January 1, 1992.

The Department is also recommending the elimination of the occupancy penalty for the pass-through costs of depreciation, mortgage interest, rentals and leases. There is no relationship between these costs and the facility's occupancy percentage.

Social Impact

The amendments are being proposed to assure the consumers that there will be reimbursement equity for the consumer, provider, and the payer. The amendments will remove the potential for an inequitable reimbursement for the providers.

Economic Impact

The 1971 Health Care Facilities Planning Act authorizes the Commissioner of Health to establish reasonable reimbursement rates for government agencies (for example, Medicaid) and hospital service corporations (for example, Blue Cross). The proposed amendments will continue to insure an equitable reimbursement for the alcohol treatment industry.

The implementation of the proposed amendments will have minimal economic impact on the provider, the payer, and the consumer. The provider may realize a slight increase in reimbursable costs since the former target occupancy formula may have unduly penalized them. However, providers will not receive reimbursement for more than their actual costs of operation.

The payer may incur a slight increase because of the change in the target occupancy formula.

The consumer may realize a slight increase in insurance premiums if this additional cost is passed through to the consumer.

Regulatory Flexibility Statement

The facilities regulated by N.J.A.C. 8:31C are not small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since these facilities employ more than 100 people. Therefore, no regulatory flexibility analysis is required.

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

8:31C-1.5 Maintenance

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

(e) The per diem amount for maintenance and replacements will be determined by dividing (d) above by [target occupancy] **actual patient days.**

(f)-(g) (No change.)

8:31C-1.6 [Target occupancy levels] **Per diem reimbursement**

[(a) A target occupancy level of 70 percent of licensed bed days or actual] **Actual** base period patient days[, whichever is greater,] will be used to develop reasonable per diem amounts. [Target occupancy will be applied to all cost centers excluding raw food, laundry and linen, laboratory, and pharmacy.]

[(b) If base period patient days exceed 90 percent of licensed bed days, then the occupancy will be entered at 90 percent of licensed bed days.

(c) Target occupancy for Residential Alcoholism Treatment Facilities with adolescent treatment beds will be established at the higher of the facility's actual occupancy or 90 percent of the Statewide average occupancy for those facilities approved for adolescent beds by the Department of Health.]

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Characteristics of a University

Proposed Amendments: N.J.A.C. 9:1-1.2, 3.1, 3.2 and 3.4

Proposed New Rule: N.J.A.C. 9:1-3.5

Authorized By: Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.

Authority: N.J.S.A. 18A:3-14 et seq.

Proposal Number: PRN 1992-168.

Submit comments by June 20, 1992 to:

Brett E. Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The Board of Higher Education is proposing new rules and amendments which recognize the existence of the "teaching university" and is retaining, unchanged, the rules governing the identification of the research/teaching university. The elements of quality associated with the current definition at N.J.A.C. 9:1-3.1, also apply to the "teaching university." For the "teaching university," the doctoral program requirement is eliminated; however, minimum requirements are stipulated with respect to full-time equivalent enrollment, graduate enrollment, and providing graduate programs in at least three academic disciplines. The proposed new rule at N.J.A.C. 9:1-3.5 includes subsection (a), which denotes those institutions which are not eligible to petition for university status, and subsections (b) and (c) which stipulate the process for obtaining a "university" designation.

Social Impact

The proposed new rule and amendments will have a positive social impact as they recognize the existence of the "teaching university." As a result, there will be a clearer description of the range of institutions available to prospective students.

Economic Impact

The proposed new rule and amendments will not have any economic impact on existing research/teaching universities. Institutions that aspire to university status could be required to increase institutional expenditures in areas where they do not meet the criteria outlined in the proposed new rule and amendments. There will be no economic impact on those colleges which meet the criteria and seek university status, or on those institutions that do not seek university status.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule and amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The institutions of higher education do not qualify as small businesses under the definition of such entities set forth in N.J.S.A. 52:14B-17 as all of the institutions have over 100 full-time employees. While those educational institutions dedicated primarily to the education or training of ministers, priests, rabbis or other professional persons in the field of religion may qualify as small businesses under the Act, they are not eligible to apply for university status.

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

9:1-1.2 Definitions

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

...

"Academic disciplines" refers to the major areas of study identified in the Classification of Instructional Programs (CIP), that is, the first two digits of the CIP code, developed by the National Center for Education Statistics, 1990.

...

"University" [means an educational institution which] **refers to both the traditional research/teaching institution as well as to the institution whose major focus is on teaching. The traditional university** provides a wide range of undergraduate and graduate studies, programs in two or more professional fields and operative programs leading to the doctorate or comparable terminal degrees in two or more areas, whose faculty are involved in extensive research, and which already identifies graduate studies and programs as distinct elements in its organization. **A teaching university is an educational institution which provides a wide range of undergraduate programs and provides graduate programs in at least three academic disciplines, and which identifies graduate studies and programs as distinct elements in its organization. A teaching university has a minimum of 2,500 full-time equivalent (FTE) students. At least 20 percent of the university's total student body (headcount) are enrolled in graduate degree programs.** See N.J.A.C. 9:1-3[1 et seq].

9:1-3.1 Programs

(a) In an atmosphere of freedom of inquiry and expression, [a] **there exist both the traditional research-teaching university and the university whose major focus is on teaching.**

(b) The traditional university provides a wide range of undergraduate and graduate studies in two or more professional fields such as medicine, law, public administration, engineering, or education, and operative programs of instruction leading to the doctorate or comparable terminal degrees in two or more areas. A university should offer a range of graduate studies related to those fields in which it offers advanced degrees to provide students elective opportunities and a selection of support studies which may be useful but not prescribed by a graduate degree program. Additionally, a university should explore the possibilities of public service.

(c) A university whose major focus is on teaching provides a wide range of undergraduate programs and provides graduate programs in at least three academic disciplines. It identifies graduate studies and programs as distinct elements in its organization. A teaching university has a minimum of 2,500 full-time equivalent (FTE) stu-

dents. At least 20 percent of the university's total student body (headcount) are enrolled in graduate degree programs.

9:1-3.2 Organization

(a) (No change).

(b) A university recruits faculties for graduate or professional programs whose competence is known beyond the institution. [Members of faculties] **A significant number of faculty in each graduate program** are associated with the institution full time, have attained the doctorate or have terminal degrees appropriate to their disciplines or records of substantial and superior professional achievements, and remain abreast of their respective fields. The faculty, including representation from the departments offering graduate programs, participates in the initiation, development, and approval of curricula as the institution determines.

(c) (No change).

9:1-3.4 Accreditation

(a) A university is accredited by [the regional association.] **the Commission on Higher Education, Middle States Association of Colleges and Schools.**

9:1-3.5 Eligibility for university status and use of "university" as part of an institution's name

(a) Non-profit educational institutions incorporated and located in New Jersey and licensed by the New Jersey Board of Higher Education which believe they meet all of the requirements stipulated in this subchapter are eligible to apply, with the concurrence of their governing boards, to the New Jersey Board of Higher Education for university status. Educational institutions dedicated primarily to the education or training of ministers, priests, rabbis or other professional persons in the field of religion are not eligible to apply for university status.

(b) When an institution's governing body determines that the institution shall seek university status, it shall file with the New Jersey Board of Higher Education an application which shall demonstrate the institution's eligibility for designation as a university.

(c) University status and the actual title of the institution require the approval of the New Jersey Board of Higher Education.

CORRECTIONS

(a)

THE COMMISSIONER

Administration, Organization and Management

Proposed Readoption with Amendments: N.J.A.C. 10A:1

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 53:14B-3 and 4.

Proposal Number: PRN 1992-165.

Submit comments by May 20, 1992 to:

Elaine W. Ballai, Esq.
Regulatory Officer, Division of Policy and Planning
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:1, Administration, Organization and Management, expires July 6, 1992. The Department of Corrections has reviewed these rules and, with the amendments in subchapters 1, 2 and 11, has determined these rules to be necessary, reasonable and proper for the purpose for which they were originally promulgated and is, therefore, proposing them for readoption at this time.

Subchapter 1 describes the functions of the New Jersey Department of Corrections and the procedures for petitioning for a rule and requesting public information. These rules were written in order to comply with N.J.S.A. 52:14B-3 and 3 and N.J.A.C. 1:30-3.6. The proposed amendments at N.J.A.C. 10A:1.2(c) and (d) change the title of "Special Assistant for Legal Affairs, Office of the Deputy Commissioner" to "Regulatory Officer, Division of Policy and Planning."

Subchapter 2 describes the rulemaking and rule exemption authority the Commissioner may exercise as the Chief Executive Officer of the New Jersey Department of Corrections. This chapter also provides the guidelines for determining the effective dates of rule adoptions and rule exemptions, the procedure for requesting exemptions from rules, the scope of Chapters 1 through 34, and a glossary of general terms that are frequently used in Title 10A. The proposed amendments add minor changes in language for the purpose of clarification, and the title "Special Assistant for Legal Affairs, Office of the Deputy Commissioner," has been changed to "Regulatory Officer, Division of Policy and Planning." To correct the mistaken idea that only indeterminate sentences are housed in the Youth Complex, the words "... with indeterminate sentences as set forth in ..." have been deleted from the definition of "Youth Complex" at N.J.A.C. 10A:1-2.2 and the words "... pursuant to ..." have been added. An amendment to N.J.A.C. 10A:1-2.4(c) adds the words, "and/or security risk" after the words "undue hardship." This amendment adds the basis for the rule exemptions which are available. Language has been added in N.J.A.C. 10A:1-2.7 to indicate the decisions regarding exemptions are based on the criteria established at N.J.A.C. 10A:1-2.4.

Subchapters 3 through 10 remain in a reserved status for possible future use.

Subchapter 11 provides the guidelines which govern an inmate's possession of permissible personal property and the disposal of non-permissible personal property upon admission to a correctional facility, upon transfer to another correctional facility, upon release to parole supervision, upon release at the expiration of an inmate's sentence, or upon the escape of an inmate. N.J.A.C. 10A:1-11.3(b) has been rewritten to further specify the options that may be used to dispose of non-permissible property of inmates. A proposed amendment to N.J.A.C. 10A:1-11.6 recodifies subsection (d) as (e) and adds a new subsection (d) which establishes procedures in the event the inmate refuses to sign the inventory form. In that instance, the inventory officer shall note the inmates' refusal on the form. In N.J.A.C. 10A:1-11.6, 11.7 and 11.8, the cross-references to N.J.A.C. 10A:1-11.9 have been changed to read N.J.A.C. 10A:1-11.10. A proposed amendment will recodify the existing N.J.A.C. 10A:1-11.9 and 11.10 as N.J.A.C. 10A:1-11.10 and 11.11 and will add a new section N.J.A.C. 10A:1-11.9, regarding responsibility for personal property when an inmate escapes.

Social Impact

Readoption of N.J.A.C. 10A:1-1 and 2 will assure the continuation of the administrative rulemaking and rule exemption authority and the procedures whereby persons may petition for promulgation, amendment or repeal of any rule of the Department of Corrections.

Readoption of N.J.A.C. 10A:1-11 will permit the continuation of rules that govern the inmate's possession of personal property and disposal of non-permissible personal property. The use of these rules help to ensure that inmate personal property is managed in an orderly and consistent manner throughout the Department of Corrections.

Economic Impact

The proposed readoption of Chapter 1 with amendments should not result in any economic impact because additional funding is not necessary to implement the requirements of the amendments.

Any costs of meeting and maintaining the requirements established by the readopted rules will be met by the Department through the established budget process with monies allocated by the State.

Regulatory Flexibility Statement

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

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:1.

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

10A:1-1.2 Procedure to petition for a rule

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

(c) The petition shall be sent to the Commissioner, Department of Corrections, and to the [Special Assistant for Legal Affairs, Office of the Deputy Commissioner] **Regulatory Officer, Division of Policy and Planning,** at CN 863, Trenton, New Jersey 08625.

(d) When the Commissioner and/or the [Special Assistant for Legal Affairs] **Regulatory Officer, Division of Policy and Planning** accept the petition which satisfies the requirements of (a) and (b) above, the Department of Corrections shall forthwith file the document for publication as a notice of petition for a rule in the New Jersey Register pursuant to N.J.A.C. 1:30-3.6(a).

(e) (No change.)

10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through N.J.A.C. 10A:30, shall have the following meanings[, unless the context clearly indicates otherwise].

...

"Youth Complex" means State correctional facilities designated to house young adult offenders [with indeterminate sentences as set forth in] **pursuant to** N.J.S.A. 30:4-146.

10A:1-2.4 Rule making and exemption authority

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

(c) The Commissioner may exempt [an institution] **a correctional facility** or [a noninstitutional] **other** operational unit from adherence to a rule or certain requirements of a rule in instances when strict compliance with a rule or all of its requirements would result in undue hardship **and/or security risk** to the overall management of [an institution] **a correctional facility** or [a noninstitutional] **other** operational unit.

10A:1-2.7 Procedure for requesting rule exemptions

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

(d) The Superintendent or the head of a noninstitutional operational unit shall review and determine, **based on the criteria at N.J.A.C. 10A:1-2.4(c),** whether to submit requests for rule exemptions to the appropriate Assistant Commissioner and the Commissioner for consideration.

(e) If the Superintendent or the **administrative** head of a noninstitutional operational unit approves a request for a rule exemption, he or she shall complete, in duplicate, Sections 1 through 6 of [FORM] **Form** 911-II REQUEST FOR RULE EXEMPTION, sign and date Section 7 and submit [FORM] **Form** 911-II to the [Special Assistant for Legal Affairs, Office of the Deputy Commissioner for legal review] **Regulatory Officer, Division of Policy and Planning**.

(f) The [Special Assistant for Legal Affairs] **Regulatory Officer** shall review [FORM] **Form** 911-II REQUEST FOR RULE EXEMPTIONS and submit [FORM] **Form** 911-II to the appropriate Assistant Commissioner along with recommendations for approval or disapproval, **based on the criteria at N.J.A.C. 10A:-2.4(c)**.

(g) The Assistant Commissioner shall review [FORM] **Form** 911-II REQUEST FOR RULE EXEMPTION and determine whether to approve or disapprove the request, **based on the criteria at N.J.A.C. 10A:1-2.4(c)**. If the Assistant Commissioner approves the request, he or she shall sign and date Section 7 of [FORM] **Form** 911-II and shall submit it to the Commissioner for review. If the Assistant Commissioner disapproves the request, he or she shall sign and date Section 8 of Form 911-II and return it to the **correctional facility** Superintendent or the **administrative** head of a noninstitutional operational unit.

(h) The Commissioner shall review [FORM] **Form** 911-II REQUEST FOR RULE EXEMPTION, submitted by an Assistant Commissioner, and determine whether to authorize a rule exemption, **based on the criteria at N.J.A.C. 10A:1-2.4(c)**. The Commissioner shall approve or disapprove a rule exemption by signing and dating the appropriate section on Form 911-II and returning it to the Assistant Commissioner.

(i) (No change.)

10A:1-11.3 Non-permissible personal property

(a) (No change.)

(b) The correctional facility shall inventory and package the non-permissible personal property and **the inmate** shall **indicate, in writing, which of the following means of disposal should be used with respect to the non-permissible personal property. The non-permissible personal property shall either be:**

1. [Mail the non-permissible property] **Mailed** to the inmate's home at the inmate's expense; [or]

2. [Make the non-permissible property available for removal from the correctional facility by a designated family member(s) or friend(s) of the inmate.] **Given to a designated visitor for removal;**

3. Donated by the inmate to a charitable organization at the inmate's expense; or

4. Destroyed at the inmate's request.

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

(f) Copies of written notices to the inmate about his or her non-permissible personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-[11.9]**11.10**).

10A:1-11.6 Inventory of inmate personal property

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

(d) In the event the inmate refuses to sign the inventory form, the inventory officer shall note the inmate's refusal on the form.

[(d)]**(e)** The signed inventory form shall be maintained on file (see N.J.A.C. 10A:1-[11.9] **11.10**) and a copy shall be given to the inmate.

10A:1-11.7 Correctional facility's responsibility for personal property when inmate is transferred

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

(f) In every case that personal property is mailed to the inmate's home, a receipt shall be obtained from the post office or railway express representative and filed in the inmate's classification folder (see N.J.A.C. 10A:1-[11.9] **11.10**).

10A:1-11.8 Responsibility for personal property when inmate is released

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

(d) Copies of written notices to the inmate about his or her personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11[11.9] **11.10**).

10A:1-11.9 Responsibility for personal property when inmate escapes

(a) When an inmate escapes, the inmate's personal property shall be held at the correctional facility for 30 days.

(b) If the escaped inmate does not return within 30 days to the correctional facility or any other correctional facility within the jurisdiction of the New Jersey Department of Corrections, the inmate's property shall be deemed abandoned property.

(c) The correctional facility may dispose of abandoned personal property by:

1. Donating the personal property to any recognized public charitable organization;

2. Retaining the personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or

3. Destroying the personal property.

(d) A written notice of final disposition of the escaped inmate's abandoned personal property shall become a permanent part of the inmate's classification folder (N.J.A.C. 10A:1-11.10).

Recodify existing N.J.A.C. 10A:1-11.9 and 11.10 as **10A:1-11.10 and 11.11** (No change in text.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service

Insurance Verification

Proposed Amendment: N.J.A.C. 13:18-6.9

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles, after consultation with Samuel F. Fortunato, Commissioner, Department of Insurnce.

Authority: N.J.S.A. 17:33B-41, 39:3-4e and 39:3-32.

Proposal Number: PRN 1992-171.

Submit written comments by May 20, 1992 to:
Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
25 South Montgomery Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

This proposal conforms the fee for replacement license plates set forth in N.J.A.C. 13:18-6.9 to the $5.00 fee for same which is set forth in the Division's proposed addition of subsection (b) to N.J.A.C. 13:20-34.5, which is published elsewhere in this issue of the New Jersey Register. The proposal amends N.J.A.C. 13:18-6.9 to increase the fee for replacement registration plates from $3.00 to $5.00 for those motorists who have surrendered registration plates to the Division of Motor Vehicles in accordance with N.J.S.A. 17:33B-41, who thereafter acquire motor vehicle liability insurance coverage, furnish proof of same to the Director and seek replacement plates. If such motorists are seeking the return of registration plates containing the same combination of letters and numbers as on the surrendered plates, they must first pay a replacement plate fee of $5.00 (rather than the old fee of $3.00). Plates which contain the specific combination of letters and numbers requested, unless already issued to another registrant or unless such issuance is otherwise prohibited, shall then be issued to the registrant upon payment of a fee of $10.00 for the set of such plates.

Since one of the statutes (N.J.S.A. 39:3-4e) which provides authority for the rules contained in N.J.A.C. 13:18-6 empowers the adoption of such rules by the Director of the Division of Motor Vehicles only after consultation with the Commissioner of Insurance, the Division has consulted with the Commissioner of Insurance with regard to this proposal.

Social Impact

The proposed amendment enables the Division to implement the public policy of this State as statutorily embodied in N.J.S.A. 39:3-32 with regard to replacement license plate fees by collecting a replacement plate fee from motorists which more nearly approximates the costs which the Division incurs in replacing such plates than the $3.00 fee which was previously specified in N.J.A.C. 13:18-6.9. The replacement plate fees collected by the Division become a part of the General State Fund.

Economic Impact

The proposed amendment impacts economically upon those vehicle registrants who surrender registration plates to the Division in accordance with N.J.S.A. 17:33B-41, who thereafter acquire motor vehicle liability insurance coverage, furnish proof of same to the Director and then seek to obtain a set of replacement plates pursuant to N.J.A.C. 13:18-6.9. Such motorists will be required by the amendment to pay a replacement plate fee of $5.00 to the Division (rather than the $3.00 fee which was previously specified in N.J.A.C. 13:18-6.9). If such registrants are seeking the return of registration plates which contain the same combination of letters and numbers as had been contained on the surrendered plates, they must first pay a replacement plate fee of $5.00 to the Division (rather than the $3.00 fee which was previously specified in N.J.A.C. 13:18-6.9), to be followed by the payment to the Division of a $10.00 fee (which is unchanged by the amendment) for the set of specifically requested plates. The amendment is intended to conform the replacement plate fee in N.J.A.C. 13:18-6.9 to the $5.00 replacement plate fee set forth in the Division's proposed addition of subsection (b) to N.J.A.C. 13:20-34.5, which is published elsewhere in this issue of the New Jersey Register. The $5.00 fee more nearly approximates the cost to the Division to replace such plates in accordance with N.J.S.A. 39:3-32 than the $3.00 replacement plate fee previously set forth in N.J.A.C. 13:18-6.9. Replacement license plate fees collected by the Division become a part of the General State Fund.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment of N.J.A.C. 13:18-6.9 imposes no reporting, recordkeeping or other compliance requirements upon small businesses; therefore, a regulatory flexibility analysis is not required. The proposed amendment of N.J.A.C. 13:18-6.9 impacts upon individual motorists who have surrendered registration plates to the Division in accordance with N.J.S.A. 17:33B-41, who thereafter acquire motor vehicle liability insurance coverage, furnish proof of same to the Director and seek replacement plates.

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

13:18-6.9 Return of surrendered registration plates to registrant

(a) In those instances in which a registrant has surrendered registration plates to the Division pursuant to section 50 of the FAIR Act and thereafter acquires motor vehicle liability insurance and furnishes proof of same to the Director as required by section 50 of the FAIR Act and this subchapter, the Division shall return to the registrant a valid set of replacement registration plates upon payment to the Division of a fee of [$3.00] **$5.00** for the set of replacement plates.

(b) If a registrant seeking the return of surrendered registration plates in accordance with [subsection] (a) [of this section] **above** desires plates which contain the same combination of letters and numbers as had been contained on the surrendered plates, he or she shall first be issued a set of replacement plates at a fee of [$3.00] **$5.00** as set forth in (a) above. Upon receipt of the replacement registration plates, the registrant may apply to the Division for plates which contain the same combination of letters and numbers as had been contained on the surrendered plates. [Such "special identifying marks"] **Plates which contain the specific combination of letters and numbers requested,** unless already issued to another registrant or unless such issuance is prohibited by N.J.S.A. 39:3-33.5, shall be issued to the registrant upon payment to the Division of a fee of $10.00 for the set of [special registration] **such** plates.

(b)

DIVISION OF MOTOR VEHICLES

Identifying Marks

Proposed Amendments: N.J.A.C. 13:20-34.2, 34.3, 34.5 and 34.7

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-33.3 et seq., 39:3-32, 39:3-33, 39:3-20, 39:3-27, 39:3-27.4, 39:3-27.8, 39:3-27.39 and P.L.1991, c.168.

Proposal Number: PRN 1992-172.

Submit written comments by May 20, 1992 to:
Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
25 South Montgomery Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The proposal amends N.J.A.C. 13:20-34.2 regarding the combinations of alphabetic and numeric characters which are reserved for use on various types of license plates issued by the Division. The proposal amends N.J.A.C. 13:20-34.2(a)1 to reserve a combination of alphabetic characters for use on license plates for a vehicle owned by, or leased by or for, the President of the Senate of the State of New Jersey. The proposal amends N.J.A.C. 13:20-34.2(a)2 to reserve a combination of

alphabetic characters for use on license plates for a vehicle owned by, or leased by or for, the Speaker of the General Assembly of the State of New Jersey. The proposal amends N.J.A.C. 13:20-34.2(a)7 to designate additional alpha/numeric combinations for use on license plates issued by the Division for vehicles owned or leased by persons accredited as members of the Press in the City of New York, New York. The proposal amends N.J.A.C. 13:20-34.2(a)9 to designate additional alpha/numeric combinations for use on license plates issued by the Division for "historic" vehicles registered pursuant to N.J.S.A. 39:3-27.3 et seq. N.J.A.C. 13:20-34.2(a)13 is amended to designate additional alpha/numeric combinations for use on license plates issued by the Division for vehicles owned by any bonafide firefighter. The proposal inserts a new provision at N.J.A.C. 13:20-34.2(a)23 (the previous provision at paragraph (a)23 having been recodified to paragraph (a)25 by the proposal) to reserve various combinations of alphabetic and numeric characters for use on license plates for vehicles owned or leased by osteopathic physicians licensed to practice medicine and surgery in New Jersey or neighboring states. The proposal inserts a new provision at N.J.A.C. 13:20-34.2(a)24 (the previous provision at paragraph (a)24 having been recodified to paragraph (a)26 by the proposal) to reserve various alphabetic and numeric characters for use on license plates for vehicles owned or leased by the mayor or chief executive of a municipality in this State.

The proposal amends N.J.A.C. 13:20-34.3 to set forth various registration numbers excluded from issuance on license plates denoted as "particular identifying marks" and the combinations of alphabetic and numeric characters which are permitted to be utilized on various types of license plates as specified by the rule. N.J.A.C. 13:20-34.3(a)1 is amended to specify additional alpha/numeric combinations for use on license plates designated for general issue by the Division. N.J.A.C. 13:20-34.3(a)4 is amended to accommodate the issuance by the Division of "particular identifying marks" which consist of a minimum of three characters and a maximum of seven characters. The rule did not previously specify a minimum number of characters, and the rule previously provided for a maximum of six characters on such license plates. This amendment accommodates the Division's issuance of "personalized" license plates which contain seven characters and conforms the rule to existing Division procedures. N.J.A.C. 13:20-34.3(a)11, which excluded the issuance of a "particular identifying mark" containing "I" as a single or isolated character, is deleted by the proposal. N.J.A.C. 13:20-34.3(a)12 through 32 are recodified by the proposal to N.J.A.C. 13:20-34.3(a)11 through 31. N.J.A.C. 13:20-34.3(a)15 (recodified to paragraph (a)14 by the proposal) is amended to exclude the issuance of a "particular identifying mark" containing "Q" as a single character; the rule previously excluded "Q" through "QQQQQQ". N.J.A.C. 13:20-34.3(a)17 (recodified to paragraph (a)16 by the proposal) is amended to designate additional alpha/numeric combinations for use on license plates issued by the Division for commercial trailers and semitrailers. N.J.A.C. 13:20-34.3(a)18 (recodified to paragraph (a)17 by the proposal) is amended to designate additional alpha/numeric combinations for use on license plates issued by the Division for commercial motor vehicles. N.J.A.C. 13:20-34.3(a)19 (recodified to paragraph (a)18 by the proposal) is amended to designate additional alpha/numeric combinations for use on license plates issued by the Division for State-owned, county-owned and municipal-owned vehicles. N.J.A.C. 13:20-34.3(a)26 (recodified to paragraph (a)25 by the proposal) is amended to designate additional alpha/numeric combinations for use on license plates issued by the Division for State Police designated vehicles. N.J.A.C. 13:20-34.3(a)28 (recodified to paragraph (a)27 by the proposal) is amended to designate additional alpha/numeric combinations for use on license plates issued by the Division for vehicles utilized as pleasure vehicles. The proposal inserts a new provision at N.J.A.C. 13:20-34.3(a)32 (the previous provision at paragraph (a)32 having been recodified to (a)31 by the proposal) designating various alpha/numeric combinations for use on license plates issued by the Division for vehicles that qualify for registration at no fee pursuant to N.J.S.A. 39:3-27 and which are not assigned specific license plate combinations by any other provision of N.J.A.C. 13:20-34. The proposal inserts a new provision at N.J.A.C. 13:20-34.3(a)33 (the previous provision at paragraph (a)33 having been recodified to paragraph (a)34 by the proposal) designating various alpha/numeric combinations for use on special organization vehicle registration plates issued by the Division pursuant to N.J.S.A. 39:3-27.35 et seq. and N.J.A.C. 13:20-39.

N.J.A.C. 13:20-34.5 is amended by the proposal through the addition of subsection (b), which provides that a fee of $5.00 shall be paid for replacement of lost, stolen or obliterated license plates except as otherwise provided by N.J.A.C. 13:20-34.5(a)3. The amendment specifies the replacement plate fee ($5.00) to be charged by the Division in accordance with N.J.S.A. 39:3-32, except that a fee of $10.00 will continue to be charged by the Division pursuant to N.J.A.C. 13:20-34.5(a)3 for replacement of lost, stolen or obliterated "particular identifying marks."

N.J.A.C. 13:20-34.7 is amended by the proposal to provide that if a registrant fails to renew the registration of a "particular identifying mark" for two years from the date of expiration, the Division may reissue same to any applicant therefor upon payment to the Division of the applicable fee specified in N.J.A.C. 13:20-34.5(a) for such plates. The rule prior to amendment provided for reissuance upon the registrant's failure to renew the registration for a period of 60 days from the date of expiration. The amendment of N.J.A.C. 13:20-34.7 conforms the rule to existing Division procedures and reduces the possibility of error in the issuance of "particular identifying marks."

Social Impact

The proposed amendments have a beneficial social impact by accommodating the Division's issuance of "personalized" license plates which contain seven characters, meaning seven character combinations are available for issuance on "personalized" license plates for those members of the public who desire to obtain such plates. The proposed amendments will also have a beneficial social impact upon the public by informing the public of the combinations of alphabetic and numeric characters which are either reserved for or permitted to be used on various types of license plates issued by the Division.

The proposed addition of subsection (b) to N.J.A.C. 13:20-34.5 enables the Division to implement the public policy of this State as statutorily embodied in N.J.S.A. 39:3-32 with regard to replacement license plate fees by collecting a replacement plate fee from motorists which more nearly approximates the costs which the Division incurs in replacing such plates than the $3.00 fee which was previously charged. The replacement plate fees collected by the Division become a part of the General State Fund.

Economic Impact

The Division's issuance of "personalized" license plates which contain seven characters impacts economically upon those members of the public who choose to apply for such plates; such applicants must pay to the Division a fee for such "personalized" license plates in accordance with N.J.A.C. 13:20-34.5(a). The availability of seven character "personalized" license plate combinations for issuance by the Division should have a positive economic impact upon the State, since it will result in the collection of "personalized" plate fees for such seven character plates by the Division which will become a part of the General State Fund.

Applicants for special license plates (that is, historic plates, firefighter plates, etc.) must pay the applicable statutory or regulatory fee for such plates, and only those persons who choose to apply for such plates and qualify for same are impacted by such fees. The fees collected by the Division for such plates become a part of the General State Fund, except that the fees collected for plates issued for vehicles owned or leased by the mayor or chief executive of a municipality in this State are appropriated to the Division pursuant to P.L.1991, c.168 to fund the additional costs incurred for the issuance of such plates. The Division will incur administrative costs in producing and issuing license plates regardless of the alpha/numeric combination which appears on the plates.

The proposed addition of subsection (b) to N.J.A.C. 13:20-34.5, which provides that a fee of $5.00 shall be paid for replacement of lost, stolen or obliterated license plates (except as otherwise provided by N.J.A.C. 13:20-34.5(a)3 for replacement of "particular identifying marks," for which a fee of $10.00 will continue to be charged), impacts economically upon those members of the public who must apply for such replacement plates. The $5.00 fee more nearly approximates the cost to the Division to replace such plates in accordance with N.J.S.A. 39:3-32 than the $3.00 replacement fee that has been charged in the past by the Division (although said fee was not previously set forth in N.J.A.C. 13:20-34.5). Replacement license plate fees collected by the Division become a part of the General State Fund.

The proposed amendment of N.J.A.C. 13:20-34.7 to provide that if a registrant fails to renew the registration of a "particular identifying mark" for two years from the date of expiration, the Division may reissue same to any applicant therefor upon payment to the Division of the applicable fee specified in N.J.A.C. 13:20-34.5(a) for such plates, will potentially result in a decrease in revenue collected by the Division with regard to the reissuance of such plates because they will be reissued less frequently. The rule prior to amendment permitted reissuance of

such plates if the registration for same had ot been renewed within 60 days following the date of expiration, allowi g the reissuance of such plates (and the collection of fees for same by t e Division) more quickly than will be permitted by the proposed amendn nt to the rule. However, the Division considers the proposed amendmer to be necessary because it reduces the possibility of error in the issuanc of "particular identifying marks" by providing the Divisi n additional tim to verify that a previously issued "particular identifying mark" is no longer an active vehicle registration number.

Regulatory Flexibility Analysis

The proposed amendments have been reviewed in accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and the Division has determined that the proposed amendments will not impose reporting, recordkeeping or other compliance requirements on small businesses, with one exception: the proposed addition of subsection (b) to N.J.A.C. 13:20-34.5. That provision sets forth that a fee of $5.00 shall be paid for the replacement of lost, stolen or obliterated license plates (except as otherwise provided by N.J.A.C. 13:20-34.5(a)3 for replacement of "particular identifying marks", for which a fee of $10.00 will continue to be charged). The $5.00 fee impacts economically upon those small businesses which must apply for such replacement plates. The $5.00 fee more nearly approximates the cost to the Division to replace such plates in accordance with N.J.S.A. 39:3-32 than the $3.00 replacement fee that has been charged in the past by the Division (although said fee was not previously set forth in N.J.A.C. 13:20-34.5). Since the purpose of the $5.00 replacement plate fee is to defray the cost of replacing such plates in accordance with N.J.S.A. 39:3-32, it is not feasible to exempt small businesses from the payment of this fee. As previously noted, the replacement plate fee set forth in N.J.A.C. 13:20-34.5(b) is the only type of requirement which is imposed upon small businesses by the proposal.

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

13:20-34.2 Registration numbers reserved

(a) The following registration numbers are reserved as specified:

1. Registration numbers comprised of two alphabetic characters only and registration numbers comprised of one alphabetic character and a single digit for vehicle owned or leased by members of the Senate of the State of New Jersey; **SP for a vehicle owned by, or leased by or for, the President of the Senate of the State of New Jersey;**

2. Registration numbers comprised of two alphabetic characters and one digit for vehicles owned or leased by members of the General Assembly of the State of New Jersey; **SPKR for a vehicle owned by, or leased by or for, the Speaker of the General Assembly of the State of New Jersey;**

3.-6. (No change.)

7. NYP 1 through NYP 999 and 1 NYP through [999 NYP] **9999 NYP** for vehicles owned or leased by persons accredited as members of the "Press" in the City of New York, New York;

8. (No change.)

9. QQA 1 through QQZ 999, 1 QQA through 999 QQZ [and], QQ1 A through QQ999 Z, **100 AQQ through 999 ZQQ, and QQ 1000 through QQ 99999** for "historic" vehicles registered pursuant to N.J.S.A. 39:3-27.3 et seq.; QQ1 to QQ99 **and Q 100 through Q 9999** for "historic" motorcycles;

10.-12. (No change.)

13. [A 11 A] **A11A** through [Z 99] **Z99Z and 1AA1 through 9ZZ9** for vehicles owned by any bona fide firefighter (paid, partially paid, or volunteer);

14.-22. (No change.)

23. DO 1000 through DO 9999 and 1000 DO through 9999 DO for vehicles owned or leased by osteopathic physicians licensed to practice medicine and surgery in New Jersey or neighboring states;

24. AA1AA through ZZ9ZZ for vehicles owned or leased by the mayor or chief executive of a municipality in this State;

[23.]**25.** USS NJ, USS NJ 1 through 9 to be set aside for the members of the USS New Jersey[,] Battleship Commission;

[24.]**26.** Three alphabetic characters plus 1 through 20 and 1 through 20 plus three alphabetic characters designated as "courtesy plates" approved by county senators.

(b) (No change.)

13:20-34.3 Registration numbers excluded

(a) The following registration numbers shall be excluded from issuance as "particular identifying marks" **and, where so indicated, shall be used for the purpose specified:**

1. Any combination except those hereinbefore reserved having the following arrangements: three alphabetic followed by three numeric characters (for example ABC 123); three numeric followed by three alphabetic characters (for example 123 ABC); three alphabetic followed by two numeric and one alphabetic character (for example, ABC 12D); **three alphabetic followed by four numeric characters (for example, ABC 1234), except that the letters I, O and Q shall not be utilized in such seven character non-personalized plate combinations.** Any combination herein excluded and not in a series designated for special classes of vehicles may be reissued as "personalized marks" if the registrant to whom the marks were **previously** issued [initially] has surrendered said marks and corresponding registration certificate. Designated for general issue;

2.-3. (No change.)

4. **Except as otherwise provided by N.J.A.C. 13:20-34.2(a)1,** [Any] **any** combination consisting of **less than three characters or** more than [six] **seven** characters;

5.-10. (No change.)

[11. "I" as a single or isolated character;]

[12.]**11.** "J" followed by three numeric characters (for example J 123) and three numerics followed by "J" (for example, 123 J). Designated for motorcycles owned by governmental agencies;

[13.]**12.** "MV 1" through "MV 10" and "1 MV" through "10 MV". Designated for State vehicles assigned to Division of Motor Vehicles personnel["];

[14.]**13.** "O" as a single character;

[15.]**14.** "Q" [through "QQQQQQ"] **as a single character;**

[16.]**15.** "S1100A" through "S1999Z", "100AS1" through "999ZS1" for School Vehicle Type I and "S2100A" through "S2999Z", "100AS2" through "999ZS2" for School Vehicle Type II;

[17.]**16.** "TA 100" through "TZ 9999" ["Taa 100"], **"TAA 100"** through ["TZZ 999"] **"TZZ 9999"**, "TA100A" through "TZ999Z", [and] "100 TAA" through "999 TZZ", **and "T100AA" through "T999ZZ"** for commercial trailers and semitrailers; **provided, however, that the letters I, O and Q shall not be utilized in seven character combinations issued for commercial trailers and semitrailers;**

[18.]**17.** "XA 100" through "XZ 9999", "XAA 100" through ["XZZ 999"] **"XZZ 9999"**, "XA1000" through "XZ9999", "X10000" through "X99999", "X1A100" through "X9Z999", "XAA10A through "XXZ99Z", [and] "XX10AA" through "XX99ZZ", **and "X100AA" through "X999ZZ"** for commercial motor vehicles; **provided, however, that the letters I, O and Q shall not be utilized in seven character combinations issued for commercial motor vehicles;**

[19.]**18.** SGA 1 through SGZ999 [and], 1 SGA through 999 SGZ, **SG 1000 through SG 99999, and 1000 SG through 9999 SG** for State-owned vehicles; CGA 1 through CGZ 999, 1 CGA through 999 CGZ [and], CG 100A through CG 999Z, **CG 1000 through CG 99999, and 1000 CG through 9999 CG** for county-owned vehicles; MGA 1 through MGZ 999, 1 MGA through 999 MGZ [and], MG 10AA through MG 99ZZ, **MG 1000 through MG 99999, and 1000 MG through 9999 MG** for municipal-owned vehicles; TD 1000 through TD 9999 and 100 TD through 9999 TD for State-owned vehicles assigned to the Department of Transportation;

Recodify existing 20.-25. as **19.-24.** (No change in text.)

[26.]**25.** SPA 100 through **SPA** 999 [and], 100 SPA through 999 SPA[.], SPB 100 through **SPB** 999 [and], 100 SPB through 999 SPB, **SP 1000 through SP 9999, and 1000 SP through 9999 SP,** used for State Police designated vehicles;

[27.]**26.** OL 1000 through OL 3999 and 1000 OL through 3999 OL for vehicles utilized as limousines or taxis for hire with PUC approval;

[28.]**27.** AAA 100 through [ZZZ 999] **ZZZ 9999,** 100 AAA through 999 ZZZ and AAA 10A through ZZZ 99Z for vehicles utilized as pleasure vehicles; **provided, however, that the letters I, O and Q shall not be utilized in seven character non-personalized plate combinations issued for vehicles utilized as pleasure vehicles;**

[29.]**28.** 1A1A1 through 9Y9Y9 for motorized bicycles;

[30.]**29.** Any combination of alphabetic and numeric characters that constitutes amateur radio call letters as issued by the Federal Communications Commission[.];

[31.]**30.** Three letters followed by CMH. Designated for vehicles owned or leased by New Jersey residents who have been awarded the Congressional Medal of Honor[.];

[32.]**31.** AR 1000 through AR 9999, NR 1000 through NR 9999, CR 1000 through CR 9999, AF 1000 through AF 9999 and MR 1000 through MR 9999 for vehicles owned by persons serving in military reserve units[.];

32. NFA 100 through NFZ 999 and NF 10000 through NF 99999 for vehicles that qualify for registration at no fee pursuant to N.J.S.A. 39:3-27 and which are not assigned specific combinations by any other provision of this subchapter;

33. Except as otherwise provided by this subchapter, any combination consisting of two alphabetic followed by four numeric characters (for example, AB 1234) or four numeric followed by two alphabetic characters (for example, 1234 AB). Designated for use on special organization vehicle registration plates issued by the Division pursuant to N.J.S.A. 39:3-27.35 et seq. and N.J.A.C. 13:20-39;

[33.]**34.** Any combination of alphabetic characters or numbers, or both, that may carry connotations offensive to good taste and decency.

13:20-34.5 Fees

(a) Fees for particular identifying marks, which shall be paid with the application therefor, shall be as follows unless otherwise provided by law:

1. "Courtesy Marks": $15.00;
2. "Personalized marks": $50.00;
3. Replacement of lost, stolen or obliterated "particular identifying marks": $10.00.

(b) Except as otherwise provided by (a)3 above, a fee of $5.00 shall be paid for replacement of lost, stolen or obliterated license plates.

13:20-34.7 Reissue

In the event a registrant fails to renew the registration for a particular identifying mark for [60 days] **two years** from the date of expiration or surrenders said mark and corresponding registration certificate to the [division] **Division,** said marks shall be available for reissuance to any applicant therefor **upon payment to the Division of the applicable fee specified in N.J.A.C. 13:20-34.5(a) for said marks.**

(a)

DIVISION OF CONSUMER AFFAIRS

State Board of Chiropractic Examiners

Referral Fees

Proposed New Rule: N.J.A.C. 13:44E-2.7

Authorized By: State Board of Chiropractic Examiners, Jay Church, Executive Director.

Authority: N.J.S.A. 45:9-41.23(h).

Proposal Number: PRN 1992-164.

Submit written comments by May 20, 1992 to:

Jay Church, Executive Director
State Board of Chiropractic Examiners
124 Halsey Street
Newark, New Jersey 07102

The agency proposal follows:

Summary

In order to codify the traditional prohibition on the receipt or payment of referral fees by professionals and to fulfill its duties pursuant to the Chiropractic Board Act, N.J.S.A. 45:9-41.17, the State Board of Chiropractic Examiners is proposing a new rule, N.J.A.C. 13:44E-2.7, entitled "Referral fees." The rule is intended to maintain and ensure standards of integrity in the profession and prevent any practices which may negatively affect the cost of health care or influence the treatment of a patient.

The Board of Chiropractic Examiners considers the payment or receipt of referral fees to constitute professional misconduct within the meaning of N.J.S.A. 45:1-21. A chiropractor must refer a patient to an appropriate health-care provider whenever the chiropractic evaluation indicates a condition not generally recognized as amenable to chiropractic treatment. The proposed new rule prohibits the acceptance of a referral fee for this service and articulates the Board's determination to uphold an appropriate standard of ethical behavior for licensed chiropractors in a manner similar to the standard imposed by other health-related professions.

The proposed new rule also recognizes the traditional, well established practice of dividing fees among those who are associated in the practice of chiropractic in *bona fide* employment, partnership or corporate relationships. This exception is consistent with accepted policies of incentive for individuals within a chiropractic practice. However, a licensee may not pay any fee or provide a gift or provide a free service or any other compensation to other persons as a reward for the referral of a patient. The rule also would prohibit a licensee from participating in a referral service where a fee is paid for each referral received. Additionally, a licensee would not be permitted to accept a fee for referring a patient for diagnostic or physical therapy services.

Social Impact

Little social impact is expected because the rule does not alter the Board's prior position or policy with respect to referral fees. It only sets forth that professional conduct which is deemed unacceptable and the only exception to that policy. The Board believes that the proposed rule will serve to maintain the reputation of the profession in this State.

Economic Impact

No substantial economic impact is expected because the rule does not alter the position of the Board in regard to unacceptable financial relationships or arrangements. The proposed new rule's exception provision defines and narrows the class of individuals affected monetarily to those in the chiropractor's employment or association.

Regulatory Flexibility Analysis

The proposed new rule will uniformly apply to the approximately 2,800 licensees of the Board of Chiropractic Examiners. No reporting or recordkeeping requirements are imposed. The rule prohibits licensees from paying, offering to pay, or receiving fees or other compensation for patient referral. Not prohibited is the division of fees among licensees engaging in a *bona fide* employment, partnership or corporate relationship for the delivery of professional services. No capital costs will be incurred, nor professional services needed, in complying with this rule. Given the nature of licensees as small businesses, and the Board's commitment to ensure professional integrity, no lesser requirements or exemptions based on business size can be provided.

Full text of the proposed new rule follows:

13:44E-2.7 Referral fees

It shall be professional misconduct for a licensee to pay, offer to pay, or to receive from any person any fee or other form of compensation for the referral of a patient. The within prohibition shall not prohibit the division of fees among licensees engaged in a *bona fide* employment, partnership or corporate relationship for the delivery of professional services.

PUBLIC UTILITIES

(b)

BOARD OF REGULATORY COMMISSIONERS OFFICE OF CABLE TELEVISION

Regulations of Cable Television

Interest on Uncorrected Billing Errors

Proposed Amendment: N.J.A.C. 14:18-3.19

Authorized By: Celeste M. Fasone, Director, with the Approval of the Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor, and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:5A-10.
BRC Docket Number: CX92030282.
Proposal Number: PRN 1992-160.

A **public hearing** concerning the proposal will be held on:
Tuesday, May 5, 1992, at 10:00 A.M.
Board of Regulatory Commissioners
10th Floor Hearing Room
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by May 20, 1992 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Regulatory Commissioners
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Presently, N.J.A.C. 14:18-3.19(b) provides, in pertinent part, that all customer credits for billing errors shall include simple interest at a rate "equal to the average yields on new six month Treasury Bills for the 12-month period ending each September 30. Said rate shall be rounded up or down to the nearest half percent, shall become effective on January 2, of the following year . . ." This calculation also governs by reference interest for deposit moneys held by the cable companies, such as those described in N.J.A.C. 14:18-4.6, 4.7 and 4.9.

Originally, the rounding of the interest rate up or down to the nearest half percent was included only for the purpose of administrative ease. The Board, however, is now of the opinion that it is more appropriate and just as easy to reflect the actual interest rate. Accordingly, the purpose of the proposed amendment is simply to eliminate the need to round the applicable interest rate up or down to the nearest half percent. The Board has proposed to amend its simple interest rule for utilities under Docket No. AX91121774 (see 24 N.J.R. 686(b)).

Also, the January 2 date was in error and is being corrected to January 1 at this time.

Social Impact

The proposed amendment will provide for the setting of a slightly more accurate rate of interest for customer deposits reflecting the cost of money based upon the standards established by the Board. This amendment conforms Cable TV treatment of deposit and billing error interest rates to the Board's treatment of interest for utilities.

Economic Impact

The proposed amendment will have only a slight impact, up or down, on the amount of interest that may be earned on any particular customer deposit in any particular year. There should be no additional costs incurred by any affected cable company in implementing the proposed amendment.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board has determined that the proposed amendment will not impose additional reporting, recordkeeping or other compliance requirements on small businesses as all cable operators will continue to utilize an interest rate that is supplied to them by the Board. The amendment involves the calculation the Board will make in order to supply the figure.

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

14:18-3.19 Interest on uncorrected billing errors
(a) (No change.)
(b) The interest rate shall be equal to the average yields on new six-month Treasury Bills for the 12-month period ending each September 30. Said rate [, which shall be rounded up or down to the nearest half percent,] shall become effective on January [2] **1** of the following year.
(c) (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Gaming Schools
Equipment

Proposed Amendment: N.J.A.C. 19:44-9.4

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c) and 70(i).
Proposal Number: PRN 1992-162.

Submit comments by May 20, 1992 to:
Barbara A. Mattie, Chief Analyst
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

N.J.A.C. 19:44-9.4 requires that the name of the gaming school be imprinted on each gaming table used by that school. The proposed amendment to N.J.A.C. 19:44-9.4(b) would delete the specific reference to each authorized game and would simply state that any gaming table used by a gaming school have the name of the gaming school imprinted thereon. This would eliminate the need to amend the rule each time a new game is authorized for use.

Social Impact

The proposed amendment merely eliminates the specific reference to each game and would have no social impact of any significance.

Economic Impact

The proposed amendment merely deletes the specific reference to each game and would have no economic impact of any significance.

Regulatory Flexibility Statement

The proposed amendment will affect licensed gaming schools (four at present). These schools, which may be small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., would be required to comply with this proposed amendment which merely deletes specific references to each game and adds a generic term. No exemption is provided for these small businesses because the amendment merely changes the terminology used in the rule and the Commission has determined that for security and integrity purposes, the name or identifying attribute of each gaming school must be affixed to all gaming tables used at the school.

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

19:44-9.4 Equipment
(a) (No change).
(b) Unless the [commission] **Commission** shall otherwise determine, each **gaming** table [for blackjack, roulette, craps, baccarat and big six] shall have the name of the gaming school, or some other identifying attribute as approved by the [commission] **Commission,** permanently imprinted thereon in letters at least one inch in height and shall, as shall each slot machine, also have permanently affixed on it a serial number which, together with the location of the table or machine, shall be filed with the commission.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Closed Circuit Television Systems; Surveillance Department Control; Surveillance Department Restrictions
Procedures for Control of Coupon Redemption and Other Complimentary Distribution Programs
Proposed Amendments: N.J.A.C. 19:45-1.10, 1.11 and 1.46A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g) and (l), and 99(a).
Proposal Number: PRN 1992-163.

Submit comments by May 20, 1992 to:
Seth H. Briliant, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk

The agency proposal follows:

Summary

On February 20, 1991, the Casino Control Commission adopted amendments to its regulations and promulgated a new rule, N.J.A.C. 19:45-1.46A, which permits casino licensees to utilize automated coupon redemption machines (see 23 N.J.R. 885(a)).

By petition filed January 21, 1992, the Division of Gaming Enforcement proposed certain amendments to the Commission's rules regarding automated coupon redemption machines. These amendments would codify a recent Commission interpretation of its rules, which permits such machines to be located immediately adjacent to the casino floor if there is proper closed circuit television surveillance of the machines.

Social Impact

By permitting coupon redemption machines to be located adjacent to the casino floor, the proposed amendments would provide casino licensees with greater flexibility to serve their patrons. Such an arrangement would also conserve and make more efficient use of casino floor space. The requirement of closed circuit television surveillance would help to maintain and ensure the necessary security over those machines not located on the casino floor itself.

By permitting coupon redemption machines to be located off the casino floor, such machines should become more available to casino patrons, thus decreasing the amount of time patrons need to spend redeeming their coupons.

Economic Impact

These proposed amendments are not expected to have any economic impact upon the Commission, the Division of Gaming Enforcement, casino licensees or their patrons.

Closed circuit television coverage of automated coupon redemption machines by the surveillance department is already required for all such machines. The proposed amendments permit, but do not require, casino licensees to relocate or install additional automated coupon redemption machines in locations immediately adjacent to the casino floor. Additional closed circuit television coverage and surveillance may or may not be required, depending on the location of the machine and the acceptability of existing camera coverage.

Regulatory Flexibility Statement

The proposed amendments will affect only New Jersey casino licensees, none of which are "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:45-1.10 Closed circuit television system; **surveillance department control; surveillance department restrictions**

(a) (No change.)

(b) The closed circuit television system shall include, but need not be limited to, the following:

1. Light sensitive cameras with zoom, scan, and tilt capabilities to effectively and clandestinely monitor in detail and from various vantage points, the following:

i.-iv. (No change.)

v. The operations conducted at automated coupon redemption machines;

Recodify existing v.-viii. as **vi.-ix.** (No change in text.)

2.-5. (No change.)

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

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-iii. (No change.)

iv. The clandestine surveillance of the operation of automated coupon redemption machines;

Recodify existing iv.-viii. as **v.-ix.** (No change in text.)

2.-9. (No change.)

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

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

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

(g) Automated coupon redemption machines may be located on or immediately adjacent to the casino floor, provided that closed circuit television system surveillance coverage of all automated coupon redemption machines is provided, pursuant to N.J.A.C. 19:45-1.10 and 1.11.

Recodify existing (g)-(p) as **(h)-(q)** (No change in text.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Slot Machines and Bill Changers; Coin and Slot Token Containers; Slot Cash Storage Boxes; Entry Authorization Logs
Proposed Amendments: N.J.A.C. 19:45-1.16, 1.17, 1.36 and 19:46-1.25

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(e), 70(l), 99(a)10-11, 100(c).
Proposal Number: PRN 1992-169.

Submit comments by May 20, 1992 to:
Seth H. Briliant, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

By petition filed December 23, 1991, Boardwalk Regency Corporation and Sevens Unlimited, Inc., proposed certain amendments to the Commission's rules regarding bill changers. Specifically, petitioners sought an alternate design arrangement which would eliminate the requirement in N.J.A.C. 19:45-1.36(d) that the slot cash storage box (cash box) be located in a separate locked compartment within the bill changer. They also

sought to eliminate one of the two locks now required on a cash box by N.J.A.C. 19:45-1.16(b).

After reviewing the matter, the Commission is proposing an amendment which would permit an alternate design arrangement for bill changers. The Commission's proposal would eliminate the requirement of a separate compartment for the cash box, so long as two locks are used to secure the area where the cash box is located and access to the keys is properly controlled. To this end, new text has been added at N.J.A.C. 19:45-1.17(a) and 19:46-1.25(e)1 to specify procedures for key access. The placement of these two locks could vary, depending upon the exact location of the cash box. The requirement of two locks securing the contents of the cash box remains unchanged.

Social Impact

These proposed amendments only involve technical issues concerning the internal design and operation of bill changers, and are not expected to have any social impact.

Economic Impact

These proposed amendments are not expected to have any economic impact upon the Commission, the Division of Gaming Enforcement, or casino patrons. It is hoped that by permitting alternate types of bill changer designs, these proposed amendments may result in some cost savings to casino licensees, who may benefit from what may be more efficient or simpler systems. However, the amount of such savings is unknown, and may be partially or totally offset in the short term by the expense of purchasing and installing any such new bill changers.

Regulatory Flexibility Statement

The proposed amendments will affect only New Jersey casino licensees, none of which are "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:45-1.16 Drop boxes and slot cash storage boxes

(a) (No change.)

(b) Each bill changer in a casino shall have contained in it a **secure** metal container known as a "slot cash storage box" in which shall be deposited all cash inserted into the bill changer. Each slot cash storage box shall [have]:

1. [Two] **Have two** separate locks securing the contents [placed into] **of** the slot cash storage box, the keys to which shall be different from each other [and one of which shall be different from the keys securing the compartment housing the slot cash storage box] **, and shall also comply with the requirements of N.J.A.C. 19:45-1.36**;

2. [A] **Have a** slot opening through which currency can be inserted into the slot cash storage box;

3. [A] **Have a** mechanical arrangement or device that prohibits removal of currency from the slot opening at any time that the slot cash storage box is removed from the bill changer; [and]

4. Be fully enclosed, except for such openings as may be required for the operation of the bill changer or the slot cash storage box; provided, however, that the location and size of such openings shall not affect the security of the slot cash storage box, its contents or the bill changer, and shall be approved by the Commission and the Division; and

[4.] **5.** [An] **Have an** asset number at least two inches in height, permanently imprinted, affixed or impressed on the outside of the slot cash storage box which corresponds to the asset number of the slot machine to which the bill changer has been attached, except that emergency slot cash storage boxes may be maintained without such number, provided the word "emergency" is permanently imprinted, affixed or impressed thereon, and when put into use, are temporarily marked with the asset number of the slot machine to which the bill changer is attached, and provided further, that the casino obtains the express written approval of a Commission inspector before placing an emergency slot cash storage box into use.

(c) The key utilized to unlock the drop boxes from the gaming tables shall be maintained and controlled by the security department. [The keys to the compartment securing the slot cash storage box shall be maintained and controlled in accordance with N.J.A.C. 19:45-1.36.]

(d) The key to one **of the** locks securing the contents of [the] **a** drop box and to **one of** the locks securing the contents of [the] **a** slot cash storage box[es, which is different from the keys to the compartment securing the slot cash storage box,] shall be maintained and controlled by the accounting department. The key to the second lock securing the contents of the drop boxes and slot cash storage boxes shall be maintained and controlled by Commission inspectors.

19:45-1.17 Drop boxes, transportation to and from gaming tables; slot cash storage boxes, transportation to and from bill changers; storage in count room

(a) Each casino licensee shall place on file with the Commission and the Division a schedule setting forth the specific times at which the drop boxes will be brought to or removed from the gaming tables and slot cash storage boxes will be brought to or removed from the bill changers. **Each casino licensee shall also maintain and make available to the Commission and the Division upon request, the names and license numbers of all employees participating in the transportation of such drop boxes and slot cash storage boxes.** No drop box shall be brought to or removed from any gaming table and no slot cash storage box shall be brought to or removed from any bill changer at other than the time specified in such schedule except with the express written approval of a Commission inspector.

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

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage box compartments; keys

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

(d) [The slot cash storage box of each bill changer shall be housed in a separate locked compartment. The slot cash storage box compartment shall have two locks, the keys to which shall be different from each other and one of which shall be different from the keys securing the contents of the slot cash storage box as required by N.J.A.C. 19:45-1.16.] **The area in which the slot cash storage box is located shall be secured by two separate locks, the design, location, and operation of which shall be approved by the Commission, and the keys to which shall be different from each other.**

(e) [One] **The** key to [the compartment] **one of the locks** securing **the area where** the slot cash storage box **is located** shall be maintained and controlled by a Commission inspector, and the **key to the** second [key] **lock** to such [compartment] **area**, which [is] **key shall also be** different from the keys securing the contents of the slot cash storage box, shall be maintained and controlled by the security **or the slot** department in a secure area within [the security] **that** department, **and** access to [which] **the key** may be gained only by a [security] supervisor **in that department.** [The security department shall establish a] **A** sign-out procedure **shall be established** for all keys removed from [the security] **that** department, in accordance with N.J.A.C. 19:46-1.25.

(f) Keys to each slot machine or any device connected thereto which may affect the operation of the slot machine, with the exception of the keys to the compartments housing the drop bucket and **to** the **locks securing the area where the** slot cash storage box **is located**, shall be maintained in a secure place and controlled by the slot department.

(g) Unless a computer which automatically records the information specified in (g)1, 2 and 3 below is connected to the slot machines in the casino, the following entry authorization logs shall be maintained by the casino licensee:

1.-2. (No change.)

3. [Whenever] **With the exception of the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a), whenever** it is required that a bill changer, other than [the] **a separate** slot cash storage box compartment, be opened, the entry shall be made on a form to be entitled "Bill Changer Log."[.] The entry shall include, at a minimum, the date, time, purpose of opening the bill changer, and the signature of **the** authorized employee opening the bill changer. The Bill Changer Log shall be maintained in the bill changer and shall have recorded thereon a sequential number and a manufacturer's serial number or asset number.

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

19:46-1.25 Slot machines and bill changers; coin and slot cash storage box compartment; keys

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

(d) [The slot cash storage box of each bill changer shall be housed in a separate locked compartment. The slot cash storage box compartment shall have two locks, the keys to which shall be different from each other and one of which shall be different from the keys securing the contents of the slot cash storage box as required by N.J.A.C. 19:45-1.16.] **The area in which the slot cash storage box is located shall be secured by two separate locks, the design, location, and operation of which shall be approved by the Commission, and the keys to which shall be different from each other.**

(e) [One] **The** key to [the compartment] **one of the locks** securing **the area where** the slot cash storage box **is located** shall be maintained and controlled by a Commission inspector[, and the]. **The key to the** second [key] **lock** to such [compartment] **area**, which [is] **key shall also be** different from the keys securing the contents of the slot cash storage box, shall be maintained and controlled by the security **or the slot** department[. The key maintained and controlled by the security department shall be maintained] in a secure area within [said] **that** department[, access]. **Access** to [which] **this key** may be gained only by a [casino security] supervisor[, removal] **in that department. Removal** of keys from this area may be undertaken only **for use and return no later than the end of the shift of the department member to whom the key was issued**, and upon the approval of a [casino security] supervisor **of that department** and [upon] entry **of the following information** into a log [maintained for this purpose of]:

1. The signature of the [security] department member to whom the key was issued; **provided however, that if the slot department controls the key in accordance with the above, the supervisor of the slot department may issue the key to a security department supervisor, who may give it to appropriate security department personnel only for the purpose of participating in the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a).**

2. The signature of the [casino security] supervisor authorizing such issuance;

3.-4. (No change.)

(f) Keys to each slot machine or any device connected thereto which may affect the operation of the slot machine, other than **the keys to** the compartments housing the drop bucket [or] **and to the locks securing the area where** the slot cash storage box **is located**, shall be maintained in a secure place and controlled by the slot department.

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

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction
Uniform Fire Code
Fire Code Enforcement
Type Ac Life Hazard Uses
N.J.A.C. 5:18-2.4A

Take notice that the Department of Community Affairs has discovered that the amendment to N.J.A.C. 5:18-2.4A(c)3 adopted effective October 7, 1991 (see 23 N.J.R. 2234(a) and 2999(a)) constituted the creation of a new category of life hazard use, which the Department did not intend to adopt at that time. As stated in response to the third comment summarized in the notice of adoption, action on new categories was being reserved by the Department pending further consideration by the codes council of the Fire Safety Commission. The Department has, therefore, requested, and the Office of Administrative Law has agreed to permit, the correction of N.J.A.C. 5:18-2.4A(c)3 to reflect the Department's expressed intent that no new categories be created through that adoption. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**):

5:18-2.4A Type Aa through Aj life hazard uses
(a)-(b) (No change.)
(c) Type Ac life hazard uses are as follows:
1.-2. (No change.)
3. Eating and/or drinking establishments with a maximum permitted occupancy of fewer than 50 persons **in which alcoholic beverages may be consumed.**
(d)-(j) (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Mechanical Subcode; Indoor Air Quality Subcode
Adopted Amendments: N.J.A.C. 5:23-1.1, 3.4, 3.11 and 3.20
Adopted New Rule: N.J.A.C. 5:23-3.20A

Proposed: January 21, 1992 at 24 N.J.R. 167(a).
Adopted: March 25, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: March 27, 1992 as R.1992, d.183, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-123 and 124.

Effective Date: April 20, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Response:

A public hearing was held on February 11, 1992 at 3131 Princeton Pike, Lawrenceville, New Jersey. Mr. Charles Decker, Assistant Director of Construction Code Enforcement acted as the hearing officer. No one testified.

Written comments were received from Robert Karen, New Jersey Builders Association, and Donna Capazzi, CIH, and Matthew Carmel, CIH, American Industrial Hygiene Association.

COMMENT: The Department should not blindly adopt the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) standards 62-89 in order to correct inconsistencies with the newly-adopted Indoor Air Quality Subcode.

RESPONSE: This amendment was proposed in response to concerns from design professionals that the technical standards for evaluation of indoor air quality problems created a conflict between design standards and functional evaluation standards. This amendment was proposed with the advice of the Energy Subcode Committee and the Uniform Construction Code Advisory Board and resolves the conflict.

COMMENT: The Department should make this change through BOCA's code change process. The Department should withhold action until BOCA has acted on the proposed code changes.

RESPONSE: The Department has submitted a code change to BOCA that addresses this issue. This amendment to the Uniform Construction Code eliminates the conflict between the BOCA design standard and the ASHRAE 62-89 evaluation standard while the state-sponsored code change awaits action through the BOCA code change cycle. To delay the adoption of this amendment to the UCC would perpetuate the conflict between the standard for design and the standard for functional evaluation unnecessarily.

COMMENT: The adoption of ASHRAE 62-89 will impose an additional burden on building subcode officials who will have to learn new technical information. This could cause budget problems for DCA's training programs.

RESPONSE: The adoption of ASHRAE 62-89 provides a single design and evaluative standard in New Jersey. It will create consistency and will not be disruptive. All licensed code officials regularly update their technical knowledge as changes are made to the model codes. DCA regularly offers training for code officials. The adoption of this standard imposes no additional training requirements and will impose no additional budgetary problems.

COMMENT: Because radon is included in ASHRAE 62-89, Table 3, the Table of Contaminants, will certificates of occupancy be conditioned upon proof that radon levels do not exceed those in Table 3?

RESPONSE: The certificate of occupancy will not be conditioned upon any contaminant level in Table 3. The ventilation rate procedure is deemed to provide acceptable indoor air quality; the contaminant table is used to evaluate indoor air quality problems upon receipt of a complaint by a public employee.

COMMENT: The Indoor Air Quality Subcode (Subchapter 11) applies only to buildings occupied by public employees; this amendment to the BOCA Mechanical Subcode extends the applicability to all buildings. This may cause technical problems.

RESPONSE: This amendment provides one technical standard for both design and functional evaluation. It does not extend the complaint process for public employees to private employees.

Summary of Agency-Initiated Change:

An incorrect codification at N.J.A.C. 5:23-3.11 was corrected upon adoption.

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

5:23-1.1 Title; division into subchapters
(a) (No change.)
(b) The chapter consists of the following subchapters:
1.-11. (No change.)
12. "Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees" which may be cited throughout the rules as N.J.A.C. 5:23-11 and, when referred to in subchapter 11 of this chapter, may be cited as this subchapter.
13. (No change.)

5:23-3.4 Allocation of enforcement responsibility
(a)-(f) (No change.)
(g) Responsibility for enforcement of the indoor air quaility subcode shall be the exclusive province of the building subcode official, except as otherwise specified in N.J.A.C. 5:23-3.11(h).
Redesignate (g)-(h) as (h)-(i).

5:23-3.11 Enforcement activities reserved to the Department
(a)-*[(h)]**(g)* (No change.)
*[(i)]**(h)* The Department of Community Affairs shall be the sole agency responsible for the enforcement of N.J.A.C. 5:23-11, the

Indoor Air Quality Procedures and Standards for Buildings Occupied by Public Employees. Any complaint of noncompliance with that subchapter shall be forwarded to the Department. This subsection notwithstanding, the Department of Health may enforce the standards contained in N.J.A.C. 5:23-11 when such standards have been adopted by the Department of Labor.

5:23-3.20 Mechanical Subcode

(a) (No change.)

(b) The following articles, sections or pages of the BOCA National Mechanical Code/1990 are amended as follows:

1.-6. (No change.)

7. Article 16 of the mechanical subcode, entitled "Ventilation Air" is amended as follows:

i. Section M-1602.0 is deleted in its entirety.

ii. Section M-1603.0 is deleted in its entirety.

iii. Section M-1604.1, is amended to delete the words "of Table M-1603.1" and "Section M-1603.0" and substitute in lieu thereof "N.J.A.C. 5:23-3.20A" and "indoor air quality procedure specified in N.J.A.C. 5:23-3.20A" respectively.

Recodify existing 7.-10. as 8.-11. (No change in text.)

(c) The following sections of the 1991 supplement to the Mechanical Subcode are modified as follows:

1. Section M-1602.0 is deleted in its entirety.

Recodify existing 1. as 2. (No change in text.)

5:23-3.20A Indoor air quality subcode

(a) Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the nationally-recognized standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., known as ASHRAE 62-1989 (Ventilation for Acceptable Indoor Air Quality), including all subsequent revisions and amendments thereto, as the standard for building ventilation and indoor air quality in all buildings or portions of buildings subject to this chapter in which mechanical ventilation is utilized. This standard is hereby adopted by reference as the indoor air quality subcode for New Jersey.

1. Copies of this standard may be obtained from the sponsor at: ASHRAE Publications Sales Department, 1791 Tullie Circle NE, Atlanta, GA30329.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Alternative Claim Procedures for Fire Retardant Treated (FRT) Plywood Roof Sheathing Failures New Home Warranties and Builders' Registration

Adopted New Rules: N.J.A.C. 5:25A
Adopted Amendments: N.J.A.C. 5:25-1.3

Proposed: December 2, 1991 at 23 N.J.R. 3603(a).

Adopted: March 27, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: March 27, 1992 as R.1992 d.188, **with substantive and technical changes** not requiring additional notice or comment (see N.J.A.C. 1:30-4.3).

Authority: Sections 3 and 9 of P.L.1991, c.202; N.J.S.A. 46:3B-10.

Effective Date: April 20, 1992.

Expiration Date: February 19, 1996, N.J.A.C. 5:25
April 20, 1997, N.J.A.C. 5:25A

Summary of Public Comments and Agency Responses:

A public hearing regarding the proposed rules was held on December 17, 1991. Mr. William M. Connolly was the presiding hearing officer. No formal recommendations based on the testimony at the hearing was made. One person spoke at the hearing. A transcript of the hearing may be reviewed at the William Ashby Department of Community Affairs Building, 101 South Broad Street, Trenton, New Jersey.

Comments were received from the following persons and firms: Robert H. Karen, President, New Jersey Builders Association (NJBA); Edward B. Wood, Esq., Osmose Wood Preserving, Inc.; Robert C. Lattanzi, Assistant Product Manager, Fire Retardants, Hickson Corporation; Andrew T. Berry, McCarter & English, Hoover Treated Wood Products, Inc.; Ronald L. Perl, Perl, Karpoff & Kessler, P.C.; Dennis A. Estis, Greenbaum, Rowe, Smith, Ravin & Davis; and Martin G. Picillo, Esq., Picillo, Bromberg & Caruso, Hoover Universal, Inc.

COMMENT: NJBA recommends that the title of chapter 25A, and other references in the chapter, be amended to include the words "roof sheathing" after "plywood," since the rules do not apply to any other use of FRT plywood.

RESPONSE: The recommendation is accepted.

COMMENT: NJBA asks that N.J.A.C. 5:25A-1.2 be amended by adding the words "involving premature failure or, inevitable premature failure, of FRT plywood roof sheathing" after the word "claims" on line 2.

RESPONSE: Reference will be made to "premature failure," but will not be made to "inevitable premature failure" until appropriate standards have been developed and adopted.

COMMENT: NJBA asks why the rules state that the Bureau of Homeowner Protection is in the Division of Housing and Development, and not in the Division of Codes and Standards.

RESPONSE: No executive reorganization plan altering the statutory status of the Division of Housing and Development has as yet been adopted.

COMMENT: NJBA asks whether any of the parties listed in N.J.A.C. 5:25A-2.1 would be eligible to file a claim during the first or second year of warranty coverage and whether claims can be filed at any time during the initial 10 years of a new home warranty issued under private new home warranty plan.

RESPONSE: The answer to both questions is "yes."

COMMENT: NJBA asks that the phrase "is the warrantor of the new home and" be deleted from N.J.A.C. 5:25A-2.1(a)5, so that a builder who is not the warrantor of the new home would be able to remediate the problem with payment from the Fund.

RESPONSE: A builder who is not the warrantor should have to bid for the job. By maintaining the current language the builder must bid for a job.

COMMENT: NJBA asks that, for purposes of consistency, N.J.A.C. 5:25A-2.1(b) be amended to change "warranty coverage" to "eligibility for warranty claim filing."

RESPONSE: "Warranty coverage" will be changed to "either warranty coverage or eligibility for warranty claim coverage."

COMMENT: NJBA would like the requirement at N.J.A.C. 5:25A-2.3(c)10 of "certification that no remediation of the damaged plywood sheathing has been undertaken" to be modified to allow "essential repairs necessary to retain physical integrity."

RESPONSE: The words "other than temporary repairs necessary to retain physical integrity" are being added.

COMMENT: NJBA questions what type of "certification" is expected in N.J.A.C. 5:25A-2.3(a)12 and (c)12 regarding the actions of past owners. Also, the reference to systems terminating in the attic should be amended to refer to "exhaust" systems.

RESPONSE: The Department will ask for a statement as to facts known to the owner, not a certification. It will be specified that exhaust systems are meant.

COMMENT: NJBA asks that N.J.A.C. 5:25A-2.4(e) specify the actions that the statute allows relative to the Attorney General's recommended assignment of rights.

RESPONSE: The full listing of these actions is added upon adoption.

COMMENT: NJBA recommends that N.J.A.C. 5:25A-2.4(f) be rephrased in the affirmative.

RESPONSE: The current phrasing is preferable because it is necessary to make it clear what may not be done by a person who has filed a civil action. However, N.J.A.C. 5:25A-2.4(f) has been recodified as 2.1(c) and a reference to standards for predictive testing added.

COMMENT: NJBA recommends that the rules provide that the Department will accept and consider technical documentation prepared by an engineer hired by an owner or association to supplement the Department's visual inspection.

RESPONSE: The Department of Community Affairs is spending $280,000 to develop valid scientific tests. The Department is not obligated to accept and validate any other methods while a procedure which, unlike those currently in use by some persons, would be reliable, is being devised. Until a reliable method is available, the Department will not be able to evaluate the various methods that people may employ and will therefore not make any provision for the submission of the results

of any such methods. In any event, major structural defects can be determined visually; research is necessary to develop a reliable method for predicting damage.

COMMENT: NJBA asks whether the Department intends to reserve sections of chapter 25A for approved testing procedures and for the imposition of a $100.00 surcharge on sales of new homes in the event that the New Home Warranty Security Fund is unable to cover the costs incurred for remediation of FRT plywood sheathing.

RESPONSE: A new section 2.6 will be reserved for the predictive testing standards that are currently being developed. Additional sections can be added to the chapter if and when necessary, including the imposition of a surcharge.

COMMENT: Hickson Corporation says that, although the various defects listed in N.J.A.C. 5:25A-2.5 may well be characteristics of products that have failed due to degradation, they represent production problems and not degradation. Structural capacity is the problem and one of several non-destructive tests methods should be included in the rules.

RESPONSE: The listing in the proposed rule includes several observable characteristics known to be associated with degradation. The Department's decision as to whether replacement is necessary will be based on the totality of the evidence. As previously indicated, the Department is sponsoring research intended to develop an acceptable testing method, since the Department is not satisfied that the methods now in use are reliable. In any event, non-destructive test methods are not needed in order to determine if the roof sheathing has already deteriorated; they are needed only for the purpose of determining if it is going to deteriorate in the future but within the warranty period.

COMMENT: Hickson recommends that the rules provide that the treated wood manufacturer and the chemical manufacturer be given notice of the need to repair a roof so that they will have the opportunity to step in and do the repairs.

RESPONSE: The Department's concern is to get the work done quickly and not to wait for other parties to decide whether or not they wish to do the work.

COMMENT: Osmose Wood Preserving, Inc., contends that the proposed rules do not establish any objective standards, procedures or technical criteria for inspection of roofs and calls for either objective testing or review by "qualified wood engineers."

RESPONSE: If the roof sheathing is falling apart, the Department's inspectors will be able to see that such is the case.

COMMENT: Osmose is concerned that the rules do not establish a procedure for determining whether the condition of a roof is caused by conditions other than "defective FRT plywood," such as building code violations. The rules must require documentation of all causes of roof deterioration.

RESPONSE: The purpose of the program is to replace deteriorated FRT treated plywood roof sheathing. This will be done regardless of who might be to blame for the condition.

COMMENT: Osmose is concerned that the proposed rules do not place any limitations on remedial designs that might be proposed by a claimant and do not exclude costs attributable to the correction of design defects, construction defects, water leaks or other problems.

RESPONSE: Correction of other defects is the responsibility of the builder. The Fund, under these rules, will only cover the cost of replacing deteriorated FRT plywood roof sheathing, but this will be done regardless of the cause of the deterioration.

COMMENT: Osmose wants limitations placed on the costs that will be allowed for replacement.

RESPONSE: The Department will carefully review the cost of all remediation proposals and make sure that only work that is properly within the scope of the FRT statute is paid for under it.

COMMENT: Osmose objects to allowing the builder of a new home to do the repairs to the FRT plywood roof sheathing even if the conditions that caused the problem, in Osmose's view, were caused by the builder. If the builder designs and implements remediation, he may fraudulently profit from his own faulty work.

RESPONSE: If the Department ever discovers a case of a builder abusing the system, it can avail itself of existing rules that allow it to recover from an at-fault builder and to suspend or revoke the builder's registration. The New Home Warranty system, however, always gives the builder the first opportunity to correct any covered defect.

COMMENT: According to Osmose, the regulations do not provide any procedure for determining whether any party is a "responsible party," as that term is used in the FRT statute, or for allowing potentially responsible parties to conduct their own investigations prior to the repair of the roof. Builders may be able to destroy evidence of their own contributions to roof failure.

RESPONSE: The Department's main obligation, under the FRT statute, is to get defective roofs repaired as expeditiously as possible. The Department will keep records of its investigations and make these available to interested parties. However, the work cannot be held up while potential parties, who may not even be known to the Department, conduct their own investigations. The Department will add a new subsection N.J.A.C. 5:25A-2.4(f) upon adoption to provide that, where a case is already in litigation, parties to that litigation will be given 21 days to investigate before work is done.

COMMENT: Osmose claims that the Social Impact statement incorrectly "deems" failure or severe deterioration of FRT plywood to be a "major structural defect." Measurement of the strength of the roof is required before deterioration can be considered a major structural defect.

RESPONSE: The FRT statute expressly provides that "this failure constitutes a major construction defect under existing law."

COMMENT: Osmose, Hoover Treated Wood Products and Hoover Universal, Inc. all object to the estimate, in the economic impact statement, that the cost of repairing a typical roof will be about $4,000. Use of a high number will encourage persons doing the remediation to pad their bills and include costs that should not be covered.

RESPONSE: The Department will be pleased if the commenters are correct and the true cost is lower. However, the Department thought it preferable to give a high estimate than to later be in the position of having misled people as to the cost of the program. The Department will monitor all remediation jobs carefully to control its costs, just as it has been doing for years with the existing New Home Warranty program.

COMMENT: Osmose points out that the proceeds from levying a $100.00 surcharge on 20,000 new homes a year would be $2,000,000, rather than $200,000 as stated in the economic impact statement.

RESPONSE: Correct.

COMMENT: Osmose, a plywood treater, contends tha FRT degradation is not caused by FRT plywood or FRT treatment. Instead, the causes may be improper kiln drying, wetting during storage or installation or due to roof leaks, improper construction, or designs in which ventilation is inadequate. The Department must investigate each of these possibilities in order to identify the cause in each case.

RESPONSE: The presumption that FRT plywood may be defective is in the statute. If deterioration were never a result of FRT treatment, no roof would ever be able to be repaired under the statute. This is obviously not the intent of the Legislature. The Department's obligation is to fix roofs by replacing deteriorated FRT plywood, not to do exhaustive investigations as to possible contributing factors.

COMMENT: Osmose claims that the Department exceeds its authority by defining "major structural defect" to include "inevitable premature failure of FRT plywood if it can be determined that a major structural defect will occur within the ten year coverage period of the claimant's new home warranty." Even if this definition is permissible, the definition is vague because there is not yet an accepted method of predicting "inevitable premature failure."

RESPONSE: The statute expressly provides that inevitable premature failure that would make replacement necessary within the period of warranty coverage is covered if it can be detected using the Department's approved testing method. The rule is within the scope of the Department's authority and is quite clear to anyone reading it in conjunction with the statute, as must be done in any event.

COMMENT: Osmose claims that the proposed rules improperly allow a builder who does his own remediation to control all aspects of the claim investigation and that the Department would improperly rely upon certifications.

RESPONSE: The Department will do its own investigations and will not rely on certifications in lieu thereof.

COMMENT: Osmose contends that the proposed rules do not require a builder to submit a document "unconditionally" undertaking to repair the roofs.

RESPONSE: N.J.A.C. 5:25A-2.3(d)8 requires submission of a copy of the contract between the builder and the homeowner for remediation. The statute does not require an "unconditional" commitment.

COMMENT: Osmose contends that a two-estimate program will not contain costs, that collusion will occur, that homeowners will have to

pay amounts by which actual costs exceed the estimates, and that the Department should solicit the bids itself.

RESPONSE: The two-estimate method has worked quite well in the State New Home Warranty program, which has had a cost containment record superior to that of private plans. The Department will pay the actual cost of correcting the FRT plywood problem. Other problems that may also have to be corrected at the same time would be addressed by either the State Plan or a private plan, depending on who the warrantor of the home may be.

COMMENT: Osmose is concerned that N.J.A.C. 5:25A-2.5(d) would allow the Department to replace adjacent roof sections that may or may not be themselves deteriorated and that this provision is vague and therefore invalid, since there is no "safeguard" against the repair of roofs that are performing properly.

RESPONSE: The "Safeguard" that Osmose seeks is against it being held responsible for the cost of excessive roof repairs. However, if the Department finds it to be in the interest of "economy and efficiency" to repair more of the roof than is already deteriorated, it will not thereby automatically make treaters subject to increased costs. The burden will always be on the Department, as the plaintiff in any recovery litigation, to prove that a treater was responsible for the costs incurred. If the Department finds it expedient to replace more than is demonstrably necessary, the extra work will not necessarily be at the treater's expense.

COMMENT: Osmose objects to the fact that N.J.A.C. 5:25A-2.6 contains only a minimum standard for remediation (that is, conformity to building code requirements) and does not impose maximum cost requirements.

RESPONSE: The Department will rely on the bid process and its own investigations to control costs.

COMMENT: Osmose objects to the statement in N.J.A.C. 5:25A-2.9 that the Department "deems" the useful life of a roof to be 30 years unless the materials have been guaranteed by the manufacturers for shorter periods of time and states that many builders advise homeowners that the roofs have a useful life of 20 years.

RESPONSE: The useful life in question is that of the covering materials, not of the roof structure. It is the covering material that is commonly warranted for 20 years by manufacturers.

COMMENTS: Hoover Treated Wood Products, Inc., contends that the approximate number of units that may be eligible for remediation under the program is 28,000, not 31,000, and that 20 percent, rather than 60 percent, of the sheathing may fail.

RESPONSE: No substantiation was provided for these assertions. However, the commenter may turn out to be right.

COMMENT: Hoover Treated Wood Products, Inc., also states that the proposal should have made it clear that a roof for which a claim is made under this program cannot also be the subject of litigated claim, except under the claim assignment procedures. Language to this effect should be added to the rule.

RESPONSE: The Department does not have authority to bar access to the courts. The rules already make it clear that all litigation rights must be assigned to the Department as a condition of participation in the program.

COMMENT: Ronald L. Perl, Esq., who writes on behalf of the various community associations represented by his firm, asserts that it is unreasonable and burdensome to require community associations to submit proof of warranty coverage for all units in any structure for which there is a least one unit for which a claim is being filed. Original owners may have moved and current owners may not have the documentation.

RESPONSE: Warranty information can readily be obtained from the warrantor, be it a private new home warranty plan or the State Plan. All units in a structure will generally be warranted by the same plan, since it is the builder who secures the warranty, not the individual purchaser.

COMMENT: Mr. Perl recommends that the classification system at N.J.A.C. 5:25A-2.5(a) for deterioration refer to inability of sheathing to accept and hold a nail that fastens a shingle.

RESPONSE: There is already reference to sheathing not holding nails snug. Plywood that cannot accept a nail will not hold nails snug.

COMMENT: Mr. Perl asks that the rule make it clear whether any of the listed characteristics will suffice to qualify for remediation under the program or all must be present.

RESPONSE: The presence of a single characteristic will not automatically qualify. Neither will all be required. The Department will look to the totality of circumstances in making its judgment. No validated test is now available that would allow another result.

COMMENT: Mr. Perl recommends that language be added to N.J.A.C. 5:25A-2.7(a) to make it clear that roof shingles over undamaged plywood sheathing may be replaced in connection with the replacement of such shingles over roof sections with major structural defects when to do so will be in the interest of economy and efficiency.

RESPONSE: Language to this effect will be added as a clarification.

COMMENT: Mr. Perl states that the rules should contain a provision establishing emergency procedures.

RESPONSE: The Department will make administrative accommodations to deal with any true emergency situation. No rule provision is required.

COMMENT: Mr. Perl asks that the rules include time requirements for acceptance or rejection of a claim in order to avoid prejudice to potential claimants who, for example, have roofs that cannot withstand a snow load.

RESPONSE: The Department intends to address all claims as expeditiously as possible. However, specifying time limits would make it difficult to address true emergencies. Moreover, the Department cannot control scheduling for cases in litigation.

COMMENT: Dennis A. Estis, Esq., who writes on behalf of various developers and condominium associations represented by his firm, believes that the number of units affected may have been incorrectly stated in the Social and Economic Impact statements because the building subcode did not allow the use of FRT plywood roof sheathing before 1981 and a DCA rule prohibited its use after March, 1989. He also believes the number of units stated to be too low because his firm is already involved in litigation involving over 22,000 units.

RESPONSE: A rule prohibiting the use of FRT plywood was proposed on December 18, 1989 at 21 N.J.R. 3870(a), but was not adopted. The estimates used in the statement are based upon the best information available to the Department. Moreover, as will be evident from the comments and responses that follow, the views of Mr. Estis and of the Department as to criteria for eligibility of units under the statute are at considerable variance, which should explain the discrepancy.

COMMENT: Mr. Estis objects to the use of the term "severe deterioration" in the Social Impact statement since it does not appear in the statute.

RESPONSE: Subsection 1b of the statute refers to "material deterioration," which the Department understands to have the same meaning.

COMMENT: Mr. Estis believes that the estimate of $4,000 per unit as the average cost of repairs is too high and is not based on actual costs to date. He says that it is misleading to refer to "average costs" since many projects have one roof over several units. If the cost actually is $4,000 per roof, an estimated total cost of $3,000,000 per year will only cover 750 roofs.

RESPONSE: The Department has been given no substantiation of any other numbers, but will certainly review any documentation that may be submitted. Mr. Estis may be right. However, as was previously stated in response to comments by several treaters, the Department deemed it preferable to give a high estimate, rather than to be in a position of having underestimated the cost.

COMMENT: Mr. Estis challenges the statement that only 60 percent of the roofs will "fail" during the 10-year warranty coverage period and states that the Department is not taking into account the statute's intent to deal with "inevitable premature failure."

RESPONSE: The Department is satisfied that evidence to date indicates that not all FRT plywood roof sheathing will inevitably fail any faster than other components of the building. Furthermore, not all FRT plywood roof sheathing that will inevitably fail will do so within the 10-year period of warranty coverage. The figure of 60 percent is only the Department's best estimate, and Mr. Estis may be right in asserting that the actual number will be higher. On the other hand, Hoover Treated Wood Products, Inc., may be right in asserting that it will be lower.

COMMENT: Mr. Estis believes that the Department is taking a position contrary to existing scientific evidence when it denies that all FRT plywood will ultimately fail.

RESPONSE: Given enough time, all building materials ultimately fail. The Department's contention is that not all FRT plywood roof sheathing will fail during the 10-year period of warranty coverage and therefore be compensable under the statute. Moreover, the Department has not heard from any scientific experts who have provided any contrary information.

COMMENT: Mr. Estis recommends that the definition of "major structural defect" include the following sentence: "Inevitable premature failure of the FRT plywood roof sheathing that is manifested or can

be determined within the ten (10) year warranty period shall be deemed to constitute a 'major structural defect' at the time of its detection."

RESPONSE: The statute defines "inevitable premature failure" as a condition that makes replacement of the material necessary within the 10-year warranty period. The statute does say that inevitable premature failure, as thus defined, is demeed to be a major construction defect at the time of its detection. The rule already cross-references the statutory definition of "major construction defect" and there is no need to repeat this provision. Moreover, the Department does not wish to provide any support for any mistaken inference that roof sheathing that is determined, during the 10-year warranty period, to be likely to fail at some time after the end of that period, is covered.

COMMENT: Mr. Estis questions the use of the word "materially" before "contributing" in the last line of N.J.A.C. 5:25A-1.2.

RESPONSE: The Department will delete the word, since it adds nothing to the meaning.

COMMENT: Mr. Estis recommends amending N.J.A.C. 5:25A-2.1(a)4 to refer to "an owner as defined in subparagraphs 1, 2 or 3 above and a builder jointly if the builder is the warrantor of the home."

RESPONSE: This change is not necessary. Both associations and builders are already authorized to apply.

COMMENT: Mr. Estis finds the commencement date of the warranty, as defined in N.J.A.C. 5:25A-2.1(b)1, to be "confusing."

RESPONSE: The addition of the words "commencement date" after "warranty" in the second line should eliminate any confusion.

COMMENT: Mr. Estis asks for a definition of "structure," which is not defined in the statute. He suggests that it be defined as "each separate building consisting of one or more units."

RESPONSE: Mr. Estis' understanding of the meaning of "structure" in this context is consistent with that of the Department. The statute refers to "multi-unit structures," so there is no way that anyone could reasonably interpret the term to mean anything else for purposes of these rules. It clearly does not mean an individual unit within a "multi-unit structure."

COMMENT: Mr. Estis asks that N.J.A.C. 5:25A-2.2 be amended to include the contents of the form that is to be used for assignment of claims to the State of New Jersey.

RESPONSE: The "form" referred to would not necessarily be a document; it may also refer to the manner in which the claim is to be presented. In any event, it is to be prescribed by the Attorney General, and not by this Department.

COMMENT: Mr. Estis recommends that reference be made, in the introductory paragraph of N.J.A.C. 5:25A-2.3(a), to "material deterioration" as well as to "failure" of FRT plywood.

RESPONSE: The statute requires that there be "failure" within the 10-year warranty period as a precondition to compensation.

COMMENT: Mr. Estis states that there is no reason to refer to "community" in reference to association in N.J.A.C. 5:25A-2.3(a)1.

RESPONSE: There is no harm in reiterating what sort of association is meant.

COMMENT: Mr. Estis states that there appears to be an assumption with regard to N.J.A.C. 5:25A-2.3(a)3 that a person who has filed a claim with a warranty company may not apply under this program.

RESPONSE: There is no such assumption. The Department has to know if someone else has already paid, or will pay, to correct the problem.

COMMENT: Mr. Estis says that there is no reason why a seller, developer or builder who has entered into an agreement with an association or an individual owner should not be able to make a claim.

RESPONSE: They can make claims, but there cannot be double recovery.

COMMENT: Mr. Estis objects to the requirement, in N.J.A.C. 5:25A-2.3(a)12, that a certification be provided regarding alterations made by the current owner or previous owners, and states that alterations made by an owner should not affect his right to assert a claim.

RESPONSE: The language is being changed to require a statement, rather than a certification. The fact that alterations may have been made will not be grounds for rejection. However, since the Department must be able to find out who is or is not a responsible party, a determination to which the making of alterations may be relevant.

COMMENT: Mr. Estis notes the absence of language indicating that a builder and an owner or association may submit a joint claim.

RESPONSE: Language to this effect is being added at N.J.A.C. 5:25A-2.1.

COMMENT: Mr. Estis asks that N.J.A.C. 5:25A-2.3(d)4 be clarified to indicate that the litigation referred to is only that relating to FRT plywood.

RESPONSE: Language to this effect is being added.

COMMENT: Mr. Estis questions the requirement that warranty guarantors submit color photographs and roof inspection surveys.

RESPONSE: It is reasonable for the Department to require warranty guarantors to follow normal claims procedures.

COMMENT: There should be a reference in N.J.A.C. 5:25A-2.3(e) to the issue of privilege or attorney work that is provided for in the statute.

RESPONSE: It is not necessary to restate a protection that is established by statute.

COMMENT: Mr. Estis objects to any requirement that a party certify that no FRT plywood claims have been submitted to a new home warranty plan, since the party would not be in litigation if the plan had accepted the claim.

RESPONSE: N.J.A.C. 5:25A-2.3(a)3 allows submission of either a certification that no claim has been filed with a private plan or evidence of a final disposition from the private plan which denied the claim. The intent is to avoid possible double recovery.

COMMENT: Mr. Estis considers it "an absurdity" to require that remediation not have been undertaken already.

RESPONSE: Language is being added to allow "temporary repairs needed to retain physical integrity." However, no payment can be made for remediation that has already been done, since the Department must be able to verify the extent of the damage before it allows payment. Moreover, the Department intends to handle claims as expeditiously as possible, so as to minimize the inconvenience to claimants.

COMMENT: Mr. Estis contends that the criteria set forth in N.J.A.C. 5:25A-2.5(a), under which only the "severe" and "failure" categories will be compensable, is contrary to the statute because even "slight" or "moderate" conditions constitute "inevitable premature failure."

RESPONSE: The criteria are not contrary to the statute. "Inevitable premature failure" refers only to failure within the 10-year warranty period; "slight" or "moderate" deterioration does not indicate that the roof sheathing either has failed or is likely to fail within that period.

COMMENT: Mr. Estis states that, "Given the clear language of the statute as it relates to 'inevitable premature failure,' there is no reason why a major structural defect should be limited to characterizations of severe deterioration or failure."

RESPONSE: As has been stated, the "clear language of the statute" includes a limitation of "inevitable premature failure" to failure within the 10-year warranty period.

COMMENT: Mr. Estis objects to the assence of a statement as to the "authorized scope of work" permitted by DCA and to the statement that replacement of shingles over undamaged sheathing will not be permitted "for the sole purpose of not having mismatched roof shingles." He states that it has been found to be more efficient to replace all of the shingles than to weave in new ones.

RESPONSE: The scope of the work will necessarily vary in each case. N.J.A.C. 5:25A-2.5(d) already provides that replacement of adjacent sections will be allowed "in the interest of economy and efficiency." Replacement of shingles over undamaged sheathing will only be outside the scope of the work if it adds unreasonably to the cost of the project.

COMMENT: Mr. Estis states that the proposed rules do not include any "guidelines for determining permissible and appropriate methods of remediation," as required by the statute.

RESPONSE: N.J.A.C. 5:25A-2.6 (recodified as 2.7 in the adoption) requires a proposed plan of remediation to conform to the State Uniform Construction Code, which is a performance-based code, meaning that it prescribes a result, not an exclusive method of obtaining that result. (It should, however, be noted that the gypsum under plywood detail method has already been approved by BOCA, the organization that writes the building subcode, and the Department will therefore accept that method.) Moreover, N.J.A.C. 5:25A-2.5(c) requires the claimant to propose an acceptable method of remediation and to obtain a minimum of two independent estimates from contractors of the cost of implementing the method of remediation. The Department will review all methods that are proposed and will make a case-by-case determination as to whether such methods are acceptable. The use of independent estimates has proven to be the most efficient way of controlling costs under the New Home Warranty program.

COMMENT: Mr. Estis states that, "Unless, and until, the roof tar paper and shingles are totally removed, one cannot determine where all of the FRT sheathing is located."

RESPONSE: Unsound FRT plywood sheathing can be detected from below as well as from above.

COMMENT: Mr. Estis contends that N.J.A.C. 5:25A-2.8 defines the scope of administrative hearings in a way that is at variance with the statute. The proposed rule provides that the issues in a hearing would be "whether the examination of the roof sheathing was conducting in accordance with N.J.A.C. 5:25A-2.5 or whether the proposed method of remediation was consistent with N.J.A.C. 5:25A-2.6." The statute identifies the issues as "whether the test or other method used by the commissioner to determine if the subject premises were damaged ... was administered properly, or whether the proposed method of remediation was within the guidelines set pursuant to paragraph (2) of this subsection (subsection 3.b.)."

RESPONSE: The effect of the statutory provisions and the rule provisions is the same. In any event, the rule must be construed as being consistent with the statute.

COMMENT: Mr. Estis states that roof reserves are maintained only for shingles by almost every condominium association in the State of New Jersey, and that the proposal "may imply a different standard." In his judgment, subsection 4.b. of the statute "suggests that the reserve funds which should have been maintained are for roof shingles alone and not for replacement of the sheathing or any other portion of the roof." He states that there is no possible explanation as to why 30 years was selected as the useful life for roofing materials.

RESPONSE: It is correct to say that roof reserves are established by associations to cover the cost of replacing roof coverings. However, subsection 4.b. of the Act specifically requires transfer of roof reserve funds to the New Home Warranty Security Fund to help cover the cost of remediation of a structure's FRT plywood roof sheathing problem. The 30-year standard is used because it exceeds by 10 years the usual period of warranty for roofing materials and would therefore impose a lesser financial burden in those cases in which no roof reserves, or inadequate reserves, have been established than if a shorter assumed period were used. N.J.A.C. 5:25A-2.10 is being rewritten to make it clearer and to make explicit the authority of the Department to require contribution of the association towards the cost of remediation.

COMMENT: Mr. Estis concludes that the rules "do not seek to achieve the results intended by the Legislature" and the statute will therefore not be of assistance to any significant number of unit owners. He contends that the rules "serve to place an even greater barrier in the way of residents to obtain advanced funding" and that DCA should "revamp its proposed regulations in order to promulgate ones which more closely seek to achieve the intent of the Legislature."

RESPONSE: The Department is satisfied that its rules, as adopted, are consistent with the intent of the Legislature as manifested in P.L. 1991, c.202 and that its program will assist the unit owners that the Legislature determined to be eligible for assistance. The rules, like the statute, are intended to address the needs of homeowners with serious and demonstrable problems. The commenter, however, seeks, despite the plain language of the statute, to characterize it as a program of relief for all persons who raise claims of an inherent product defect. No basis for any such claim has yet been proven, and the Department believes that it is neither necessary nor appropriate tht the State undertake to relieve the burden of every citizen who is potentially affected by any such product defect. Through the New Home Warranty Program, the State has taken on the limited obligation of backing up builders' warranties, but that obligation is limited, after the first two yrears, to major structural defects. By virtue of P.L. 1991, c.202, the State has undertaken to assist those homeowners whose private warranty guarantors have failed or refused to honor their warranty obligations with regard to FRT plywood roof sheathing, by providing those homeowners with a means of getting their roofs fixed without having to await the outcome of litigation with the warranty guarantors.

Summary of Agency-Initiated changes:

A new subsection (b) was added at N.J.A.C. 5:25A-1.2 simply reiterating the statute in regard to the scope of the rules. At N.J.A.C. 5:25A-2.3(a)6, the term "claimant's association" was deleted because it was viewed as unnecessary and redundant.

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

5:25-1.3 Definitions

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

...

"Major structural defect" means any actual damage to the load-bearing portion of the home, including consequential damages, damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) that affects its load-bearing function and that vitally affects or is imminently likely to vitally affect use of the home for residential purposes. "Major structural defect" shall have the same meaning as "major construction defect," as used in the Act.

CHAPTER 25A
ALTERNATIVE CLAIM PROCEDURES FOR FIRE RETARDANT TREATED (FRT) PLYWOOD ***ROOF SHEATHING*** FAILURES

SUBCHAPTER 1. GENERAL PROVISIONS

5:25A-1.1 Title

This chapter shall be known as***,*** and may be cited as***,*** "Rules Governing Alternative Claim Procedures for Fire Retardant Treated (FRT) Plywood ***Roof Sheathing*** Failures".

5:25A-1.2 Scope

(a) This chapter shall:

[govern] ***1. Govern*** procedures for the review and processing of claims ***involving premature failure of FRT plywood roof sheathing*** pursuant to the alternative funding mechanism authorized by the Act;

[prescribe] ***2. Prescribe*** the form and documentation necessary for a claim to be considered for assignment;

[establish] ***3. Establish*** guidelines for permissible and appropriate methods of remediation;

[define] ***4. Define*** a standard of adequacy for roof reserves; and

[adopt] ***5. Adopt*** standards, procedures, and technical criteria for making an examination and determination of whether the damage claimed is ascribable to the FRT plywood or the FRT treatment applied to it, resulting or *[materially]* contributing to the creation of a major structural defect.

(b) This chapter shall be construed as supplementing the "Regulations Governing New Home Warranties and Builders' Registration," N.J.A.C. 5:25.

5:25A-1.3 Definitions

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

"Act" means P.L. 1991, c.202 (N.J.S.A. 46:3B-13 et seq.)

"Advance Funding" means moneys advanced by the Commissioner from the New Home Warranty Security Fund for the remediation of structural damages due to FRT plywood occurring in structures covered by an approved private alternate new home warranty security plan, subject to the provisions and requirements of the Act.

"Attorney General" means the Attorney General of the State of New Jersey.

"Bureau" means the Bureau of Homeowner Protection of the Division of Housing and Development in the New Jersey Department of Community Affairs.

"Commissioner" means the Commissioner of the New Jersey Department of Community Affairs.

"Major structural defect" means any actual damage to the load bearing portion of a building that affects its load-bearing function, or is imminently likely to vitally affect use of the building for residential purposes. "Major structural defect" also means and includes inevitable premature failure of FRT plywood if it can be determined that a major structural defect will occur within the ten year coverage period of the claimant's new home warranty. "Major structural defect" shall have the same meaning as "major construction defect," as used in the Act.

5:25A-1.4 Administration

(a) The Division of Housing and Development in the Department of Community Affairs shall administer this chapter, in cooperation with the Attorney General. All the powers, duties, and responsibilities vested in the Commissioner by P.L. 1991, c.202 are hereby delegated to and vested in the Director of the Division of Housing and Development except the power to adopt, amend, or repeal regulations.

(b) Within the Division of Housing and Development, responsibility for the administration and enforcement of these rules shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities delegated to the Director, Division of Housing and Development by this chapter shall be executed by the Chief, Bureau of Homeowner Protection except the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act, this chapter or the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) which power shall be vested in the Commissioner.

5:25A-1.5 Separability

If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter that can be given effect, and to this end the provisions of this chapter are severable.

SUBCHAPTER 2. CLAIM ELIGIBILITY AND PROCESSING

5:25A-2.1 Claim eligibility

(a) The following are eligible to file a claim for advance funding provided that the new home is covered at the time the claim is filed under a new home warranty issued by an approved alternate new home warranty security plan:

1. An individual fee simple owner of the new home;

2. An association of individual fee simple owners formed for the purpose of pursuing a unified claim for homes owned by the individuals forming the association;

3. An association of individual owners or lessees that is responsible for the maintenance or replacement of the roof structure;

4. An owner and builder**, or an association and builder,*** jointly if the builder is the warrantor of the home;

5. A builder who is the warrantor of the new home and undertakes to remediate the cited damages and has entered into a written agreement or made a written acknowledgement to remediate the cited damages;

6. A warranty guarantor who undertakes to reimburse the owner**, community association*** or builder for the costs of remediation.

(b) Nothing in this chapter shall be construed so as to extend ***either*** warranty coverage ***or eligibility for warranty claim coverage*** beyond the ten-year period prescribed by the New Home Warranty and Builders' Registration Act.

1. The commencement date of the warranty on common elements is the date the element was first put to use. Therefore, the warranty ***commencement date*** on roof sheathing in a development in which roofs are common elements is the commencement date of the first warranty issued in *[the]* ***each*** structure.

2. Holders of new home warranties with extended structural defect coverage are eligible to file a claim up to the end of the tenth year.

(c) No person who has instituted a civil action may file a claim pursuant to this section at any time after the 120th day following the effective date of rules that set forth an approved testing procedure or an alternative procedure for the detection of defective FRT plywood that is predictive in nature. The examination standards set forth at N.J.A.C. 5:25A-2.5 shall not be deemed to be such a procedure. (Standards for predictive testing shall be set forth at N.J.A.C. 5:25A-2.6.)

5:25A-2.2 Assignment of claimant's rights against responsible parties

Prior to the investigation by the Department of any claim and the making of any payment for remediating the damage, the claimant must agree to assign to the State of New Jersey, in a form as prescribed by the Attorney General, the claimant's rights and any rights the claimant has acquired in any claim upon any responsible party, or in any other recovery of funds, that may arise out of the damage cited in the claim.

5:25A-2.3 Acceptance of assignment of claimant's rights to recover from others

(a) A claimant who is an owner who has not instituted suit, prior to the effective date of the Act, to recover damages on grounds of failure of FRT plywood ***roof sheathing*** will have his or her claim accepted upon submission of the following agreements, documentation, and certifications:

1. Proof of ownership and documentation relating to whether the roof is a common element: If the roof is a common element, the claim must be submitted by the community association that is responsible for the administration of common elements;

2. Proof of warranty coverage: If the roof is a common element, proof of warranty coverage must be submitted for all the units in the affected structure:

3. Either of the following:

i. Certification that no claim for damages related to FRT plywood ***roof sheathing*** has been filed with an approved alternate new home warranty security plan (private plan); or

ii. Evidence, if a written denial was received, of a final disposition from the private plan which denied the claim;

4. Certification that a claim for damages related to FRT plywood ***roof sheathing*** has not been approved, and is not pending, under any plan of insurance other than a new home warranty;

5. Assignment of claimants right to recover damages from any responsible party to the State of New Jersey;

6. Agreement to fully cooperate with the State of New Jersey in any litigation involving claimant *[or claimant's association]* that seeks to recover damages for FRT plywood failures in which funding has been provided to the claimant;

7. A statement of the amount of money held in reserve for the replacement of roofs and/or roofing materials;

8. Certification that no litigation ***regarding failure of FRT plywood roof sheathing and*** involving claimant or claimant's association is pending and that no ***such*** litigation has been settled or dismissed;

9. Certification that neither the seller, developer, builder, any subcontractor, any supplier of building materials, any manufacturer of building materials including treaters of FRT plywood, any private alternate new home warranty security plan, any warranty guarantor, nor any other party has made any payment to the claimant as compensation for damages caused by the FRT plywood and that no releases have been given to any person and no assignments have been made to any third party. For the purposes of this certification, "compensation" means any form of valuable consideration and includes, but is not limited to, cash payments, services in lieu of cash payments, discounts on goods provided, reduction in the selling price of the home, and any other form of remuneration as compensation for the defect or potential defect in the FRT plywood of the roof of the home;

10. Certification that no remediation ***of the damaged plywood sheathing, other than temporary repairs needed to retain physical integrity,*** has been undertaken ***for units for which claims have been made***;

11. Documentation, including any expert reports, photographs, and descriptions of the roof conditions at the time the claim is submitted;

12. A *[certification, with exceptions noted, that]* ***statement as to whether or not*** the present owner(s) and, to the present owner's knowledge, any prior owners, have *[not]* made alterations to the roof or otherwise made changes in the home which would have an impact on attic conditions*[: such]***. Such*** alterations would include, but not be limited to, the installation of mechanical or passive ventilation of living spaces*[,]* ***or*** clothes dryer*[s]* or plumbing ***exhaust*** systems which terminate in the attic*[;]* ***,*** modifications to trusses or rafters*[;]* ***,*** replacement of all or part of the roof sheathing*[;]* and adding attic insulation;

13. Agreement to use the proceeds of any funding only for the purposes approved by the Department;
14. Certification that no releases have been given to anyone and that claimants have not assigned their rights to any third party; and
15. Any additional information that the Department, upon review of the claim, determines to be necessary to effectuate the purposes of the Act.

(b) A claimant that is an association of unit owners formed for the purpose of filing a unified claim that has not instituted suit, released or assigned its rights, or obtained a settlement from a potentially responsible party prior to the effective date of the Act to recover damages on grounds of failure of FRT plywood ***roof sheathing*** shall have its claim accepted upon submission of the certifications, agreements, and documents cited in N.J.A.C. 5:25A-2.3(a) for each unit for which funding for remediation is sought.

(c) A claimant that is a community association that has not instituted suit, released or assigned its rights, or obtained a settlement from a potentially responsible party prior to the effective date of the Act to recover damages on grounds of failure of FRT plywood ***roof sheathing*** shall have its claim accepted upon submission of the following certifications, agreements, and documents:

1. Documentation that the roof is a common element;
2. Proof of warranty coverage for all of the units in any structure in which there is at least one unit for which a claim is being filed;
3. Either of the following:

i. Certification that no claim for damages related to FRT plywood ***roof sheathing*** has been filed with an approved alternate new home warranty security plan (private plan); or

ii. Evidence, if a written denial was received, of a final disposition from the private plan which denied the claim;

4. Certification that a claim for damages related to FRT plywood ***roof sheathing*** has not been approved, and is not pending, under any plan of insurance other than a new home warranty;
5. Assignment of claimant's right to recover damages from any responsible part to the State of New Jersey;
6. Agreement to fully cooperate with the State of New Jersey in any litigation involving claimant or claimant's association which seeks to recover damages for FRT plywood failures in which funding has been provided to the claimant;
7. A statement of the amount of money held in reserve for the replacement of roofs and/or roofing materials;
8. Certification that no litigation ***regarding FRT plywood roof sheathing and involving the claimant*** is pending and that no ***such*** litigation has been settled ***or dismissed***;
9. Certification that no party including the builder, any sub-contractor, the supplier, manufacturer, private plan, warranty guarantor, or any other person has made any payment to the claimant as compensation for damages caused by the FRT plywood;
10. Certification that no remediation of the damaged plywood sheathing***, other than temporary repairs needed to retain physical integrity,*** has been undertaken ***for units for which claims are made***;
11. Documentation, including any expert reports, photographs, and descriptions of the roof conditions at the time the claim is submitted;
12. A *[certification, with exceptions noted, that]* ***statement as to whether or not the community association,*** the present owner(s) and***/or***, to the present owner's knowledge, any prior owners have *[not]* made alterations to the roof or otherwise made changes in the home that would have an impact on attic conditions*[:]* ***.*** Such alterations would include, but not be limited to, the installation of mechanical or passive ventilation of living spaces*[,]* ***or*** clothes dryer*[s]* or plumbing ***exhaust*** systems which terminate in the attic*[;]* ***,*** modifications to trusses or rafters*[;]* ***,*** replacement of all or part of the roof sheathing*[;]* and adding attic insulation;
13. Agreement to use the proceeds of any funding only for the purposes approved by the Department;
14. Certification that no releases have been given to anyone and that no rights have been assigned to any third party; and
15. Any additional information that the Department, upon review of the claim, determines to be necessary to effectuate the purposes of the Act.

(d) A builder that has not instituted suit prior to the effective date of the Act to recover damages on grounds of failure of FRT plywood ***roof sheathing*** will have its claim accepted upon submission of the agreements, documentation, and certifications listed in N.J.A.C. 5:25A-2.3(a) for each unit on which a claim is submitted. In addition, the builder must make the following certifications and provide the following documentation:

1. Certification that a claim for damages related to FRT plywood ***roof sheathing*** has not been approved, and is not pending, under any plan of insurance other than a new home warranty;
2. Assignment of claimant's right to recover damages from any responsible party to the State of New Jersey;
3. Agreement to fully cooperate with the State of New Jersey in any litigation which seeks to recover damages for FRT plywood failures in which funding has been provided to the claimant;
4. Certification that no litigation ***regarding failure of FRT plywood roof sheathing and involving the claimant and the unit(s) for which the claim has been submitted*** is pending and that no ***such*** litigation has been settled ***or dismissed***;
5. Certification that no remediation of the damaged plywood sheathing has been undertaken;
6. Agreement to use the proceeds of any funding only for the purposes approved by the Department;
7. Documentation that the claimant is the warrantor of the new home(s);
8. A copy of the agreement between the builder and the owner(s) of the new home(s) ***or community association*** to remediate the damages; and
9. Any additional information that the Department, in its review of the claim, determines would be necessary to effectuate the purposes of the Act.

(e) A claim submitt*[t]*ed by a warranty guarantor that has not instituted suit prior to the effective date of the Act to recover damages on grounds of failure of FRT plywood ***roof sheathing*** will be accepted upon submission of the certifications, documentation, and agreements required of owners in N.J.A.C. 5:25A-2.3(a); or of community associations (if the roof is a common element) in N.J.A.C. 5:25A-2.3(c); and, of a builder in N.J.A.C. 5:25A-2.3(d), except for N.J.A.C 5:25A-2.3(d)8.

1. The warranty guarantor must also provide any reports used in making the determination that the FRT plywood has met the criteria for a major structural defect, color photographs of the roof conditions, a roof inspection survey documenting the condition of the attic with respect to ventilation, and mechanical and plumbing exhausts, together with any additional information that the Department, in its review of the claim, determines to be necessary.

5:25A-2.4 Assignment of litigated claims

(a) Any person who, prior to the effective date of the Act, had instituted a civil action to recover damages arising out of the failure of FRT plywood ***roof sheathing*** may submit a claim under the provisions of the Act and these regulations.

(b) The claim shall include the following information and documentation:

1. The caption and docket number of the civil action;
2. The name, address and telephone number of the claimant's attorney;
3. The status of the civil action;
4. The status of discovery;
5. A copy of all pleadings and orders filed in the civil action including the complaint, answers, counter-claims, cross claims, and any amendments thereto;
6. A copy of any expert reports exchanged among the parties;
7. All other documents and information that the Commissioner or the Attorney General may require of the claimant or the claimant's counsel to effectuate the purposes of the Act; and
8. A certification that the submission is truthful and complete.

(c) The claim shall be referred to the Attorney General for a determination of whether the claimant's rights against responsible parties should be accepted for assignment to the State.

(d) If the Attorney General makes an initial recommendation to accept the assignment of the claimant's rights against responsible parties, the Commissioner shall process the claim in accordance with N.J.A.C. 5:25A-2.3 and 2.5, and the claimant shall be required to submit the required documents, certifications, and agreements applicable to N.J.A.C. 5:25A-2.3 at that time.

(e) Prior to the Department's making any payment for remediation, the Attorney General will make a final review of the claim and claimant or claimant's counsel shall at that time file and supply to the Attorney General any supplemental or updated information requested by the Attorney General.

1. If, and only if, the Attorney General, after conducting such final review, continues to recommend the assignment of the claimant's rights against responsible parties, the claimant will be required to file a motion for voluntary dismissal without prejudice of the civil action pending before the court***, for the severance of those claims approved by the Attorney General and by the Department from other claims in the civil action, for a stay of the proceedings in the action,*** or ***to*** take other such action as the Attorney General may direct.

2. The Attorney General may refuse the assignment even if the court refuses to grant the requested relief.

(f) *[No person who has instituted a civil action may file a claim pursuant to this section at any time after the 120th day following the effective date of rules that set forth an approved testing procedure or an alternative procedure for the detection of defective FRT plywood that is predictive in nature. The examination standards set forth in N.J.A.C. 5:25A-2.5 shall not be deemed to be such a procedure.]* ***Where a case is in litigation, all parties shall be given at least 21 days in which to conduct investigations of the condition of the roof sheathing prior to commencement of work authorized by the Department. When the Department accepts the assignment of the claim, notice shall be given to the parties and the 21-day period for conducting investigations shall thereupon commence.***

5:25A-2.5 Claim examinations

(a) Upon acceptance of a claim for assignment, the Bureau shall examine the premises. This examination shall be done in accordance with the standard practices of the Bureau using the following classification system:

1. Standard characteristics not to be confused with deterioration:
i. Darker color than regular plywood sheathing;
ii. Rough exposed surface on attic side (usually "D" face);
iii. Grain checking of surface veneer.
2. Levels of deterioration:
i. None to slight:
(1) Efflorescence-surface bloom;
(2) Roofing nails secure;
(3) Firm to pressure—no veneer separation;
(4) Slight to moderate veneer checking along the grain.
ii. Moderate:
(1) Roofing nails secure;
(2) Slight veneer checking perpendicular to and along the grain;
(3) Slight sag and give to pressure.
iii. Severe:
(1) Excessive darkening (charring) and efflorescence (surface bloom);
(2) Face veneer separation, buckling and cracking;
(3) Noticeable give to pressure;
(4) Roofing nails show sign of corrosion and are no longer snug enough to adequately secure the roofing material.
iv. Failure:
(1) Veneer delamination, peeling and falling away; and
(2) Easy give to pressure, soft and flexible.

(b) To be eligible for funding, the condition of the FRT plywood sheathing must qualify as a major structural defect, as defined in N.J.A.C. 5:25A-1.3. In accordance with the classification system described in N.J.A.C. 5:25A-2.5(a), if the roof sheathing is characterized as "severe" or "failure" by the Bureau, the defect shall be classified as a major structural defect.

(c) If a claim is accepted for assignment and is found eligible for funding based on the examination, the owner or association, as the case may be, shall be instructed to propose an acceptable method of remediation and to obtain a minimum of two independent estimates from contractors of the cost of implementing the method of remediation.

(d) Nothing in this chapter shall be construed to prohibit the Bureau from making a determination, in the interest of economy and efficiency, to secure the replacement of sections of roofs adjacent to sections that have a major structural defect.

5:25A-2.6 Predictive testing procedure for inevitable premature failure (Reserved)

5:25A-*[2.6]***2.7*** Methods of remediation

A proposed plan of remediation of structural failures in FRT plywood roof sheathing must conform to the New Jersey Uniform Construction Code (N.J.A.C. 5:23). The Bureau will accept a true copy of a building permit as proof of compliance with this provision.

5:25A-*[2.7]***2.8*** Claim payments

(a) The cost of remediation shall not exceed the lesser of the estimates accepted by the Bureau. The Bureau shall not approve a plan for remediation that exceeds the authorized scope of work. The authorized scope of work shall not include the replacement of roof shingles over undamaged plywood sheathing for the sole purpose of not having mismatched roof shingles***; provided, however, that replacement of roof shingles over undamaged plywood roof sheathing may be permitted by the Bureau in the interest of economy and efficiency***. Proposals that call for an upgrade in the quality of roof shingles compared to that which exists shall not be approved. The Bureau *[reserves]* ***shall have*** the right to engage a contractor of its choice to perform the remediation.

(b) Payment shall be made only upon presentation of verified invoices for work and material actually provided and installed in accordance with the approved plan of remediation.

(c) Unless the contractor has been selected by the Bureau, payment shall be made by check payable jointly to the owner and contractor selected by the owner to perform the remediation. No payment will be made in advance of the commencement of work.

5:25A-*[2.8]***2.9*** Hearings

(a) Decisions of the Bureau shall be final, except that a person aggrieved by any ruling, action, order or notice of the *[commissioner]* ***Bureau*** denying *[an FRT]* ***a*** claim ***filed pursuant to this chapter***, in whole or in part, shall be entitled to an administrative hearing in accordance with the *[provisions of the]* Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, on the issue of whether the examination of the roof sheathing was conducted in accordance with N.J.A.C. 5:25A-2.5 or whether the proposed method of remediation was consistent with N.J.A.C. 5:25A-*[2.6]* ***2.7***. The burden of proof in either case *[lies]* ***shall lie*** with the claimant.

(b) Any request for an administrative hearing must be filed with the Hearing Coordinator of the Division of Housing and Development, CN 802, Trenton, NJ 08625 within 15 days after receipt by the person of the notice of the ruling, action, order, or notice complained of.

(c) Decisions by the Attorney General not to recommend assignment shall not be reviewable in an administrative hearing.

5:25A-*[2.9]***2.10*** Roof reserve standard of adequacy

[The Department shall base its determination of the amount of money due from the claimant's roof reserves to the New Home Warranty Security Fund on the extension of the useful life of the roof achieved through the remediation, and the portion of the roof or roofs replaced. The useful life of roofing materials shall be deemed to be thirty years unless the materials have manufacturer's warranties or guarantees specifying shorter periods of time.] ***A claimant that is an association shall be required to contribute towards the cost of remediation a percentage of its accumulated roof reserves that is proportionate to the percentage of the total roof**

area requiring replacement. In the event that accumulated roof reserves are less than the amount that would have been accumulated based on a 30-year useful life of roofing materials, or such shorter period as may be specified in a manufacturer's warranty or guarantee of such materials, the difference shall also be required to be contributed by the association towards the cost of remediation.*

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

BUREAU OF DISCHARGE PREVENTION

Discharges of Petroleum and Other Hazardous Substances—Confidentiality

Adopted Amendments: N.J.A.C. 7:1E-1.6 and 1.9
Adopted New Rules: N.J.A.C. 7:1E-7, 8, 9 and 10

Proposed: September 16, 1991, at 23 N.J.R. 2848(a).

Adopted: March 27, 1992, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: March 27, 1992 as R.1992 d.186, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:10-23.11 et seq., particularly 58:10-23.11t; and N.J.S.A. 13:1D-1 et seq., particularly 13:1D-9d.

DEPE Docket Number: 034-91-08.

Effective Date: April 20, 1992.

Expiration Date: September 3, 1996.

Summary of Public Comments and Agency Responses:

On September 16, 1991, the Department of Environmental Protection and Energy (Department) proposed amendments and new rules at N.J.A.C. 7:1E, regarding confidentiality of information obtained by or submitted to the Department under its rules governing discharges of petroleum and other hazardous substances. The proposed amendments and new rules were published in the New Jersey Register at 23 N.J.R. 2848(a). Secondary notice was given by publishing notices in four newspapers of wide general circulation and by direct mailing the full text of the proposal to approximately 100 persons who had expressed interest or concern regarding confidentiality. No public hearing was held. In response to the proposed amendments, the Department received one written comment during the public comment period which closed on October 16, 1991, from Thomas J. Detweiler, Associate Director, Regulatory Affairs, Chemical Industry Council on New Jersey.

Economic Impact

COMMENT: The economic impact may well exceed the trivial costs dependent solely upon the claimant as stated by the Department, if the Department follows its normal course of action of requesting excessive, capricious and non-germane information in support of a claim of confidentiality.

RESPONSE: The Department believes that the rules already address the commenter's concern. At N.J.A.C. 7:1E-8.3(a)1 through 6, the Department has specifically listed the information which the claimant is to submit in substantiation of a confidentiality claim. These types of information are necessary to enable the Department to determine whether the information asserted to be confidential meets the criteria in the definition of "confidential information" at N.J.A.C. 7:1E-1.6. In establishing this specific list of types of information required, the Department limited the scope of information to be submitted and guarded against the kind of request described by the commenter. The Department notes that its other confidentiality rules contain essentially the same list. See, for example, N.J.A.C. 7:1F-2.3, 7:14A-11.5, 7:26B-8.3, 7:27-8.17. The Department therefore disagrees with the commenter's assertion that the normal course of action is to request excessive, capricious or non-germane information to support a confidentiality claim.

COMMENT: The protection of confidential information maintains the status quo vs. the negative impact of disclosure. There is no potential benefit to non-disclosure of that which has not previously been disclosed.

RESPONSE: The Department agrees with the commenter that the protection of confidential information does no more than maintain the status quo. However, under N.J.A.C. 7:1E, the Department will obtain information through inspections, and through the submission of discharge prevention, containment and countermeasure plans and discharge cleanup and removal plans; absent the protections established by this rule, such information would be subject to disclosure as public records. By protecting confidential information against such disclosure, the rule benefits the person seeking confidential treatment by avoiding the potential for economic harm which could result from disclosure.

Subchapter 1. General Provisions

N.J.A.C. 7:1E-1.6

COMMENT: In the definition of "confidential information," the term "substantial damage" is undefined and its use puts an undue burden on the claimant to substantiate its claim against an arbitrary standard both established and judged by the Department. The demonstration of "any financial damage" to a competitive position should be an adequate basis for successfully claiming confidentiality of the information in question.

RESPONSE: The Department agrees with the commenter in part, and has therefore added a definition of the term "substantial damage." The term "substantial damage" or "substantial harm" is used in the Department's other confidentiality rules as well. See, for example, N.J.A.C. 7:1F-2.4, 7:14A-11.6, 7:26B-8.4. Though those rules do not define the term either, the Department historically has applied the ordinary meaning of "substantial," as "of a material nature; tangible; of real worth, value or effect." The definition added to the rule upon adoption incorporates that meaning. The Department believes that the standard of "any financial damage" suggested by the commenter is broader than necessary to serve the purpose of protecting trade secrets and other confidential information.

Subchapter 8. Confidentiality Determinations

N.J.A.C. 7:1E-8.2

COMMENT: What is the basis for the Department unilaterally and without notification of the claimant determining that a claim for confidentiality is not valid? The Department should be obligated to inform the claimant of its intention of making such a decision and allow the claimant to enter into discussions to reverse the decision with additional or amended information as agreed to by both parties.

RESPONSE: The Department agrees that, in most cases, it cannot make a determination that information is not "confidential information" without consulting with the claimant. However, the rules at N.J.A.C. 7:1E-8.10 list specific classes of information which are definitely not confidential and which must be subject to disclosure; if information falls within one of these classes (for example, the name, address and business telephone number of a facility and its owner or operator), consultation with the claimant could not provide any basis for determining that the information is confidential. The Department notes that the classes of non-confidential information listed in N.J.A.C. 7:1E-8.10 are narrowly and specifically defined in order to avoid disputes over whether information falls within one of the classes.

Similarly, the information may so clearly fail to meet the criteria in the definition of "confidential information" that consultation with the claimant could not provide any basis for determining that the information is confidential. For example, if the Department already possesses the assertedly confidential information through public sources such as common reference books, the information could not be considered confidential.

The Department's other confidentiality rules contain provisions corresponding to the one which the commenter questions. See, for example, N.J.A.C. 7:14A-11.2, 7:26-17.3, 7:27-8.14. In the Department's experience applying those other rules, it has found that this approach results in accurate confidentiality determinations for the narrow classes of information which are classified as non-confidential.

The Department notes that when confidentiality determinations are made in this manner, N.J.A.C. 7:1E-8.2(c) still requires the Department to notify the claimant 14 days in advance of the disclosure, which provides the claimant with an opportunity to take action to prevent disclosure.

In addition, the Department has clarified the rules upon adoption to specify the procedure through which a claimant may contest a disclosure. Specifically, N.J.A.C. 7:1E-9.8 now contains an express provision for a claimant to request an adjudicatory hearing to contest disclosure of assertedly confidential information. The provision also states the

procedure for requesting such a hearing and for the Department to grant or deny the request.

N.J.A.C. 7:1E-8.4

COMMENT: The Department has not established any time performance requirements for its confidentiality evaluations. Therefore, given the voluminous nature of the submissions required, claimants should be allowed at least 30 days for submission of substantiations regardless of the reason or person causing the need for a confidentiality assessment.

RESPONSE: Though the Department disagrees with the commenter's assertion that the rule requires voluminous submissions for substantiation of confidentiality claims, the Department agrees with the substance of the comment. The Department has found a 30-day period is workable in its experience administering other programs (see, for example, N.J.A.C. 7:26B-8.3(c)3, N.J.A.C. 7:1F-2.3(d), and N.J.A.C. 7:27-8.16(c)3). Accordingly, the Department has made the suggested change, and revised cross-references throughout the rule accordingly.

Rather than establishing time frames for making confidentiality determinations, the Department has structured the rule in a manner intended to avoid the need for making a confidentiality determination at all in most cases. Under N.J.A.C. 7:1E-8.1, the Department will delay making a confidentiality determination until it receives a request to inspect or copy the assertedly confidential information, or until the Department expects to take action inconsistent with the treatment of confidential information. Until the final confidentiality determination has been made, the Department will treat assertedly confidential information as if it is confidential. As a result, the claimant will usually obtain the benefit of confidential treatment, without the burden of substantiating a confidentiality claim, and the Department will not need to expend resources on processing the claim.

COMMENT: The extension of time allotted for submission of substantiation, pursuant to N.J.A.C. 7:1E-8.4(c), should be at the discretion of the Department regardless of the cause for a confidentiality assessment.

RESPONSE: The Department disagrees with the commenter. N.J.A.C. 7:1E-8.4 provides that, except in extraordinary circumstances, the Department shall not approve an extension of time if the confidentiality determination is in response to a request under the public records law, N.J.S.A. 47:1A-1 et seq., unless the person making the request consents. The Department believes that this requirement is necessary to balance the interest of the confidentiality claimant in extending the time available to submit substantiation against the interest of the public in exercising its right to obtain public records. The Department's other confidentiality rules reflect the same balance. See, for example, N.J.A.C. 7:14A-11.5.

N.J.A.C. 7:1E-8.5

COMMENT: The information provided by the Department pursuant to N.J.A.C. 7:1E-8.5(a)1 should include exactly which portions of the confidentiality claims were rejected, that is, what information will be released to the public. If some, but not all, of a claimant's information is deemed to not be confidential, the claimant should submit a "blacked out" final public copy per the Department's confidentiality determination in accordance with N.J.A.C. 7:1E-7.1(b).

RESPONSE: The Department has clarified the rule upon adoption in accordance with the commenter's suggestion.

N.J.A.C. 7:1E-8.7

COMMENT: The time frame under N.J.A.C. 7:1E-8.7, for disclosure of non-confidential information, should be 14 days following the claimant's receipt of the written notice of the confidentiality determination (instead of 14 days after delivery of such notice, as provided in the proposal), to be consistent with N.J.A.C. 7:1E-8.5(a)1 and 2.

RESPONSE: The Department has revised the rule upon adoption as suggested by the commenter, to make the language in question consistent with similar provisions elsewhere in the rule. However, the Department notes that the rule already provides for a time frame of 14 days following delivery of the notice to the claimant; the Department's position is that there is no substantive difference between delivery to the claimant and receipt by the claimant.

N.J.A.C. 7:1E-8.8

COMMENT: If the Department wished to generate a modified public copy per its confidentiality determination, such a document should be sent to the claimant to ensure concurrence and accuracy with regard to what will be disclosed.

RESPONSE: The Department has changed N.J.A.C. 7:1E-8.5(a)1 upon adoption to provide that the Department will send the final public copy to the claimant along with the notice of the final confidentiality determination.

N.J.A.C. 7:1E-8.9

COMMENT: The Department has established what it considers to be classes of information that are not confidential. For the same reasons of efficiency, consistency and public disclosure, the Department should provide as part of these regulations, a list of classes of information that will be considered confidential.

RESPONSE: The Department has not made the suggested change. N.J.A.C. 7:1E-1.6 establishes the criteria which the Department will apply to determine whether information is confidential. Some of these criteria concern factors independent of the nature of the information itself, such as the requirement that the claimant has taken reasonable measures to protect the confidentiality of the information. For this reason, no particular class of information exists which will always satisfy all of the criteria. In contrast, several narrowly and specifically defined classes of information will always fail to meet at least one of the criteria, and therefore can be considered non-confidential. For the same reasons, none of the Department's other confidentiality rules contain a provision of the type suggested by the commenter.

N.J.A.C. 7:1E-8.10

COMMENT: Housekeeping and maintenance, if efficiently and uniquely performed, can give a company a competitive edge. Accordingly, such information should not be disclosed. The Department should be more specific as to the information it needs, not merely wants, with regard to these areas.

RESPONSE: Based upon this comment, the Department has deleted N.J.A.C. 7:1E-8.10(a)9 so that outlines of housekeeping and maintenance programs will not automatically be considered non-confidential. However, the Department notes that housekeeping and maintenance information remains subject to case-by-case confidentiality determinations, and particular information is subject to disclosure if it does not fall within the definition of "confidential information." The housekeeping and maintenance information the Department requires to be submitted is set forth in N.J.A.C. 7:1E-4.3(d)7, and is not affected by this adoption.

Subchapter 9. Disclosure and Use of Confidential Information

N.J.A.C. 7:1E-9.1

COMMENT: If confidential information is provided to another public agency, that receiving agency should have to abide by the conditions of N.J.A.C. 7:1E-10.1 and 2.

RESPONSE: The Department agrees with the commenter in part, and has clarified N.J.A.C. 7:1E-9.1 to provide for the receiving agency to abide by the conditions of N.J.A.C. 7:1E-10.1 and 2. However, exceptions to this requirement are necessary, because the receiving agency may have the authority to compel production of the information itself, and to disclose it. In such circumstances, the Department cannot require the receiving agency to refrain from disclosure.

N.J.A.C. 7:1E-9.2

COMMENT: The Department should, at the very least, inform the claimant that a contractor will be provided with confidential information, the exact information to be provided to the contractor, and the name of the contractor company and individuals. The claimant should then have the right to object to such disclosure stating the specific reason why. Such disclosure may be to a competitive company or could result in a conflict of interest unknown to the Department.

RESPONSE: The Department agrees with the commenter's concern. In response to the comment, the Department has revised N.J.A.C. 7:1E-9.2 upon adoption to provide that the Department will notify the claimant of the proposed disclosure (stating the information to be provided and the identity of the contractor) at least 14 days before making the disclosure. The revised rule requires the Department to refrain from disclosure if, at least three working days before the scheduled date of the disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause more than nominal damage either to the claimant's competitive position or to national security. In addition, as noted above, the Department has clarified the rule upon adoption by expressly providing for an opportunity to request an adjudicatory hearing to contest a disclosure; therefore, the claimant is not required to rely completely upon

consultation with the Department to resolve concerns over the proposed disclosure.

N.J.A.C. 7:1E-9.5

COMMENT: The incorporation of confidential information into cumulative data should not contain the disclaimer of "foreseeability." This would allow the Department to release confidential information it determines the public cannot deduce from cumulative data. However, the Department is not an expert in all areas of all businesses it regulates. The Department may release cumulative information it cannot foresee is confidential, but that experts in the field can learn confidential information from.

RESPONSE: The Department agrees with the commenter's evaluation of the risk of incorporation of confidential information into cumulations of data. The Department has revised N.J.A.C. 7:1E-9.6 upon adoption, to provide for consultation between the Department and the claimant before disclosure occurs. The consultation requirement will provide the claimant with an opportunity to advise the Department of how the cumulation of data is likely to allow persons to deduce the confidential information or the identity of the person who supplied it to the Department, thereby providing the Department with a basis for refraining from disclosure. In addition, as noted above, the rule now expressly provides for a claimant to request an adjudicatory hearing to contest the proposed disclosure, thereby providing the claimant with an additional opportunity to prevent the disclosure if consultation with the Department does not resolve the issue to the satisfaction of the claimant.

N.J.A.C. 7:1E-9.7

COMMENT: There should be no basis for Department disclosure for rulemaking and permitting, since neither matter poses an imminent and substantial danger nor would it materially impair the public interest to not disclose the same.

RESPONSE: The Department agrees that the provision for disclosure in rulemaking and permitting proceedings is not based upon an imminent and substantial danger from nondisclosure. In N.J.A.C. 7:1E-9.3, the Department provides specifically for disclosure to alleviate an imminent and substantial danger.

However, the Department disagrees with the commenter's assertion that it would not materially impair the public interest to prohibit disclosure in rulemaking and permitting proceedings. With respect to rulemaking proceedings, the Department's determination that a rule change is necessary may be based upon confidential information; if the Department were prohibited from using the information in the rulemaking, it would effectively be prohibited from making the rule change as well, since it could not explain its basis and purpose for the change as required by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Similar issues could arise in permitting proceedings, because the Department's determination of the need for particular permit conditions could be based upon confidential information, and the applicable permitting rules may require disclosure of that information.

The Department notes that the rule already guards against unwarranted disclosure in these types of proceedings. Under N.J.A.C. 7:1E-9.7(b)2, the confidentiality claimant may assert that the confidential information is not relevant to the proceeding, or that the disclosure is not necessary to serve the public interest; the Department cannot then disclose the information without determining that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest to limit the use of the information to a manner which preserves its confidentiality. In addition, as noted above, the rules have been clarified upon adoption to include an additional safeguard against unwarranted disclosure, by providing for a claimant to request an adjudicatory hearing to contest a proposed disclosure.

COMMENT: By providing for disclosure in rulemaking and permitting proceedings, the Department is giving itself too great a latitude to arbitrarily violate its own confidentiality requirements.

RESPONSE: As discussed above, the rule allows the Department to disclose confidential information only in specific circumstances. Specifically, if the confidentiality claimant objects to the disclosure, the Department cannot disclose the information without determining that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest to limit the use of the information to a manner which preserves its confidentiality. The establishment of these standards for disclosure, and the provision for an adjudicatory hearing, guard against arbitrary disclosure.

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

7:1E-1.6 Definitions

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

...

"Assertedly confidential information" means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

...

"Claimant" means any person who submits a confidentiality claim under this chapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:1E-8.9, for a class of information.

...

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Department, containing information which the claimant asserts is confidential information.

"Confidential information" means information which the Department determines to have satisfied all of the following substantive criteria:

1. The claimant has asserted a confidentiality claim with respect to the information, in compliance with the procedures required by N.J.A.C. 7:1E-7, and such confidentiality claim has not expired by its terms, been waived or withdrawn;

2. The claimant has shown that disclosure of the information would be likely to cause substantial damage either to the claimant's competitive position or to national security;

3. The claimant has taken reasonable measures to protect the confidentiality of the information, and intends to continue to take such measures;

4. The information is not, and has not been, available or otherwise disclosed to other persons either by the claimant (except in a manner which protects the confidentiality of the information) or without the consent of the claimant (other than by subpoena or by discovery based on a showing of special need in a judicial proceeding, arbitration, or other proceeding in which the claimant was required to disclose the information to such other persons, as long as the information has not become available to persons not involved in the proceeding);

5. The information is not contained in materials which are routinely available to the general public, including without limitation initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

6. The claimant has not waived the confidentiality claim for the information; and

7. No law, regulation (including, without limitation, N.J.A.C. 7:1E-8.10 or any other regulations of the Department), or order by a court or other tribunal of competent jurisdiction specifically requires disclosure of the information or provides that the information is not confidential information.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Department or to allow the Department to obtain, a written request by such person that the Department treat such information as confidential information.

"Confidentiality determination" means a determination by the Department that assertedly confidential information is or is not confidential information.

...

"Contract" means an agreement between the Department and a contractor, for which the Department has determined that it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

"Contractor" means a person, other than an employee of the Department, who has entered into an agreement with the Department to perform services or to provide goods for the Department.
...
"Final public copy" means a copy of a record submitted to or obtained by the Department, identical to the confidential copy except that any confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be *[cancelled]* ***concealed*** by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.
...
"Preliminary public copy" means a copy of a record held by the Department, identical to the confidential copy except that any assertedly confidential information has been blacked out; provided, however, that if the record is not in a form in which confidential information can be cancealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.
...
"Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved and from which the information can be retrieved or copied.
...
"Requester" means a person who has made a request to the Department to inspect or copy records which the Department possesses or controls.
...
"Substantial damage" means damage which is material and of real worth, value or effect. This term does not include damage which is speculative, contingent, or nominal.
...
"Substantiation" means information which a claimant submits to the Department in support of a confidentiality claim pursuant to N.J.A.C. 7:1E-8.3.
...

7:1E-1.9 Access

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

SUBCHAPTER 7. CONFIDENTIALITY CLAIMS

7:1E-7.1 Procedure for making a claim

(a) Any person required to submit information to the Department under this chapter, or allow the Department to obtain such information, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the Department (at the address provided in N.J.A.C. 7:1E-7.3) a confidential copy and, upon the Department's request, a preliminary public copy of any record containing assertedly confidential information. The preliminary public copy shall carry a notation stating that confidential information has been deleted. The Department may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy, which page contains information that the claimant asserts is confidential information, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the Department by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices pursuant to N.J.A.C. 7:1E-7.2.

7:1E-7.2 Designation by claimant of an addressee for notices and inquiries

A claimant shall designate a person as the proper addressee of communications from the Department under N.J.A.C. 7:1E-7, 8, 9 and 10. To designate such a person, the claimant shall submit the following information to the Department in writing: the name and address of the claimant; the name, address, and telephone number of the designated person; and a request that all Department inquiries and communications (oral and written), including without limitation the inquiries and notices listed in N.J.A.C. 7:1E-7.3(a), be directed to the designee.

7:1E-7.3 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices to the person designated by the claimant pursuant to N.J.A.C. 7:1E-7.2, including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:1E-8.2(a)1ii;

2. Notices of denial of confidentiality claims and proposed disclosure of information, under N.J.A.C. 7:1E-8.5(a)1;

3. Notices concerning shortened comment and/or waiting periods under N.J.A.C. 7:1E-9.3(a);

4. Notices of disclosure under N.J.A.C. 7:1E-9.4; and

5. Notices of proposed use of confidential information in administrative proceedings, under N.J.A.C. 7:1E-9.7.

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following address:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027

SUBCHAPTER 8. CONFIDENTIALITY DETERMINATIONS

7:1E-8.1 Time for making confidentiality determinations

(a) The Department shall make a confidentiality determination:

1. If the Department receives a request, by a person to whom the Department is restricted from disclosing confidential information pursuant to N.J.A.C. 7:1E-10, to inspect or copy records containing assertedly confidential information which is the subject of a confidentiality claim; or

2. Before taking any action which is inconsistent with requirements for treatment of confidential information set forth in N.J.A.C. 7:1E-10.

(b) The Department may, in its discretion, make a confidentiality determination at any time.

7:1E-8.2 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

(a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:

1. Notify each claimant who is known to have asserted a claim applicable to such information, and who has not previously been furnished with notice with regard to the information in question, of the following:

i. That the Department is in the process of making a confidentiality determination with respect to the claimant's claim;

ii. That the claimant is required to substantiate the claim as required by N.J.A.C. 7:1E-8.3;

iii. The address of the office to which the claimant's substantiation must be addressed;

iv. The time allowed for submission of substantiation, pursuant to N.J.A.C. 7:1E-8.4;

v. The method for requesting a time extension under N.J.A.C. 7:1E-8.4*[(c)]***(b)***; and

vi. That a claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:1E-8.4 shall operate as a waiver of the claimant's claim.

2. Furnish, to any requester whose request for inspection or copying of the information is pending, notice that:

i. The information which is the subject of the request may be confidential information;

ii. The Department must undertake further inquiry before granting or denying the requester's request; and

iii. After the Department has made a confidentiality determination concerning the information which is the subject of the request, the Department will grant or deny the request.

(b) The Department shall send the notice required by paragraphs (a)1 and 2 above by certified mail, return receipt requested, or by other means providing a receipt for delivery.

(c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1E-8.3, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1E-8.5. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1E-8.5.

7:1E-8.3 Substantiation of confidentiality claims

(a) If the Department has determined that any assertedly confidential information may be confidential information, and notified the claimant pursuant to N.J.A.C. 7:1E-8.2(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted in N.J.A.C. 7:1E-8.4:

1. Measures taken by the claimant to prevent disclosure of the information to others;

2. The extent to which the information has been disclosed to others, and the precautions taken to prevent further disclosure;

3. If the Department, EPA or any other agency has previously made a confidentiality determination relevant to the pending confidentiality claim, copies of all such confidentiality determinations;

4. A description of any substantial harmful effects which disclosure would have upon the claimant's competitive position, an explanation of why such harmful effects are substantial, and an explanation of the causal relationship between disclosure and such harmful effects;

5. The period of time for which the claimant desires that the Department treat the assertedly confidential information as confidential information; and

6. Any other substantiation which is relevant in establishing that the assertedly confidential information is confidential information.

(b) The claimant may assert a confidentiality claim for any information submitted to the Department by the claimant as part of his or her substantiation pursuant to this section. If the claimant fails to assert a confidentiality claim for such information at the time of submission, the claimant shall be deemed to have waived all such claims with respect to the information.

7:1E-8.4 Time for submission of substantiation

(a) *[If the Department is making a confidentiality determination in response to a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq., the]* ***The*** claimant shall submit substantiation within *[10 working]* ***30*** days after the date of the claimant's receipt of the written notice ***provided under N.J.A.C. 7:1E-8.2(a)1***.

[(b) If the Department is making a confidentiality determination for any reason other than as provided in (a) above, the claimant shall submit substantiation within 20 working days after the claimant's receipt of the written notice.]

*[(c)]*** *(b)** The Department may, in its discretion, extend the time allotted for submission of substantiation pursuant to *[(b)]* ***(a)*** above if, before the expiration of the allotted time, the claimant submits a written request for the extension of such allotted time*[.]* ***, provided, however, that*** *[Except]* ***except*** in extraordinary circumstances, the Department shall not approve such an extension of time *[allotted pursuant to (a) above]* ***in connection with a request to inspect or copy assertedly confidential information pursuant to N.J.S.A. 47:1A-1 et seq.*** without the consent of any person whose request to inspect or copy the allegedly confidential information under N.J.S.A. 47:1A-1 et seq. is pending.

*[(d)]*** *(c)** If a claimant fails to submit substantiation within the time allotted pursuant to this section, the claimant shall be deemed to have waived all confidentiality claims with respect to the information for which the substantiation was required.

7:1E-8.5 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to N.J.A.C. 7:1E-8.2 and 8.3, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:

1. The Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the claimant of the written notice. ***The notice shall include a copy of the final public copy to be made available to the public.***

2. On or after the 14th day following receipt by the claimant of the written notice required by (a)1 above, the Department shall send written notice of the determination to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The Department shall send the notice by certified mail, return receipt requested.

(b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:1E-8.3, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:1E-10. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

7:1E-8.6 Treatment of information pending confidentiality determination

The Department shall treat assertedly confidential information as confidential information, until the Department has made a final determination that the assertedly confidential information is not confidential information.

7:1E-8.7 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:1E-8.5(a), the Department may disclose such information to any person on the date which is 14 days after ***the claimant's receipt of the*** written notice of the confidentiality determination *[is delivered to the claimant]*.

7:1E-8.8 Preparation of final public copy

After the Department makes a final confidentiality determination that a record contains confidential information, the Department shall prepare a final public copy of the record based upon the final confidentiality determination. The Department may disclose the final public copy to any person, without restriction or limitation.

7:1E-8.9 Class confidentiality determinations

(a) The Department may make a class confidentiality determination if the Department finds that the items of information within the class share one or more characteristics, which characteristics would cause the Department to determine consistently that such information is or is not confidential information.

(b) A class confidentiality determination shall clearly identify the class of information to which it applies. Such identification shall include a list of the common characteristics shared by all information within the class.

(c) A class confidentiality determination shall state that all of the information in the class is or is not confidential information.

7:1E-8.10 Classes of information which are not confidential information

(a) Without limiting the ability of the Department to determine that information not listed in this section is not confidential information, the following types of information are not confidential information:

1. The name, address and business telephone number of the owner or operator of a transmission pipeline, or of the registered agent of such owner or operator;

2. The name, address and business telephone number of a facility and of its owner or operator and the registered agent of such owner or operator;

3. Schedules of integrity testing for aboveground storage tanks required to be submitted under N.J.A.C. 7:1E-2.2(a)4, and information concerning the methods of testing;

4. Test reports for aboveground storage tanks required to be submitted under N.J.A.C. 7:1E-2.2(a)5;

5. Information contained in documentation of employee training, evaluation and qualifying activities required to be maintained under N.J.A.C. 7:1E-2.12(d);

6. The storage capacity of a facility, the transfer capacity of a facility, and the types of hazardous substances present at a facility;

7. Discharge cleanup information required to be submitted under N.J.A.C. 7:1E-3.4;

8. All information required to be submitted by discharge cleanup organizations under N.J.A.C. 7:1E-4.2;

[9. Outlines of housekeeping and maintenance programs required to be submitted under N.J.A.C. 7:1E-4.3(d)7;]

*[10.]***9.*** Lists of standard operating procedures required to be submitted under N.J.A.C. 7:1E-4.3(d)10;

*[11.]***10.*** Summaries of action plans required to be submitted under N.J.A.C. 7:1E-4.4(a)1;

*[12.]***11.*** Information concerning procedures for mobilizing equipment in the event of a discharge;

*[13.]***12.*** Names and titles of response coordinators and other persons authorized to hire contractors and release funds for discharge response, containment, cleanup and removal;

*[14.]***13.*** Information concerning proposed methods of disposal of material gathered during cleanups;

*[15.]***14.*** Housekeeping and maintenance records required to be made available under N.J.A.C. 7:1E-4.3(f)6;

*[16.]***15.*** The locations of environmentally sensitive areas;

*[17.]***16.*** Certifications required under N.J.A.C. 7:1E-4.11, and the identity of any person signing such a certification;

*[18.]***17.*** Information which the Department is required to report under N.J.A.C. 7:1E-5.9; and

*[19.]***18.*** Information contained in an administrative order or notice of civil administrative penalty assessment under N.J.A.C. 7:1E-6.3.

SUBCHAPTER 9. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

7:1E-9.1 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to any other state agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency;

2. The Department notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information;

3. The other agency has furnished to the Department a written opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department (or allowed the Department to obtain such information) to disclose such information to the requesting agency;

4. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure, ***and agrees in writing to refrain from disclosure and to safeguard the information in accordance with the requirements of N.J.A.C. 7:1E-10.1 and 10.2,*** unless:

i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or

ii. The claimant has consented to disclosure of the information by the requesting agency; and

5. The requesting agency agrees not to disclose the information further unless:

i. The requesting agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The claimant has consented to disclosure of the information by the requesting agency.

7:1E-9.2 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor, if ***it complies with the procedure established under (b) below, and if****:

1. The Department determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;

2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the Department, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the Department all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform obligations under the contract, or at any time upon the request of the Department; and

3. If the claimant so requests, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.

(b) Before disclosing confidential information to a contractor under (a) above, the Department shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor, and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the Department information sufficient to establish that the proposed disclosure would be likely to cause more than nominal damage either to the claimant's competitive position or to national security, the Department shall refrain from making the disclosure.*

7:1E-9.3 Disclosure to alleviate an imminent and substantial danger

(a) If the Department finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the Department may, in its discretion, take one or more of the following actions:

1. Reduce the time allotted for providing substantiation pursuant to N.J.A.C. 7:1E-8.4, and notify the claimant of such reduction;

2. Advance the date on which the Department may disclose information which the Department has determined is not confidential information, pursuant to N.J.A.C. 7:1E-8.5(a), and notify the claimant of such advance; or

3. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the enviroment makes such disclosure necessary. Any disclosure pursuant to this paragraph shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger. Any disclosure made pursuant to this paragraph shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

7:1E-9.4 Notice to claimants of disclosure of confidential information

(a) Promptly after the Department discloses confidential information pursuant to N.J.A.C. 7:1E-9.1, 9.2 or 9.3, the Department shall

notify any claimant from whom the Department has obtained confidential information of the disclosure. such notice shall be in writing, and shall contain the following information:

1. The date on which disclosure was made;

2. The name of the agency or other person to which the Department disclosed the confidential information; and

3. A description of the confidential information disclosed.

7:1E-9.5 Disclosure by consent

(a) The Department may disclose confidential information in accordance with the written consent of the claimant.

(b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclosure is of such nature that the disclosed information is no longer confidential information.

7:1E-9.6 Incorporation of confidential information into cumulations of data

Nothing in this chapter shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that ***after consultation with the claimant, the Department has determined that*** such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:1E-9.7 Disclosure of confidential information in rulemaking, permitting, and enforcement proceedings

(a) Notwithstanding any other provision of this subchapter, the Department may disclose confidential information in rulemaking, permitting and enforcement proceedings.

(b) The following procedures shall apply to the disclosure of confidential information by the Department in rulemaking, permitting and enforcement proceedings:

1. The Department may disclose confidential information in an adjudicatory hearing, subject to the protection from making the information available to the public which the administrative law judge may impose under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 including without limitation N.J.A.C. 1:1-14.1.

2. The Department may disclose confidential information in any enforcement, permitting, or rulemaking proceeding which does not involve an adjudicatory hearing, pursuant to the following procedure:

i. The Department shall inform the claimant that the Department is considering using the information in connection with the proceeding and shall afford the claimant a reasonable period for comment;

ii. The claimant shall submit comments to the Department within the time allotted pursuant to (b)2i above, concerning the proposed uses of confidential information, including comments which may support a determination that the confidential information is not relevant to the proceeding, or that the disclosure of the confidential information in the proceeding is not necessary to serve the public interest;

iii. The Department may disclose the confidential information in the proceeding if, upon consideration of comments submitted pursuant to (b)2ii above, the Department determines that the information is relevant to the subject of the proceeding, that the use of the information in the proceeding will serve the public interest, and that it materially impairs such service of the public interest to limit the use of the information to a manner which preserves its confidentiality; and

iv. The Department shall give the affected person at least five days notice prior to using the information in the proceeding in a manner which may result in the information being made available to the public.

***7:1E-9.8 Hearing before disclosure of information for which a confidentiality claim has been made**

(a) A claimant may request an adjudicatory hearing to contest disclosure of any information for which a confidentiality claim has been made, at any time before disclosure. The request shall be in accordance with the requirements of N.J.A.C. 7:1E-6.4(b), and shall be delivered to the Department at the following address:

Department of Environmental Protection and Energy
Office of Legal Affairs
Attention—Adjudicatory Hearing Requests—
DPCC Confidentiality
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(b) The Department may deny a request for an adjudicatory hearing under (a) above if:

1. The claimant fails to provide all information required under N.J.A.C. 7:1E-6.4(b);

2. The Department receives the request after disclosure of the assertedly confidential information occurs;

3. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

4. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety, as provided in N.J.A.C. 7:1E-9.3.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) At the adjudicatory hearing, the respondent shall have the burden of showing that the proposed disclosure is not in accordance with this chapter.

(f) Pending the completion of the adjudicatory hearing, the Department will refrain from disclosing the assertedly confidential information, unless:

1. The Department has been ordered to disclose the information by a court of competent jurisdiction, or by any other person or entity with the power and authority to compel disclosure; or

2. The Department determines that disclosure is necessary to alleviate an imminent danger to the environment or to public health or safety.*

SUBCHAPTER 10. TREATMENT OF CONFIDENTIAL INFORMATION

7:1E-10.1 Nondisclosure of confidential information

Unless specifically required by any Federal or State law, regulation or order, court order, or applicable court rule, the Department shall not disclose confidential information to any person other than as provided in N.J.A.C. 7:1E-9.

7:1E-10.2 Safeguarding of confidential information

(a) Submissions to the Department required under this chapter will be opened only by persons authorized by the Department to be engaged in administering this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.

(e) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

7:1E-10.3 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department of any employee, contractor or agent thereof shall be of no force or effect.

7:1E-10.4 Wrongful access or disclosure; penalties

(a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting.

(c) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and/or

2. Pursue any other remedy available at law or equity.

(d) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(e) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

(a)

WASTEWATER FACILITIES REGULATION PROGRAM

Standards for Individual Subsurface Sewage Disposal Systems

Adopted Amendments: N.J.A.C. 7:9A-3.2 and 3.16

Proposed: January 21, 1992 at 24 N.J.R. 202(a).

Adopted: March 27, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: March 27, 1992 as R.1992 d.187, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:11-23 et seq., 58:10A-1 et seq., including 58:10A-16., 13:1D-1 et seq., and 26:3A2-21 et seq.

DEPE Docket Number: 055-91-12.

Effective Date: April 20, 1992.

Expiration Date: August 21, 1994.

Summary of Public Comments and Agency Responses:

Secondary notice was accomplished by publication in 21 newspapers distributed throughout every county in the State, and by direct mail to 509 individuals registered with the Department pursuant to N.J.A.C. 7:9A-3.17 as well as to 14 environmental organizations within the State.

The Department reviewed written comments from 11 individuals received within the comment period, which ended on February 20, 1992.

The following individuals submitted comments:

1. Leonard H. Williams, Health Officer, Township of Branchburg
2. Gene S. Osias, Health Director, Township of Vernon
3. Kelly Astarita, Director of Governmental Affairs, New Jersey Association of Realtors
4. Brad Haber, President, Builders League of South Jersey
5. Robert Karen, President, New Jersey Builders Association
6. Leonard Drew Sendelsky, President, Central Jersey Builders Association
7. Philip Deacon, President, Community Builders Association of New Jersey
8. Rodney Saponaro, President, Atlantic Builders Association of New Jersey
9. Edward Wengrowski, Bergman Hatton Associates, Director, Environmental Services, Office of the West Windsor Township Engineer.
10. Ann M. Scott and Terri Settlecowski, Middlesex County Health Department, Septic Management Unit

General Comments

Seven of the commenters supported the amendments to either N.J.A.C. 7:9A-3.2 or 3.16 or both, because they will provide relief to numerous individuals with pending projects which otherwise would be jeopardized. Four commenters suggested further modifications to N.J.A.C. 7:9A-3.2 and one opposed it. Three commenters provided comments in opposition to the amendment to N.J.A.C. 7:9A-3.16. Specific comments either in opposition or suggesting further modification are discussed below.

COMMENT 1: New Jersey Association of Realtors; New Jersey Builders Association: Why were many other amendments recommended by the Statutory Advisory Committee not included in the Department's January 21, 1992 rule proposal?

RESPONSE: As mentioned in the summary statement of the Department's January 21, 1992 rule proposal, these amendments were proposed prior to and separate from the bulk of the issues discussed between the Statutory Advisory Committee and the Department because they involved the expiration of deadline dates and their resolution was urgent. On or before May 18, 1992, another rule proposal concerning the remaining issues will be published by the Department.

N.J.A.C. 7:9A-3.2 New system design approvals

COMMENT 2: Township of Vernon; Bergman Hatton Associates: N.J.A.C. 7:9A-3.2(b)1, as written, will make prior approvals null and void if any modifications to the septic system design have to be made. There are circumstances where a septic system design approved prior to January 1, 1990 must be modified because of conditions encountered at the site during system installation. This may create financial and enforcement problems in situations where a newly constructed home cannot be occupied because the lot cannot support a septic system that conforms to the new standards. The need for the engineer to modify the plan to address the field conditions is common and should be allowed. If it is the Department's intent to allow septic system designs approved prior to January 1, 1990 to be installed and certified until December 31, 1994, then N.J.A.C. 7:9A-3.2(b)1 must be deleted.

RESPONSE: The Department agrees that, as presently worded, N.J.A.C. 7:9A-3.2(b)1 could result in substantial hardship to the property owners in the scenario described above. To address this, N.J.A.C. 7:9A-3.2(b)1 has been changed to allow those modifications that are dictated by actual field conditions encountered to be approved by the administrative authority in accordance with the conditions of the design approval. The plan modifications allowed under this provision will be limited to those necessary to address soil or site limitations not previously identified in the approved engineering design plans.

COMMENT 3: Township of Branchburg: We are pleased that prior design approvals and soil tests made pursuant to the repealed standards will sunset on December 31, 1994. However, most municipal approvals are issued in two phases: design approval and permit to construct. Advise how this amendment will affect many construction permits that have been issued in Branchburg Township with no expiration date.

RESPONSE: The amendment to N.J.A.C. 7:9A-3.2 outlines the circumstances and specifically limits the time period under which septic system designs approved prior to January 1, 1990 may be installed and certified. Therefore, all approvals for septic systems designed pursuant to the repealed standards shall expire on December 31, 1994, irrespective of whether or not an expiration date is specified in the approval issued by the administrative authority.

COMMENT 4: New Jersey Association of Realtors; New Jersey Builders Association: N.J.A.C. 7:9A-3.2 should be modified further to include provisions allowing for septic system designs, which were submitted to the administrative authority prior to January 1, 1990, to be reviewed, approved, installed and certified pursuant to the repealed standards.

RESPONSE: The Department has not made the suggested change. The effect of the change would be to require administrative authorities to review and approve septic system designs after January 1, 1990 based on standards which had been included in regulations that expired as of that date. The Attorney General's office has advised the Department that it cannot require such regulatory decisions to be made based on regulations which are no longer in effect. The Department has not proposed to put those regulations back into effect, because for the reason discussed below, it expects no significant hardships or unforeseen adverse affects to result from this decision.

When the Department originally promulgated the new standards, it delayed the operative date for five months, to allow ample time for the submission and processing of applications that had been prepared

pursuant to the repealed standards. Subsequently, the Department has made inquiries on this issue to several administrative authorities, all of which stated that they had processed all complete applications filed before December 31, 1989, pursuant to the repealed standards. In discussing this issue with the Statutory Advisory Committee (which includes the commenter) on March 6, 1992, the Department learned of no new information suggesting that the original five-month delay was insufficient, and the commenter has not brought any such information to the Department's attention. Therefore, the suggested modification is not necessary.

COMMENT 5: New Jersey Association of Realtors; New Jersey Builders Association: In N.J.A.C. 7:9A-3.2(b), the word "may" should be changed to "shall," and the phrase "up to" should be deleted. Also, this subsection should be amended to state that the period for which septic system designs approved prior to January 1, 1990 may be installed and certified is not to be limited by any local ordinances that were in effect at the time of the approval.

RESPONSE: The Department disagrees with these changes. The word "may" and the phrase "up to" as used in proposed N.J.A.C. 7:9A-3.2(b) are appropriate and should remain unchanged since the administrative authorities, pursuant to N.J.S.A. 58:11-25, are empowered to enforce more stringent standards than the minimum standards promulgated by the State. The Attorney General's office has advised the Department that the use of the word "shall" would infringe on this power of the administrative authority and, therefore, cannot be legally supported. However, as stated in its December 24, 1991 letter to all health officers, sanitarians, consulting engineers, and other interested parties, the Department recommends that the administrative authorities should grant extensions up to December 31, 1994 for design approvals issued prior to January 1, 1990 unless there is a valid reason to believe that the septic system design, as approved, will not perform in a satisfactory manner.

COMMENT 6: New Jersey Builders Association: The Association is opposed to the Department establishing a time limit after which approvals granted by administrative authorities would not be valid and recommends that no such limit be established.

RESPONSE: As indicated at N.J.A.C. 7:9A-1.2(b), the new standards are regarded as uniform minimum requirements that are in force throughout the State except where local ordinances prescribe stricter standards, as allowed by N.J.S.A. 58:11-25. Therefore, in cases where an existing ordinance is less stringent than the State standards, the State standards must be compiled with. The Department believes there must be a cut-off date for the designs that do not meet the current standards. Allowing the approvals for such designs to remain valid forever would impair the effectiveness of the current standards.

COMMENT 7: Bergman Hatton Associates: To allow septic system designs approved pursuant to the repealed rules to be installed for up to five years from January 1, 1990 will result in substandard system installations. It will result in the development on land with severe environmental constraints, that would otherwise be deemed unsuitable under the current standards. The previously approved designs for on-site disposal are vastly under-sized or substandard such as seepage pits which inherently have severe adverse impacts upon ground water supplies. The deadline date established in N.J.A.C. 7:9A-3.2(b) should be reduced from five years to two years from January 1, 1990.

RESPONSE: The Department does not dispute the fact that septic systems designed pursuant to the repealed standards may not be located or designed in a manner which would be consistent with either the existing standards or current scientific knowledge, but in order to be fair and reasonable and to responsibly address the concerns of those individuals who obtained approvals prior to January 1, 1990 pursuant to the repealed standards, the December 31, 1994 deadline date has been justifiably established. The Department believes that the time period being allowed is necessary since there is no just alternative available to alleviate the hardship that would otherwise be experienced by those who have allocated substantial resources in obtaining the necessary approvals and acquiring property on the basis of such approvals. Also, it should be noted that, if in any particular area, soil limiting zones are commonly encountered and the systems approved pursuant to the repealed standards are found to be inadequate, the administrative authorities are still empowered to adopt and implement appropriate ordinances that further limit the validity of such approvals.

N.J.A.C. 7:9A-3.16 Prior tests

COMMENT 8: Bergman Hatton Associates: Since both N.J.A.C. 7:9A-5.2(b) and 6.1(k) require that soil evaluation procedures or permeability tests relied upon as a basis for the design of a septic system must be carried out under the direct supervision of a licensed professional engineer, those prior tests performed under the supervision of licensed health officers or first-grade sanitarians would be invalid.

RESPONSE: The comment is not correct. N.J.A.C. 7:9A-3.16(a)2 states that one of the conditions of using prior soil tests in designs subject to the new standards is that they must have been in compliance with the rules in effect at the time that they were performed. N.J.A.C. 7:9-2.60 in the repealed standards references both licensed health officers and first-grade sanitarians, along with licensed professional engineers, as individuals under whose supervision percolation tests may be performed. Therefore, prior tests performed under the supervision of licensed health officers and first-grade sanitarians would comply with the rules in effect at the time and are, therefore, acceptable in this context.

COMMENT 9: Bergman Hatton Associates: The deadline for using prior tests, performed pursuant to the repealed standards, should not be extended up to December 31, 1994 because such tests are deficient in the following manner. Soil logs recorded pursuant to the repealed standards are typically based on soil borings which are inferior to test pits due to the disturbed nature of the soils encountered, the failure to observe soil morphology and the finite surface area exposed to observation. The prior soil tests may not provide a representative profile of the onsite soil conditions. The repealed rules required only one test boring per disposal field whereas the new standards require a minimum of two soil profile pits or one soil profile pit and three soil borings thereby providing the administrative authority the ability to interpolate between tests to determine uniformity of soils. Soil profile pits excavated pursuant to the repealed standards were not required to be backfilled in a manner which would insure continuity of soil horizonization, density and permeability in the soil below the disposal field. Soil logs recorded pursuant to the repealed standards were written using the Unified Soil Classification (Unified) System which fails to recognize the relevance of soil morphology and soil color in determining suitability for onsite sewage disposal. These Unified System descriptions fail to provide United States Department of Agriculture (USDA) soil textural classifications, percentage of coarse fragments and soil consistence. Additionally, due to variation in particle size criteria of soil separates used in each method of classification, ready conversion between the Unified system and the USDA system of soil classification is impossible. The Unified system does not describe soil morphology to the detail necessary to compare with soil profile descriptions provided in Soil Conservation Service County Soil Survey Reports as allowed for in N.J.A.C. 7:9A-5.8(b)2ii. The Unified system will not allow for the determination of the presence and type of soil limiting zones which must be determined to select disposal field type. In soils with moderate or high shrink-swell potential, the lack of an extended "pre-soak" in percolation tests performed pursuant to the repealed standards, may result in erroneously fast percolation rates which will result in undersized disposal fields. Simply adding a 25 percent overdesign requirement to designs based on percolation tests performed under the repealed rules is not adequate.

RESPONSE: The Department does not dispute that soil evaluation and testing performed pursuant to the repealed standards were inferior and in many cases will not provide the degree of detail or accuracy needed to comply with the provisions of subchapters 5 and 6 of the new standards. This is the reason as to why the new soil evaluation and testing standards were adopted. The foremost reason for the Statutory Advisory Committee recommending this amendment and the Department's decision to adopt the same is the need to be fair and reasonable. The Department is obligated to consider and account for the time and resources expended by those individuals who had soil evaluation or tests performed according to the repealed standards but were unable to proceed with the design and construction for a variety of reasons. Extending the time period for the use of these tests from December 31, 1991 to December 31, 1994 is necessary to allow reasonable consideration of the use of such prior tests.

It should however be noted that not all soil logs recorded prior to the implementation of the new standards were based solely upon soil borings since soil profile pits were recognized as acceptable in N.J.A.C. 7:9-2.61 of the repealed standards. The Unified Soil Classification System is referenced in N.J.A.C. 7:9-2.60 of the repealed standards but other systems of soil classification were also allowed and deemed acceptable by the Department. In the five years preceding the adoption of the new standards, soil logs reviewed by the Department as part of treatment works approval applications indicated a marked increase in the use of the United States Department of Agriculture (USDA) System of Soil Classification by engineering firms. Also, over this time period, a high level of attendance at training courses in soil evaluation offered by

Rutgers University in cooperation with the Department, indicated that an increasing number of engineering firms had already begun submitting soil data using the USDA System of Soil Classification in applications prepared pursuant to the repealed standards.

COMMENT 10: Middlesex County Health Department: The extension of the deadline for using prior tests, performed pursuant to the repealed standards, until December 31, 1994, offers a false hope for applicants and engineers. Under the repealed standards, routine soil evaluations were not conducted in accordance with N.J.A.C. 7:9A-5 making the identification of soil limiting zones difficult and subsequent compliance with N.J.A.C. 7:9A-10 impossible, without supplemental testing. Extension of the validity of prior test results to December 31, 1994 will only prolong arguments between administrative authorities and applicants and result in a greater detrimental economic impact to applicants when designs are drafted and submitted which will never conform with the current standards.

RESPONSE: The Department disagrees with this comment. The earlier rule provision allowing the use of prior tests for two years beyond the operative date of the new standards was found to be generally workable and should remain so for the further extension to be granted under this amendment. The Department foresees the following scenarios which may arise when interpreting prior tests.

a. The prior tests do not indicate the presence of a) excessively coarse horizons or substrata in the zone of treatment, b) massive rock or hydraulically restrictive horizons or substrata within either the zone of treatment or the zone of disposal, c) regional or perched zones of saturation within the zone of treatment, or d) presence of disturbed ground where either filling or cutting has occurred. In such cases, additional site evaluation or permeability testing pursuant to the new standards will not be necessary provided that additional soil limiting zones are not encountered throughout the area and within the depth of the disposal field as observed upon its excavation as per N.J.A.C. 7:9A-3.13(b).

b. The prior tests do indicate the presence of a) excessively coarse horizons or substrata in the zone of treatment, b) massive rock or hydraulically restrictive horizons or substrata within either the zone of treatment or the zone of disposal, c) regional or perched zones of saturation within the zone of treatment, or d) presence of disturbed ground where either filling or cutting has occurred, and such soil and site limitations are adequately addressed in the septic system design in accordance with the new standards. Again, as in the above scenario, additional site evaluation or permeability testing pursuant to the new standards will not be necessary provided that additional soil limiting zones are not encountered throughout the area and within the depth of the disposal field as observed upon its excavation as per N.J.A.C. 7:9A-3.13(b).

c. The prior tests do not indicate within reason, the presence or lack of, soil limiting zones or field conditions mentioned in the paragraphs above but the presence of these limiting zones or conditions is suspected. Under these circumstances, supplemental soil evaluation and testing shall be performed in accordance with the new standards for further verification of soil conditions.

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

7:9A-3.2 New system design approvals

(a) All aspects of the location, design, construction, installation, operation, alteration and repair of individual subsurface sewage disposal systems approved after January 1, 1990 shall comply with the requirements of these standards.

(b) Designs for individual subsurface sewage disposal systems approved by the administrative authority prior to January 1, 1990 may be installed and certified pursuant to the rules in effect at the time of the approval. Such approvals may be valid for up to five years following January 1, 1990 provided that the following conditions are met:

1. That *[those portions of]* ***any modifications to*** the approved engineering design plans involving location, design, construction and installation of components specific to the individual subsurface sewage disposal system are *[not modified after January 1, 1990]* ***limited to those which are necessary to address specific soil or site limitations encountered during construction but not previously identified in the approved engineering design plans***; and

2. That the period for which such approvals are valid is not limited by any ordinances adopted by the administrative authority.

7:9A-3.16 Prior tests

(a) Percolation test results, soil logs and determinations of seasonally high water table made prior to January 1, 1990 may be used as a basis for design and location of an individual subsurface sewage disposal system for five years following January 1, 1990 provided that the following conditions are met:

1.-2. (No change.)

(a)

ENGINEERING AND CONSTRUCTION ELEMENT

Redelineation of East Ditch

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: January 21, 1992 at 24 N.J.R. 203(a).
Adopted: March 18, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy
Filed: March 20, 1992 as R.1992 d.173, **without change.**

Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEPE Docket Number: 054-91-12.
Effective Date: April 20, 1992.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Responses:

The Department of Environmental Protection and Energy (Department) published the proposed amendment in the New Jersey Register on January 21, 1992. The Department also published notice of the proposed amendment in the Herald News on January 21, 1992. The Department received no written comments concerning the proposal. No members of the public attended the public hearing on the proposal, which was held on February 7, 1992 in Trenton, New Jersey.

Summary of Hearing Officer's Recommendations and Agency Response:

John Scordato, of the Department's Engineering and Construction Element, served as hearing officer at the public hearing held on February 7, 1992. No members of the public attended the public hearing. Mr. Scordato recommended that the proposed amendment be adopted without change, and the Department concurs.

AGENCY NOTE: Maps and associated flood profiles showing the location of the revised delineated flood hazard areas may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey, and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 East State Street, Trenton, New Jersey.

The revised floodway is identified on the plates specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
DELINEATION OF FLOODWAY AND FLOOD HAZARD AREA
East Ditch
Sheets N-11 and Profile Sheet ED-1, PR-1 & BDB-1

(b)

OFFICE OF LEGAL AFFAIRS

Notice of Administrative Correction

Pollutant Discharge Elimination System Conditions Applicable to All Permits

N.J.A.C. 7:14A-2.5

Take notice that the Department of Environmental Protection and Energy has discovered that the cross-references to various subparagraphs of N.J.A.C. 7:14A-2.5(a)12 in N.J.A.C. 7:14A-2.5(a)14vi(2), (3) and (4), and (a)14vii, require correction to reflect that the referenced subparagraphs are in paragraph (a)14. Because the references pertain to report-

ing requirements, which are set forth in paragraph (a)14, and the referenced subparagraphs of paragraph (a)12 either do not exist or are not logically connected to the paragraph (a)14 requirements, these cross-references can be corrected through this notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7.

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

7:14A-2.5 Conditions applicable to all permits
(a) Permittees shall comply with the following:
1.-13. (No change.)
14. The permittee shall conform to the reporting requirements as follows:
i.-v. (No change.)
vi. The permittee shall include the following in each report:
(1) (No change.)
(2) The permittee shall orally provide the information in [(a)12vi(1)(A) through (C)] **(a)14vi(1)(A) through (C)** above to the DEP Hotline (609) 292-7172 within two hours from the time the permittee becomes aware of the circumstances.
(3) The permittee shall orally provide the information in [(a)12vi(1)(D) through (E)] **(a)14vi(1)(D) through (E)** above to the DEP Hotline within 24 hours of the time the permittee becomes aware of the circumstances.
(4) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain the information in [(a)12vi(1)(A) through (F)] **(a)14vi(1)(A) through (F)**.
vii. The permittee shall report all instances of noncompliance not reported under [(a)12i, iv, v, and vi] **(a)14i, iv, v, and vi** above, at the time monitoring reports are submitted. The reports shall contain the information required in the written submission listed in [(a)12vi] **(a)14vi**.
viii. (No change.)
15. (No change.)

(a)

COMMISSION ON RADIATION PROTECTION

Notice of Administrative Correction

Bureau of Radiation Protection Rules

Therapeutic X-Ray and Therapeutic Accelerator Installations with Energies of One MeV and Above.

N.J.A.C. 7:28-14.4

Take notice that the Department of Environmental Protection and Energy has discovered an error in the equipment requirements for leakage radiation outside the patient area set forth in N.J.A.C. 7:28-14.4(b)2. The "0.5 percent" limit is a typographic error which arose in the original proposal document (see PRN 1986-219). The correct limit, in accordance with the Suggested State Regulations for Control of Radiation, Volume One, Ionizing Radiation, prepared by the Conference of Radiation Control Program Directors, Inc., upon which the standard was based (see 18 N.J.R. 1157(a)), is "0.05 percent." This error was noted by a commenter on the original proposal, and has since been noted by a physicist advising the Bureau of Radiological Health. Given the expressed standard source and the obvious nature of this typographic error to the regulated community, the limit can be corrected through this notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

7:28-14.4 Therapeutic x-ray and therapeutic accelerator installations with energies of one MeV and above
(a) (No change.)
(b) The following are the equipment requirements for leakage radiation outside the patient area:
1. (No change.)
2. Except in the area specified in (a) above as the patient area, neutron leakage measured as absorbed dose in rads or grays in water, at any point one meter from the path of the charged particles before they strike the target or the window, shall not exceed [0.5] **0.05** percent of the maximum absorbed dose in the circular plane specified in (a) above;
3. (No change.)
(c)-(w) (No change.)

HEALTH

(b)

FAMILY HEALTH SERVICES

Birth Defects Registry

Live Births; Reporting Requirements

Adopted Amendment: N.J.A.C. 8:20-1.2

Proposed: January 21, 1992 at 24 N.J.R. 171(a).
Adopted: March 23, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Filed: March 27, 1992 as R.1992 d.184, **without change.**

Authority: N.J.S.A. 26:8-40 et seq., specifically 26:8-40.26.

Effective Date: April 20, 1992.
Expiration Date: March 2, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

8:20-1.2 Reporting requirements
(a) Any infant who is born to a resident of the State of New Jersey, or who becomes a resident of the State before one year of age, and who is diagnosed as having a birth defect, either at birth or any time during the first year of life, shall be reported to the State Department of Health, Special Child Health Services as follows:
1. The conditions listed as Congenital Anomalies (Diagnostic Codes 740.00 through 759.90) in the most recent revision of the International Classification of Diseases, Clinical Modification, shall, except as specified in (a)1ii below, be reported to the Special Child Health Services. In addition, there are several other conditions considered to be defects that are not listed under Diagnostic Codes 740.00 through 759.90 which describe Congenital Anomalies. The birth defects listed in (a)1i below shall also, in every case, be reported to the Special Child Health Services. The minor conditions listed in (a)1ii below shall not be reported to the Special Child Health Services in every case, but only as required in (a)1iii, iv and v below.
i. (No change.)
ii. Minor conditions as follows:
...
Pixie-like ear
Pneumothorax
Pointed ear
Polydactyly (postaxial, type B)—skin tags on hands or feet
Posteriorly rotated ears
Preauricular sinus
Pylorospasm (intermittent)
Ranula—never a defect
Rectal fissure
Redundant foreskin
Rockerbottom feet
Sacral dimple
Sebaceous cysts
Simian crease (transverse palmar crease)
Single umbilical artery
Skin cysts
Small fontanel
Small lips
Splenomegaly
Thymic hypertrophy
...

iii-v. (No change.)
(b)-(j) (No change.)

(a)

HEALTH FACILITIES RATE SETTING
Residential Alcoholism Treatment Facilities (RATF) Manual
Cost Accounting and Rate Evaluation Guidelines
Adopted New Rules: N.J.A.C. 8:31C

Proposed: December 2, 1991 at 23 N.J.R. 3609(a).
Adopted: March 25, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: March 27, 1992 as R.1992 d.185, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: April 20, 1992.
Expiration Date: April 20, 1997.

These rules expired on January 20, 1992 and, in accordance with N.J.A.C. 1:30-4.4(f), the readoption must now be treated as new rules. These new rules with amendments will be effective April 20, 1992.

The Department has added additional language to N.J.A.C. 8:31C(a)2iv to be in conformance with the established rules of the Office of Administrative Law, regarding the appeal process.

Summary of Public Comments and Agency Responses:

COMMENTER: Kaden and Arnone—Consultants

COMMENT: The commenter supports the development of separate screens in the cost centers for Nursing, Laboratory, Pharmacy and Medical Director for those RATFs offering detoxification services.

RESPONSE: The Department has requested the RATFs to review recent financial simulations which indicate a decrease in reimbursement for those facilities if there is a separate screening process.

COMMENT: The commenter is concerned that the regulations continue to use Target Occupancy Levels which cause an inappropriate double screening of the same base period costs. This is utilizing the rate setting process to affect planning changes in bed complements when clearly these are two separate processes.

RESPONSE: The Department proposed an elimination of the Target Occupancy Levels at the January 9, 1992 HCAB meeting.

COMMENT: The 1992 regulations containing strong language penalizing hospitals for failure to submit appeal documentation within the allotted time (that is, 60 working days after rates are issued). Yet there are no requirements that the Department act on the appeal documentation within a reasonable (for example, 90 working days) period of time.

RESPONSE: The Department acknowledges that historically this may have been a problem because of the lack of staffing and, therefore, continuity for resolutions of appeals of these reimbursement rates. However, the Department now has a full time analyst in this area and the only outstanding appeals are awaiting adjudication by the Office of Administrative Law.

COMMENTER: Law firm of Riker, Danzig, Scherer, Hyland and Perretti

COMMENT: The proposed amendments should be applied prospectively only and not applied retroactively to pending appeals.

RESPONSE: The proposed regulations will be applied prospectively only.

COMMENT: The proposed regulations failed to alter the existing rule regarding the target occupancy calculations.

RESPONSE: A proposal to eliminate the target occupancy penalty was presented to the HCAB on January 9, 1992 for initial publication.

COMMENT: There is a concern on the effect of these proposed rules on the 1992 reimbursement rates. A suspension of the 30-day time for appeals, pending finalization of these rule proposals, is recommended.

RESPONSE: The Department will allow a 30-day time period for the appeals of the detoxification and target occupancy issues when the final disposition of these proposed changes have been determined.

COMMENTER: Office of Administrative Law

COMMENT: The Department has limited the submission of documentation at the Level II hearing before an Administrative Law Judge to the same documentation submitted to the rate setting analyst at the Level I rate appeal hearing.

RESPONSE: The proposed regulatory language is very similar to the current requirement for specialized and rehabilitation hospitals which are reimbursed under the Standard Hospital Accounting and Rate Evaluation (SHARE) system.

The current Level I process does include witnesses and the Department of Health considers it to be a serious presentation of the issues which the provider has appealed. The RATF Level II proceedings are not merely a review of the reasonableness of the Level I decision. It is a review by an Administrative Law Judge to determine whether the Department of Health has complied with the duly promulgated RATF reimbursement regulations.

The proposed regulation does not ban witnesses and sworn testimony and does not in any way hinder the presentation by the provider's attorney at the Level II hearing. The only limitation is that documentation must be first submitted on or before the Department of Health Level I hearing. This avoids the potential for the providers to submit a new case and facilities will primarily prepare their cases for OAL hearings which will increase the ALJ caseload and inappropriately delay the resolutions of appeals.

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

8:31C-1.2 Definitions

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

"Administrative Payment Rate" means the payment rate developed following a review (Level I Appeal) with the rate analyst of the Screened Rate.

...

"Final Administrative Rate" means the payment rate developed as a result of the rate established following a Level II Appeal to the Administrative Law Judge.

...

"Level I Appeal" means the appeal held with a Department of Health Analyst. The resolution of the Level I Appeal results in the Administrative Payment Rate. (See above).

"Level II Appeal" means an appeal held before an Administrative Law Judge. The resolution of the Level II Appeal results in the Final Administrative Rate. (See above).

...

"Residential Alcoholism Treatment Facility (RATF)" means a facility or a designated unit of a facility which is licensed by the New Jersey Department of Health to provide services specified in the Manual of Standards for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A.

...

8:31C-1.3 Reporting period: cost data

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

(c) Once the Department has determined that the actual cost study submission is suitable for entry into the data base, it shall be so entered, no further substitutions or rearrangement of costs will be accepted unless it is deemed necessary by those performing the detailed, on site review pursuant to N.J.A.C. 8:31C-1.1.

1. For any facility proceeding under the screened methodology which has requested an Administrative Payment Rate (Level I Appeal), a date for the detailed review with the analyst shall be set within 60 working days of the issuance of the Screened Rate. At least 10 working days prior to the date so established, the facility shall submit written documentation of all items to be discussed. This documentation will specify each item, the costs associated with the item, and the facility's rationale for the request. Should the facility fail to submit the documentation in the allotted time or fail to appear on the established date, it shall have forfeited its right to an appeal and the Screened Rate will become the Final Administrative Rate. (The rate is equivalent to that received after Level II Appeal).

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

8:31C-1.12 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services will be established as follows:

1. (No change.)

2. Total nursing costs for each RATF in the base period (per (b)1 above) will be accumulated and then be divided by the base period patient days. These per diem costs will then be ranked in descending order on a facility basis (Detoxification and Other).

3. (No change.)

(c) (No change.)

8:31C-1.14 Special patient care

(a) (No change.)

(b) The reasonableness limit for medical director/physician services will be established as follows:

1. (No change.)

2. Total medical director/physician costs for each RATF in the base period (per (b)1 above) will then be divided by the base period patient days. These per diem costs will then be ranked in descending order on a facility basis (Detoxification and Other).

3. (No change.)

(c) (No change.)

(d) The reasonableness limit for laboratory services will be established as follows:

1. (No change.)

2. Total laboratory costs for each RATF in the base period (per (d)1 above) will then be divided by the base period patient days. These per diem costs will then be ranked in descending order on a facility basis (Detoxification and Other).

3. (No change.)

(e) The reasonableness limit for pharmacy will be established as follows:

1. (No change.)

2. Total pharmacy costs for each RATF in the base period (per (e)1 above) will then be divided by the base period patient days. These per diem costs will then be ranked in descending order on a facility basis (Detoxification and Other).

3. (No change.)

8:31C-1.16 Appeal process

(a) When a RATF believes that, owing to an unusual situation, the application of these rules results in an inequity, two levels of appeals are available: a Level I Appeal heard by representatives from the Department of Health*[:]* ***;*** and a Level II Appeal heard before an Administrative Law Judge.

1. Level I Appeal: A request for a Level I Appeal must be submitted in writing to the Department of Health, Health Facilities Rate Setting, Room 600, John Fitch Plaza, CN 360, Trenton, New Jersey 08625 within 30 days of receipt of the notification of rates.

i.-iv. (No change.)

v. Rates resulting from the Level I Appeal will be known as the "Administrative Payment Rate".

2. Level II Appeals (Administrative Law Appeal): If a RATF is not satisfied with the results of the Level I Appeal, it may request a hearing before an Administrative Law Judge.

i.-iii. (No change.)

iv. The RATF may not submit documentation other than that provided to the Analyst at the Level I Appeal hearing***, unless they can establish just cause for failure to provide the documentation earlier. Also, the documentation must be sent to the other parties at least 30 days prior to the Level II hearing.***

Recodify existing iv. as v. (No change in text.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need Moratorium: Exceptions

Adopted Amendments: N.J.A.C. 8:33-5.1

Proposed: January 21, 1991 at 24 N.J.R. 173(a).

Adopted: March 18, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: March 20, 1992 as R.1992 d.172 **without change.**

Authority: N.J.S.A. 26:2H-1, 26:2H-5, 26:2H-8, 26:2H-9.

Effective Date: April 20, 1992.

Expiration Date: July 27, 1995.

Summary of Public Comments and Agency Responses:

The proposed amendments to N.J.A.C. 8:33-5.1 appeared in the January 21, 1992 New Jersey Register at 24 N.J.R. 173(a). Public comment was received on the proposed amendments through February 20, 1992. Written comments were received from the Honorable Senator Matthew Feldman; Roger W. Turnau, vice-president, Horst Group/horst lifecare; Dean R. Allen, administrator, ICS Invalid Coach Service of N.J. Inc.; Leonard Fishman, general counsel of the New Jersey Association of Non-Profit Homes for the Aging; Gregory L. Rogerino, executive director, Ward Homestead; Richard J. Reding, government affairs liaison, Life Care Services Corporation; Thomas F. LePrevost, president, and Catherine L. Scott, vice-president for marketing, The Presbyterian Homes of New Jersey Foundation, Inc.; and from the following concerned citizens who support the proposal to continue processing certificate of need applications for continuing care retirement communities (CCRCs) during the certificate of need moratorium and who urge expeditious processing of an application expected to be submitted by Keswick Pines Manor to establish a CCRC in Whiting Township, Ocean County: Katherine Collard; Herbert A. and Marie Seiler; May E. Jordan; (Mrs.) Ruth Pohli; Anne Sehweighardt; Gwen Valentien; Miss Pauline Van Krimpen; Helen and William Burns; Dave and Gladys Easton; Mrs. Gladys E. Jensen; Kathryn Roscoe; Alice M. DiBlasi; O. Arthur Terjesen; Joan A. Lovell; Harold C. and Myrtle P. Shelmire; William and Eleanor Flower; Arnetta Francis; Emilia Grof; Elizabeth L. Chester; Muriel C. Dyer; (Mrs.) Evelyn Arndt; Thelma Ackert; Mrs. Katherine A. Lewis; Mrs. Clara B. Glantz; Ethel L. Phillips; Edgar T. Speer; (Mrs.) Doris Lingener; A Pioneer of Keswick Pines Manor; Adolph J. and Evelyn Richards; Cora Mac Lean; (Mrs.) Muriel A. Miller; Venus and Reynold Trowers; Olive M. and William H. Powell; Sasah K. Sutton; Alice Woods; Loretta Speiden; Mrs. Margaret Randow and Mr. Charles Randow; Cornelius Vander Pyl; Mr. and Mrs. Ellsworth Losey; Jean Dennis; Elisabeth and Reverend Joseph McCullough; (Mrs.) Marguerite B. Hillman; (Mrs.) Agnes B. Youngdahl; (Mrs.) Edna M. Stettler; Paula Hesterberg; Helen Robinson; Beatrice Dusel; Edward P. and Harriett Vollherbst; and Adele Schwieger. All letters received during the public comment period were shared with the Health Care Administration Board prior to the Board's action on the proposed amendments.

COMMENT: The New Jersey Association of Non-Profit Homes for the Aging (NJANPHA) has written a letter in support of the proposed amendments on behalf of the 125 not-for-profit health care and housing facilities for the elderly which it represents. Writing on behalf of the NJANPHA, Mr. Leonard Fishman, general counsel, represents that the narrow exceptions to the moratorium reflected in the proposal are both consistent with the intent of the moratorium and would greatly benefit the facilities and the residents they serve by allowing for the processing of certificate of need applications that are not expected to be affected by the State Health Plan. He urges adoption of the proposal without change.

RESPONSE: The Department agrees with the statements made by the New Jersey Association of Non-Profit Homes for the Aging and will ask the Health Care Administration Board to adopt the proposed amendments without change.

COMMENT: In addition to the significant number of private citizens who wrote in support of the Department's proposal to process certificate of need applications for the development and implementation of continuing care retirement communities during the moratorium (see comments below), additional letters of support for this proposal were received from the following individuals and organizations: Mr. Leonard Fishman on

behalf of the New Jersey Association of Non-Profit Homes for the Aging; Mr. Richard Reding, government affairs liaison for Life Care Services Corporation; Mr. Gregory L. Rogerino, executive director of Ward Homestead, and Mr. Roger Turnau, vice-president of the Horst Group/horst lifecare. Mr. Fishman noted that the proposal was consistent with the purposes of the moratorium as well as the substance of current and proposed policies and plans for long-term care and is consistent with Legislative intent reflected in the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," N.J.S.A. 52:27D-331, to promote continuing care retirement communities in the State of New Jersey. Mr. Reding and Mr. Turnau agreed that certificate of need applications limited to the development or implementation of continuing care retirement communities should properly be excluded from the certificate of need moratorium for the reasons stated in the proposal notice, namely that skilled nursing beds which are approved as part of a continuing care retirement community are not counted against the need methodology described at N.J.A.C. 8:33H-3.10 and the State Health Plan is not expected to limit the growth of continuing care retirement communities in the State. Mr. Turnau offered a number of reasons for supporting the proposed amendments including his belief that continuing care retirement communities offer important benefits to older persons and offer economic benefits to local economies.

RESPONSE: The Department notes the commenters support for the proposal and will ask the Health Care Administration Board to support the proposal without change.

COMMENT: Senator Matthew Feldman, by letter dated January 31, 1992, to Commissioner of Health Frances J. Dunston, M.D., M.P.H., asked the Commissioner to share his support for the proposed amendments with the Health Care Administration Board with the hope that the Board would look favorably on the adoption of the amendments.

RESPONSE: Senator Feldman's support for the proposed amendments was without reservation and the Department of Health wishes to note his support for the official record.

COMMENT: A number of private citizens, whose names are noted above and who are interested in moving into a continuing care retirement community known as Keswick Pines Manor and planned for Whiting Township, Ocean County, wrote to the Department during the comment period advising of their support for the proposed amendment, referenced at N.J.A.C. 8:33-5.1(b)8, which would allow for the processing of certificate of need applications related exclusively to the development and implementation of continuing care retirement communities. Many of these individuals have put down deposits at Keswick Pines Manor and seek timely processing of its certificate of need application in order to expedite the implementation of the project.

RESPONSE: The Department of Health notes that it has not yet received a certificate of need application from Keswick Pines Manor to establish a continuing care retirement community. It does, however, support processing of certificate of need applications related exclusively to the development and implementation of continuing care retirement communities during the certificate of need moratorium for the reasons set forth in the proposal, so that worthy applications may move forward with project implementation without delay. Should these amendments be approved and should Keswick Pines Manor subsequently submit a complete application for processing, the Department of Health will move expediently to process the application.

COMMENT: Mr. Dean R. Allen, administrator of ICS Invalid Coach Service of N.J. Inc. wrote in opposition to the proposed amendment noted at N.J.A.C. 8:33-5.1(b)6, which would allow for the processing during the certificate of need moratorium of certificate of need applications for the provision of basic life support services including invalid coach, transport ambulance, and emergency ambulance services. The proposed amendment would, however, continue to apply the moratorium to all other emergency medical services including, but not limited to, mobile intensive care services, helicopter ambulance services, and trauma services. As a provider of medical transportation services, Mr. Allen urged that the moratorium on invalid coach and emergency ambulance services not be lifted because additional competition, which might result from the introduction of new providers, may erode the financial base of existing providers during current recessionary times.

RESPONSE: Mr. Allen argues for the retention of the moratorium on the initiation of invalid coach and emergency ambulance services to prevent additional competition during this recessionary period. The Department of Health cannot accept Mr. Allen's claim as a sufficient basis to retain the moratorium on these types of services. To do so would indeed be inconsistent with the purpose of the moratorium, which is to permit the development of the State Health Plan required by the Health Care Cost Reduction Act, P.L. 1991, c.187, by enabling Department staff to concentrate their efforts on the formulation of the new Plan and review system and, most importantly, to avoid the possibility of the Department taking any action which may be inconsistent with the requirements to be imposed by the Plan. The Department has proposed the processing of certificate of need applications for the provision of basic life support services including invalid coach, transport ambulance, and emergency ambulance services, since these types of certificate of need applications are not expected to be affected to any degree by the State Health Plan. It is indeed proper and customary to review the impact that a proposed service represented in a certificate of need application can reasonably be expected to have on the organization, delivery and cost of care in the area where the service is proposed. To use a moratorium for the exclusive purpose of protecting existing franchises from additional competition is unacceptable to the Department.

Full text of the adoption follows.

8:33-5.1 Moratorium

(a) (No change.)

(b) The purpose of the moratorium is to permit the development of the State Health Plan required by the Health Care Cost Reduction Act, P.L. 1991, c.187, by enabling Department staff to concentrate their efforts on the formulation of the new Plan and review system and to avoid the possibility of the Department taking any action which may be inconsistent with the requirements to be imposed by the Plan. The following types of certificate of need applications will continue to be processed administratively while the moratorium is in place, since they are not expected to be affected to any degree by the State Health Plan:

1.-5. (No change.)

6. Certificate of need applications for the provision of basic life support services including invalid coach, transport ambulance, and emergency ambulance services. The moratorium shall apply to all other emergency medical services including, but not limited to, mobile intensive care services, helicopter ambulance services, and trauma services.

7. Certificate of need applications to undertake studies, surveys, architectural or other design studies and drawings except for projects which would be affected by the capital cap implemented by P.L. 1991, c.187.

8. Certificate of need applications related exclusively to the development or implementation of continuing care retirement communities.

9. Certificate of need applications for the relocation of an existing health care facility or service within the same county or in the instance of a health care facility which was conditioned by certificate of need approval to be located in a specific city, relocation of the facility or service to another site in the same city. However, applications for relocation of existing health care facilities or services will not be processed during the moratorium, where the resultant approval would impact Chapter 83 reimbursement, as determined by the Commissioner of Health.

10. Certificate of need applications to change the site of a previously approved but not yet implemented certificate of need where the new site is within the same county as the previously approved site or in the case of a certificate of need conditioned on the basis that the facility or service be located in a specific city, where the proposed new site is within the same city as the previously approved site. However, applications for a change of site will not be processed during the moratorium, where the resultant approval would impact on Chapter 83 reimbursement, as determined by the Commissioner of Health.

11. Certificate of need applications for the replacement of an existing health care facility which is not an acute care hospital or specialized hospital, where the replacement will not increase the total number of beds licensed at the facility or change the number of beds in a given category as represented on the facility's most current license issued by the Department of Health.

12. Certificate of need applications for any decrease in the total licensed bed capacity of a facility or in the number of beds licensed in a given category, where the reductions can occur with no as-

sociated costs. The moratorium remains in effect, however, for bed additions and conversions.

13. Certificate of need applications for the discontinuance of a health care service or closure of a health care facility.

14. Certificate of need applications for facilities and services which are substantially within the realms of the above categories.

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

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Administrative Correction

Manual of Standards for Licensure of Invalid Coach and Ambulance Services

N.J.A.C. 8:40-3.3, 5.2 and 6.14

Take notice that the Department of Health has discovered errors in the text of N.J.A.C. 8:40-3.3, 5.2 and 6.14 currently appearing in the New Jersey Administrative Code.

At N.J.A.C. 8:40-3.3(c), the phrase "such as operating with surveys" contains a typographic error. In the original proposal document (PRN 1991-452), the phrase was "such as cooperating with surveys." As the requirements of the rules are not altered and necessary clarification is provided, this phrase is corrected through this notice.

N.J.A.C. 8:40-5.5(b)6 was proposed for deletion (see PRN 1991-452) but was inadvertently incompletely marked for deletion in the published proposal (see 23 N.J.R. 2566(a)). As such, it was retained both on adoption (see 24 N.J.R. 119(a)) and in the Code. Because its requirement is now contained in N.J.A.C. 8:40-5.2(c), paragraph (b)6 is deleted through this notice.

N.J.A.C. 8:40-6.14(d)3, the term "temporary pressure" is a typographic error. The correct term is "inspiratory pressure" as set forth in the rule prior to the amendment and in the original notice of proposal (see PRN 1991-452). This term, which was not amended through the rulemaking (see 23 N.J.R. 2566(a) and 24 N.J.R. 119(a)) but was incorrectly reproduced, is corrected back to its original form through this notice.

Pursuant to N.J.A.C. 1:30-2.7, this notice of administrative correction is published to provide the correct text of these rules.

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

8:40-3.3 Standard operating procedures

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

(c) In addition to addressing the employees' responsibilities under this chapter, such as [operating] **cooperating** with surveys, the rules governing "out-of-service" vehicles, the possibility of incurring fines in case of licensure violations, having training credentials immediately available and performing duties in a professional manner, the manual should address sanitation requirements, vehicle cleanliness, communicable disease guidelines, placing patients into physical behavioral restraints, patients' rights and confidentiality, vehicle breakdowns and other areas of concern to the licensee or the Department. The manual shall also contain a nondiscrimination statement, outlining the service's willingness to transport and treat patients with AIDS. As appendices, the manual shall include a copy of the EMS Annex and the HAZMAT Annex of the State disaster plan, if the service provides "street EMS." A copy of these rules (N.J.A.C. 8:40) shall be included in the manual, but, by itself, is not sufficient to totally meet the requirements of this section.

8:40-5.2 Patient restrictions

(a) (No change.)

(b) Service shall not be provided to a patient who requires (based upon current medical condition or past medical history):

1-5. (No change.)

[6. If a patient suddenly and unexpectedly requires Emergency Department treatment after transportation has begun, that patient shall be transported to an Emergency Department of a hospital.]

(c) (No change.)

8:40-6.14 Resuscitation devices

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

(d) Any oxygen-powered resuscitator shall provide:

1. 100 percent oxygen;

2. An instantaneous flow rate between 35 and 45 liters per minute;

3. [Temporary] **Inspiratory** pressure between 55 and 65 on water pressure; and

4. 15/22mm fittings.

(e)-(g) (No change.)

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only

New Eligibility Computation Amounts

Adopted Concurrent Amendments: N.J.A.C. 10:71-4.8, 5.4, 5.5, 5.6 and 5.9

Proposed: February 18, 1992 at 24 N.J.R. 651(a).

Adopted: March 27, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: March 30, 1992 as R.1992 d.191, **without change.**

Authority: N.J.S.A. 30:4D-3r(7); 7a, b and c; 42 CFR 435.210 and 435.1005; 20 CFR 416.1163 and 416.2025.

Effective Date: April 20, 1992.

Expiration Date: December 24, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:71-4.8 Institutional eligibility; resources of a couple

(a) In the determination of resource eligibility for an individual requiring long term care, the county welfare agency shall establish the combined countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This determination shall be made upon a request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The CWA shall establish a share of the resources to be attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed $68,700 unless authorized in 4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

i. $13,740; or

ii. One half of the couple's combined countable resources.

2.-9. (No change.)

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or reduced value. Persons determined to be "living in the

household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have income in the amount of:

$160.67 for an individual
$231.00 for a couple

i. (No change.)
13. (No change.)
(b) (No change.)

10:71-5.5 Deeming of income

(a)-(f) (No change.)
(g) A table for deeming computations amount follows:

TABLE A
Deeming Computation Amounts

1. Living allowance for each ineligible child $211.00			
2. Remaining income amount	Head of Household $211.00	Receiving Support and Maintenance $140.66	
3. Spouse to Spouse Deeming—Eligibility Levels			
a. Residential Health Care Facility	$1,125.36		
b. Eligible individual living alone with ineligible spouse	$ 869.36		
c. Living alone or with others	$ 664.25		
d. Living in the household of another	$ 515.09		
4. Parental Allowance—Deeming to Children			
Remaining income is:	1 Parent	Parent & Spouse of Parent	
a. Earned only	$844.00	$1,266.00	
b. Unearned only	$422.00	$ 633.00	
c. Both earned and unearned	$422.00	$ 633.00	

10:71-5.6 Income eligibility standards

(a)-(b) (No change.)
(c) Non-institutional living arrangements
1.-4. (No change.)
5. Table B follows:

TABLE B

Variations in Living Arrangement	Medicad Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	$ 572.05	$1,125.36
II. Living Alone or with Others	$ 453.25	$ 658.36
III. Living alone with Ineligible Spouse	$ 658.36	
IV. Living in the Household of Another	$ 325.65	$ 515.09
V. Title XIX Approved Facility: Includes persons in acute general hospitals, nursing facilities, intermediate care facilities/mental retardation (ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.	$1,266.00†	

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap."

(d) (No change.)

10:71-5.9 Deeming from sponsor to alien

(a)-(d) (No change.)
(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:
1. (No change.)
2. Subtract $422.00 for the sponsor, $633.00 for the sponsor if living with his or her spouse, $844.00 for the sponsor if his or her spouse is a co-sponsor.
3. Subtract $211.00 for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.
4. (No change.)
(f) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Administrative Correction
Public Assistance Manual
Responsibilities of the State Agency
Assistance Standards Handbook
AFDC Supplemental Payments
N.J.A.C. 10:81-11.7 and 10:82-5.11

Take notice that the Division of Economic Assistance has discovered errors in the text of N.J.A.C. 10:81-11.7 and 10:82-5.11 as currently published in the New Jersey Administrative Code.

At N.J.A.C. 10:81-11.7, paragraph (a)10 was deleted effective November 5, 1990 (see 22 N.J.R. 1664(a) and 3373(a)) but inadvertently retained in the Code.

At N.J.A.C. 10:82-5.11, the table in subsection (j) requires deletion. This table was proposed as part of subsection (h), but was misplaced at the end of the rule upon adoption when subsection (i) and (j) were added (see 16 N.J.R. 832(a) and 1608(a)). A new subsection (h) table was proposed at 17 N.J.R. 880(a), along with the deletion of the misplaced subsection (h) table which followed subsection (j). While these changes were adopted effective July 1, 1985 at 17 N.J.R. 1656(a), the repealed table after subsection (j) has persisted in the Code.

Pursuant to N.J.A.C. 1:30-2.7, this notice of administrative correction is published to provide the correct text of these rules.

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

10:81-11.7 Responsibilities of the State agency

(a) The State Office of Child Support and Paternity Programs, located in the Division of Economic Assistance, shall be the single organizational unit responsible for the supervision of the administration of the Child Support and Paternity Program. This unit shall be referred to as the Office of CSP Programs. Responsibilities of the Office of CSP Programs include, but are not limited to, the following:

1.-9. (No change.)

[10. The assessment of a late payment fee of five percent for overdue support, to be applied the first day of the month following the month in which the support was due;]

[11.]**10.** (No change in text.)

10:82-5.11 AFDC supplemental payments

(a)-(i) (No change.)

(j) Payments for families eligible for AFDC supplemental payments shall be made promptly upon verification of eligibility criteria.

[AFDC-C AFDC-F	Number Eligible in Unit	AFDC-N
$ 98	1	$ 65
195	2	130
257	3	171
295	4	197
334	5	223
373	6	249
411	7	274
450	8	300
489	9	326
527	10	351
Add $39 each person	more than 10	Add $26 each person]

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook

Child Care Rates

Adopted Amendment: N.J.A.C. 10:82-5.3

Proposed: January 21, 1992 at 24 N.J.R. 213(a).

Adopted: March 20, 1992, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: March 24, 1992, as R. 1992 d.175, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: April 20, 1992.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Changes:

The maximum child care rates for IV-A Child care payments in Table I have been slightly increased since the proposal appeared in the Register. The Department recognizes the concern of the child care community to ensure that children from low income families can access the same care arrangements as those available to families not on public assistance. Whenever possible, the Department will dedicate resources for this expressed purpose. As such, the Department has determined that funding is available at this time to support this increase in rates for licensed center arrangements.

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

10:82-5.3 Payment for child care

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

(g) Statewide maximum child care payment rates are based upon either the age or special needs status of the child and on the number of hours of care provided in the various types of child care arrangements. Included in the types of arrangements are registered homes, approved homes, in-home care, child care centers and day camps, and the hours of care provided (that is, full and part-time day care and care before and after school and during school recesses).

1. "Special needs" children as defined in N.J.A.C. 10:82-5.2 shall be eligible for the appropriate "special needs" child care rate (see Tables II and III below). Appropriate authorization shall be obtained from DEA before placement of the child in care and issuance of payment.

2. (No change.)

3. Before and after school care for school-age children, age five and older, shall be actual costs up to the maximum rate set forth in Tables I, II and III below.

4. (No change.)

5. The maximum authorized rates for child care are set forth in Tables I, II and III below, as determined by the type of child care arrangements, and based upon either the age or special needs status of the child and the hours of care provided.

CHILD CARE MAXIMUM DAILY RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, DAY CAMPS

	HOURS OF CARE PROVIDED			
Child's Service Category	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
*[Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$113.00	$84.75	$56.60	$28.25
Daily	$ 22.60	$16.95	$11.30	$ 5.65
Pre-Schoolers (2.5 up to 5 yrs)				
Weekly	$ 92.00	$69.00	$46.00	$23.00
Daily	$ 18.40	$13.80	$ 9.20	$ 4.60
Kindergarteners & School-Agers (5-13 yrs.) and Special Needs Child (13-19 yrs.)				
Weekly	$ 92.00	$69.00	$46.00	$23.00
Daily	$ 18.40	$13.80	$ 9.20	$ 4.60]*
***Infants/Toddlers & Special Needs Child (0 up to 2.5 yrs)**				
Weekly	**$114.00**	**$85.50**	**$57.00**	**$28.50**
Daily	**$ 22.80**	**$17.10**	**$11.40**	**$ 5.70**

Pre-Schoolers & Special Needs Child (2.5 up to 5 yrs)				
Weekly	**$ 94.00**	**$70.50**	**$47.00**	**$23.50**
Daily	**$ 18.80**	**$14.10**	**$ 9.40**	**$ 4.70**
Kindergarteners & School-Agers & Special Needs Child (5-13 yrs.) and Special Needs Child (13-19 yrs.)				
Weekly	**$ 94.00**	**$70.50**	**$47.00**	**$23.50**
Daily	**$ 18.80**	**$14.10**	**$ 9.40**	**$ 4.70***

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

CHILD CARE MAXIMUM DAILY RATES

Table II

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

	HOURS OF CARE PROVIDED			
Child's Service Category	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$ 90.00	$67.50	$45.00	$22.50
Daily	$ 18.00	$13.50	$ 9.00	$ 4.50
Pre-schoolers (2.5 up to 5 yrs)				
Weekly	$ 70.00	$52.50	$35.00	$17.50
Daily	$ 14.00	$10.50	$ 7.00	$ 3.50
Kindergarteners & School-Agers (5 up to 13 yrs)				
Weekly	$ 70.00	$52.50	$35.00	$17.50
Daily	$ 14.00	$10.50	$ 7.00	$ 3.50
Special Needs Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$110.00	$82.50	$55.00	$27.50
Daily	$ 22.00	$16.50	$11.00	$ 5.50
Special Needs Child(ren) (2.5 yrs & up)				
Weekly	$ 90.00	$67.50	$45.00	$22.50
Daily	$ 18.00	$13.50	$ 9.00	$ 4.50

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

CHILD CARE MAXIMUM DAILY RATES

Table III

These rates shall be utilized for:

APPROVED HOME DAY CARE

Child's Service Category	HOURS OF CARE PROVIDED Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$55.00	$41.25	$27.50	$13.75
Daily	$11.00	$ 8.25	$ 5.50	$ 2.75
Pre-schoolers (2.5 up to 5 yrs)				
Weekly	$41.00	$30.75	$20.50	$10.25
Daily	$ 8.20	$ 6.15	$ 4.10	$ 2.05
Kindergarteners & School-Agers (5 up to 13 yrs)				
Weekly	$41.00	$30.75	$20.50	$10.25
Daily	$ 8.50	$ 6.15	$ 4.10	$ 2.05
Special Needs Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$66.00	$49.50	$33.00	$16.50
Daily	$13.20	$ 9.90	$ 6.60	$ 3.30
Special Needs Child(ren) (2.5 yrs & up)				
Weekly	$55.00	$41.25	$27.50	$13.75
Daily	$11.00	$ 8.25	$ 5.50	$ 2.75

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

(h) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Administrative Change
Home Energy Assistance Program Benefits
N.J.A.C. 10:89-3.4(f)2

Take notice that the Division of Economic Assistance has discovered an error in the current text of N.J.A.C. 10:89-3.4(f)2. The current text of this paragraph which corresponds to N.J.A.C. 10:89-3.5(a) was adopted as an emergency rule on January 21, 1992, at 24 N.J.R. 300(b). That emergency adoption established at N.J.A.C. 10:89-3.5(a) the maximum Home Energy Assistance (HEA) entitlement as $750.00 per eligible household. The reference at N.J.A.C. 10:89-3.4(f)2 was inadvertently omitted and should be changed to the current authorized maximum HEA entitlement of $750.00 as adopted and reflected at N.J.A.C. 10:89-3.5(a).

This notice of administrative change is published pursuant to N.J.A.C. 1:30-2.7(c).

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

10:89-3.4 Emergency energy assistance

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

(f) Emergency assistance benefits to prevent eviction:

1. (No change.)

2. Emergency assistance to prevent eviction may not exceed the difference between the amount of the HEA entitlement for the program year and [$900.00] **$750.00**, and shall be the lowest amount necessary to prevent eviction from the residence.

3. (No change.)

(g) (No change.)

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Child Care Centers
Licensing Fees
Adopted Amendments: N.J.A.C. 10:122-2.1 and 2.8

Proposed: January 6, 1992 at 24 N.J.R. 71(a).

Adopted: March 23, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: March 24, 1992, as R.1992 d.176, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:5B-1 to 15 and 18A:70-1 et seq.

Effective Date: April 20, 1992;
Operative Date: July 1, 1992.
Expiration Date: May 15, 1994.

Summary of Public Comments and Agency Responses:

The Division of Youth and Family Services received seven comments from directors of child care centers. Five commenters chose not to have their names published in the New Jersey Register. The remaining commenters are Kathy Zimmerman, Director of Little Lambs Nursery School and Bettie Witherspoon, Executive Director of Better Beginnings Child Development Center.

COMMENT: Three child care center directors expressed concern that the increase in the licensing fee for their centers was too high.

RESPONSE: While the Division shares the center director's concerns about any possible economic hardship the increase in fees may have on their centers, it is important to note that the licensing fees have not been increased since 1974, despite substantial increases in inflation since

that time. Over the past 18 years, the Division has experienced significant increased costs in processing license applications, conducting programmatic and life/safety inspections of licensed child care centers, providing technical assistance and training.

The Division, in conjunction with the major child care organizations throughout the State, determined that licensing fees should be charged according to center size, based on the center's official licensed capacity. If a center's enrollment falls below the center's official licensed capacity, the center may request a lower licensed capacity, which could put the center in a lower differential fee category resulting in a lower fee for the center's license. Finally, should a center choose to pass the increased cost onto the families served by the center, the amount would be no more than one to two dollars per child, over the three year period of the license.

COMMENT: A child care center director suggested that the licensing fees be based on a center's actual enrollment instead of its licensed capacity.

RESPONSE: Center enrollments tend to vary and change frequently and it would be impossible for the Bureau of Licensing to track and verify the actual enrollment of the 2,200 centers that it licenses. For that reason, the fee structure must be tied to the licensing capacity of each center, which normally remains constant. If a center's enrollment, however, falls below the center's official licensed capacity, the Bureau will consider any requests from a center to lower the licensed capacity to the enrollment level, which could put the center in a lower differential fee category resulting in a lower fee for the center's license.

COMMENT: A child care center director wanted clarification of the licensing fees for centers that have multiple sessions accommodating different children in each session. Specifically, the director wanted to know if the licensing fee was based on the center's entire enrollment or on the number of children in the center for a particular session.

RESPONSE: The Division determines the center's licensed capacity based on the center's square footage, number of toilets and sinks and staff qualifications, not the center's total enrollment when it serves different children in multiple sessions. However, if such a center's enrollment per session is below its licensed capacity, such a center could request a lower licensed capacity, which could possibly put the center in a lower differential fee category resulting in a lower licensing fee.

COMMENT: Two center directors that provide contracted services to children under DYFS supervision expressed the opinion that the licensing fees for those types of centers should not be increased based on the population they serve.

RESPONSE: Generally, these centers serve clients on a co-payment system based on the client's ability to pay. Since the fee increase amounts to no more than $1.00 to $2.00 per child over the three-year licensing period, the costs to cover the increases would be minimal and should not impose an economic hardship on either the center or the clients. The Division feels that the new licensing fee scale should apply to these centers as well. The Division plans to offset the cost of the increase in licensing fees by amending the current contracts with centers that serve children supervised by the Division. These contract modifications could cover the increased costs for securing a license.

Summary of Agency-Initiated Changes:

The Division made some corrections, the most significant of which at N.J.A.C. 10:122-2.1 (Chart for Licensing Fees For Centers) corrects an error in the proposal by changing the $185.00 licensing fee for centers with a capacity between 61-100 children to $175.00. As can be determined by looking at the chart, the increase was intended to be $25.00 per increment. Other typographical corrections at N.J.A.C. 10:122-2.1 and 2.8 involve minor punctuation and minor grammatical changes.

Also an operative date has been added to ensure adequate time to institute the changes established by the amendments.

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

10:122-2.1 Application*[s]* for a license

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

(c) An applicant for an initial or renewal license shall submit with the completed application form the specified licensing fee listed in the chart below, in the form of a check or money order made payable to the "Treasurer, State of New Jersey."

LICENSING FEES FOR CENTERS

Center's Licensed Capacity	Three Year Fee
6-15	$100.00
16-30	125.00
31-60	150.00
61-100	*[185.00]***175.00***
101 and up	200.00

(d) In lieu of the fees specified in (c) above, an applicant for an initial or renewal license who operates a center for eight weeks or less each year shall submit with the completed application form a $100.00 licensing fee, in the form of a check or money order made payable to the "Treasurer, State of New Jersey."

(e) In lieu of the fees specified in (c) above, an applicant for an initial or renewal license who operates a Head Start center, pursuant to, 42 U.S.C. 9831 et seq., shall submit with the completed application form a $100.00 licensing fee, in the form of a check or money order made payable to the "Treasurer, State of New Jersey".

(f) If the application is denied, or the center does not open, the Bureau will refund the licensing fee to the applicant.

(g) The licensing fee will not be refunded once the Bureau issues the center a license.

10:122-2.8 Procedures for securing a Certificate of Life/Safety Approval for centers operated by an aid society of a properly organized and accredited church prior to May 16, 1984, pursuant to N.J.S.A. 18A:70-1 to 9

(a) (No change.)

(b) The applicant shall submit to the Bureau a $100.00 fee in the form of a check or money order made payable to the "Treasurer, State of New Jersey," along with the completed application *[of]* ***for*** a Certificate of Life/Safety Approval.

(c) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Adopted Amendment: N.J.A.C. 10:123-3.4

Proposed: February 3, 1992 at 24 N.J.R. 330(a).

Adopted: March 20, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: March 24, 1992, as R.1992, d.177, **without change.**

Authority: N.J.S.A. 44:7-87.

Effective Date: April 20, 1992;
Operative Date: May 1, 1992.
Expiration Date: July 13, 1995.

Summary of Public Comments and Agency Responses:

The Division received a comment from William Abrams, Vice President of the New Jersey Association of Health Care Facilities, writing on behalf of the Association.

COMMENT: Mr. Abrams expressed his Association's concern over the base that is used for the annual calculation of the PNA increase. The PNA increase usually goes into effect in May of the year, and the aggregate increase for the year is prorated over the remaining eight months of the year. The eight-month base is then used to calculate the increase for the next year, not the non-prorated 12-month base. The Association stated that this causes each annual increase to be inflated. The Association suggested that the 12-month base be used and that the PNA be put into effect on January 1 of each year.

RESPONSE: The Division and the Department of Human Services, working with the Office of Administrative Law, are developing a method for putting the personal needs allowance increase into effect on January 1 of each year, the same date as the Federal cost of living increase in the SSI (reference is made to 55 Fed. Reg. 55325 (October 25, 1991)). This new procedure should be in place for next year's personal needs allowance increase and will eliminate the concern identified by Mr. Abrams. Should the Division not be able to institute this new procedure

in time for next year's increase, the Division will use a 12-month base for calculating the PNA, as Mr. Abrams suggests.

Full text of the adoption follows.

10:123-3.4 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least $65.00 per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

Adopted Amendments: N.J.A.C. 11:3-16.5, 16.8, 16.10

Proposed: November 4, 1991 at 23 N.J.R. 3199(a).
Adopted: March 27, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: March 27, 1992 as R.1992 d.189, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with the proposed amendments to N.J.A.C. 11:3-16.11 and the Appendix not adopted at this time.**
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-1 et seq., 17:29A-36.2 and 36.3, 17:29A-44, 17:30A-1 et seq., and 17:33B-1 et seq.
Effective Date: April 20, 1992.
Expiration Date: January 4, 1996.

On November 4, 1991 the Department of Insurance ("Department") proposed amendments to four separate rules at N.J.A.C. 11:3-16. This subchapter addresses Rate Filing Requirements for Voluntary Market Private Passenger Automobile Insurance (see 23 N.J.R. 3199(a)). Based upon the public comments received and continuing review, the Department has determined to adopt amendments to three rules as set forth below. The Department is not adopting the proposed amendment to N.J.A.C. 11:3-16.11 and the subchapter Appendix at this time, but may take action on the proposed amendment to N.J.A.C. 11:3-16.11 at some future date.

Summary of Public Comments and Agency Responses:

The Department received three public comments from insurers (Alliance of American Insurers, Liberty Mutual Insurance Company and Prudential Property and Casualty Insurance Company) which relate to the amendments being adopted. These comments and the Department's responses are summarized below.

COMMENT: One commenter objected to N.J.A.C. 11:3-16.5(a)5. This provision requires insurers which desire to increase rates in accordance with the flex rate provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner, to file manual rate pages and computer disk(s) containing the flex rate system to be implemented. The rule provides that this filing be accompanied by an explanatory memorandum showing the calculation of the new manual rates, using the current manual rates as a starting point in the calculation. The proposed amendment required that insurers show the calculation of the current and proposed average rates, including the variable portion and expense fees for each coverage. The commenter stated that the data requirements for automobile flex rate revisions within the limits provided by N.J.S.A. 17:29A-44 appear to be too restrictive. The commenter suggested that this provision should be modified to allow the inclusion of the average variable portion and "average" expense fee for each coverage.

RESPONSE: The Department agrees with the commenter and has amended this section accordingly.

COMMENT: Two commenters objected to N.J.A.C. 11:3-16.10(a)8, which provides how investment income shall be treated by group coverages. This rule was proposed to be amended to provide that the interest rates used in the calculation shall be a simple average of the most recent 36 monthly numbers for the Moody's seasoned AAA corporate bond rate as published in the Federal Reserves statistical release "Selected Interest Rates," or the insurer's actual prospective yield, whichever is higher.

One commenter stated that the interest rate used in the calculation of investment income for ratemaking should be reviewed further. The commenter stated that the revision requires the use of the simple average of the most recent 36 month numbers for Moody's seasoned AAA corporate bond rate. The commenter states that the use of a simple average fails to reflect the prospective nature of ratemaking, because a period 36 months in the past will have the same weight as the most recent month. The commenter further stated that this procedure, coupled with the requirements for companies to use the higher of the average Moody's seasoned AAA corporate bond rate, or the insurer's actual perspective yield, will result in an over-statement of the interest rate if rates are falling or have fallen and are not stable. The commenter suggested that the Department revise this provision to allow consideration of any of the following interest rates for ratemaking based on the insurer's expectation for the period rates that are to be in effect: 1) 12 monthly numbers from the Treasury constant three-year maturity; 2) 36 monthly numbers from Moody's seasoned AAA corporate bonds; or 3) The most recently published value by the Internal Revenue Service to be used for discounting loss or adjustment experiences.

A second commenter questioned why the Department selected a new interest rate for discounting loss reserves in the investment income model. The commenter stated that Moody's rate represents a lower quality, higher risk portfolio than the Treasury bond rate used previously. Additionally, the commenter stated that the three-year maturity provides a balance between the long-term pay-out pattern of liability and the rapid payment of physical damage losses. The commenter further stated that the proposed long-term corporate bond rate has no similar justification. The commenter also stated that moving from a 12-point to a 36-point average further distorts the calculation of anticipated investment income since it is more reflective of the historical return than that expected in the prospective period.

A third commenter stated that it agreed that companies should have to bear the downside risk of a riskier investment than AAA corporate bonds. The commenter further stated that insurers should reap the rewards of such a strategy, and objected to the phrase "or the actual yield whichever is higher."

RESPONSE: The Department agrees with the first commenter that the 36 month period is too long, but does not believe that providing several alternatives is necessary. Rather, this provision is amended to require the use of the simple average of the most recent six months. The Department believes that Moody's seasoned AAA corporate bond rate is an adequate measure for this type of yield for a relatively safe investment.

The Department uses Moody's Seasoned AAA Corporate bond rate as a minimum safe rate; nevertheless, if companies have an actual yield that is higher, then they should use it.

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

11:3-16.5 Insurer flex rating filings

(a) Any insurer that desires to increase its rates in accordance with the flex rate provisions of N.J.S.A. 17:29A-44 and applicable Orders of Commissioner issued pursuant to N.J.A.C. 11:3-16A shall provide the following information in support of its flex rate filing:

1.-4. (No change.)

5. The manual rating pages and computer disk(s) containing the flex rate system to be implemented, accompanied by an explanatory memorandum showing the calculation of the new manual rates, using the current manual rates as the starting point in the calculation, and showing the calculation of the current and proposed average rates, including the ***average*** variable portion and ***average*** expense fees for each coverage. The memorandum shall also include the Department's file number and effective data of use for the current rates.

11:3-16.8 Premium, loss and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium loss and loss adjustment expense:

1. (No change.)

2. For each coverage and each experience year used in setting the overall rate level, the following information at total limits and, at the filer's option, basic limits:

i.-viii. (No change.)

3.-6. (No change.)

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

(d) Each filer, except small filers, shall provide the following data regarding trend factors and their application:

1. All internal loss trend data on a calendar year paid and, at the filer's option, incurred basis shown separately for frequency and severity for the latest available five calendar years on a quarterly year ending basis for all coverage on both a countrywide and New Jersey basis. Bodily injury liability and property damage liability trend data shall be given at total limits and, at the filer's option, basic limits. Basic personal injury protection ("PIP") data shall be given at a per person limit retained by the insurer according to N.J.S.A. 39:6-73.1 ($75,000 of insurer payments). Physical damage coverages shall be shown on the basis of the $500.00 deductible or all deductibles combined adjusted to the $500.00 deductible basis. In the latter case the filer shall provide an explanation of the methodology for adjusting other than $500.00 deductible data to the $500.00 deductible level.

2. (No change.)

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

11:3-16.10 Rate calculation using standard ratemaking methodology

(a) Investment income shall be treated by group of coverages as follows:

1.-7. (No change.)

8. The interest rate used in the calculation shall be a simple average of the most recent *[36]* ***six*** monthly numbers for the Moody's seasoned AAA corporate bond rate as published in the Federal Reserve statistical release "Selected Interest Rates*[",]* *,"* or the insurer's actual prospective yield, whichever is higher.

(b)-(f) (No change.)

(a)

DIVISION OF FRAUD

Fraud and Theft Prevention/Detection Plans

Adopted New Rules: N.J.A.C. 11:16-4

Proposed: November 4, 1991 at 23 N.J.R. 3236(a).

Adopted: March 27, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: March 27, 1992 as R.1992 d.190, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:33B-46 and 17:1C-6(e).

Effective Date: April 20, 1992.

Expiration Date: January 31, 1996.

Summary of Public Comments and Agency Responses:

Ten public comments were received from insurance companies (Atlantic Mutual Insurances Companies, Chubb Group of Insurance of Insurances Companies, New Jersey Manufacturers Company, Prudential Property and Casualty Insurance Company of New Jersey, Royal Insurance Company, Selective Insurance Company of America, and State Farm Insurance Companies), insurance trade associations (Alliance of American Insurers, and the American Insurance Association), and the Insurance Services Office, Incorporated.

COMMENT: One commenter objected to N.J.A.C. 11:16-4.3 which requires all insurers which transact the business of private passenger automobile insurance in New Jersey to file for approval, a fraud and theft prevention/detection plan. The commenter states that in accordance with N.J.S.A. 17:33B-46 insurers were required to submit anti-fraud plans on March 7, 1991. The commenter argues that it is not clear in the proposed rules whether insurers are required to file anti-fraud plans again. The commenter states that if an insurer's anti-fraud plan already substantially reflects the requirements of the proposed rule an insurer should be able to supplement the anti-fraud plan that they already have on file.

A second commenter states that N.J.A.C. 11:16-4.6 should be amended to add a new subsection (d) which provides that:

A plan that was filed and approved under N.J.S.A. 17:33B-46 prior to the effective date of these regulations shall be deemed approved under these regulations without any requirement by the insurer to refile the plan.

RESPONSE: The Department agrees with the first commenter. If an insurer has already filed an approved fraud and theft prevention/detection plan an insurer may supplement the plan to reflect the requirements of this rule. The Department does not believe that the second commenter's amendment is necessary because some insurers may need to supplement their plans pursuant to these rules.

COMMENT: Four commenters objected to N.J.A.C. 11:16-4.4(a)1, which requires SIU investigators to be a separate unit from the claims adjusting function and at least one SIU investigator to be assigned to every claim office. Additionally, this provision requires insurers to employ at least one SIU investigator per claim office and one additional SIU investigator for each 30,000 policies serviced by that office.

One commenter argues that the need for and the efficient use of an SIU investigator is not determined by an arbitrary and unjustified mathematical formula, universally applicable to all insurers and all claim offices. The commenter states that the need for a SIU investigator is determined by the number of instances of suspected fraud a particular claim office may be dealing with.

A second commenter states that the Department's standard is arbitrary and does not take into account the differences and needs of individual companies in establishing a workable and effective anti-fraud plan. The commenter believes that companies can best determine the need for a SIU investigator or a policy ratio which is both cost effective and in compliance with the spirit of the FAIR Act.

A third commenter suggested that the Department permit a "floating" SIU investigator who will be available for all claim offices, for the purposes of curtailing fraud. The commenter believes that this will permit insurers to comply with the letter and intent of the law, and allow certain SIU investigators who have particular expertise to be utilized where and when needed.

RESPONSE: The Department agrees that N.J.A.C. 11:16-4.4(a)1 may be too restrictive. Therefore, the Department has deleted the provisions of this rule that required: at least one SIU investigator be assigned to every claim office; and that the SIU investigator be physically located in the office. An insurer is now required to employ at least one SIU investigator for each 30,000 New Jersey Automobile policies serviced. Additionally, the Department notes that the Market Transition Facility's contract with servicing carriers requires one SIU investigator for each 10,000 policies. The Department discussed this standard with some insurers with established SIU units and has determined that the ratio of at least one SIU investigator for each 30,000 policies is reasonable as a minimum standard and ensures an insurer's commitment to curtailing fraud.

The Department's original intent in proposing these rules was to have at least one SIU investigator in each claims office to ensure accessibility. The Department will permit insurers to have "floating" SIU investigators as long as there is at least one SIU investigator for 30,000 policies and the floater is available at the claim office on a regular basis.

COMMENT: Two commenters objected specifically to N.J.A.C. 11:16-4.4(a)iii. One commenter assumes that the term "policies" means private passenger automobile policies. The commenter suggests that the Department provide some clarification into the interpretation of this rule. Another commenter suggests that this section should be clarified to state that: "for each 30,000 **New Jersey** policies serviced by that office."

RESPONSE: The Department agrees with the commenter and has amended this section accordingly.

COMMENT: Two commenters objected to N.J.A.C. 11:16-4.4(a)3 which requires SIU investigators to be qualified by education and/or experience. One commenter argues that due to the specialized nature of Fraud and Investigations, the minimum requirements for SIU investigators should be expanded to reflect at least five years of insurance claim investigation experience.

A second commenter argues that these requirements are in excess of what could be justified by an employer and certainly will be subject to scrutiny and attack by the Fair Employment Commission for being overly rigid and unrelated to business necessity.

RESPONSE: The Department disagrees. The Department's qualifications for an SIU investigator are based on New Jersey Civil Service standards for an insurance fraud investigator. The Department believes that the educational requirements provided in this rule sufficiently reflect the education and/or experience needed in order to perform the duties of a SIU investigator based on Civil Service standards. Additionally, in regards to the first commenter's comments, the Department notes that the qualifications for an SIU investigator are minimum requirements and individual companies may enhance these qualifications to meet their own requirements.

COMMENT: Three commenters objected to N.J.A.C. 11:16-4.4(d). This provision requires the plan to provide for underwriting investigations, verify that the insurer is an eligible person and is properly rated within 60 days of receipt of the application.

One commenter states that this section is confusing because it appears to infer that companies are required to cancel an insured when the insured is found to be an ineligible person. The commenter argues that since an insurer need not cancel an existing policyholder for eligibility points, the commenter questions the need of advising the IFD of an ineligible insured within 30 days of discovery.

A second commenter believes that the Department needs to clarify this section regarding the definition of an "ineligible insured" as it pertains to the IFD. The commenter questions whether notification should be provided to the IFD when an ineligible person is identified because of convictions of crimes or prior conviction of insurance fraud as outlined in N.J.A.C. 11:3-34. The commenter further questions whether the IFD wants notification of ineligible persons as a result of nine or more insurance eligibility points or other factors that make a person ineligible.

A third commenter argues that this section is broader than the scope intended by the FAIR Act and is obviously much broader than Insurance Fraud. The commenter states that the reporting of cases where fraudulent information has been given to insurers (false residences) is necessary. The commenter believes that this provision goes far beyond any real fraud fighting and attempts to use the commenter's authority relating to fraud to review an insurer's underwriting practices. The commenter further believes that this provision should be limited to cases where fraudulent information is provided by applicants. The commenter suggests that the Department establish a task force which includes insurers to design standardized reporting procedures to implement this and other provisions of this rule.

RESPONSE: The Department agrees with the first commenter. This provision does not require companies to cancel an insured when the insured is found to be an ineligible person. Upon careful consideration of the comments and in order for the Department to comply the Legislature's intent in Sections 4 and 5 of P.L. 1991, c.331, which amends the New Jersey Insurance Fraud Prevention Act to address false statements of residency, the Department has amended and deleted provisions of this rule to clarify that insurers are required to provide information to the IFD when an insured has given false information about his or her residency. The Department has deleted provisions which require the reporting of an ineligible person to the IFD for reasons other than false information about their residency. The Department has also deleted the provision that required that the underwriting investigation verify the insured's driving record and the requirement that the plan set forth the insurer's underwriting rules for accepting or rejecting and renewal business.

COMMENT: Two commenters objected to N.J.A.C. 11:16-4.4(e). This section provides that the plan shall set forth the underwriting rules an insurer uses to accept or reject renewal business.

One commenter states that the Department needs to clarify what is meant by the term "underwriting rules" that must be included in an anti-fraud plan. The commenter questions whether this means verification procedures that underwriters must follow to determine whether an applicant is an "eligible person" and is rated properly, or does it mean that the full details of insurer's underwriting rules must be included in its anti-fraud plan.

A second commenter argues that underwriting rules for automobile insurers are already required to be filed and approved under N.J.A.C. 11:3-19, 34, 35, and requiring these underwriting rules to be part of the anti-fraud plan to be filed and approved by the IFD is both redundant and burdensome. The commenter believes that N.J.A.C. 11:16-4.4(e) should be deleted entirely.

RESPONSE: The Department agrees with the second commenter and has deleted this section.

COMMENT: One commenter states that N.J.A.C. 11:16-4.5 is not clear. This provision provides that insurers shall maintain up-to-date and accurate records on their fraud and theft prevention/detection plans. The commenter argues that this provision is unclear because it does not state whether records need to be maintained at the claim office level or at one central location which may contain the combined statistics for all offices within the State. The commenter suggests that the Department give carriers the option to maintain records at either level.

RESPONSE: Insurers have the option of maintaining their records at the claim office level or at another location as long as the report that is filed with the Commissioner combines the statistics for all the offices within the State.

COMMENT: Several commenters questioned N.J.A.C. 11:16-4.5(b) which requires insurers to file a report with the Commissioner annually for each calendar year beginning Janaury 1, 1992, and requires the report to include certain information.

One commenter states that this provision is unclear in that it has two possible interpretations. The commenter argues that if insurers must provide the required information outlined in this section for the 1992 calendar year, then insurers should be able to report this information some time in 1993. The commenter states that in accordance with N.J.S.A. 17:33B-46 insurers will report, in 1992, their "experience in implementing their fraud and theft prevention plan." Therefore, the commenter believes that the detailed requirements of the proposed rules will not be required for the 1991 calendar year. The commenter further states that the second possible interpretation is that insurers must provide anti-fraud information annually, beginning January 1, 1992, in effect tracking the requirements of N.J.S.A. 17:33B-46. The commenter states that under this interpretation, 1991 anti-fraud plan information would have to be reported in 1992 with the level of detail required by the proposed regulation. The commenter believes that as a result of the above-mentioned interpretations, the Department should clarify this provision.

A second commenter suggests that the Department provide additional time within to file the annual reports so that a full calendar year worth of statistics can be available. The commenter urges the report for the prior year not to be due until March 30th of the following year. For example, the commenter states that the report for 1991 would be due at the end of March, 1992. The commenter states that in this way, the annual reports can be conclusive, rather than summaries of part-year experience.

RESPONSE: In accordance with N.J.S.A. 17:33B-46, insurers are required to report to the IFD on an annual basis, beginning January 1, 1992, its experience in implementing its fraud and theft prevention/detection plan. Therefore, insurers are required to report information in 1992 on their experience in implementing fraud and theft prevention/detection plan in accordance with N.J.A.C. 11:16-4.5(b).

The Department agrees with the second commenter and has amended this section accordingly. For the 1991 calendar year insurers are permitted to submit their reports by June 1, 1992. In 1993 and thereafter all reports shall be submitted by April 1.

COMMENT: One commenter states that although they recognize the benefit of quantifying the effectiveness of the plan (see N.J.A.C. 11:16-4.5(b)4 and 5), they are also aware of the difficulties in capturing accurate costs and benefit figures. The commenter states that "the dollar amount of claims denied for fraud" is especially susceptible to distortion. The commenter states that companies will estimate savings if a suit is settled for less than originally anticipated, due to the less than honest behavior of the claimant. The commenter further states that in a more general sense, the magnitude of fraud and its ultimate cost to insurers is subject to much speculation from numerous sources, yet little empirical evidence seems to exist on this subject.

RESPONSE: The Department recognizes that there may be some difficulties in capturing accurate costs and benefit figures. The Department notes that the dollar amount of claims denied for fraud is an acceptable industry standard used to judge the effectiveness of anti-fraud efforts and SIU activities. The Department believes that this is the best method to estimate savings due to the plan.

COMMENT: One commenter suggests that the Department amend Appendix A of the IFD reporting form to include the insurance policy number. The commenter states that this identifying number is as important as the claim number.

RESPONSE: Appendix A is the Department's reporting form. The Department's systems are not designed to record or compile this information. The Department does not want to require information that it cannot use. Therefore, the Department does not believe it is necessary to include the insurance policy number on Appendix A of the IFD reporting form.

Summary of Agency-Initiated Change:

The Department has added amendatory language in these rules which it believes will clarify reporting information for insurers. The Department has amended N.J.A.C. 11:16-4.5(b)5 to require that an insurer's report on the dollar amount of claims denied for fraud is based on a SIU investigation. This also makes this provision consistent with N.J.A.C. 11:16-4.5(b)3 which requires an insurer to report the number of claims denied for fraud based on a SIU investigation.

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

SUBCHAPTER 4. FRAUD AND THEFT PREVENTION/ DETECTION PLANS

11:16-4.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the standards for a fraud and theft prevention/detection plan to be filed for approval pursuant to N.J.S.A. 17:33B-46, by insurers which transact business of private passenger automobile insurance in this State.

(b) These rules apply to all insurers that transact the business of private passenger automobile insurance in New Jersey, including both personal lines and commercial lines of insurance.

11:16-4.2 Definitions

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

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

"Eligible person" means an individual that meets the qualifications set forth in N.J.A.C. 11:3-34.

"Fraud and theft prevention/detection plan" or "plan" means the insurer's plan for the prevention of fraudulent insurance applications and claims and for the prevention of automobile theft.

"IFP" means the New Jersey Division of Insurance Fraud Prevention established by N.J.S.A. 17:33A-8.

"Insurer" means any person authorized to transact the business of private passenger automobile insurance in New Jersey, whether in accordance with a personal lines or commercial lines rating system, and includes a group of affiliated companies.

"Special investigations unit" or "SIU" means the functional group established by an insurer to carry out the duties set forth in N.J.A.C. 11:16-4.4(a).

11:16-4.3 General requirements and filing format

(a) All insurers which transact the business of private passenger automobile insurance in New Jersey shall file for approval a fraud and theft prevention/detection plan in accordance with N.J.S.A. 17:33B-46 and this subchapter. No insurer shall use or implement any plan not filed and approved as set forth herein.

(b) Insurers shall submit their Plan on 8½ by 11 inch paper using one side of the page. The first page shall show the filer's company name, the filer's identifying number for this filing, National Association of Insurance Commissioners (NAIC) company number(s), and NAIC group number.

(c) Insurers shall file their Plan with the Department of Insurance at the following address:

Anti-Fraud/Anti-Theft Plans
New Jersey Department of Insurance
Division of Insurance Fraud Prevention
CN-324
Trenton, NJ 08625-0324

11:16-4.4 Elements of fraud and theft prevention/detection plan

(a) Except for insurers which insure less than 1,000 New Jersey automobiles, the plan filed in accordance with this subchapter shall establish a full-time special investigations unit.

1. The SIU shall conduct investigations on claims referred by the claim personnel whenever the adjuster or processor suspects fraud.

i. SIU investigators shall be a separate unit from the claims adjusting function*[, and at least one SIU investigator shall be assigned to every claim office.

ii. The SIU investigator shall be physically located in the office, regardless of the state in which the claims are processed]*.

*[iii.]***ii.*** Insurers shall employ at least one SIU investigator *[per claim office and one additional SIU investigator]* for each 30,000 ***New Jersey Automobile*** policies serviced *[by that office]*.

2. In addition to actually performing investigations, the duties of an SIU investigator shall include, but not be limited to, the following:

i. Providing liaison with the IFD and law enforcement personnel;

ii. Providing in-service training to claims personnel;

iii. Maintaining a data base on fraudulent claims;

iv. Informing insurance underwriters of ineligible risks by reason of prior fradulent activities;

v. Identifying persons and organizations that are involved in suspicious claim activity; and

vi. Initiating civil or criminal actions based on their investigations as authorized by the insurer.

3. An SIU investigator shall be qualified by education and/or experience, which shall include either a college degree and one to three years of insurance claim investigation experience or five years of law enforcement investigation experience involving economic crimes.

(b) Except for insurers which insure less than 1,000 New Jersey automobiles, the plan shall provide fraud education for claims personnel which shall contain a detailed and comprehensive program of insurance fraud awareness and education to prepare claims personnel for fraud detection.

1. The program shall consist of formal, specialized training for adjustors, claims processors and investigators.

2. Training shall be provided in the following specialties: automobile theft investigations, automobile property damage and fire investigations, personal injury protection investigations, and bodily injury liability claim investigation.

(c) Except for insurers which insure less than 1,000 New Jersey automobiles, the Plan shall provide a Fraud Detection Procedures Manual and disseminate it to all claims personnel for the handling of suspicious automobile insurance claims. The Fraud Detection and Procedures Manual shall include, at a minimum, the following:

1. Information for claims personnel and SIU investigators regarding general investigation guidelines; unfair claims practices; conducting interviews; report writing; information disclosure; law enforcement relations; and the New Jersey Fraud Prevention Act;

2. The process to be employed when a suspicious claim is identified;

3. The "fraud profiles" or indicators for automobile theft, automobile physical damage and bodily injury claims fraud;

4. The duties and functions of the SIU;

5. The procedure for referral of a claim to the SIU; and

6. The post-referral procedure for communication between the claims unit and the SIU.

(d) The plan shall provide for underwriting investigations to verify that the insured is an eligible person and is properly rated within 60 days of receipt of the application. These underwriting investigations shall verify the insured's residency *[and driving record, independent of the information]* provided by the insured on his or her application for insurance. The plan may provide that these investigations are generally done "in-house" by telephone and by using information from the New Jersey Division of Motor Vehicle Services (or similar agencies in other states) and prior insurers.

[1. In the event an insured is found not to be an eligible person he or she shall be notified of the cancellation of coverage within 60 days, in accordance with Department administrative rules, N.J.A.C. 11:3-19, Standard/Nonstandard Rating Plans and N.J.A.C. 11:3-35, Private Passenger Automobile Insurance Underwriting Rules.]

*[2.]***1.*** The *[plan]* ***Plan*** shall provide that the insurer shall notify the IFD of an ineligible insured *[within 30 days of discovery]*

based on residency pursuant to N.J.S.A. 17:33A-9a of the Fraud Prevention Act.

[(e) The plan shall set forth the underwriting rules an insurer uses to accept or reject new and renewal business.]

*[(f)]****(e)*** The plan shall provide that all suspicious claims be referred to the IFD as soon as practical on the prescribed reporting form (as set forth in Appendix A, incorporated herein by reference), and thereafter cooperate with the IFD investigation. The IFD will assist insurers by providing necessary information, such as fraud profiles or indicators.

*[(g)]****(f)*** The insurer shall permit the IFD access to its offices upon reasonable notice and at reasonable hours to conduct on site review of the insurer's compliance with its fraud prevention plan.

*[(h)]****(g)*** The plan may include such other items as the insurer may wish to provide.

11:16-4.5 Record retention

(a) Insurers shall maintain up-to-date and accurate records on their fraud and theft prevention/detection plan, which shall at minimum include those necessary to prepare the report required in (b) below.

(b) *[Insurers]* ***By April 1, insurers*** shall file *[a]* ***their annual*** report ***for the prior calendar year*** with the Commissioner *[annually for each calendar year]* beginning January 1, *[1992]* ***1993***. ***For the 1991 calendar year insurers are permitted to submit their reports by June 1, 1992.*** Such report shall include:

1. The number of claims processed for the proceeding calendar year;
2. The number of suspected fraudulent claims referred to the SIU unit;
3. The number of claims denied for fraud (based on a SIU investigation);
4. The dollar amount spent implementing a fraud prevention plan;
5. The dollar amount of claims denied for fraud ***(based on a SIU investigation)***; and
6. The dollar amount of restitution obtained as the result of successful fraud investigations.

(c) The report required by (b) above shall be sent to the following address:

New Jersey Department of Insurance
Division of Fraud Prevention
CN-324
Trenton, NJ 08625-0324

11:16-4.6 Approval and filing of fraud and theft prevention/ detection plans

(a) An insurer's fraud and theft prevention/detection plan shall be deemed approved by the Commissioner if not affirmatively approved or disapproved by the Commissioner within 90 days of the date of filing.

(b) During the 90 day approval period, the Commissioner may request such amendments to the Plan as he or she deems necessary.

(c) An insurer may submit amendments to its plan. Any amendments to a plan filed with the Commissioner shall be deemed approved by the Commissioner if not affirmatively approved or disapproved within 90 days of the date of filing.

11:16-4.7 Penalties

Failure to comply with the provisions of this subchapter shall subject the insurer to penalties as provided by N.J.S.A. 17:33B-46c.

APPENDIX A

IFD Case # _____

State of New Jersey
Insurance Fraud Division
CN 324
Trenton, New Jersey 08625

SIU Yes ____ No ____

JUA Yes ____ No ____

Date Reported: _____ Company: _____ NAIC # _____

Contact Person: _____ Address: _____

Phone #: _____ City/State/Zip: _____

Claim # D/L Amount or Reserve STATUS Pend Denied Paid Date:

AUTO TYPE: AUTO THEFT PROP. DAMAGE PIP COLL. COMP. MISC.

TYPE OF CLAIM: _____

HOMEOWNERS TYPE: COMMERCIAL TYPE: LIFE & HEALTH TYPE: OTHER TYPE:

Location of Incident: Loc. of 1st Notification: i.e. Claims Office Agt.

Name of Insured(s) Address City/State Phone

Subject Name Relationship to Insured(s) i.e., doctor, lawyer, claimant, etc. Phone

Address DOB Employer

City/State/Zip D/L #-State SS #

Name Phone

Address DOB Employer

City/State/Zip D/L #-State SS #

Reasons for Suspicions/Describe Facts identify violations of NJ Insurance Fraud Prevention Act (MUST BE COMPLETED)

Vehicle Year Make Model Color Reg. # State Vin. #

(1)

(2)

Referral to any other agency i.e. law enforcement, NATB, Professional Boards, etc.

Name Date of Referral Phone #

REMARKS:

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Automobile Insurance
Appeals from Denial of Automobile Insurance
Adopted New Rules: N.J.A.C. 11:3-33 and 11:17A-1.7.
Adopted Amendment: N.J.A.C. 11:17A-1.2

Proposed: February 18, 1992 at 24 N.J.R. 546(a).
Adopted: March 30, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: March 30, 1992 as R.1992 d.192, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:33B-13 through 18; 17:33B-21; 17:1C-6(e).

Effective Date: April 20, 1992.
Expiration Date: January 4, 1996, N.J.A.C. 11:3,
January 2, 1995, N.J.A.C. 11:17A.

Summary of Public Comments and Agency Responses:

The reproposed amendments and new rules were published on February 18, 1992. During the comment period, which closed on March 19, 1992, nine public comments were submitted by insurance companies (Allstate Insurance Company, New Jersey Manufacturers Insurance Company, The Prudential Property and Casualty Insurance Company of New Jersey, Selective Insurance Company of America and State Farm Insurance Companies), an insurance trade association (The Alliance of American Insurers), producer trade associations (Independent Insurance Agents of New Jersey and Professional Insurance Agents of New Jersey) and the National Motorists Association.

COMMENT: A number of comments which were received in conjunction with the original proposal of the new rules and amendments were either reiterated during the recent comment period or resubmitted with regard to the following sections: N.J.A.C. 11:17A-1.2, 11:17A-1.7(b), 11:3-33.5, 11:3-33.8.

RESPONSE: The comments were fully considered and addressed when initially submitted and the responses thereto are incorporated herein by reference. See 24 N.J.R. 546(a), February 18, 1992 New Jersey Register.

COMMENT: Several commenters suggested that the definition of declination at N.J.A.C. 11:17A-1.2 be amended as follows: "Refusal by an insurance agent to submit an application on behalf of **an eligible** person . . ."

RESPONSE: The Department disagrees with the recommendation. Although such a definition would be consistent with N.J.S.A. 17:33B-13b, for the purpose of these rules the definition of declination cannot incorporate a reference to an "eligible person." An adjudication of whether an applicant satisfies the requirements of an "eligible person" entitled to coverage pursuant to N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4 can only be made after an applicant has been wrongfully denied coverage. To amend the definition of declination as suggested, would presuppose the status of an applicant which is the subject to be resolved through the process provided in these rules. The provisions of N.J.A.C. 11:3-33.2 have, therefore, also been amended to be consistent with the provisions of N.J.A.C. 11:17A-1.2.

COMMENT: One commenter suggested that the Department clarify its position regarding the applicability of the appeal process to nonrenewals and endorsements and to amend the appendices to reflect all such clarifications.

RESPONSE: The appeal process provided by these rules applies to both nonrenewals and endorsements where the denial of coverage is based upon a determination of "eligible person." Therefore, the applicable appeal forms must be provided to any individual who is denied either a renewal or an endorsement on that basis. N.J.A.C. 11:3-33.4(c) has been amended upon adoption to provide this clarification and to simplify the appeal process by including appeal documents with the notice of nonrenewal.

COMMENT: Several commenters questioned the applicability of these rules to direct writers of insurance or insurers who use exclusive or independent agents. The commenters noted the provisions of N.J.A.C. 11:17A-1.7 which would require company employees of direct writers to be licensed producers. As such, they would be required to provide quotations for higher priced policies issued by an affiliate company in addition to their company's own rates.

RESPONSE: N.J.S.A. 17:33B-18a(1) does not provide exemptions to licensed producers who are employed by companies which are direct writers of insurance coverage. Therefore, applicants must be provided with quotations from any insurer or affiliate, for which the applicant qualifies, pursuant to the insurer's underwriting rules.

COMMENT: One commenter requested a clearer definition of the term "brokerage relationship" appearing at N.J.A.C. 11:17A-1.7(a).

RESPONSE: The term brokerage relationship has been adopted from the provisions of N.J.S.A. 17:33B-13. The Department interprets the term to have its plain meaning. Thus, a brokerage relationship implies a relationship between an insurer and a producer who is not an agent of the insurer, but who regularly places business with the insurer or provides quotations for coverage from that insurer.

COMMENT: One commenter suggested that N.J.A.C. 11:17A-1.7(a) should be amended to take into consideration the seven-day time period for securing an inspection after the effective date of the coverage granted in N.J.A.C. 11:3-36.

RESPONSE: The seven-day deferral period is incorporated into N.J.A.C. 11:17A-1.7(a) by specific reference to N.J.A.C. 11:3-36.

COMMENT: One commenter noted that, in the proposal, the Department's response to a comment relating to N.J.A.C. 11:17A-1.7(a)2 could be interpreted as placing an affirmative duty on the insurer to tell an applicant which insurance was best, rather than having the applicant make that determination based on his or her own needs and finances. The commenter feared that placing such a burden on the producer/insurer would lead to a recommendation for the most expensive coverage available. The commenter requested clarification from the Department to forestall such a result.

RESPONSE: The Department expects the producer to explain any differences in coverages and premium charges so the consumer can make an informed choice as to coverage. The rule is intended to prevent producers from systematically and unnecessarily placing risks with the same insurer or avoiding certain other insurers. Nothing in the rule requires the producer to recommend the "best" insurance.

COMMENT: One commenter expressed a concern with the requirement of N.J.A.C. 11:17A-1.7(a)2, that applicants be provided with quotations "before application for coverage with an insurer is made." The data required to generate a quotation would be the same needed for a formal application. The commenter suggested that a quotation provided without the relevant data would be confusing and of little use to the applicant and, therefore, recommended that the word "before" be deleted from the rule.

RESPONSE: The purpose of the section is to provide a person requesting coverage with sufficient information, including an approximate premium cost, prior to binding coverage, so the applicant can make an informed choice based on cost and coverage. Having the required data on hand at the time a quotation is given may serve to speed up the formal written application process.

COMMENT: One commenter suggested that N.J.S.A. 11:17A-1.7 should be clarified to indicate that there is no prohibition against a licensed producer representing a multi-line company or insurer group for some lines (for example, commercial) but not others (for example, personal). It claimed that the broad definition of "insurer" coupled with the duty imposed by regulation, implies that an agent must provide quotations for any company the agent represents, whether or not the agent's contract involves the writing of automobile insurance for that insurer. It, therefore, proposed the following clarification: "Provide each eligible person seeking automobile insurance with premium quotations for the forms or types of coverage which are offered by all insurers represented by the agent [or broker] **for private passenger automobile insurance** or with [whom] **which** the [agent or] broker places **private passenger automobile** risks".

The Department should clarify whether its intention is to require that all agents must have the authority to write coverage for all insurers or insurer groups with whom they have agency contracts.

RESPONSE: It is not the Department's intent to require quotes from producers who have no authority to write personal private passenger automobile insurance. The Department, therefore, adopts the clarification with some minor modifications.

COMMENT: One commenter suggested that N.J.A.C. 11:17A-1.7(a)2 should be amended to include that the agent or broker can require an applicant to demonstrate eligibility by furnishing a motor vehicle report and that the eligible person be required to complete a Coverage Selection Form or the equivalent.

RESPONSE: The Department declines to adopt this recommendation as it would add a new requirement to the rule and it is beyond the scope of the proposal.

COMMENT: One commenter suggested that oral quotations may be confusing to an applicant without a written record and, therefore, suggested that N.J.A.C. 11:17A-1.7(a)2 permit oral quotations rather than mandate that they be offered upon request.

RESPONSE: The Department is reluctant to impose a requirement that written quotations be provided in response to oral requests. The intent of the rule is to permit oral quotations in response to oral requests. The rule is, therefore, amended accordingly to clarify this intent.

COMMENT: One commenter noted that N.J.A.C. 11:17A-1.7(a)2 fails to recognize that not all eligible persons will be entitled to coverage. It would, therefore, be pointless to provide them with a quote.

RESPONSE: A determination of eligibility cannot necessarily be made at the time a quotation is requested. It is, therefore, not necessarily pointless to provide a quotation at that time. The Department notes that the definition of declination includes both a "[r]efusal by an insurance agent to submit an application on behalf of an applicant ..." and also the refusal, upon the request of an applicant, to provide "an application form or other means of making an application or request for automobile insurance coverage ...." N.J.A.C. 11:17A-1.2 and 11:3-33.2. Any refusal which is considered a declination, under the law, triggers an individual's right to appeal same.

COMMENT: One commenter suggested that an agent or broker be held harmless from liability to the insured as the result of any problems which may arise based on the advice he renders regarding an applicant's selection of an insurer.

RESPONSE: Such a suggestion is beyond the scope of these rules.

COMMENT: One commenter suggested amending N.J.A.C. 11:17A-1.7(a)4 to require that the insurers provide a declination in writing to the agent, so the agent is not responsible for memorializing the insurer's intent. The underwriting judgment is generally made by the insurer and the agent should, therefore, be shielded from the possibility of passing on information to an insured which was misunderstood. In addition, the commenter suggested amendatory language which would indemnify the agent or insurer for furnishing an applicant with reasons for the declination.

RESPONSE: The rule permits either the producer or the insurer to provide a declination to an applicant. It is between the producer and the insurer to assign such responsibility. The Department will not, within the confines of this rule, make such a determination.

COMMENT: One commenter suggested that producers be permitted to charge fees to offset the enormous costs that will be generated by the requirements that they provide multiple quotations and written declinations to applicants and that they respond to consumer complaints. They proposed the following new subsection to N.J.A.C. 11:17A-1.7:

(d) Notwithstanding the provisions of N.J.A.C. 11:17B-3.1, an insurance agent may charge a fee for providing the premium quotations required pursuant to N.J.A.C. 11:17A-1.7(a)(2), subject to the limitations, as to the amount of such fees set forth in N.J.A.C. 11:17B-3.2.

RESPONSE: The Department disagrees with this suggestion. The cost of quoting prices is a cost of doing business. Producers are compensated by the commissions they earn.

COMMENT: One commenter requested a clarification of the correct procedures for dealing with an underwriting denial.

RESPONSE: To the extent that a denial does not relate to whether an applicant is an eligible person, it is beyond the scope of these rules. Such a denial would, however, have to be consistent with the insurer's underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35.

COMMENT: One commenter noted that the application of the 10 percent rule in Appendix B, N.J.A.C. 11:3-8.4(a)2, and the definition of "declination" at N.J.A.C. 11:3-33.2 is not used uniformly. It, therefore, suggested that the language should track uniformly. It also encouraged the Department to review and reconsider the concept of the "10 percent rule." The Department should also clarify the criteria which will be used to determine whether a driver usually accounts for 10 percent or more of the use of the vehicle.

RESPONSE: The rules have been amended to read uniformly. The Department expects to use the mileage driven to determine the percent usage of the vehicle. A reconsideration of the "10 percent rule" is beyond the scope of these rules.

COMMENT: Two commenters noted that the retroactive coverage required by N.J.A.C. 11:3-33.6(d) presents the potential for fraud. One commenter suggested that prosecution of the appeal by an applicant be conditional upon showing proof of coverage. The second commenter suggested that insurers should, therefore, be able to make coverage contingent upon a strong certification that no losses took place between the proposed policy inception date and the tender of payment for the full term of the policy.

RESPONSE: Appendices A and B recognize an applicant's obligation to obtain coverage during the pendency of an appeal. The Department is unwilling, at this time, to require proof of insurance as a condition for filing an appeal. It has, however, modified the remedy provided when the applicant has been uninsured in order to avoid the dangers described by the commenter.

COMMENT: One commenter suggested that in order to avoid wasteful, duplicative auto insurance, an insurer should be required to offer coverage effective on the date of the declination or the date the applicant has cancelled his or her other automobile insurance, whichever is later. The commenter proposed the following amendment to N.J.A.C. 11:3-33.6(d):

"... shall offer to the applicant requested coverage effective on **the later of** the date of the declination **or the date the applicant cancels his or her other auto insurance coverage, if any.**"

RESPONSE: The Department declines to make the recommended change. The Department anticipates that, in most cases, the applicant will have been insured in the residual market at higher rates. If the applicant is successful on appeal, the residual market coverage may be cancelled and a refund provided if the retroactive offer of coverage is accepted.

COMMENT: Several commenters again claimed that the penalty provisions at N.J.A.C. 11:3-38.8 are unduly harsh in light of the absence, in the rule, of any mention that mitigating circumstances will be considered for unwillful violations.

RESPONSE: The Department reiterates that the penalties provided in the rule are "up to" the amounts stated therein. This indicates that the Commissioner will consider the circumstances surrounding any violation.

COMMENT: One commenter noted that Appendix A should be amended to clarify that the appeal process has been established for only those persons who believe they have been wrongfully denied automobile insurance. Otherwise, it may encourage the filing of appeals on all denials whether or not the applicant believes they are warranted.

RESPONSE: The Department agrees with this recommendation and adopts the change.

COMMENT: One commenter suggested that Appendix B should be amended to make the insured's statement that he or she has coverage in force more prominent and a separate item. Moreover, the applicant should be required to certify that coverage is in force and should provide adequate information upon which a verification of the coverage could be made.

RESPONSE: The Department has noted the significance of this section by including reference to it in bolder print immediately above the signature line. As stated above, the Department is not willing, at this time, to require proof of insurance as a condition of prosecuting an appeal, because the vehicle in question may remain unregistered and not driven, in which case the applicant may have chosen not to obtain insurance coverage.

COMMENT: Several commenters noted that there would be increased costs involved in implementing these rules and also suggested that sufficient time, at least 60 days, be given before imposing any new requirements to print a final version of any required notices and to have sufficient time to supplement necessary computer programs, revise procedures and train employees.

RESPONSE: These rules shall apply to declinations made on or after April 1, 1992, whether or not an insurer has finalized the required notices and forms. Insurers are therefore urged to finalize the necessary items as quickly as possible.

COMMENT: One commenter suggested that, for purposes of cost effectiveness, the notification of appeal process and the copy of the letter and appeal form set forth in the Appendix hereto be included in the Buyer's Guide which is available to all applicants and renewal policyholders.

RESPONSE: Individuals who would be declined coverage may not be provided with a Buyer's Guide and would therefore not receive the proper notices or forms or may not take note of them. Such a practice would nullify the entire purpose of these rules. The Department will, however, consider amending the Buyer's Guide at a future time to include these items.

COMMENT: A number of commenters have reiterated their concerns that the 90-day time period, in which to file an appeal, is too long a period of time.

RESPONSE: The Department believes that, while the public becomes acquainted with its rights pursuant to N.J.S.A. 17:33B-15, during this introductory period of these new provisions, 90 days is an appropriate period of time in which to file an appeal. In reviewing the implementation of these rules, the Department may, in the future, consider a shorter period of time in which to file an appeal, if the practice so warrants.

Summary of Agency-Initiated Changes

As noted above, the definitions of "declination" in N.J.A.C. 11:17A-1.2 and 11:3-33.2 were amended so as to be identical. Other minor editorial changes, in addition to those commented upon, were also made to assure that the definitions were identical. In addition, the word "applicant" was substituted for the word "person" here and elsewhere because it is a more descriptive term, is defined in N.J.A.C. 11:3-33.2 and includes more than one person (that is, a husband and wife) who apply for insurance together.

Other editorial, non-substantive changes, to improve clarity are made at N.J.A.C. 11:3-33.1, 33.2, 33.4, 33.5, 33.6 and 33.7. The correct statutory citation is provided at N.J.A.C. 11:3-33.8.

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

11:17A-1.2 Definitions

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

...

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

...

"Declination"***, "denied" or "denial"**** means:

1. Refusal by an insurance agent to submit an application on behalf of an applicant to any of the insurers represented by the agent;

2. Refusal by an insurer to issue an automobile insurance policy to *[a person]* ***an applicant*** upon receipt of an application for automobile insurance;

3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by a person, including the refusal to make requested changes to an existing policy that are available to other insureds with that *[company]* ***insurer***, or the offer to insure at a rate applicable to other than an eligible person;

4. The refusal by an insurer or agent to provide, upon the request of *[a person]* ***an applicant***, an application form or other means of making an application or request for automobile insurance coverage;

5. The refusal by an insurer to renew a policy of automobile insurance based on the eligible person status***, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle pursuant to N.J.A.C. 11:3-8.4(a)2 or that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5***; or

6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium.

...

"Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34. ***4***.

...

"Personal private passenger automobile insurance" or "automobile insurance" means direct insurance on private passenger automobiles issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

...

11:17A-1.7 Personal private passenger automobile insurance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting personal private passenger automobile insurance, shall:

1. Not attempt to channel an eligible person away from an insurer or insurance coverage so as to avoid the agent's or broker's obligation to submit an application or an insurer's obligation to accept an eligible person;

2. Provide each *[eligible person]* ***applicant*** seeking automobile insurance with premium quotations for the forms or types of coverage requested by the *[eligible person]* ***applicant***, which are offered by all insurers represented by the agent or broker ***for personal private passenger automobile insurance or*** with *[whom]* ***which*** the agent or broker places ***personal private passenger automobile*** risks. *[The agent or broker shall provide quotations to the eligible person orally if the request was oral, or in writing if the request was written, before application for coverage with an insurer is made]* ***If the request for a quotation was made orally, the agent or broker may provide the applicant with an oral quotation; but shall provide the applicant at minimum with information about rate levels in the territory***;

3. Upon request, submit an application of an eligible person for automobile insurance to the insurer selected by the *[eligible person]* ***applicant***;

4. Within 10 working days after receiving a declination (see N.J.A.C. 11:3-33) from an insurer to which a written application has been submitted, so advise the applicant in writing***,*** unless the written declination was sent by the insurer to the applicant or the insured;

5. Where no written application has been made prior to declination, the agent or broker shall, if so requested by the applicant within 90 days ***from the date of denial***, provide the applicant with a written explanation of the declination within 10 ***working*** days of the request. Such communication shall, when applicable, include the reasons why ***the*** coverage offered is with less favorable terms or conditions than those requested; and

6. Not bind coverage for automobile physical damage perils prior to inspection of the automobile by the insurer when the insurer requires such inspection pursuant to the provisions of N.J.A.C. 11:3-36.

(b) For the purpose of this section the Commissioner of Insurance may impose a civil penalty in an amount of up to $2,000 for the first violation and up to $5,000 for the second and each subsequent violation and any other penalty provided by law.

Recodify existing 11:17A-1.7 and 1.8 as 1.8 and 1.9 (No change in text from proposal.)

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

11:3-33.1 Purpose; scope

This subchapter sets forth an appeal procedure for a person who has been either denied personal private passenger automobile insurance or nonrenewed in the voluntary market by an insurer on the basis that they are not an eligible person as defined in N.J.A.C. 11:3-34.4. This subchapter applies to such persons***,*** *[and]* agents and insurers *[who must]* ***required to*** write ***personal*** private passenger automobile insurance pursuant to ***State*** statutes and rules.

11:3-33.2 Definitions

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

"Applicant" means an insured or prospective insured who has made a request for personal private passenger automobile insurance on either a first time or renewal basis.

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Cancellation" means termination of insurance during the policy term pursuant to the provisions of N.J.S.A. 17:29C-7.

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

"Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decision, determination, or other, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

"Declination," "denied" or "denial" means:

1. Refusal by an insurance agent to submit an application on behalf of an *[eligible person]* applicant to any of the insurers represented by the agent;

2. Refusal by an insurer to issue an automobile insurance policy to an *[eligible person]* ***applicant*** upon receipt of an application for automobile insurance;

3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by an *[eligible person]* ***applicant***, including the refusal to make requested changes to an existing policy that are available to other insureds with that insurer, or the offer to insure at a rate applicable to other than eligible persons;

4. The refusal by an insurer or agent to provide, upon the request of an *[eligible person]* ***applicant***, an application form or other means of making an application or request for automobile insurance coverage.

5. The refusal by an insurer to renew a policy of ***automobile*** insurance based on eligible person status***,*** unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the ***subject*** vehicle pursuant ***to*** N.J.A.C. 11:3-8.4(a)2 or that ***the*** eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5; or

6. The cancellation of an automobile insurance policy *[of an eligible person]* by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium.

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

"Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34.4.

"Insurance agent" or "agent" means an insurance agent as defined at N.J.S.A. 17:22A-2 and shall also include an "insurance broker" as defined at N.J.S.A. 17:22A-2 who has a brokerage relationship with an insurer.

"Insurer" means any person transacting the business of personal private passenger automobile insurance with a duty to write personal private passenger automobile insurance in New Jersey for an eligible person, pursuant to N.J.S.A. 17:33B-15 and rules promulgated pursuant thereto by the Commissioner.

"Person" means an individual, association, corporation, partnership or other entity.

"Personal private passenger automobile insurance" or "automobile insurance" means direct insurance on private passenger automobiles issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

"Voluntary market" means automobile insurance written other than through a plan of operation established pursuant to N.J.S.A. 17:29B-1 et seq., 17:30E-1 et seq. or 17:33B-11.

"Working day" means any day except Saturday, Sunday or New Jersey State legal holidays.

11:3-33.3 Right to appeal

Any eligible person who has been denied automobile insurance in the voluntary market by an insurer shall be entitled to appeal the denial in the manner provided by this subchapter.

11:3-33.4 Duties of insurer or insurance agent

(a) If the application or request for coverage was made in writing, the insurer or agent shall provide the applicant with an explanation of the reasons for the denial in writing. If the application or request for coverage was made orally, the insurer or agent may provide the applicant with an oral explanation instead of a written explanation *[and]* ***but*** shall provide a written explanation if the applicant requests a written explanation within 90 days of the oral denial.

(b) *[An insurer or agent, upon denying automobile insurance in the voluntary market, shall, within 10 working days of its determination when written application is made, or within 10 working days of a request for a written determination when oral application is made, notify the applicant, in writing, of each specific reason for the denial.]* ***Within 10 working days of a determination to deny automobile insurance in the voluntary market (from either a written application or from the date that an oral request is made for a written determination), an insurer or agent shall notify an applicant, in writing, of each specific reason for the denial.*** The reasons provided by an insurer or insurance agent shall be comprehensive and written in plain language. The reasons shall identify the specific basis *[on]* ***for*** which the applicant fails to qualify as an "eligible person."

(c) An insurer or agent who has issued a written denial shall notify an applicant of his ***or her*** right to appeal ***the denial*** to the Department***,*** pursuant to the provisions of this subchapter. That insurer or agent shall also advise the applicant *[that they have an]* ***of his or her*** obligation to obtain ***insurance*** coverage as a condition of operation of the vehicle. As part of this notification, an insurer or agent shall provide an applicant with the letter and appeal form which comprise *[the]* Appendices A and B to this subchapter set forth and incorporated *[into]* ***as part of*** this rule. For nonrenewals, the insurer shall provide the notice set forth in N.J.A.C. 11:3-8.3 *[in lieu of any other notice]* ***together with the letter and appeal form when nonrenewing an applicant pursuant to N.J.A.C. 11:3-8.4***.

11:3-33.5 Procedure for filing an appeal

(a) Appeals from a denial of automobile insurance in the voluntary market shall be submitted to the Department, on a form prescribed by the Department (Appendix B to this subchapter, which is incorporated herein by reference as part of this rule), within 90 days of the date of a written denial from an insurer or insurance agent. *[In addition to the obligation of]* ***Notwithstanding*** an insurer***'s*** or agent***'s obligation*** to provide a person with this form upon a denial of initial coverage (see N.J.A.C. 11:3-33.4(c)), copies *[of this form]* can ***also*** be obtained by contacting the Department by telephone (609) 984-2426*[;]* or by mail at the address below:

Department of Insurance
Division of Enforcement and Consumer Protection
Attn: Auto Insurance Denial
20 West State Street
CN 329
Trenton, New Jersey 08625

(b) The form prescribed by the Department shall be completed and submitted to the address above and shall include, at a minimum, the following information:

1. A copy of the written denial obtained from the insurer or agent pursuant to N.J.S.A. 17:33B-16 and N.J.A.C. 11:3-33.4. When *[a person]* ***an applicant*** receives an oral denial, he or she shall request a written denial as provided by N.J.A.C. 11:3-33.4; and

2. A statement from the *[person]* ***applicant*** who has received a denial of coverage, including supporting documentation, if any, indicating the reasons why the denial is *[incorrect]* ***improper***.

11:3-33.6 Processing appeals

(a) Upon receipt of an appeal submitted in accordance with N.J.A.C. 11:3-33.5, the Department shall send to the insurer *[and/]*or insurance agent ***(the "respondent")*** who provided the written denial, a copy of all pertinent documents which have been submitted by *[the appellant]* ***applicant (the "appellant")***, and shall require a final written *[response]* ***reply from the respondent*** within 30 days of the receipt of these documents.

(b) Upon ***the Department's*** receipt of the *[insurer's response]* ***respondent's reply*** to the appeal, and upon ***a*** review of the papers, the Department shall render its decision on the appeal. The decision shall be in writing and shall set forth the reasons why the denial was appropriate or inappropriate under law. Copies of the Department's decision shall be mailed by certified mail to the appellant and *[to either the insurer or insurance agent, as the case may be]* ***the respondent***. The Department's decision shall also include a written notice explaining the procedures *[for]* ***to*** appeal*[ing]* the decision pursuant to N.J.A.C. 11:3-33.7.

(c) *[The The failure of an insurer or agent]* ***A respondent's failure*** to timely *[respond]* ***reply*** pursuant to (a) above shall result in a decision by the Department based ***solely*** upon the papers submitted *[to the Department]* by the *[applicant and]* ***appellant, together with*** any other information available to the Department at that time, pursuant to this subchapter. *[Such failure by an insurer or agent to timely respond]* ***A respondent's failure to timely reply*** pursuant to (a) above shall *[also]* be ***deemed*** a violation of this subchapter and may result in ***the assessment of*** penalties provided in N.J.A.C. 11:3-33.8.

(d) Upon a determination by the Department that a denial was improper, the insurer shall ***be required to*** offer *[to]* the applicant the requested coverage effective *[on]* ***as of*** the date of the declination. ***The Department may, however, determine to require the insurer to offer coverage effective on a later date upon a finding that the applicant failed to maintain insurance on an automobile as required by N.J.S.A. 39:6B-1.***

11:3-33.7 Contested case hearings; pleadings

(a) An appeal from a decision of the Department made pursuant to N.J.A.C. 11:3-33.6 shall be heard as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The procedure for filing an appeal from the Department's decision *[in]* ***pursuant to*** N.J.A.C. 11:3-33.6***(c)*** shall be as follows:

1. Upon receipt of *[the decision of]* the Department***'s decision***, the insurer*[,]* ***or*** agent ***denying coverage*** or *[person]* ***the applicant*** denied automobile insurance ***coverage*** shall, within 20 calendar days of receipt of the decision, file with the Department a written request *[for a contested case hearing.]* ***that the matter be heard as a contested case. Failure to file an appeal within the time required by this section shall result in the Department's decision becoming the final agency action. The written request for a hearing as a contested case*** *[If there is a failure to timely file an appeal as required by this section the Department's decision shall remain the final agency action pursuant to N.J.A.C. 11:3-33.6. The request]* shall contain the following information.

i. The name and address of the appellant;

ii. The Department's case or file number;

iii. If the appellant is the person denied insurance, the name and address of the insurance company and/or insurance agent which issued the denial of automobile insurance. If the appellant is the insurance company, the name and address of the insurance agent who issued the denial of coverage, if any, and the name and address of the person to whom automobile insurance was denied;

iv. A ***detailed*** statement explaining*[, in detail,]* the reasons why the Department's determination is *[erroneous, including the filing therewith of]* ***improper together with*** supporting documentation, if any; and

v. A statement as to whether the appellant is represented by legal counsel, or another person pursuant to N.J.A.C. 1:1-5.1, and the name, address and telephone number of said person.

(c) Upon ***the Department's timely*** receipt of the items set forth in (b) above, *[within the time provided, the Department]* ***it*** shall ***simultaneously*** send a copy of the documents to the opposing party and shall transmit the matter to the Office of Administrative Law for hearing as a contested case.

11:3-33.8 Penalties

Any insurer or insurance producer who violates any provision of this subchapter shall be subject to the penalties provided by law, including, but not limited to, the suspension or revocation of a certificate of authority or licensure and a civil penalty in an amount of up to $2,000 for the first violation and *[of]* up to $5,000 for the second and each subsequent violation, pursuant to N.J.S.A. *[17:33-2]* ***17:33B-15 and 21***.

11:3-33.9 Compliance

(a) Pursuant to N.J.S.A. 39:6A-3 and 17:33B-15, compliance with the provisions of this subchapter shall be effected in the following manner:

1. Appeals from denials concerning new policies on or after April 1, 1992 may be filed in the manner prescribed by this subchapter; and

2. Appeals from denials concerning policy renewals which take effect on or after April 1, 1992, may be filed in the manner prescribed by this subchapter.

APPENDIX A

Dear Applicant,

The "Fair Automobile Insurance Reform Act of 1990" (Act) provides that on or after April 1, 1992, every insurer, either by one or more separate rating plans, shall provide automobile insurance for eligible persons.

Therefore, an insurer may deny coverage only to those applicants who are not eligible. New Jersey law provides that any person who owns or has registered an automobile in New Jersey or a person who has a valid New Jersey drivers license is eligible except a person:

1. Who, in the last three years, has been convicted of driving under the influence or refusing a chemical test in New Jersey or elsewhere;

2. Who, in the last three years, has been convicted of a crime involving an automobile;

3. Whose driving license is suspended or revoked by a court;

4. Who, in the last five years, has been convicted of fraud or intent to defraud involving an insurance claim or application;

5. Who, in the last five years, has been denied payment of an insurance claim in excess of $1,000, if there was evidence of fraud or intent to defraud;

6. Whose automobile insurance policy, in the last two years, was cancelled because of nonpayment of premium or financed premium (unless the entire annual premium for the new coverage is paid in full before issuance or renewal);

7. Who fails to maintain membership in a club, group or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance;

8. Whose driving record, for the last three years, has an accumulation of nine or more eligibility points. (Eligibility points are accumulated as a result of convictions, suspensions, revocations and determination of responsibility for civil infractions in accordance with schedules adopted by the New Jersey Department of Insurance. For example, one at-fault accident has been assigned five eligibility points.)

NOTE: The above description is a simplification of the statutory definition. For a more extensive description, see the New Jersey Administrative Code at N.J.A.C. 11:3-34.***4***.

The Commissioner of Insurance has established an appeal process for persons who have been denied automobile insurance. The procedure for

filing a written appeal can be found in the New Jersey Administrative Code at N.J.A.C. 11:3-33. Most New Jersey public libraries have this material.

To begin the appeal process, you must complete the attached form and mail it, with the necessary documentation, to the address indicated.

WARNING: You must have automobile insurance if you plan to operate and/or register a vehicle during the appeal process. Filing an appeal does not provide you with insurance.

APPENDIX B

NOTE: YOU HAVE 90 DAYS FROM THE DATE ON WHICH A WRITTEN DENIAL OF AUTOMOBILE INSURANCE IS MADE TO FILE THIS APPEAL.

NEW JERSEY DEPARTMENT OF INSURANCE
AUTOMOBILE DECLINATION APPEAL

Your Name: _____

Your Address: _____

_____

Your Telephone Number: (___) _____

Insurance Company and/or Insurance Producer (agent or broker) that declined your application for automobile insurance coverage in the voluntary market (if producer, please provide the name and address):

Company _____

Producer _____

YOU MUST ATTACH A COPY OF THE DECLINATION (If you have not received a written declination from the insurance company or producer, you must request one within 90 days from the date you first applied for insurance.)

BASIS FOR YOUR APPEAL (Please indicate with an "X" those statements or reasons that apply and attach a copy of pertinent documentation supporting your appeal. Such documentation should include a certified motor vehicle driver "abstract", where appropriate, available from the Division of Motor Vehicles, 120 South Stockton Street, CN 142, Trenton, New Jersey 08666. There is a $5.00 fee for each copy of the DMV abstract.)

☐ I have not been convicted of Driving Under the Influence (N.J.S.A. 39:4-50) or of refusing to submit to a chemical test (N.J.S.A. 39:4-50.4(a)), or for a similar offense in another jurisdiction, or of a crime involving an automobile or theft of a motor vehicle.

☐ My driver's license is not suspended or revoked, nor has it been for any 12-month period in the preceding three years.

☐ I have not been convicted of insurance fraud or intent to defraud, or have not had an insurance claim (in excess of $1,000) denied because of evidence of fraud within the five-year period immediately preceding application or renewal.

☐ My auto insurance has not been cancelled for nonpayment of premium within the last two years and I provide proof of payment OR I have had my policy cancelled for nonpayment AND I am able to pay the full annual premium for this policy.

☐ I am qualified as a member of a group or organization in which membership is required in order to obtain this insurance policy.

☐ I have fewer eligibility points accumulated than alleged in the declination letter as evidenced by the attached copy of my driving record.

☐ The accident record indicated in the declination letter is wrong as evidenced by the attached.

☐ No other person who is a member of the same household and who will drive ***the subject vehicle for 10 percent or*** more *[than 10 percent]* of the time is an ineligible person.

☐ Other (Specify and provide proof, if appropriate).

CERTIFICATION OF APPEAL

The information contained in this appeal is true and complete to the best of my knowledge and belief.

I UNDERSTAND THAT FILING THIS APPEAL DOES NOT PROVIDE ME WITH AUTOMOBILE INSURANCE. IF MY AUTO IS REGISTERED IN NEW JERSEY OR IS BEING DRIVEN, I HAVE OBTAINED OTHER AUTO INSURANCE.

Your Signature _____ Date _____

MAIL THIS COMPLETED FORM AND NECESSARY DOCUMENTATION TO:

New Jersey Department of Insurance
Division of Enforcement and Consumer Protection
CN 329
Trenton, New Jersey 08625
Attn: Auto Insurance Denial

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway
Garden State Arts Center
Definitions; Prohibitions; Seating; Ticket Resales; Readmission; Merchandise Sales
Adopted Amendments: N.J.A.C. 19:8-1.1 and 2.11

Proposed: February 18, 1992 at 24 N.J.R. 557(a).
Adopted: March 20, 1992 by the New Jersey Highway Authority, David W. Davis, Executive Director.
Filed: March 24, 1992 as R.1992 d.178, **without change.**

Authority: N.J.S.A. 27:12B-5(j) and 27:12B-24.

Effective Date: April 20, 1992.
Operative Date: May 1, 1992.
Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:8-1.1 Definitions

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

"Amphitheater" means the theater and lawn areas within the confines of the fence which surrounds the theater located at the Garden State Arts Center.

"Arts Center" means the amphitheater, plaza, mall, all roads leading to and from the amphitheater and all parking areas supporting the amphitheater.

...

19:8-2.11 Garden State Arts Center

(a) For events requiring a ticket, no person shall be admitted to the amphitheater without a ticket, including minors. For events requiring a ticket, no person, including a minor, may occupy a reserved seat at the amphitheater unless able to produce a ticket stub for that seat nor occupy lawn space unless able to produce a ticket stub.

(b) No person shall be admitted to the amphitheater unless properly attired. Bare feet are not permitted.

(c) No person shall be admitted to the amphitheater with the following in his or her possession:

1.-2. (No change.)

3. Cameras, video cameras, recording equipment, radios, televisions or other electronic equipment unless specifically authorized by the Authority;

4. Pets.

(d) To effect compliance with (c) above, the Authority shall have the right to inspect any such package, can, bottle, cooler, box, flask, thermos bottle, bag or container of any description in the possession of any persons seeking admission to the amphitheater. Any refusal to permit such inspection shall be grounds to prohibit the admission of any person to the amphitheater.

(e) No person may take or leave their reserved seat when the house lights are out, unless accompanied by an usher.

(f) Ticket resales are prohibited except in accordance with Title 56 of the New Jersey statutes.

(g) After any person has been admitted to the amphitheater, there shall be no departure and readmittance permitted without the approval of the Authority.

(h) No person shall sell any merchandise of any description or kind within the Arts Center without express permission of the Authority.

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway
Emergency Service
Adopted Amendment: N.J.A.C. 19:8-2.12

Proposed: February 18, 1992 at 24 N.J.R. 557(b).
Adopted: March 20, 1992 by the New Jersey Highway Authority, David W. Davis, Executive Director.
Filed: March 24, 1992 as R.1992 d.179, **without change.**

Authority: N.J.S.A. 27:12B-5(j), 27:12B-18 and 27:12B-24.

Effective Date: April 20, 1992.
Operative Date: May 1, 1992.
Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:8-2.12 Emergency service
(a) (No change.)
(b) Rules on road service for all vehicles are as follows:
1. Service charge: 24 hours per day, $15.00;
2.-3. (No change.)
(c) Rules on towing cars and campers up to a registered maximum gross weight of 6,999 lbs. are as follows:
1. Towing charge: $35.00 plus $2.25 per mile or fraction thereof.
(d) Rules on towing trucks and buses (two axles) and cars and campers registered gross weight 7,000 lbs to 14,999 lbs. are as follows:
1. Towing charge: $50.00 plus $2.50 per mile or fraction thereof.
(e) Rules on towing trucks, with or without trailers, and buses (three-axles or more) or with a registered gross weight exceeding 14,999 lbs. are as follows:
1. Towing charge: $85.00 plus $3.00 per mile or fraction thereof.
2. The charge for use of a Land All Trailer (Low Boy) is $110.00 for the first hour, with an additional $55.00 charge for each additional hour used. In addition, there will be a towing charge of $4.50 per mile.
3. The charge for the use of a heavy-duty Under Reach is $200.00 per hour, plus $4.50 per mile or fraction thereof.
(f) (No change.)

(b)

CASINO CONTROL COMMISSION

Notice of Administrative Correction
Administrative Review of Unpaid Fees and Penalties
Disposition of Fee Matters and Penalties
N.J.A.C. 19:42-10.4

Take notice that the Casino Control Commission has discovered a typographic error in the current text of N.J.A.C. 19:42-10.4. In subsection (c), the phrase "or any person" was correctly published in the notice of proposal as "of any person" (see 23 N.J.R. 3249(a)). However, in the notice of adoption (see 24 N.J.R. 298(a)) and subsequently in the Code, the word "of" was misprinted as "or." This error is corrected through this notice, published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus;** deletion indicated in brackets [thus]):

19:42-10.4 Disposition of fee matters and penalties
(a)-(b) (No change.)
(c) At the hearing, the Commission may dismiss all applications, and may suspend all licenses or registrations [or] **of** any person who has failed to pay all required fees or civil penalties owed by that person.

(c)

CASINO CONTROL COMMISSION

Gaming Equipment
Rules of the Games
Blackjack Table; Physical Characteristics
Cards; Number of Decks; Value of Cards
Permissible Additional Wager
Adopted Amendments: N.J.A.C. 19:46-1.10 and 19:47-2.2
Adopted New Rule: N.J.A.C. 19:47-2.17

Proposed: November 4, 1991 at 23 N.J.R. 3251(a).
Adopted: March 18, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: March 20, 1992 as R.1992 d.174, **without change.**

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

Effective Date: April 20, 1992.
Expiration Date: April 28, 1993.

Summary of Public Comment and Agency Response:
COMMENT: The Division of Gaming Enforcement, TropWorld Casino and Entertainment Resort and Resorts International Hotel, Inc. support the new rule and amendments as published.
RESPONSE: Accepted.
COMMENT: Sands Hotel, Casino and Country Club opposes the amendments and new rule since analysis and impact studies on the effect of house advantage have not been completed.
RESPONSE: The Commission rejected this comment for the following reason. The adoption of the amendments and new rule will not negatively impact house advantage in blackjack. Based on statistical data provided by Gaming Concepts, Inc. the average house advantage of this wager is 8.2 percent. Since this wager has a separate house advantage from the standard game of blackjack, the blackjack revenues should be favorably impacted from the offering of this wager.

Full text of the adoption follows.

19:46-1.10 Blackjack table; physical characteristics
(a)-(d) (No change.)
(e) If a casino licensee offers the additional wager authorized by N.J.A.C. 19:47-2.17, the cloth covering the blackjack table shall have designated areas for the placement of the additional wager and the payout odds for the additional wager imprinted thereon.

19:47-2.2 Cards; number of decks; value of cards
(a) (No change.)
(b) The value of the cards contained in each deck shall be as follows:
1.-2. (No change.)
3. An ace shall have a value of:
i. Eleven, unless that value would give a player or the dealer a score in excess of 21, in which case, it shall have a value of one; or
ii. One, if the ace is one of the initial two cards dealt to a player in determination of the additional wager authorized by N.J.A.C. 19:47-2.17; provided, however, that the value of such ace for all other purposes under this subchapter shall be governed by (b)3i above.
(c) (No change.)

19:47-2.17 Permissible additional wager
(a) A casino licensee may, in its discretion, offer to all players at a blackjack table the option to make an additional wager on whether the player's initial two cards shall have a point total either

greater than or less than 13, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3 prior to withdrawing the offer of this option.

(b) Prior to the first card being dealt for each round of play, each player shall make a wager against the dealer as required by N.J.A.C. 19:47-2.3(a) and (d) and shall also indicate whether he or she wishes to make an additional wager that:

1. The point total of the player's initial two cards shall exceed 13, which wager shall win if the point total does exceed 13; or

2. The point total of the player's initial two cards shall be less than 13, which wager shall win if the point total is less than 13.

(c) An additional wager made in accordance with this section shall be lost when the point total of the player's initial two cards equals 13.

(d) All losing additional wagers shall be collected by the dealer immediately after the second card is dealt to each player and prior to any additional cards being dealt to any player at the table.

(e) All winning additional wagers shall be paid at odds of one to one immediately after the second card is dealt to each player and prior to any additional cards being dealt to any player at the table.

(f) An additional wager shall be made by placing gaming chips or plaques on the appropriate area of the blackjack layout except that a verbal wager accompanied by cash may be accepted provided that it is confirmed by the dealer and casino supervisor at the table prior to the first card being dealt to any player and such card is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(g) Any additional wager made pursuant to this section shall not exceed the amount of the blackjack wager made by the player pursuant to N.J.A.C. 19:47-2.3(a) and (d). An additional wager shall have no bearing on any other wager made by the player at the game of blackjack.

(a)

CASINO CONTROL COMMISSION

Temporary Adoption of New Rules and Amendments Accounting and Internal Controls Gaming Equipment Rules of the Games Gaming Schools Pai Gow Poker

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

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-5 and 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments and new rules concerning the game of pai gow poker should be adopted on a permanent basis. Amendments and new rules were proposed in the February 18, 1992 at 24 N.J.R. 569(a). The experiment shall be conducted in accordance with temporary rules which will be posted in each casino participating in the experiment and will also be available from the Commission upon request.

Specifically, the test would allow any casino licensee which wishes to participate in the experiment, and which meets all terms and conditions established by the Commission, to offer the game of pai gow poker to the public beginning after May 3, 1992, on a specific date to be determined by the Commission, which date will be posted in each casino participating in the experiment. The experiment would continue for the maximum period of time authorized by N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission pursuant to the terms of the experiment.

Should the temporary amendments and new rules prove successful, the Commission will permanently adopt them in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

(b)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Adopted New Rule: N.J.A.C. 19:61-2.2

Proposed: November 18, 1991 at 23 N.J.R. 3436(b).
Adopted: March 24, 1992 by Executive Commission on Ehtical Standards, Rita L. Strmensky, Acting Executive Director.
Filed: March 26, 1992 as R.1992 d.180, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:13D-21.

Effective Date: April 20, 1992.
Expiration Date: March 2, 1997.

Summary of Public Comments and Agency Responses:

The Commission received four comment letters concerning N.J.A.C. 19:61-2.2; three of the comments were received after the comment period closed on December 19, 1991. Notwithstanding the lateness of the three comments, the Commission considered all four comment letters. The commenters were: Jan Gabin, Vice-President of the Office of Legal Management, UMDNJ; Albert Price, Ethics Liaison, Department of the Treasury; Jeffrey Stoolman, Ethics Liaison, Department of Transportation; and Alexander P. Waugh, Jr., Assistant and Counsel to the Attorney General.

COMMENT: One commenter addressed the Commission's authority to specify provisions of agency codes of ethics.

RESPONSE: Historically, the Commission's position on this issue has been that routine reporting of outside employment by State employees is warranted by the language of N.J.S.A. 52:13D-23(e)(1) and 23(e)(5).

COMMENT: One commenter suggested that requiring that all agency employees report outside employment would impose a costly burden on the agency. The commenter suggested reporting only by those employees whose responsibilities are at such a level as to make outside employment potentially a violation of a code of ethics.

RESPONSE: The Commission noted that there may be some categories of outside employment that could be exempted from the reporting requirement. The proposed rule has been changed so that each agency will formulate, in its code of ethics, a disclosure procedure that is tailored to the agency's particular needs and problems. This approach mirrors the flexibility that each State agency is able to exercise in the promulgation of its code of ethics under N.J.S.A. 52:13D-23(a). The Commission, under N.J.S.A. 52:13D-23(b), will review each agency's disclosure procedure prior to its becoming effective.

COMMENT: One commenter objected to the annual reporting requirement and suggested that after an initial filing, only updates as necessary should be required. The commenter felt that an annual requirement would be unduly burdensome to the agency.

RESPONSE: The Commission feels that the change to N.J.A.C. 19:61-2.2(a) allowing the agency to formulate its disclosure procedure with respect to its particular needs and problems gives each agency the opportunity to avoid burdensome procedures, subject to the Commission's prior approval.

COMMENT: Two commenters inquired as to whether special State officers and employees would be required to disclose outside employment and/or business interests by the operation of N.J.A.C. 19:61-2.2(a).

RESPONSE: The Commission has not included special State officers and employees in the reporting requirement of N.J.A.C. 19:61-2.2(a).

COMMENT: Three commenters expressed concern that the Commission's staff would be overburdened by the requirement of N.J.A.C. 19:61-2.2(b) that all disclosures of outside employment and/or business interests be forwarded to the Commission for review. The commenters also questioned whether the disclosures would be available for public review after they are forwarded to the Commission.

RESPONSE: The Commission feels that the review requirement of N.J.A.C. 19:61-2.2(b) is in keeping with the Commission's pro-active stance of monitoring the outside employment and business interests of State employees. The Commission also feels that such disclosures should be public documents and will be maintained as such.

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

19:61-2.2 Agency codes of ethics

(a) State agencies shall include in their Codes of Ethics a requirement that *[all]* employees annually disclose outside employment and/or business interests. ***The disclosure procedure shall be formulated by each agency with respect to its particular needs and problems. For example, an agency may find it administratively efficient to exempt disclosure of specific kinds of outside employment (for example, part-time work for businesses not related to the position of employment in the agency).***

(b) All disclosures made in accordance with said Code of Ethics requirements shall be forwarded to the Commission for review.

TRANSPORTATION
(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route U.S. 9 in New Gretna, Burlington County
Adopted Amendment: N.J.A.C. 16:28-1.41

Proposed: February 3, 1992 at 24 N.J.R. 342(a).

Adopted: March 12, 1992, by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: March 17, 1992, as R.1992 d.171, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5 and 6, N.J.S.A. 39:4-98.

Effective Date: April 20, 1992.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received comments from the following residents of New Gretna, New Jersey, concerning the proposal: Marian C. Broome, Carol Calcecano, Edith Clark, Rosanne Fornarotto, Betty Grotts, Ruth McGarvey, William McGarvey, and Joan Zarych.

COMMENT: Several residents asked for a traffic light at the intersection of Route 9 and County Route 679, which is also known as Maple Avenue. They stated that walking in this area, especially for children, is unsafe, and cited the recent death by auto of a local boy on Route 9, the deaths of a number of household pets, and the frequency of serious, and sometimes fatal, traffic accidents.

RESPONSE: The Department is in the process of evaluating the intersection for a traffic signal and will act on the request in the near future.

COMMENT: Several commenters noted that there appear to be no speed controls in the area, where traffic has increased since the casinos opened in Atlantic City. A commenter noted that traffic picks up speed when leaving the Garden State Parkway exit ramp, where the speed limit is 25 miles per hour, and entering Route 9. Several commenters noted the need for more strict enforcement of the traffic rules.

RESPONSE: The enforcement of traffic rules is the province of the police who have jurisdiction over that area, in this case, the New Jersey State Police. The commenters are encouraged to contact the appropriate police officials.

COMMENT: One commenter requested that signs warning motorists to "slow down" be placed on Route 9 in the vicinity of the "old" New Jersey Department of Transportation Maintenance Yard.

RESPONSE: The proper posting of the 35 mile per hour speed limit signs, accompanied by enforcement presence, should bring about a reduction in the motorists' speed through the area without the need to add the requested "slow down" signs.

COMMENT: One commenter requested that speed limit signs with attention-getting blinking lights be installed along Route 9 in New Gretna.

RESPONSE: It is the opinion of the Department's traffic engineers that the proper placement of the 35 mile per hour speed limit signs, accompanied by enforcement presence, should bring about a reduction in the motorists' speed through the area without the need to get the motorists' attention via blinking lights on a sign.

COMMENT: Several commenters stated that lowering the speed limit to 35 miles per hour, as proposed by the Department, is not sufficient. The commenters cited New Gretna's status as a "village," the heavy traffic, the location of all amenities within walking distance, and the need for restriction on the activities of children in the area due to the dangerous traffic.

RESPONSE: The posting of a speed limit lower than 35 miles per hour in the New Gretna area of Route 9 would not, in the opinion of the Department's traffic engineers, be appropriate. The compliance of all motorists with the posted speed limit of 35 miles per hour should enhance safety in this area.

COMMENT: Several commenters noted that the speed limit on Route 679, Maple Avenue, should be reduced.

RESPONSE: The County of Burlington has jurisdiction over Route 679. James L. Quinn, County Engineer, has stated that a reduction of the speed limit to 35 miles per hour on a specified portion of Route 679 has been submitted to the Department for the Commissioner's approval.

Summary of Agency-Initiated Changes:

The Department notes that a reference in the rule to Route 444 is incorrect, since that highway designation no longer exists. Therefore, any reference to it has been removed.

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

16:28-1.41 Route U.S. 9

(a) (No change.)

(b) The rate of speed designated for State highway Route U.S. 9 *[including parts of Route 444]* (and excluding Garden State Parkway Authority sections) described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. (No change.)

2. 35 miles per hour to Green Bush Road (Co. Rd. 654) in Bass River Township, Burlington County (mileposts 56.00 to 57.28); thence.

3.-32. (No change.)

(b)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING
BUREAU OF ACCESS AND DEVELOPMENT IMPACT ANALYSIS
State Highway Access Management Code Definitions; Access Classification; Access Standards; Permits; Procedure for Changes in Classification; Access Management Plans; Designation of Limited Access; Access Code Revisions; and County and Municipal Access Codes
Adopted Amendment: N.J.A.C. 16:41-2.2
Adopted New Rules: N.J.A.C. 16:47

Proposed: May 20, 1991 at 23 N.J.R. 1525(a) (see also 23 N.J.R. 1913(a) and 2831(b)).

Adopted: March 25, 1992 by George Warrington, Deputy Commissioner, Department of Transportation.

Filed: March 26, 1992 as R.1992 d.181 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), **and with portions not adopted (Appendices B, E, E1 and J).**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and State Highway Access Management Act, P.L. 1989, c.32.

Effective Date: April 20, 1992.

Operative Date: April 20, 1992, except for the following, which shall be operative September 21, 1992: N.J.A.C. 16:47-3.1 to 16:47-3.5; 16:47-3.8; 16:47-3.16(a) to (d), and (g) to (h); 16:47-4.3(a)6 to 8, (f), (i), (k)2 and 3, (l), (n) to (q); 16:47-4.5; 16:47-4.6(a), (b), (d), (e), (k) to (n); 16:47-4.8 to 16:47-4.21; 16:47-4.24 to 16:47-4.30; 16:47-4.33; 16:47-4.35; 16:47-4.40; and 16:47-4.41;
Appendix C. Access Level Diagrams (figures C-1 to C-25);
Appendix D. Optimum Spacing of Signalized Intersection for Various Progressive Speeds and Cycle Length;
Appendix F. Flow Chart for Determining Lot Conformance;
Appendix H. Local Road Improvements;
Appendix I. Measuring for Access Points;
Appendix K. Measuring Corner Clearance; and
Appendix L. LOS Standards for Signalized Intersections.
Expiration Date: July 28, 1992, N.J.A.C. 16:41;
April 20, 1997, N.J.A.C. 16:47.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Transportation (Department) is adopting rules to implement the provisions of the "State Highway Access Management Act," P.L. 1989, c.32 (N.J.S.A. 27:7-91), and adopt an amendment to N.J.A.C. 16:41-2.2.

The original proposal for N.J.A.C. 16:47 was published on April 2, 1990, at 22 N.J.R. 1061(a). Five public hearings were held on that proposal. The total number of persons attending the hearings was 147. The hearing officer, Deputy Commissioner Robert A. Innocenzi, recommended that further studies be done and that the comment period be extended.

The reproposed new rules and amendment were published in the New Jersey Register at 23 N.J.R. 1525(a) on May 20, 1991. Secondary notice was given by publishing notices in newspapers of general circulation and by direct mailing the full text of the reproposal to affected agencies and interested parties. A notice of correction pertaining to the dates and location of the public hearings and other corrections was published in the New Jersey Register at 23 N.J.R. 1913(a) on June 17, 1991. Five public hearings were held on the reproposal. The hearing officer, Thomas Johnson, made no recommendations. The Department recommended that the State highway typical sections appearing in Appendix B be reproposed, Appendices E and E1 be modified to reflect the superseding edition of Institute of Transportation Engineers TRIP GENERATION REPORT and that the flowchart for Appendix J, Significant Increase in Traffic, also be modified. The reproposed Appendices were published in the New Jersey Register at 23 N.J.R. 2831(b), on September 16, 1991.

These Appendices are adopted elsewhere in this issue of the New Jersey Register. Five hundred and sixty-two (562) comments were received during the comment period, which closed on July 19, 1991.

Five public hearings were held on the reproposal as follows:

Date	Place
July 8, 1991	Matawan Borough Municipal Building, Matawan, New Jersey
July 9, 1991	NJDOT Headquarters, Multipurpose Room, Trenton, New Jersey
July 11, 1991	Paterson Municipal Building, Paterson, New Jersey
July 17, 1991	Cherry Hill Municipal Building, Cherry Hill, New Jersey
July 18, 1991	New Brunswick Public Library, New Brunswick, New Jersey

Thirty-nine (39) people presented comments at the public hearings, although a total of 165 people were present. The following people submitted written comments or made oral comments at the public hearings. For commenters whose name or affiliation was indecipherable, the Department has inserted blanks. The hearing record may be reviewed by the public. Contact Charles L. Meyers, Administrative Practice Officer, Department of Transportation, 1035 Parkway Ave., Trenton, N.J. 08625, telephone (609) 530-2041, with any requests to review the rulemaking record.

Allwell, Stephen—Hunterdon Co., Planning Bd.
Alpert, Judith Hilton—Princeton, NJ
Arecco, Frances—Trenton, NJ
Arlett, Yolan—Princeton, NJ
Arnold, H.L.—Princeton, NJ
Aschenbach, Daniel J.—Township of Cranford
Ayres, Beverly—Trenton, NJ
Baker, Joan C.—Princeton, NJ
Barcan, Stephen E.—Wilentz, Goldman & Spitzer
Barnack, Charles—Princeton, NJ
Bartholomew, Edward Kapp—Pennington, NJ
Batmanglidj, H.—Princeton, NJ
Benedetti, David J.—Township of Cherry Hill
Bennett-Good, Lisey—Princeton, NJ
Berger, Marjorie—Princeton, NJ
Berson, Bernard R.—New Jersey Society of Professional Engineers
Blazier, John, Jr.—Burger King, Princeton, NJ
Bloch, Norman—Mayor, Town of Morristown
Bollentin, Elliot J.—Princeton, NJ
Bollentin, Roger & Wendy—Princeton, NJ
Bollentin, R.A.—Princeton, NJ
Boright, Walter-Union Co. Board of Freeholders
Boulteron, Jane—Princeton, NJ
Boyle, George E.—Red Bank, NJ
Bracy, Christine—Princeton, NJ
Bradley, Dennis—South Jersey Chamber of Commerce
Breese, Alice & Gerry—Princeton, NJ
Bretnall, Katherine—Princeton, NJ
Briggs, George B.—Princeton, NJ
Briggs, Margaret—Princeton, NJ
Bruschi, Robert W.—West Windsor Township
Burger, Marguerita P.—Princeton 08540-4158
Burke, Robert W.—East Windsor, NJ
Burne, Tom
Burns, Patricia—Pennington, NJ
Burr, Leland—Princeton, NJ
Bzik, Robert—Somerville, NJ
Callaway, Barbara R.—Princeton, NJ
Campbell, Donna—Princeton, NJ
Canter, Jerry A.—Horner & Canter Associates
Carchman, Jo Ann—Princeton, NJ
Carnevale, Lou—Skillman, NJ
Carr, Warren—Harrison Township Planning Board
Carthy, Kay—Princeton, NJ
Casate, Christine—Princeton, NJ
Casey, Nicholas C.—Southern New Jersey Development Council
Chappel, Hayward & Lura K.—Princeton, NJ
Cheng, Sam & Jean—Princeton, NJ
Cleary, Mary H.—W. Trenton, NJ 08628
Cochran, Martha—Princeton, NJ
Coffey, Joseph & Maryann B.—Princeton, NJ
Cohen, Anita L.—Princeton, NJ
Comerford, Genevieve—Sweetwater, NJ
Conley, Arthur & Louise—Princeton, NJ
Cook, A.S., Jr.—Princeton, NJ
Cook, Mary Ann—Princeton, NJ
Cook, Mary Elise—Princeton, NJ
Cook, Raymond—Princeton, NJ
Cootes, Merrit (Mrs.)—Princeton, NJ
Cramer, Richard S., Jr.—Townplan Associates
Cranstoun, Susan—Princeton, NJ
Davies, Gary—Garmen Associates
Dawes, Florence—Princeton, NJ
De Croce, Alex—Assemblyman, District 26
De Iorio, Joseph—Councilman, Roselle Park
De Pinto, Marian—Princeton, NJ
De Vito, Philip F.—Princeton, NJ
Decker, Lynn—Trenton, NJ
Deldonno, Debbie—Levittown, PA
DeLibereo, Shirley A.—New Jersey Transit
Delle Monache, Cathy—Kitchen Kapers, Princeton, NJ
Dewing, Martha—Princeton, NJ
Down, Judith—Yardley, PA
Doyle, Duncan S.—Princeton, NJ
Doyle, Joseph E.—New Jersey Federation of Planning Officials
Dressel, William—Trenton, NJ
Druetzler, Frank J.—Mayor, Borough of Morris Plains
Dudley, Sally—Association of New Jersey Environmental Commissions
D'Ambrisi, J.V.—Princeton, NJ

Earle, Eldon H. (Mr. & Mrs.)—Princeton, NJ
Edmond, Kathleen—Ocean County Planning Department
Eggers, Sara H.—Princeton, NJ
Ellis, Barbara S.—Princeton, NJ
Elis, John—Princeton, NJ
Elmer, Warren, Jr.—Princeton, NJ
English, Ilona S.—East Amwell Planning Board
Epling, John W.—Department of Treasury
Estell-O'Nau, Loulie—Princeton, NJ
Eubank, Harriet H.—Princeton, NJ
Fallat, George—Monmouth County Engineering Dept.
Farley, Margaret Jane—Princeton, NJ
Farley, William H.—Princeton, NJ
Fears, Kenneth—Ocean, NJ
Fears, Kenneth E.—Nelson-Kendarian Assoc., P.A.
Feldman, Matthew—Senator, District 37
Ferguson, Robert F., Jr.—New Jersey Associaton of Realtors
Fineli/Goldstein, Lyn & Evan—Princeton, NJ
Fisher, Mona—Princeton, NJ
Fisher, T. Burnet—Princeton, NJ
Flemer, Helen S.—Kingston, NJ
Fredericks, Karen—Somerville, NJ
Fuchs, Edith W.—Princeton, NJ
Gaignault, Lucille B.—Princeton, NJ
Gallagher, Mary Rose—Trenton, NJ
Gange, Judith—Belle Mead, NJ
Gange, Sharon—Princeton, NJ
Gardner, Emily—Princeton, NJ
Garnett, Richard E.—Brick, NJ
Gibson, James & Eve—Princeton, NJ
Gibson, Walter & Janice—Princeton, NJ
Gilbert, James—New Jersey State Planning Commission
Giordano, John C., Jr.—Giordano, Halleran & Ciesla, P.C.
Goeke, Greaciau—Kingston, NJ
Goldfarb, David A.—Princeton, NJ
Good, Pamela—Princeton, NJ
Good, Pamela & Carl—Princeton, NJ
Gorog, Judith—Princeton, NJ
Graham, John & Georgia—Princeton, NJ
Grange, Sue—Belle Meade, NJ
Guarriello, Donald—Roselle Park, NJ
Guarriello, Donald R.—Municipal Engineer
Hagen, Joan & Robert—Boxworks, Princeton, NJ
Haines, Alan H.—Princeton, NJ
Hall, Robert G.—Monmouth Junction, NJ
Hamilton, Helen D.—Princeton, NJ
Hance, Charles E.—Beneficial Management Headquarters, Inc., Peapack, NJ
Harkins, Joanne—New Jersey Builders Association
Harper, Doris—Princeton, NJ 08540
Hehir, Roswitha—Lawrenceville, NJ
Hehis, Anne Miriam—Princeton, NJ
Helms, Mary-Anne—Princeton, NJ
Hersh, Pam—Princeton, NJ
Hill, Colin & Margaret—Princeton, NJ
Hitch, John J.—Lawrenceville, NJ
Hite, Pat—Princeton, NJ
Hoff, Linda—Princeton, NJ
Horn, Jeffrey—National Association of Industrial and Office Parks
Howard, William & Cecelia R.—Princeton, NJ
Hughes, John B.—Princeton, NJ
Hughes, Sally B.—Princeton, NJ
Jaggard, R. Thomas—Mount Holly, NJ
Johnson, James H.—Princeton, NJ
Johnson, Joseph—Princeton, NJ
Johnson, Roger—Coalition for Community and Consumer Access
Jozwiak, Anna—Plainsboro, NJ
Kahn, David L.—c/o J. McLaughlin, Princeton, NJ
Kammerer, Allan—Pennsauken, NJ
Kapp, Edward—Princeton, NJ
Karen, Robert—New Jersey Builders Association
Katz, Eileen
Kavanaugh, Walter J.—Somerville, NJ
Kayne, Patricia—Princeton, NJ
Keelen, Edward—Middletown Twp., Red Bank, NJ
Kellogg, John—Hunterdon Co. Planning Bd., Flemington, NJ
Kennel, Scott—Abbington-Ney Associates
Kinsley, Shirley J.—Skillman, NJ
Kiser, Robert—Princeton Township Engineer
Klinger, Linda—Princeton, NJ
Kohli, Minnie (The Perfect Gift)—Princeton, NJ
Kraft, Ginny—Flemington, NJ
Kulick, Lorraine—Township of Manalapan
Kuran, Patricia M.—Mayor, Borough of Fanwood
Kuser, Eleanor W.—Princeton, NJ
Kuter, Ken—Trenton, NJ
LaPlaca, Claudia—Princeton, NJ
Leuchten, Mark—Princeton, NJ
Leuchten, Mark—Wind-Water Designs, Princeton, NJ
Lewandowski, Christine—Township Historic Preservation Officer
Lingle, Kathie—Princeton, NJ
Lipiner, Ed—Passaic County Planning Board
Little, Lewis E.—Princeton, NJ
Long, M. Ellen—Princeton, NJ
Luidwig, Brigitte O.—Princeton, NJ
Machold, Pamela—Princeton, NJ
Mackie, Elizabeth—Princeton, NJ
Manfra, Yvonne—Somerset County Planning Board
Manrique, Rae Jean—Princeton, NJ
Marchand, Phyllis—Princeton Township Committee
Martin, Henry—Princeton, NJ
Marty, Anastasia—Princeton, NJ
Mather, Norman (Mrs.)—Princeton, NJ
McAndrew, Patrick—Moorestown, NJ
McAuliffe, Annemarie—Hopewell, NJ
McCaughal, Wesley & Judith—Princeton, NJ
McDonough, Kevin—McDonough & Rea Associates
McFarland, Susan—Princeton, NJ
McGovern, Eleanor—Borough of Fanwood
McHale, Mary C.—Princeton, NJ
McLarty, Richard
Mehr, William J.—Mehr & La France
Mele, Howard S. (MD)—Princeton, NJ
Mesoros, Valarie—Princeton, NJ
Mironov, Janice S.—Township of East Windsor
Mitchell, J.—Princeton, NJ
Moore, Carl—Lambertville, NJ
Mrazik, Faith—Trenton, NJ
MSM Regional Council—Princeton, NJ
Ney, Henry J.—Freehold, NJ
Nigam, Elaine—Pennington, NJ
Obet, Abraham H.—Rocky Hill, NJ
Oldroyd, Wayne—Environmental & Design Group
Oliver, Frank—Environmental Commission, Teaneck, NJ
Orleans, Jeffrey H.—Princeton, NJ
Otis, George & Louise—Princeton, NJ
Owen, Mary H.—W. Long Branch, NJ
Pagan, Robert—Berline, NJ
Paul, Duder S.—Lawrenceville, NJ
Paul, Lois (Mrs.)—Princeton, NJ
Pemberton, Mary—Princeton Junction, NJ
Penick, Margen—Regional Planning Board of Princeton
Perrini, Judy—Kingston, NJ
Peters, Carl E.—Princeton, NJ
Peters, Rosemarie D.—Township of Middletown
Pilenga, Denna—Princeton, NJ
Pillon, Pearl J.—Regional Planning Board of Princeton
Pingel, Gretchen—Brooklyn, NY
Pingel, John Spencer—Brooklyn, NY (112)
Pitcher, Barbara—Princeton, NJ
Pommez, Philippe—Princeton, NJ
Porter, Fred—Princeton Township Committee
Putman, Peter & Durenda—Princeton, NJ
Ramsey, Ruth R.—Skillman, NJ
Ramus, Michael—Princeton, NJ
Rauirez, Gabriele O.—Princeton, NJ
Reed, Marvin R.—Princeton, NJ
Reichelderfer, Ann—Princeton Theological Seminary
Reid, Ingrid—Mercer County Planning Board
Resident—No. Brunswick, NJ
Resident—Lawrenceville, NJ
Richards, Alan Windsor—Princeton, NJ

Robins, William R.—Media Financial Group, Inc.
Rodhaman, Chester—Princeton, NJ
Roemmele, Russell—New Jersey Motor Truck Assoc.
Rogerson, Elizabeth M.—Princeton, NJ
Rothenbery, Paul—Matawan, NJ
Rudenstine, Neil L.—Princeton, NJ
Sander, Cintra—Princeton, NJ
Sanford, Elizabeth M.—Princeton, NJ
Scaffidi, Timothy D.—Ragonese, Scaffidi & Albano, Runnemede, NJ
Schmidt, Glenda A.—Princeton, NJ
Schneeweis, Hazel B.—Princeton, NJ
Schwartz, Alan & Barbara—Princeton, NJ
Serrele, Jessie P.—Princeton, NJ
Sesztak, Eva—Skillman, NJ
Shannon, Julie G.—Chatham, NJ
Sheinberg, Ben & Helen—Lawrenceville, NJ
Sheirman, Marja-Liisa—Princeton, NJ
Sheridan, John P., Jr.—Riker, Danzig, Scherer, Hyland & Perretti
Sherwood, Amy C.—Princeton, NJ
Shiburn, Karen—Princeton, NJ
Shinn, Roxane—Princeton, NJ
Shuss, Patricia—Township Clerk, Township of Princeton
Simon, Mary Lou—Township of Mullica
Simonetta, Joseph A.—New Jersey Society of Professional Engineers
Sisko, John III
Slachetka, Stanley—American Planning Association
Smith, G.W. & Helen—Princeton, NJ
Smith, James & Betsy—Princeton, NJ
Smith, Sarah & Craig—Princeton, NJ
Souter, Ellen—Deputy Mayor, Princeton Townshp
Sperber, Mark & Sharon—Bedminster, NJ
Stackpole, Willa M.—Lawrenceville, NJ
Steib, Michael B.—Middletown, NJ
Stewart, Deana—Titusville, NJ
Stockman, Gerald—Senator, District 15 (Mercer)
Strunsky, Martha—Kingston, NJ
Sullivan, Thomas—Princeton Junction, NJ
Sweeney, Karen—Princeton, NJ
Szedlmayer, Irene—Association of New Jersey Environmental Commissions
Taylor, Cynthie—Princeton, NJ
Thigpen, Phillip—County of Essex
Thomas, Stephen—Princeton, NJ
Thomas, Weeks—Princeton, NJ
Thorpe, Kathleen A.—Township of South Brunswick, NJ
Tietz, Joel F.—Bellemead Development Corporation
Tucker, Robert—Dayton, NJ
Tupper, R.Y.—Princeton, NJ
Unral, Diane—Princeton, NJ
Van Blarcom, W.O.—State Board of Prof. Engineers & Land Surveyors
Van Horn, Christy—New Jersey Future
Ververides, George—Director, Middlesex Co. Planning Board
Vigilante, Susan—Lawrenceville, NJ
Vivian, Anita—Princeton, NJ
Vivian, Anitalo (Mrs.)—Princeton, NJ
Vreeland, Joy C.—Town of Westfield
Wadsworth, Ray—Princeton, NJ
Wagner, Arthur F.—Princeton, NJ
Wagner, Bonnie—Princeton, NJ
Wallmark, Madeline—Princeton, NJ
Walsh, Barbara—Princeton, NJ
Watson, Beth—Princeton, NJ
Weinstock, Richard A.—Plainsboro, NJ
Weller, Cornelia & Jac—Princeton, NJ
Wells, Robert—Princeton Township Shade Tree Commission
Westcott, Helen—Princeton, NJ
Whitlock, Margaret R.—Princeton, NJ
Williams, Alice—Princeton, NJ
Willis, Edna—Princeton, NJ
Willis, Robert S.—Princeton, NJ
Wilmerding, Adela S.—Princeton Township
Winder, A. Bayley (Mrs.)—Princeton, NJ
Wirtz, George & Emma—Princeton, NJ
Wolfgang, George—Princeton, NJ
Woodbridge, Richard C.—Mayor, Princeton Township
Woolf, Harry—The Institute for Advanced Study

Wright, Benjamin M. (Dr. & Mrs.)—Princeton, NJ
Wright, Nicholas—Princeton, NJ
Wurzier, Ingeburg—Princeton, NJ
Yazersky, Gail M.—Monmouth Co. Planning Board, Freehold, NJ
Young, Elaine—Lawrenceville, NJ
Young, J. Michael—Lawrenceville, NJ
_____ Princeton, NJ
_____ Princeton, NJ
_____ Princeton, NJ
_____ Princeton, NJ
_____ Princeton, NJ
_____ Princeton, NJ

General

1. COMMENT: The Access Code is neither authorized by statute, nor intended to serve as a planning tool that designates areas of development and non-development and restricts overall development Statewide.

RESPONSE: The legislative findings and declarations set forth in N.J.S.A. 27:7-90 indicate that highways must provide for efficient movement and must be managed and maintained effectively. To meet these requirements, some State highway segments are likely to be found unsuitable for additional development. Additionally, the functional integrity and public purpose of the State highway system cannot be preserved for present and future categories, as required by the Act, without planning.

2. COMMENT: Inclusion of suburban standards are essential in managing traffic and capacity in the country's most suburban state. Rural and urban standards are not enough. At a minimum, the Access Code should either be based on a more refined categorization, such as urban, suburban, and rural, which more accurately portray ambient street conditions and the future character of the highway. Given that physical growth is linked with other infrastructure accessibility, such as sewer and water services, a method of defining planning areas would be the use of water and sewer management areas. A future alternative would be the use of planning areas established by the State Development and Redevelopment Plan. These revisions could be added to the Code without substantive changes to the format.

RESPONSE: Transportation systems have long been classified into urban and rural categories. Although the format of the Code can accommodate another classification or could be adjusted based on planning areas, no one has yet suggested suburban classification criteria that would be practical to implement. There is no State Development and Redevelopment Plan at the present time, but when there is, N.J.A.C. 16:47-8.4 requires the Department to modify the Access Code to accommodate it.

3. COMMENT: The proposed classification system only sets forth the function that State highway segments are planned to serve, but does not set forth the function that such segments presently serve.

RESPONSE: N.J.A.C. 16:47-4.3(g) states that applications shall reflect conditions that exist at the time of application. This implies that the function a highway segment currently serves is that which is provided by the conditions that exist. The accommodation for the future in a permit is addressed in N.J.A.C. 16:47-3.1(c).

4. COMMENT: The Code relies on 1980 Census data, thereby basing the classification system on the environment which existed, rather than the environment which exists. The urban and rural designations are based on population density, not curb side commercial, industrial, and residential actvity. They were not designed to measure the character of the specific roadway, but rather of the region in which it is located. Access management should be a forward looking process, and should deal with the future character of the highway, based on comprehensive plans for the area.

RESPONSE: The Department finds the Census data to be the best determinant of urban and rural environments. The Federal Highway Administration also uses the Census data as the basis of its classifications. Nonetheless, the Department recognizes that the 1980 Census data may not reflect current conditions. To address this, N.J.A.C. 16:47-8.3 requires that the Access Code be modified after the Department obtains updated Census data. Also, Appendix B contains comprehensive plans of all State highways and addresses the future of each segment. Additionally, N.J.A.C. 16:47-5 contains the procedures to be followed in requesting a change in classification.

5. COMMENT: The blanket classification of cells 25 to 54 as rural cannot be derived from the functions of posted speed limit, number of lanes, whether the segment is divided, and access level.

RESPONSE: The urban and rural classifications of highway segments were known parameters, as were the posted speed limit, number of lanes, and whether the segment is divided. These parameters led to the determination of the access level.

6. COMMENT: The Code violates the Act whenever it uses urban and rural distinctions to do other than differentiate criteria for the geometric design of driveways, intersections, and interchanges; establish the desirability of constructing driveways and interchanges with grade separations; set minimum and desirable spacing of driveways, intersections, and interchanges; and treat nonconforming lots. The level of service criteria and fair share financial contribution provisions are examples of such violations.

RESPONSE: Urban and rural distinctions have been mandated by the Federal Highway Administration and supported by the American Association of State Highway and Transportation Officials and the Department for many years. The Department has traditionally relied on this distinction when determining the need for highway improvements and there is nothing in N.J.S.A. 27:7-91h that indicates that the Department should use other criteria when determining the need for street and highway improvements funded by fair share financial contributions. Through these rules the Department is making the public aware of the bases it has traditionally used for the establishment of highway needs.

7. COMMENT: When a lot owner of land abutting a State highway is not able to develop the land to the extent permitted under existing municipal zoning standards, what compensation will there be for the decrease in the value of their land?

RESPONSE: No compensation will be provided in these cases. Statutory and case law require compensation only if all access to the general system of streets and highways is eliminated.

8. COMMENT: The Code should be clarified to indicate that highway traffic volume will not be cited as a safety issue requiring denial of access.

RESPONSE: The Department and some commenters agree that traffic volumes and safety are related. It would, thus, be inappropriate to ignore traffic volumes when determining if access should be denied.

9. COMMENT: The Code lacks adequate standards and fails to account for the cumulative impact of development.

RESPONSE: This Access Code is more comprehensive than access regulations promulgated by other states. It contains standards in areas which are not even addressed in codes such as the one adopted in Colorado. In addition, this Access Code addresses the cumulative impact of development by limiting the future magnitude of each component of the State highway system.

10. COMMENT: It would be detrimental to state and county planning efforts to prematurely institute regulations which foreclose local and state options for coordinated approaches to growth and traffic management.

RESPONSE: N.J.S.A. 27:7-91 provided the Department with one year to adopt an Access Code. There was no mention in the Act of waiting for some other event to occur before adopting the Access Code. In addition, the Department has proposed the Access Code twice and sent several letters to each municipality and county. Ample opportunity for coordination has been provided and will be provided in the future, as set forth in N.J.A.C. 16:47-8.

11. COMMENT: The Department should sponsor formal training for those to be involved in face to face negotiations over the classification of State highway segments. The Department should specify what issues, standards, or assumptions are negotiable and what the protocol is for resolving disagreements.

RESPONSE: The Department has already initiated efforts to provide the suggested training and will specify negotiable issues.

12. COMMENT: This version of the Access Code has numerous changes that reduce driver reaction time, decrease the number of nonconforming lots, increase allowable traffic on nonconforming lots, and seem to favor the status quo. The rules and standards for nonconforming lots appear to undermine the entire intent of the Act. The standards rely too heavily upon engineering criteria and the short term economic interests of owners of lots abutting State highways to the detriment of sound planning and prudent management of the State highway system. The thrust of the Code is to prevent or mitigate the effects of large projects, yet the bulk of the access applications will be from small projects, leaving the whole issue of cumulative impact an enormous threat to mobility.

RESPONSE: The Access Code will be a vast improvement over the status quo. Although the number of nonconforming lots has been decreased, there will still be many nonconforming lots. The allowable traffic on nonconforming lots was increased because the Department found the difference between small traffic generating conforming and nonconforming lots to be too great. The Department finds that the impacts of small traffic generators are not practical to calculate and it is willing to forego pursuing mitigation responsibility for such applicants. This approach is based on N.J.S.A. 27:7-95, which establishes 100 peak hour trips as the minimum of significance for traffic. The Access Code does not even mention driver reaction time. Please also refer to Response number 9.

13. COMMENT: The Code should incorporate stricter access standards. When such standards implement the strong public policy objectives from legislation they are not generally vulnerable to taking challenges.

RESPONSE: The Code is much stricter than existing rules. The Department believes that the standards proposed achieve a balance between undue burdens on property owners and the need for access management.

14. COMMENT: The Department has failed to adequately recognize the power the access rules could have in encouraging lot owners and developers to initiate more desirable development practices. The spacing standards proposed still provide a relatively easy basis for commercial development to occur along State highways. More restrictive regulations would greatly increase the monetary benefit or incentive for developing alternative developments schemes less dependent on direct State highway access. In particular, methods of consolidating lot frontage, and developing new public street frontage to serve commercial development purposes are not adequately encouraged by the proposed regulations.

RESPONSE: The Department recognizes that it has not taken advantage of the full authority granted by the Act. The Department seeks to adopt rules which effectively manage access to the State highway system and at the same time enable growth. The challenge is to preserve the integrity of mainline traffic operations while providing an adequate means of access to developments. The Department believes it has achieved a balance between these divergent interests in the proposed rules.

15. COMMENT: The introduction to the Access Code indicates that the Access Code does not preclude direct access to a State highway when alternative access is available. This appears to conflict with those provisions which appear to suggest that access will be denied or restricted only when a safety issue exists.

RESPONSE: The Access Code does not say that access will be denied or restricted only when a safety issue exists. However, the Code contains standards for direct access, which a lot with alternative access must meet to quality for direct access.

16. COMMENT: Most of the highway system in New Jersey was originally designed as land service roads. It appears through these rules that an attempt is being made to convert all State highways to limited access highways.

RESPONSE: Please refer to Response number 39 at 23 N.J.R. 1528, May 20, 1991.

17. COMMENT: No further malls or other facilities should be built which abut directly on the traffic flow of State highways.

RESPONSE: The Department does not have the authority to ban a particular land use along a State highway. This Access Code places direct or indirect limitations on traffic generation for all lots adjacent to State highways.

18. COMMENT: Future sites for malls and other facilities near State highways must provide service road ingress and egress.

RESPONSE: The Access Code includes standards for safe and efficient access for all lots abutting State highways. Service roads are not required, but in some instances may be the only means of providing access which meets the requirements of the Code.

19. COMMENT: State funding should be provided, where appropriate, to assist in the financing of a portion of highway improvements to relieve congestion and other unsafe and environmentally destructive traffic conditions.

RESPONSE: The Act did not provide funding for highway improvements. The Access Code does not address existing congestion and safety problems directly. The Department addresses these matters through its capital construction and maintenance programs.

20. COMMENT: The State should join with municipalities and counties in working towards a comprehensive and workable Access Code for proposed and existing sites.

RESPONSE: The Department believes that the Code reflects such an effort by the State. This is most evident in N.J.A.C. 16:47-5, which addresses jointly developed plans for existing and proposed access.

21. COMMENT: The State should seek the input of truck transport leaders in implementing safe and efficient procedures for truck transport

to contribute its know-how in effecting safe movement of goods to delivery sites.

RESPONSE: The Department sought comments on the April 2, 1990 and May 20, 1991 Access Code proposals from citizens and interested groups and individuals. All comments are being addressed.

22. COMMENT: The Access Code tends to be too specific in design standards and fails to permit variations from these standards.

RESPONSE: The Department deliberately proposed comprehensive design standards to reduce subjectivity for applicants and their representatives, as well as Department staff who review applications. The waiver provisions of the Access Code, N.J.A.C. 16:47-4.35, provide for flexibility and variations from the standards.

23. COMMENT: The Department may deny access if the fair share financial contribution is insufficient to resolve safety problems caused by site traffic. The applicant is being penalized by conditions that exist as a result of other traffic generators.

RESPONSE: It is unreasonable for an applicant to desire, and for the Department to be expected to approve, unsafe access. The Department does not view this consideration of existing traffic conditions as a penalty to the applicant. Rather, existing traffic conditions are an aspect of the unique conditions present at a particular location.

24. COMMENT: The Code provides for restrictions of future capacities of roadways and intersections, ultimate DTS, trip generation rates from nonconforming lots, etc. The implementation of the Act through the Code must allow for inventive approaches to development access needs.

RESPONSE: The waiver provisions in N.J.A.C. 16:47-4.35 enable applicants to propose inventive means of addressing development access needs.

25. COMMENT: The access classification system and access level diagrams have not been used before. Because there is only limited experience upon which to anticipate the likely impacts of the proposed access levels, a transition period of two or three years is needed.

RESPONSE: Much of the Access Code has not been used before and the Department is sensitive to the need to monitor its implementation. The Department will propose changes as the need arises. In addition, there will be an educational period of approximately six months between adoption of the Access Code and implementation of its permit provisions.

26. COMMENT: The Access Code will allocate the rights to scarce resources, highway capacity and highway access. This allocation is competitively sought by users. An equitable scheme for efficient allocation of this resource requires more than a set of standards for review of individual access applications. Over time, property owners, as well as municipalities, will be placed in competition for the same resource without a legal or regulatory mechanism to allocate that resource fairly. The opportunity for confrontation is boundless, but the Code provides no mechanisms for resolving these issues.

RESPONSE: All of these issues can be addressed in an access management plan. Such a plan is jointly developed by a municipality and the Department, along with public input. Designating the future locations for access to every lot and reflecting the desirable typical section of the highway will equitably and efficiently apportion highway capacity, rather than have competition for such capacity. Before such a plan is adopted, the Code limits the highway capacity degradation allowed by traffic using each lot adjacent to the State highway system. The standards are uniformly applied. As available capacity decreases on a highway, the access limitations increase. In all cases, the allocation of resources is based on resources which exist. Absent an access management plan, the competition for resources is based on first come first served.

27. COMMENT: For most of this century, government decisions which affect the rights of property owners to use their land have been made in an open forum, involving all interested parties. Under this proposed Code, decisions that will affect land use over large areas will be made through administrative decisions involving a specific project and a particular applicant. For example, even though a traffic signal is a scarce resource vital to development of an area, under this Code the location can be determined by the first applicant in the process. Instead, the Code should work to supplement the decisions made in a planning context that has been conducted in an open process to balance the competing objectives. Before access rights are restricted, a full comprehensive planning process with public participation should be undertaken.

RESPONSE: Although the Department has not been provided with the resources and means to develop a comprehensive plan for the State highway system, it has been provided with the ability to adopt access management plans, designate the locations of future traffic signals, and determine the typical section for all State highways. The department will review access applications based on the conditions which exist at the time of application and use the tools just mentioned as effectively as possible.

28. COMMENT: There are several provisions in the Code which vest a substantial amount of discretion with the Commissioner regarding the issuance of access permits. This discretion is unduly broad and should be curtailed.

RESPONSE: The discretionary powers of the Commissioner set forth in the Code are authorized by the Act.

29. COMMENT: The Code emphasizes access as a determinant of land uses along State highways, without regard for broader, more comprehensive planning programs. Implementation of the Access Code as presently written will tend to continue the fragmentation of the planning process by its narrow focus on a single component of the roadway network within the State. In certain instances, the Code usurps the comprehensive planning processes established by other legislation, especially the Transportation Development District Act, resulting in conflict and competition in these processes.

RESPONSE: The Department agrees that the access permit process does not provide for a comprehensive planning program. The Department has never been authorized to undertake such a program. The Department does not agree that the Code usurps any other legislation, especially the Transportation Development District Act, which specifies in N.J.S.A. 27:1C-5b that the draft district transportation improvement plan shall incorporate the relevant plans of all transportation agencies. The Access Code is a relevant Department plan.

30. COMMENT: Because the impact of these rules will be so great, it is extremely important that they strike an appropriate balance between the needs and rights of the motoring public and private lot owners.

RESPONSE: The Department agrees with this comment.

31. COMMENT: The Code, while advocating the development of similar access codes for municipalities, will apply to approximately seven percent of the roadway network in New Jersey. There is no overall plan for the control of highway access as it relates to either the total highway system or the overall transportation system, including mass transit.

RESPONSE: The Act does not authorize control over the entire Statewide roadway system. It permits the Department to address each State highway segment, develop overall standards, and develop an overall classification system. The Act provides municipalities and counties with the ability to adopt access codes for roads under their jurisdiction.

32. COMMENT: Though the Code mandated by the Act is primarily intended to manage growth by the control of access along State highways, it should not function totally independent of other Statewide, regional, and local planning programs, whose objectives are the orderly development of lands within New Jersey.

RESPONSE: The Code is primarily intended to manage highway access to maintain mobility. The Code provides for the coordination of access with other programs. N.J.A.C. 16:47-4.3(o) requires duplicate copies of major access applications to be provided to municipalities and counties; N.J.A.C. 16:47-6 permits the joint development of access management plans; and N.J.A.C. 16:47-8.4 obligates the Department to revise the Access Code when the State Development and Redevelopment Plan is adopted or amended.

33. COMMENT: There is a clear need to recognize and allow different standards in circumstances where access restrictions would conflict with other public goals. For example, the Code does not allow for the promotion of concentration of development, diversity of land use, or even alternative forms of transportation. It is also unclear if the Code would promote a more balanced land use pattern and thereby a more efficient use of the Statewide transportation system.

RESPONSE: The Department recognizes the need to consider other public goals and unique development plans. This recognition is reflected in the waiver provisions set forth at N.J.A.C. 16:47-4.35.

34. COMMENT: The regulation of site access is consistent with both the Act and the Municipal Land Use Law. However, the regulation of growth due to off-tract conditions, and the design and implementation of area-wide improvements, are outside the purview of the Act and this Code.

RESPONSE: The Code does not regulate growth due to off-site conditions. It regulates the addition of site-generated traffic to the State highway system based on the ability of the system to safely and efficiently handle the added traffic. The Code does not require area-wide improvements, only that the applicant address the fair share of highway improvements needed to handle the addition of site traffic.

35. COMMENT: The Code has no formal provision to coordinate technical studies where more than one application is involved.

RESPONSE: The Department has no authority to require applicants to work together. N.J.A.C. 16:47-4.2 addresses the manner in which the Department will coordinate the review of two applications which may affect the same State highway segment.

36. COMMENT: The Code has no mechanism to minimize the wasteful overlaps in technical studies performed by applicants.

RESPONSE: Preapplication meetings are required for those applications which must include traffic impact studies. At these meetings, the Department shares information which may assist an applicant and eliminate duplicate studies.

37. COMMENT: The Code provides no assurance that the optimal corridor solution will be found. What applicant will propose or agree to a major bypass that could take many years to implement if he or she can define a series of intersection band-aids that can be approved and implemented immediately.

RESPONSE: The Department does not disagree with this comment because the Code does not cover bypasses. Rather, it addresses the existing State highway system.

38. COMMENT: The Code enables development rights to be taken away through an essentially administrative procedure.

RESPONSE: The Code does not take rights away. A lot owner has the right to access to the general system of streets and highways in a manner that permits the beneficial use of the lot. The Code does not infringe on these rights.

39. COMMENT: If a condition should arise where adequate mitigation cannot be designed to allow development to proceed, then the response should be simply not to limit development of a few properties that happen to front on the State highway. Rather, this condition evidences an area-wide congestion problem that must be remedied through growth management and transportation system improvements.

RESPONSE: The Act only grants the Department authority to address access from lots abutting State highways. Any property removed from a State highway is beyond the Department's direct jurisdiction. The Department advocates that adding and widening roads are not the solutions to all transportation problems. As a result, there are segments of the transportation system which lack the capacity to handle added traffic. In such areas the Department must not approve major traffic additions.

40. COMMENT: The Access Code will be implemented throughout the State without setting any priorities on immediately addressing existing access issues along segments of the State highway system.

RESPONSE: The Access Code is not designed to address existing access issues along segments of the State highway system. These issues are addressed through the Department's capital construction project development program.

41. COMMENT: Implement the Access Code along segments of the State highway system which are experiencing the most severe access problems. Concurrently mandate and fund access management plans in targeted access hot spots.

RESPONSE: N.J.S.A. 27:7-91a and b preclude the Department from implementing the Access Code for only a portion of the State highway system.

42. COMMENT: The Department should establish an internal monitoring system during the Access Code's initial application for a one or two year time frame, where the regulations are periodically reviewed, updated or amended based on the real world experiences gained from the review of the first access permits applied for.

RESPONSE: The Department intends to monitor the implementation and functioning of the Access Code.

43. COMMENT: In highly urban counties with dense highway networks, the Access Code is of particular significance. While the need for free flow of traffic exists, at certain densities, particularly in central business districts, the need to increase vehicle speed has to be balanced with pedestrian safety. In suburban areas, there is minimal pedestrian traffic and therefore maintaining vehicular speed is important. We support the intent of the Access Code to minimize access where practicable, thus improving safety and traffic flow.

RESPONSE: The Access Code does not seek to increase vehicle speeds, but rather to maintain the free flow of traffic. Implementation of the Access Code should not reduce pedestrian safety.

44. COMMENT: The reproposed Access Code is less stringent than the original version. This relaxation of standards could be counterproductive. The Department should, where appropriate, revert to the more stringent standards.

RESPONSE: Please refer to Response number 13.

45. COMMENT: The phasing of traffic signals along Route 28 is done without regard for the desires of the traffic safety officials in the Borough of Fanwood.

RESPONSE: The phasing of traffic signals along a State highway is not addressed in the Access Code, but would be an appropriate topic to include in an access management plan.

46. COMMENT: The Department should be prepared to provide adequate technical or financial assistance to municipal planning boards once the Access Code is implemented.

RESPONSE: The Department is developing training programs for its staff and those outside the Department. It will publicize the availability of the training and do so before the Access Code is fully implemented.

47. COMMENT: The Department must process applications in a timely fashion.

RESPONSE: Please refer to Response number 404 at 23 N.J.R. 1549, May 20, 1991.

48. COMMENT: How do the proposed rules mitigate the safety and congestion problems on those stretches of State highway already overburdened with private driveway access? The Department must promulgate strong management tools to mitigate existing problem areas and protect those stretches of State highway which allow relatively free-flowing traffic.

RESPONSE: The Act does not authorize the Department to address existing problem areas within the context of access applications. Access management plans are the best tool provided by the Act for mitigation in these areas. The Department believes that the Code adequately protects those stretches of State highways which have relatively free-flowing traffic.

49. COMMENT: Every strategic planning document in the State recognizes that New Jersey must strive to reduce dependence upon the single-occupant automobile to avoid strangling in traffic congestion and suffocating in ozone and carbon monoxide pollution. Those business interests that depend upon continued strip development along our highways are not concerned with these essential quality of life and fiscal issues for New Jersey. The Department should be. These issues should be clearly reflected in every policy and rule promulgated by the Department. It is too late in the day for the Department to attempt to deal with highway access in isolation from closely correlated land use planning and air quality issues.

RESPONSE: The Act authorizes the Department to make access determinations based on highway safety and efficiency. Coordinated land use planning was always intended to be the focus of the County Municipal Planning Partnership Act. Other State legislation is being advanced to address the requirements of the Federal Clean Air Act.

50. COMMENT: How does the Access Code account for the cumulative impact on highway capacity, efficiency, safety, and average speed of individual access permits?

RESPONSE: The Access Code addresses the cumulative impact on highway capacity, efficiency, and safety by dealing cumulatively with access applications. Each successive applicant has less highway capacity available to it. This is supported by N.J.A.C. 16:47-4.3(g) which indicates that applications must reflect conditions which exist at the time of application. Cumulative impacts are further accounted for by N.J.A.C. 16:47-4.38(d) which requires some applicants to add anticipated traffic from developments which were under construction at the time traffic counts were taken ahead of the applicant's traffic prior to comparing no-build conditions with build conditions. The Code does not address the average travel speed. However, since applicants are not responsible for more than their fair share of highway improvements, average travel speeds will not be improved as a result of the Access Code and average travel speeds may deteriorate.

51. COMMENT: How does the Access Code support the Department's and the Department of Environmental Protection's goal of reducing ozone and carbon monoxide pollution caused by auto traffic?

RESPONSE: The Access Code will not reduce ozone and carbon monoxide pollution caused by auto traffic. However, it will lead to less pollution than would occur if there were no Access Code. In addition, N.J.A.C. 16:47-4.39 provides for applicants to propose travel demand management plans which will reduce the increase in traffic caused by development and redevelopment. Also, the Code fosters the coordination of traffic signals. By providing traffic signal progression, pollution is minimized by reduced vehicle idling time.

52. COMMENT: For the first time, we have an opportunity to coordinate transportation planning efforts between State, county, and local levels and fully integrate transportation planning with the other elements

of the comprehensive planning process in New Jersey, including land use development and redevelopment planning. However, the Code fails to capitalize on this unique opportunity and, as such, falls woefully short in achieving the comprehensive planning goals set forth in the Act. The key problem is that the proposed Code still emphasizes the establishment of an inventory and a set of engineering standards over true comprehensive planning. The fact that the Code will be the de facto State Transportation Plan for New Jersey makes this problem particularly worrisome. It is imperative that an effective intergovernmental planning process be in place before the implementation of a Statewide Access Code and the development of specific access management plans. There are serious doubts concerning the efficacy of the planning processes contained in the current proposal. Specifically, the proposed rules do not provide for the full integration of State, county and local planning efforts necessary to effectively implement the proposed Code. It is recommended that a stronger and more comprehensive local transportation planning process be established and a more direct and clear linkage between the State Planning process and the proposed Code.

RESPONSE: The Access Code does coordinate access management for State highways through the State, county, and local levels of government. This is accomplished through such provisions as N.J.A.C. 16:47-3.16(h), which encourages municipalities and counties to submit comments on major access applications, and N.J.A.C. 16:47-6, which provides for joint development of access management plans. The Department does not believe that the Act sets forth comprehensive planning goals, but rather access management goals. The Department distributed material in support of Appendix B to each municipality and county. This was to coordinate transportation planning efforts between levels of government. The Municipal Land Use Law specifies that revisions to local zoning and master plans will have to comply with the Access Code along State highways and adopted county and municipal access codes for roads under those jurisdictions. The Transportation Development District Act also requires the coordination of long-range planning in some high-growth areas. Also, please refer to Response numbers 27, 32, 40, 41, and 500.

53. COMMENT: Local transportation planning efforts should be significantly strengthened at the local level before the implementation of any Access Code. Municipalities are currently provided with the authority to undertake transportation planning efforts through the provisions of the Municipal Land Use Law. Unfortunately, many municipal master plans do not include circulation plan elements, and many circulation plans do not contain a comprehensive planning analysis. Most fall short of the comprehensive and detailed transportation planning analysis that will be necessary to effectively integrate local transportation planning efforts with the provisions of any proposed access management plans and do not adequately anticipate the transportation impacts of proposed land uses. Circulation plan elements should be required as mandatory components of the local master plan of municipalities that contain State highways within their borders.

RESPONSE: There is no requirement in the Act that local transportation planning efforts should be significantly strengthened before the implementation of any Access Code. Access management plans are optional, and not a prerequisite for implementing the Access Code. In addition, the Department has no authority to require circulation plans in master plans. Even the Municipal Land Use Law does not require master plans, and circulation plan elements are only optional provisions of master plans.

54. COMMENT: Department staff should review applications based on what is reasonable. Certain members of the Department have demonstrated an extremely professional attitude in looking at the merits of every argument that is proposed to them and deciding on the basis of those merits and not simply on the basis of a set of rules. Their effort has always been to do that which is best for the public in general and still allow the applicant to take a reasonable action. However, a less helpful attitude is most prevalent in the other Department staff. The Commissioner should abolish the obstructionist attitude that exists in the Department as a matter of policy and replace it with a constructive attitude.

RESPONSE: The Department expects all staff members to display a professional attitude and has taken action to address the attitude problems cited by this commenter.

55. COMMENT: The Code provides a tremendous amount of power and authority to be placed in the hands of the Commissioner. This may not be wise, given the complexity and range of issues involved in each of the applications which will come before the Department.

RESPONSE: The authority granted to the Commissioner was provided by the Legislature through the Act.

56. COMMENT: This Code appears to dictate improvement to existing roadways or intersections without due consideration to comprehensive transportation planning for a corridor or region.

RESPONSE: The Access Code provides a long range plan, the desirable typical section for each State highway segment. The DTS is based on input, when available, from corridor and regional studies, comprehensive planning, the transportation plan, and Transportation Executive Council reports. It is beyond the scope of the Code to prepare a comprehensive transportation assessment of every State highway and project within New Jersey. The Act provides for access management plans, as supplements to the Code, to address this level of detail.

57. COMMENT: The Act and the Code have no provisions for comprehensive planning of the State, county, and local highway system, nor should they. The Transportation Development District Act, the Municipal Land Use Law, and others authorize and regulate the planning and implementation of highway improvements, and establish a framework for master planning and growth management which includes a substantial opportunity for public involvement.

RESPONSE: The Department agrees with this comment and encourages open communication among all levels of government.

58. COMMENTS: The urban and rural categories within New Jersey should be changed, since the entire State is considered, on a national basis, an urban state. All State highways within New Jersey should be classified as urban highways and the design criteria in the Code pertaining to urban highways should apply to all State highway conditions.

RESPONSE: The Federal Highway Administration established different design standards for urban and rural highways. They found State highways in New Jersey which satisfied their criteria for rural highways. The Department agreed with the determination and believes that there are rural areas of this state, and it is appropriate to treat State highways in these areas differently than State highways in the urban areas.

59. COMMENT: The Code should acknowledge and specify the need for access to bus stops on the State highway system. For highways with existing bus service, the Code should require the provision of bus stops for major access permits and for all access permits for low and moderate income housing development. To ensure this, bus stop design should be required as part of the permit application. NJ TRANSIT can provide bus stop design guidelines for distribution with permit applications. The standard for bus stop spacing on highways should be specified in the Code. NJ TRANSIT suggests 1500 feet for most highway sections, with the exception of 500 feet for highway sections within central business districts. Access applications could be exempt from transit access requirements if a bus stop is already located within the specified distance. For highways without current bus service, bus stop easements should be required so that bus service can be added in the future if warranted by increased demand.

RESPONSE: While the Department acknowledges the need for and desirability of bus stops, applicants lack the power to establish bus stops and the Department lacks the authority to require bus stops as a condition of an access permit. The same is true for easements for future bus stops. The Department encourages applicants to incorporate travel demand management plans in their applications pursuant to N.J.A.C. 16:47-4.39. Such a plan could address bus accommodation.

60. COMMENT: The Code should acknowledge and accommodate pedestrian access to the highway system. Right-of-way and intersection design should improve pedestrian access. At a minimum, the Code should specify pedestrian access requirements from the development to both sides of the highway, and from the site to bus stops. This is essential if bus service is to be considered accessible by potential users.

RESPONSE: The desirable typical section for every State highway includes a sidewalk area which can accommodate pedestrians. Although the most stringent provisions of the Code require applicants to make build conditions no worse than no-build conditions, the Department lacks authority to require applicants to improve conditions. The Act and the Code address vehicular access. Pedestrian access is covered by municipal standards. The Code provides for vehicular access to the general system of streets and highways. Vehicles are not guaranteed access to both sides of a highway. Likewise, pedestrians are not guaranteed access to both sides of a highway.

61. COMMENT: The desirable typical sections should acknowledge and consider transit service access on highways by providing sufficient right-of-way for bus turnouts and bus stop shelters. The provision of adequate shoulders in the right-of-way is a critical factor in providing

turnouts for safe bus stops along highways. Conversely, desirable typical sections specifying barriers on highways make patron access to transit very difficult, as every transit patron must cross the highway to either reach the bus stop, or walk to their final destination after alighting from a bus. Alternative access such as pedestrian overpasses or signalized pedestrian crossings should be required for barrier segments to provide for the safe movement of pedestrians across highways.

RESPONSE: The desirable typical sections establish a cap on the number of through lanes along State highway segments. Bus turnouts and bus stop shelters can usually be accommodated within the desirable typical sections because their right-of-way requirements do not exceed those for the desirable typical sections. The Department does not accept the assertion that desirable typical sections specifying barriers on highways make patron access to transit very difficult because there are breaks in the barrier at intersections, permitting legal crossing. The Department does not encourage jay-walking and the presence of a barrier should not affect pedestrians crossing highways. Pedestrian overpasses or signalized pedestrian crossings are considered during project development.

62. COMMENT: The Department should expand consideration for continued economic development and urban redevelopment and to further consider protection for the rights of property owners throughout the State. The Department should be more aware and give greater consideration to the need to effectively manage control under this Access Code so that any action taken does not increase the cost of residential and commercial development, costs ultimately that are borne by our residents for whom the cost of government is already staggering.

RESPONSE: The Access Code provides for economic development and urban redevelopment through access management which complies with the legislative mandate to maintain effectively each State highway to preserve its functional integrity and public purpose for present and future generations. The Access Code also protects the legal rights of property owners throughout the State. The Department expects no significant change in the cost of developing minor traffic generators. The cost of developing some major traffic generators will increase because the developer will be required to address traffic problems caused by site traffic. This should be viewed as decreasing the costs for the current residents of the State who, prior to the Access Code, have been taxed for much of the costs for accommodating the new traffic generated by private development.

63. COMMENT: The Access Code creates new public options that are overwhelmingly positive for the quality of life of our State. These options create alternatives to the steady decline in mobility caused by congestion and proliferation of hazards, and options to costly disruptive overhauls of our roads. In short, this Code is a sensible procedure for allocating a scarce resource, that being our vanishing mobility.

RESPONSE: The Department appreciates this expression of support for the Access Code.

64. COMMENT: The Ocean County professional staff agrees that the original intent of the Act, to balance the need for reasonable access to the State highway system with the desire for mobility, is absolutely essential. The County commends the Department for preparing a comprehensive set of rules to systematically manage vehicular access to and from State highways. This will establish uniform standards that provide for the consistent application of standards and will enable all levels of government, as well as developers and lot owners, to readily determine how access will be managed on any given State highway. However, the Code falls short on a variety of issues.

RESPONSE: The Department appreciates this general expression of support for the Access Code. Certain issues are not addressed in the Access Code due to statutory limitations.

65. COMMENT: In areas such as New Jersey, that are in non-attainment for air quality, environmental impact studies should be done before access levels are set and before desirable typical sections are established.

RESPONSE: Designating access levels and desirable typical sections does no harm to the environment, so no environmental impact studies must precede adoption of the Access Code. When highway improvements are designed, the need for environmental impact studies will be determined and the studies will be performed when required.

66. COMMENT: The Department should be commended for the open, cooperative and professional manner in which it has conducted this rulemaking. It is truly refreshing to see an agency of State government adopt such a posture. This is especially critical in light of the fact that New Jersey's approach to traffic management is more ambitious, more extensive, and inherently more experimental than any other State in the nation. Hopefully, this spirit of cooperation will continue as the rules are refined, adopted, and implemented.

RESPONSE: The Department intends to continue to be open and cooperative.

67. COMMENT: Limiting access to State highways carries with it the implicit direction to use land use alternatives, not simply a curb cut policy. To be successful in the creative and tedious efforts that have gone into devising highway access management strategies requires going beyond road opening issues. Standards should be set for land owners, developers, municipalities, and counties to devise alternative development schemes that minimize the impact on our highways.

RESPONSE: The Department does not believe the Act grants authority for the State to regulate land use. However, the Act revises the Municipal Land Use Law and requires that zoning ordinances provide for the regulation of land adjacent to State highways in conformity with the Access Code. This establishes the link between transportation, which the Department regulates, and land use, which municipalities regulate.

68. COMMENT: Although the State Development and Redevelopment Plan has not been adopted, some concepts have been common through the process, as called for in the State Planning Act. The accepted concepts are based on the need to curtail suburban sprawl and concentrate future development in centers. The Code as now proposed, without adequately rigorous driveway standards in suburban and rural areas, will work against the Plan. Subchapter 8 of the Code does provide for revisions to the Access Code after adoption of the Plan; however, it is unlikely that revisions would rework the structure of the Access Code to include these basic tenets. It is doubtful that these levels of inconsistencies, if not addressed now, will ever be eliminated.

RESPONSE: The Department supports curtailing sprawl and concentrating some future development in centers. Future development centers should not be created on State highways, unless they do not impede the flow of through traffic. The Department believes that the driveway standards proposed are adequately rigorous in all areas of the State. The Department is unable to speculate what changes may be necessary to the Access Code when the State Development and Redevelopment Plan is adopted.

69. COMMENT: The Department should be commended for its outreach to local governments. The vertical coordination resulting from this outreach will produce a more coordinated approach to access management. The intergovernmental process proposed for desirable typical sections and access classifications, introduced in N.J.A.C. 16:47-8.5, creates opportunities to integrate the State's interest in protecting mobility on the State highway system with local government and land use objectives.

RESPONSE: The Department appreciates this commendation and agrees with this comment.

70. COMMENT: The Access Code recommends different standards and treatments for State highways depending on whether they are in urban or rural areas. This distinction is based on a broad interpretation of the existing and anticipated land use activity in the State. The State Planning Commission's approved Interim State Development and Redevelopment Plan contains five Planning Areas and a hierarchy of Centers ranging from Hamlets to Urban Centers. We anticipate that the Department will consider these State Plan classifications as it modifies the Access Code to support an adopted State Development and Redevelopment Plan, pursuant to N.J.A.C. 16:47-8.4.

RESPONSE: The Department will consider the State Plan classifications as it modifies the Access Code to support an adopted State Development and Redevelopment Plan.

71. COMMENT: The considerable information received by the Department during the intergovernmental dialogue, combined with the requirements of N.J.A.C. 16:47-8.4, offer an unusual opportunity to link decision-making both vertically, among levels of government, and horizontally, between the Department and other agencies of the State.

RESPONSE: The Department agrees with this comment.

72. COMMENT: The level of service standards appear to only apply to major applications with a planning review and when generated traffic affects a signalized intersection. This threshold approach causes concerns from similar experience with Department of Environmental Protection CAFRA regulations. The threshold for State review of development applications in the coastal area was set at 25 units. The response in the market place was the submission of 24 unit proposals, and this practice became the norm for development in the CAFRA area. Level of service standards should be developed, but a quantitative threshold would produce unintended consequences as private sector actors, as might be

expected, attempt to avoid the application of the Access Code. Also, the cumulative impact of traffic generated by development not defined as major with planning review could significantly alter the traffic conditions and safety or a particular area. This is extremely important in rural areas of the State where the State Plan is attempting to protect important natural resources of the State. The Department should review the Access Code to ensure that the State highway system is protected through the application of level of service standards for all access permit applications.

RESPONSE: A level of service analysis is a technical and costly effort. The Department believes that requiring such an analysis for all access permits would be impractical, unnecessary, and a burden for small traffic generators and the Department. The Department, furthermore, has not found difficulties associated with access applications which are just under a threshold.

Social Impact

73. COMMENT: Commercial development patterns are predicted to shift away from State highways onto local, minor, or residential roadways at municipal and county levels. Less intense traffic producing residential uses may then pop-up on State highways. This is backwards to traditional land use transportation planning and actual theory and practice.

RESPONSE: Please refer to Response number 48 at 23 N.J.R. 1528, May 20, 1991.

74. COMMENT: The proposed rules seem to contradict the spirit and intent of the State Development and Redevelopment Plan in setting up a framework for scattered suburban development away from State highways, rather than utilization of space and highway access in urban corridors.

RESPONSE: Please refer to Response number 46 at 23 N.J.R. 1528, May 20, 1991.

75. COMMENT: In the Department's effort to manage access through the Access Code, one hopes that suburban sprawl is not the result. This might happen if level of service in congested urban areas causes developers to move to less congested areas in order to obtain an access permit. Urban area redevelopment should be encouraged with incentives, geographical location of highway segments, access levels and desirable typical sections.

RESPONSE: Please refer to Response number 44 at 23 N.J.R. 1528, May 20, 1991.

76. COMMENT: How does the Access Code encourage development and redevelopment in New Jersey's metropolitan areas and in compact clusters in rural and suburban areas and discourage strip development?

RESPONSE: The Access Code manages access. It is not intended to directly encourage or hinder development or redevelopment. In addition, please refer to Response number 50 at 23 N.J.R. 1528, May 20, 1991.

Economic Impact

77. COMMENT: No credible economic impact analysis has been undertaken by the Department to quantify the impacts. In accordance with both the letter and spirit of the Administrative Procedure Act, a detailed economic impact analysis should be undertaken and reviewed prior to implementation of the Access Code.

RESPONSE: Please refer to Response number 62 at 23 N.J.R. 1529, May 20, 1991.

78. COMMENT: Economic issues and concerns affect both the public and private sectors. Changing land use densities and patterns may result in tax revenue losses at the municipal and county levels.

RESPONSE: Please refer to Response numbers 61 at 23 N.J.R. 1529 and 74 at 23 N.J.R. 1530, May 20, 1991.

79. COMMENT: The Access Code will negatively affect real estate values and hence tax rateables and would constitute a serious burden to the Borough of Fanwood.

RESPONSE: The Department has reclassified Route 28 in Fanwood so that there will be few changes as a result of the Access Code. The amended Appendix B, proposed at 23 N.J.R. 2838 to 2844, September 16, 1991, shows the new classifications. In addition, please refer to Response number 74 at 23 N.J.R. 1530, May 20, 1991.

80. COMMENT: Decreased site densities from allowable zoning, due to the referenced trip reduction formula, will further negatively impact development because of the lack of return on land investment.

RESPONSE: Please refer to Response number 75 at 23 N.J.R. 1530, May 20, 1991.

81. COMMENT: The Access Code is seen as having a potential financial effect on the rehabilitation of existing sites.

RESPONSE: Please refer to Response number 76 at 23 N.J.R. 1530, May 20, 1991.

82. COMMENT: There is serious concern that the time necessary to receive Department access permit approval, when added to the already lengthy project approval process, will substantially increase project costs.

RESPONSE: Please refer to Response number 411 at 23 N.J.R. 1550, May 20, 1991.

83. COMMENT: The proposed rules, even for a preapplication or project concept, will require significant project design, detailed traffic analysis, and wide-ranging mapping and topography which will significantly drive up a project's cost. This cost may be lost, particularly if the project fails and does not proceed to preliminary design and final construction.

RESPONSE: Please refer to Response number 406 at 23 N.J.R. 1549, May 20, 1991.

84. COMMENT: The Access Code will have major potential impacts which will affect the ability of the development industry to make acquisition decisions. It will also affect land values along State highways. It is apparent that the Code will have significant negative consequences on the ability of many projects to proceed in New Jersey. The sweeping nature of the proposed Code raises several substantial problems, which, if left unattended, could seriously affect the economic viability of the State. If the Code is restructured, however, these concerns can be addressed in ways that will enhance the Code's ability to achieve its legislative objectives.

RESPONSE: The Department has structured the Code within the framework established by the Act. The public has been provided with numerous opportunities to comment on the Code and help shape the Code. The Department has been responsive to all comments. Clearly the Code does not enable all development to take place since it is in the public interest to manage access so that the public purpose of the State highway system is not impaired and so that the public investment in the State highway system is not damaged.

85. COMMENT: The Department failed to provide documentation supporting its conclusions that less congestion means fewer accidents and lower insurance costs, and that the Code minimizes highway congestion, higher costs, and delays for the movement of the public and freight, and fuel consumption.

RESPONSE: There are numerous publications which support the Department's conclusions by predicting that fewer accidents and higher traffic flows result from access management. Among these publications is the Federal Highway Administration course material for "Access Management for Streets and Highways."

86. COMMENT: The Department fails to recognize, or at least analyze, the regulatory burden it will be placing on landowners and applicants, which is also considered as a major cause of economic displacement. This Code will impose a heavy financial burden upon the applicant in initial technical studies to determine the potential for access approval. Such traffic engineering requirements will significantly increase application costs over current practice.

RESPONSE: The Department has analyzed the regulatory burden it is placing on applicants and has reduced requirements to the minimum needed to assure compliance with the Act. For minor applications and for major applications the small amount of technical information needed is readily available to applicants. It is recognized that for major applications with a planning review, the traffic impact study requirements are extensive. However, the Department has not received suggestions which could minimize this burden while also comprehensively addressing the provisions of the Act and protecting the integrity of the State highway system.

87. COMMENT: The Department seeks to reduce congestion and increase capacity on its segment of the roadway system without acknowledgment that there is the potential, due to the implementation for the Access Code, to impose congestion onto the county and local roadways. No analysis is presented as to the fiscal ability of this level of government to absorb the increased transportation infrastructure costs due to this relocation of congestion.

RESPONSE: The Department strongly disagrees with this comment because local governments will not have to absorb infrastructure costs. Appendix H illustrates the responsibility of the Department for addressing local road improvements as a result of its actions. When the Department is not responsible, local governments may address needed improvements through their land use approval processes. Further, N.J.A.C. 16:47-9 complements similar provisions in the Act which enable local governments to adopt their own access codes.

88. COMMENT: The impact on vacant, undeveloped lots is obvious since the Code clearly states that the Department is not required to permit access on nonconforming lots created after the Code's adoption. By denying access to lot owners of lots fronting on State highways, lots are rendered valueless and just compensation is due.

RESPONSE: This comment seriously misconstrues certain provisions of the Access Code. Vacant, undeveloped lots are eligible for access even if they are nonconforming as long as they existed before the adoption of the Code. If they were created after the Code, they were created without regard for the requirements of Code and are not eligible for access or compensation.

89. COMMENT: How does the Access Code support the management of State resources, including publicly financed capital investments, envisioned by the Interim State Development and Redevelopment Plan?

RESPONSE: The Access Code establishes limits on the State highway system, thereby capping the potential public expenditure of resources on expansion of the system. This capacity based perspective, rather than a demand based perspective, is envisioned in the Interim State Development and Redevelopment Plan. The Access Code also requires financial contributions towards the cost of constructing highway improvements at locations where the capacity of the network is inadequate and can be expanded. When the State Development and Redevelopment Plan is adopted, N.J.A.C. 16:47-8.4 requires the Department to modify the Access Code to accommodate it.

90. COMMENT: The philosophy that there should not be an adverse effect on land values as a result of the Access Code and, in fact, that land values may actually be improved by the Code due to prevention of roadway congestion in the future has been suggested. General observations show that the most valuable real estate in our State is lots on the roadways that are carrying the heaviest traffic volumes. Examples are Route 17, Route 4, Route 3, Route 46, Route 22 in Somerset and Union Counties, Route 206 in Somerset and Mercer Counties, Route 1, Route 9, etc. That observation tends to refute the basic philosophy as to economic impact of lots. It appears clear that access to high volumes of traffic provides for economic value in a commercial lot while level of service on the roadways in question has very little, if anything, to do with the economic value of the lot. Therefore, it appears that one of the basic concepts presented regarding the Access Code may be flawed.

RESPONSE: The Department agrees that there is a relationship between the value of a commercial lot and the traffic volume passing the lot. Although a lot which is permitted access should not have its value changed by the Code because the volume of traffic passing the site will not change, a nonconforming lot may become less valuable if the vehicular use limit is lower than traffic which could access the lot if it was developed to the fullest extent permitted by zoning. Overall, the Department expects that the gross economic value of all lots along State highways will be greater with the Acess Code than it would be without one.

91. COMMENT: An applicant should be responsible for physical changes necessary for a safe access to his facility in the immediate vicinity of his facility, but the concept of assessing an applicant for far reaching modifications will have the effect of reducing the development occurring in this State by increasing the cost of development. This will have the direct result of reducing tax revenues with the State while increasing the cost of living. This may have a long term harmful effect to the State's economy. Certainly, the recent recession has demonstrated the effect that any economic slow-down has on the State budget in terms of reducing revenues.

RESPONSE: The Department finds that an applicant should be responsible for the impacts caused by site traffic, even if these impacts occur far from the site. The Department disagrees with the implication that the purpose of the economy is to fuel the State budget. Rather, the budget must provide the services required by citizens. In the past, unmanaged access and uncontrolled congestion have resulted in public outcries for more transportation facilities. The State budget has been unable to keep pace with the demand for such facilities. The Access Code reduces the demand for new State-financed facilities, and thereby decreases the drain on the State budget.

92. COMMENT: This Code could still have a detrimental impact on small local businesses fronting along a State highway. The requirements for driveway spacing could put many businesses in an almost impossible situation, thus severely diminishing their ability to grow.

RESPONSE: Any small local business will be able to grow by at least 99 peak hour trips without needing a new access permit as long as existing access is used. This is a considerable amount of traffic. Based on this, the Department does not agree that the spacing standards will have a detrimental impact on such businesses.

93. COMMENT: The Department should undertake a detailed, long range economic impact analysis in order to assess the fiscal implications of the Code. The potential for this Code to negatively impact the local business economy and municipal tax bases cannot be ignored. Given the severe budgetary constraints being experienced by all levels of government, the implementation of rules which could exacerbate the problem must be scrutinized more closely.

RESPONSE: Please refer to Response numbers 71 and 74 at 23 N.J.R. 1530, May 20, 1991.

94. COMMENT: The impact on local zoning and land use control, while consistent with the language in the Act, places in the control of the Department the frontage requirements for lots planning access to a State highway. In addition to the frontage requirements, by virtue of the concept of nonconforming lots, the Department now has the authority to limit the size of structures which can be built on a lot with accesds to a State highway. The potential undermining of comprehensive planning in order to protect highway access is far reaching. In addition, the property tax implications of this cannot be underestimated and needs to be carefully assessed and monitored.

RESPONSE: The Department does not limit the size of structures directly. The Department only has the authority to regulate traffic, which is based on the type and size of land use proposed on a lot. As comprehensive as planning may have been in the past, it inadequately considered the importance of mobility on State highways. The Act and this Code require future comprehensive planning to adequately address this issue.

95. COMMENT: It is imperative to consider not merely the impact of such a plan on the safe movement of traffic, but also the impact it has upon the quality of life in general along these highways. Restricting access points along State highways can improve traffic flow and thus increase safety. However, control must be applied in such a manner as not to limit development, damage existing businesses or unduly restrict the use of property adjacent to these highways.

RESPONSE: Please refer to Response numbers 62, 64, 65, 68, and 69 at 23 N.J.R. 1529, May 20, 1991.

96. COMMENT: Managing access will have a significant effect on the economic growth of communities, but its ability to minimize congestion, improve safety, and protect the environment depend on careful consideration of roadway classification and access level determinations.

RESPONSE: The Department has carefully considered roadway classifications and access level determinations. Also, please refer to Response number 546.

N.J.A.C. 16:47-1.1

97. COMMENT: The definition of access point should be clarified to avoid confusion with other jurisdictions and applicants by amending it to mean the connection between a highway or street or driveway with the highway.

RESPONSE: The Department prefers to define a point as a location, rather than a connection. A connection is defined as a link and the implication here is a node, or spot location.

98. COMMENT: The definition of alternative access should be limited so as not to apply to emergency or service access.

RESPONSE: Emergency or service access is not available for use by all site traffic and thus does not provide alternative access.

99. COMMENT: The definition of applicant time is objectionable because the term as defined creates a double penalty in those sections where it is used. A request for information from an applicant stops the clock which causes delay and secondly resets the time frames back to the beginning of the review period.

RESPONSE: An applicant must accept responsibility for failure to submit all the information required for a complete application. The Department should not be penalized for the applicant's failure, as would be the case if the clock was not stopped or the step was not repeated. The Department will publish a list of steps and associated time frames for each type of application. This will enable applicants to anticipate the amount of time possibly lost if a step has to be repeated.

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100. COMMENT: The definition of applicant time does not restrict the time the Department may have to request additional information or limit the number of requests for additional information.

RESPONSE: The Department staff will make a good faith effort to discover completeness deficiencies during its completeness check and accuracy deficiencies during its application review. If the Department fails to request additional or corrected information during these initial checks, the Department will either obtain the information without the assistance of the applicant or complete the review without the subsequent information.

101. COMMENT: The definition of band width should have through in the third line, rather than of.

RESPONSE: This change has been made.

102. COMMENT: Add a definition of bypass trip, which means a driveway movement that represents a vehicular detour from its ultimate destination.

RESPONSE: A similar definition has been added for "passby."

103. COMMENT: The definition of car is contrary to the definitions given in the American Association of State Highway Transportation Officials for the basic design vehicles and common reference. Within the Code, reference is made to vehicle, not car. Therefore, the definition is inappropriate. However, the definition cited applies to vehicle. In the Code, neither truck nor bus are defined, but are referenced.

RESPONSE: The Department defined car in the Code in order to avoid any misinterpretation of the definitions of major access permit and minor access permit in N.J.S.A. 27:7-1. There is no need to define vehicle and bus in the Code, since they are used in a manner consistent with the common usage of these terms.

104. COMMENT: The definition of change of lot use should be amended to include the result of a significant increase in traffic.

RESPONSE: This amendment has not been made because the Department prefers to separate the determination of the change from the determination of the traffic increase. N.J.S.A. 27:7-95 also does this in two steps.

105. COMMENT: The definition of a complete application should indicate that the completeness requirements are set forth in the Access Code.

RESPONSE: This change has been made.

106. COMMENT: The definition of component factors should be expanded to include traffic signals and pavement markings.

RESPONSE: These terms have not been added because they are not listed in the reference to component factors in the definition of improvement, N.J.S.A. 27:7-1.

107. COMMENT: The definition of corner lot should be amended so that a lot on the corner of two State highways is clearly a corner lot.

RESPONSE: The definition of corner lot was crafted to have such a lot be a mid block lot. This definition enables a lot on a corner of two State highways to be treated as mid block lot.

108. COMMENT: The definition of driveway causes problems in later usage relevant to corridor studies. The definition should be amended so that it means a private access to a street or highway.

RESPONSE: The Department modified the definition as proposed.

109. COMMENT: The definition of curbline opening is incorrect, based on figure 2. It should be the overall opening measured along the curbline or edge or roadway between the points of curvature of the driveway radii when curbing exists or the maximum width of opening at the edge or roadway.

RESPONSE: The definition has been modified based on this comment.

110. COMMENT: The definition of driveway cites only access. It should reference both access and egress between a street or highway.

RESPONSE: The suggested change has not been made because the term access includes ingress and egress.

111. COMMENT: The definition of expansion of lot use refers to function. How is an increase in function measured? How does it distinguish an alteration of use from an expansion of business due to its success in the market?

RESPONSE: An example of increase in the function performed on a lot is a school, functioning with 1,000 students when its permit allowed only 500 students. This is an expansion of the function and a deviation from the basis for the permit. This differs from a 10,000 square foot shopping center which has a permit, but generates twice the average number trips for such a facility due to its success in the market, because the facility is still a 10,000 square foot shopping center and the basis for the permit has not been altered.

112. COMMENT: The definition of expansion of lot use should be amended to include the result of a significant increase in traffic.

RESPONSE: This amendment has not been made because the Department prefers to separate the determination of the expansion from the determination of the traffic increase. N.J.S.A. 27:7-95 also does this in two steps.

113. COMMENT: The definition of fair share financial contribution should indicate the percentage of the cost of the highway improvements necessitated by and bearing a rational nexus to the increase in traffic directly attributable to the issuance or modification of an access permit.

RESPONSE: The definition has not been revised as suggested because the contribution must be a dollar amount, not a percentage. The definition has been revised to incorporate some of the terminology from N.J.S.A. 27:7-91h.

114. COMMENT: The definition of fair share financial contribution should be limited to where a level of service violation occurs as a result of additional development trip generation.

RESPONSE: The definition has been revised as mentioned in Response number 113.

115. COMMENT: The definition of floor area ratio should be amended to exclude structures other than parking structures or unoccupied auxiliary buildings.

RESPONSE: The definition proposed in the Access Code matches the definition in the Municipal Land Use Law, N.J.S.A. 40:55D-4. The Department will not grant a blanket exclusion of these structures as suggested. An applicant may seek a waiver in accordance with N.J.A.C. 16:47-4.35.

116. COMMENT: Is the definition of floor area ratio based on gross leasable area or net floor area?

RESPONSE: The definition has been modified and refers to gross floor area, whether leasable or not.

117. COMMENT: In the definition of highway, the word component is missing before factors.

RESPONSE: The word component has not been added because it does not appear in the definition of highway in N.J.S.A. 27:7-1.

118. COMMENT: The definition of improvement should include the word guide, rather than guard.

RESPONSE: Guard is used because it is used in the definition of improvement in N.J.S.A. 27:7-1.

119. COMMENT: The definition of improvement capacity should be expanded to refer to the Highway Capacity Manual Special Report 209 as the basis for determining level of service for State highway approaches and a V/C ratio of 1.2 as the basis for determining level of service for non-State highway approaches.

RESPONSE: The suggested changes have been included in the definition to clarify that the Capacity Manual which is referred to as a design standard in the definition of design standard defines the level of service. The reference concerning V/C ratio on non-State highway approaches at signalized intersections clarifies the meaning with N.J.A.C. 16:47-4.26.

120. COMMENT: The definition of improvement capacity, according to the determination of capacity cited in the Code and the Highway Capacity Manual Special Report 209, for a signalized intersection is based on vehicle delay and V/C. The definition should be expanded to include vehicle delay as described later in the Code.

RESPONSE: The definition of improvement capacity as defined in the Access Code is the only definition relevant to the provisions of the Code. For all but non-State highway approaches to signalized intersections, the capacity is defined as the maximum possible volume with level of service E. On State highway approaches to signalized intersections, delay is the measure of level of service. This is the same average stopped delay used elsewhere in the Code.

121. COMMENT: The definition of improvement capacity appears incorrect for rural State roads.

RESPONSE: The definition also applies to rural State highways. Even though the level of service standards do not allow deterioration to the levels referred to in the definition, these levels are used to establish capacities. Please note that these levels also do not correspond to the level of deterioration allowed in urban areas.

122. COMMENT: The definition of improvement capacity should be based on all intersection approaches using the same criteria.

RESPONSE: The Department disagrees with this suggestion. The Act promotes mobility on State highways and does not even authorize the Department to promote this same quality on other types of roads. Consequently, the Department has established higher standards for State highways than for other roads which intersect State highways.

123. COMMENT: The definition of inside radius may not be necessary since Figure 2, which illustrates definitions, does not refer to an inside radius.

RESPONSE: The definition has been deleted because it was not referred to elsewhere in the Code.

124. COMMENT: The definition of interchange should include at grade conditions because vehicles do cross streams of traffic at grade.

RESPONSE: The definition has been modified slightly. The intent is that mainline streams of traffic do not cross at grade or interchanges.

125. COMMENT: The definition of intersection should be amended to eliminate interpretations that could include driveways as intersections.

RESPONSE: The suggested changes have been included in the definition.

126. COMMENT: The definition of lot refers to a simple tax map parcel, but tax map parcel is not defined in the Code.

RESPONSE: The Department did not define tax map parcel because its use in the Code is the same as in common usage.

127. COMMENT: The definition of lot centerline refers to Appendix I-3. Reference should be made to appropriate figures and appendices for clarification of all definitions.

RESPONSE: The Department has included references to figures and appendices wherever it deemed such references appropriate.

128. COMMENT: The definition of lot centerline does not need the word lots in the second line.

RESPONSE: The word lots is appropriate in the second line because a partial denial of access lot is a particular type of lot. The definition makes no sense without the word.

129. COMMENT: The definition of low speed rural and high speed rural leave a void between 45 and 50 miles per hour.

RESPONSE: Because there are no roads with posted speed limits between 45 and 50 miles per hour, there is no need to fill this void.

130. COMMENT: The definition of low speed urban and high speed urban leave a void between 40 and 45 miles per hour.

RESPONSE: Because there are no roads with posted speed limits between 40 and 45 miles per hour, there is no need to fill this void.

131. COMMENT: In the definition of maintenance. the phrase to hold is technical jargon and should be avoided in a Code.

RESPONSE: The phrase to hold is included in the definition of maintenance in N.J.S.A. 27:7-1, so it is also included in the definition of maintenance in the Code.

132. COMMENT: The definition of major access applications with a planning review should have the 200 peak-hour trip threshold increased to 250.

RESPONSE: The Department set forth the basis for the 200 peak-hour trip threshold in Response Number 393 at N.J.R. 1549, May 20, 1991. In addition, the National Cooperative Highway Research Program report "Access Management Guidelines for Activity Centers" suggests three permit categories, which they call minimum use generators (up to 50 trips per day), minor generators (up to 200 peak hour trips), and major generators (more than 200 peak hour trips). New Jersey's category of major permit with a planning review matches the latter category. The Department is not able to match the split between the first two categories because N.J.S.A. 27:7-1 establishes 500 daily trips as the boundary.

133. COMMENT: The definition of major access applications with a planning review has a superfluous phrase to and from the use or uses.

RESPONSE: The Department included this phrase to enhance the clarity of the definition.

134. COMMENT: The definition of major collector refers to rural areas. What about collectors in urban environments?

RESPONSE: By definition, major and minor collector roads exist only in rural environments and collectors exist only in urban environments.

135. COMMENT: The definition of major collector have to in the third line, not e.g.

RESPONSE: The Department was unable to find the e.g. cited.

136. COMMENT: In the definition of major traffic generator, whi should be with.

RESPONSE: The Department was unable to find the whi cited.

137. COMMENT: The definition of major traffic generator has a superfluous phrase to and from the use or uses.

RESPONSE: The Department included this phrase to enhance the clarity of the definition.

138. COMMENT: The definition of maximum vehicular use limits should also include the Sunday peak hour.

RESPONSE: The definition has not been revised to include the Sunday peak hour. There are few land uses where the highest peak hours occurs on Sunday. The Department prefers to avoid the complexity and additional work associated with the inclusion Sundays.

139. COMMENT: The definition of minor access applications has a superfluous phrase to and from the use or uses.

RESPONSE: The Department included this phrase to enhance the clarity of the definition.

140. COMMENT: In the definition of minor access applications, add trips after vehicles, to be consistent with other definitions.

RESPONSE: This addition has been made.

141. COMMENT: The definition of minor collector refers to smaller. Who determines small?

RESPONSE: The Department will determine small based on the Federal Highway Administration Functional Classification, Volume 20, Appendix 12, Concepts, Criteria and Procedure, that implies that smaller places and towns are those whose population is less than 5,000 or are sparsely settled.

142. COMMENT: The definition of minor traffic generator has a superfluous phrase to and from the use or uses.

RESPONSE: The Department included this phrase to enhance the clarity of the definition.

143. COMMENT: The statute does not provide an absolute prohibition on the creation of nonconforming lots, but they must comply with the provisions of the Access Code. The Code limits trip activity on nonconforming lots, and these limitations would be applicable to nonconforming lots created subsequent to the implementation of the Code. The definition of nonconforming lot prohibits a subdivision creating nonconforming lots incorrectly and should be amended to mean a lot that does not meet the standards for spacing between lot center lines.

RESPONSE: N.J.S.A. 27:7-93 lists the existence of a lot prior to the adoption of the Access Code as a requirement for eligibility for nonconforming lot designation. The proposed definition includes this requirement. Pursuant to the Act, nonconforming lots created by subdivisions approved subsequent to the adoption of the Code are not entitled to any direct State highway access.

144. COMMENT: The definition of parkway should be expanded to be consistent with the American Association of State Highway Transportation Officials and Manual on Uniform Traffic Control Devices definitions.

RESPONSE: Recent informtion from both of these sources indicates that they have dropped the definition of parkway. However, there is no requirement that the definition in the Code be the same as the definition in any source other than the Act. The definition in the Access Code matches the definition in N.J.S.A. 27:7A-1.

145. COMMENT: The definition of partial denial access lot does not need through its.

RESPONSE: These words have been retained to maintain the clarity of the definition.

146. COMMENT: The definition should be added for revocation, which indicates that revocation should only be utilized when the Department determines an existing driveway is unsafe.

RESPONSE: The Act does not limit the Department's exercise of its revocation authority to situations where unsafe conditions exist. The Act allows the Department to exercise discretion in the use of this authority. However, the actions of the Department must be reasonable and must not be arbitrary or capricious.

147. COMMENT: The definition of right-of-way should be amended to reflect rights-of-way such as perpetual easements.

RESPONSE: The definition has been revised to mention easements.

148. COMMENT: The definition of road needs a statement that a driveway is not a road.

RESPONSE: The definition of driveway has been expanded to indicate this.

149. COMMENT: A definition of safety should be added, meaning a design that conforms to minimum geometric criteria as set forth in the American Association of State Highway and Transportation Officials Engineering Manual or the Department's Design Manual.

RESPONSE: The Department does not accept this definition. This definition does not allow for waivers granting exceptions to design standards where safety is not compromised.

150. COMMENT: The definition of significant increase in traffic should unequivocally state that both peak hour and daily traffic increases are needed to create a significant increase.

RESPONSE: The definition has been revised as suggested. Appendix J was revised in the New Jersey Register on September 16, 1991 at 23 N.J.R. 2847.

151. COMMENT: The definition of significant increase in traffic has limits which appear to have no technical basis.

RESPONSE: The limits are identical to those found in N.J.S.A. 27:7-95a.

152. COMMENT: Single family residential driveway is defined, but multiple family is not.

RESPONSE: Multiple family driveway is not a category of permit in the Access Code. Such a driveway is classified as a minor driveway.

153. COMMENT: The definition of street contains an arbitrary provision relating to population which should be deleted.

RESPONSE: This definition is based on the definition of street in N.J.S.A. 27:7-1, which contains the same population reference. The Department has no authority to change or delete this figure.

154. COMMENT: In the definition of street, add the word component before the word factor.

RESPONSE: This addition has not been made to maintain consistency with the definitions in N.J.S.A. 27:7-1.

155. COMMENT: The definition of street intersection application should refer to streets or lanes intersecting a State highway.

RESPONSE: This reference has been incorporated in the definition.

156. COMMENT: The traffic growth rate definition calls for a compounded growth rate, which tends to overestimate interim traffic projections. While such rates are commonly used to project a future condition, the most common best fit based on a plot of historical traffic is a straight line or annual growth rate. The use of a compound factor or annual growth rate should be considered where appropriate, particularly if phased development is an issue.

RESPONSE: The Department has found that the extensive research needed to establish an historical trend at a location is too burdensome a requirement. The method proposed in the Code produces satisfactory results. Applicants are free to gather historical data and present it to the Department, if they so desire.

157. COMMENT: The definition of vanpool is overly restrictive and should include groups of five to 15 passengers.

RESPONSE: This definition has been revised to cover a minimum of seven passengers. This is consistent with N.J.S.A. 39:3-27.19.

158. COMMENT: The definition of weaving is inconsistent with the definition in the 1985 HCM.

RESPONSE: There is no requirement that the definition in the Access Code match definitions in the 1985 HCM. The definition in the Code is intended only for use in the Code.

159. COMMENT: The definitions of application approval, concept review application, deficiency meeting, design review, developer agreement, start date, and telecommuting need review as some appear incomplete or include redundant words.

RESPONSE: This comment is too vague. The Department is satisfied with the definitions as modified in this adoption.

N.J.A.C. 16:47-2.1

160. COMMENT: Finding sources are not an appropriate means of classifying urban and rural areas.

RESPONSE: The Code relies on the Census data to classify urban and rural areas, not funding sources.

N.J.A.C. 16:47-3.1(a)1

161. COMMENT: Lots fronting on access level 1 highways are considered nonconforming lots and are not permitted to have direct access to the State highway. Exits are required by alternative means.

RESPONSE: Access is not permitted from lots to access level 1 highways. Lots along such highways are not considered nonconforming lots. Neither direct entrances nor direct exits are permitted.

N.J.A.C. 16:47-3.1(a)2

162. COMMENT: The proposal refers to AL 1 in the last sentence and should refer to AL 2.

RESPONSE: This correction has been made.

163. COMMENT: Lots along access level 2 highways are considered nonconforming lots and are permitted access via right turns based on unlimited traffic usage or the permissible vehicle use limitations set forth in N.J.A.C. 16:47-3.5.

RESPONSE: Nonconforming lots along access level 2 highways are subject to vehicle use limitations. However, the limitations apply to the total two-way traffic accessing the State highway. Right turns are not unlimited.

N.J.A.C. 16:47-3.1(a)6

164. COMMENT: Frontage and service roads along State highways should always be classified as AL 6.

RESPONSE: The Department agrees and this correction has been made. As stated in N.J.S.A. 27:7-90, the focus of the Access Code is on those State highways which serve as a network of principal arterial highways. Frontage and service roads are not principal arterials. These roads are designed for local use, have lower speed limits, and do not carry long trips which use the parallel State highway.

N.J.A.C. 16:47-3.1(b)

165. COMMENT: Nonconforming lot access should not be allowed for access level 2, in rural and suburban areas. This change would act as a very strong incentive to use shared access, alternative access, and develop access management plans and other tools in the Code in these environments. It would also keep the access points on the State highway system in these areas at greater distances, and thus, improve safety and maintain the speed of through traffic.

RESPONSE: The Department cannot incorporate this suggestion because the Department is not prepared to deny access to the general system of streets and highways for nonconforming lots along access level 2 highways and acquire such lots. The Department also is not prepared to build new access roads or acquire easements to provide alternative access.

N.J.A.C. 16:47-3.1(c)

166. COMMENT: The applicant should not have to accommodate the desirable typical section without a demonstration that the desirable typical section will be constructed within a reasonable time, such as five years.

RESPONSE: N.J.S.A. 27:7-90c sets forth a responsibility to preserve State highways for present and future generations. This long range perspective could not be served by the five year limitation suggested. This subsection has been clarified to indicate that it addresses access provisions.

N.J.A.C. 16:47-3.2(a)

167. COMMENT: There should be no need for direct State highway access in many instances if alternative access is available.

RESPONSE: The Department has found that direct access in addition to alternative access frequently enhances safety and efficiency or reduces travel distances. Therefore, this provision enables the Department to require both direct and alternative access when there is a public benefit. The Department's position is supported by current reseach which recommends that access opportunities at activity centers should be designed to effectively distribute site traffic on surrounding roads and to avoid undue concentrations at any access point. Access should be provided on as many roads as possible consistent with access spacing guidelines.

168. COMMENT: The transfer of access may bottleneck traffic elsewhere on non-State highways, causing increased fuel consumption and environmental air quality degradation.

RESPONSE: Please refer to Response numbers 144 at 23 N.J.R. 1533; 165, 167, and 170 at 23 N.J.R. 1534; and 181 at 23 N.J.R. 1535, May 20, 1991.

169. COMMENT: Development costs will increase, in some cases drastically, where acquisition or adjacent land is required for alternative access points or where highway improvement costs are borne solely by the developer.

RESPONSE: Please refer to Response number 156 at 23 N.J.R. 1534, May 20, 1991.

170. COMMENT: The Access Code continues to prefer access to the side street approach via alternative reasonable access if the lot has frontage on a side street, use of a common driveway with an adjacent lot, or access to a service road.

RESPONSE: N.J.A.C. 16:47-3.2(a) indicates that the Department may require alternative access in addition to direct access if the lot has frontage on another road. This does not state a preference, as suggested.

171. COMMENT: It is unclear from reading this provision whether permits can be revoked where alternative access exists.

RESPONSE: This provision indicates that the Department will allow direct access, but alternative access may also be required. N.J.A.C. 16:47-4.3(n) indicates that direct access may be revoked if reasonable alternative access exists.

172. COMMENT: The first sentence includes both shall and will.

RESPONSE: The Department intended that will be included in the first sentence and has deleted shall.

173. COMMENT: The decision to require access to a local road should be made by the local Planning and Zoning Boards. Such an action could result in substantive detriment and disruption to neighborhoods. Local boards are best able to gauge such changes in access against localized conditions which the Department may not be aware of. This is particularly true since applicants will now have to obtain Department approval before coming to the municipality, which is opposite of how it has always worked in the past.

RESPONSE: N.J.S.A. 27:7-94 grants the Department authority to revoke direct access and require alternative access. It also requires that the municipality be notified of the Department's intentions regarding the site and be sent a copy of the plans showing the alternative access. This enables a municipality to advise the Department of localized conditions which the Department may not be aware of. There has never been a rule establishing the order in which an applicant must seek Department and municipal approvals.

174. COMMENT: How does the Department expect to determine the safety benefits associated with alternative access. It would appear that any alternative access would be better both operationally and from a safety standpoint.

RESPONSE: The Department expects to evaluate each application on its merits based on the conditions which will exist at the time the access opens to traffic. The number of traffic conflicts, volumes of traffic, and length of trips will be included in the consideration.

175. COMMENT: The proposed Code will restrict most new access to local roads where a tract has frontage on both a local road and a State highway. There is a legislative mandate to restrict access to the State roadway system. However, a strict enforcement of this mandate, as found in the proposed Code, will work against efforts to cluster future development in locations where infrastructure is available or can reasonably be provided. It also has the potential for threatening the attractiveness of many small villages and hamlets if new development traffic is forced to be routed through them rather than being permitted direct access to a State highway. Both of these planning objectives were identified by counties and our municipalities during the Cross-Acceptance process and are consistent with the Interim State Development and Redevelopment Plan. Some flexibility needs to be provided for in enforcing the Code so that significant amounts of new traffic will not be forced into small communities and onto local roads in areas which municipal, county, and State planners have identified for limited development. These standards also need to be flexible enough to permit new communities to be developed, where appropriate, in rural areas.

RESPONSE: Please refer to Response numbers 170 and 173.

176. COMMENT: This provision has been changed to completely reverse the original proposal. It is questionable whether this provision could now serve the intent of the Act. The Department should consider an alternative that would permit all conforming lots access to the State highway, yet still may require the alternative access if beneficial to the State highway system. However, nonconforming lots should not be allowed direct access to State highways if reasonable alternative access exists and if the lot is less than 50 percent of the spacing distance needed to be conforming.

RESPONSE: The Department believes that the suggestion is unnecessary because lots which fall into this category are likely to be unable to have direct access because of the sum of the corner clearance, minimum access point width, and edge clearance requirements. The Department believes that the requirements proposed for conforming and nonconforming lots serve the intent of the Act.

177. COMMENT: Nonconforming lots, by the fact that their frontage is insufficient to meet the spacing standards, should be encouraged to use other tools in the Code, primarily shared access, as well as alternative access and the establishment of access management plans. Allowing every nonconforming lot direct access does little to encourage these other tools.

RESPONSE: The Department believes that the limitations placed on traffic generation for nonconforming lots provide adequate incentive to lot owners to use other tools in the Code.

N.J.A.C. 16:47-3.2(b)

178. COMMENT: This provision is clearly beyond the express language and intent of the Act in that it amounts to a Statewide planning tool serving to arbitrarily limit development in certain areas without any planning basis; without prior input of counties, municipalities, and property owners; and without any assurance that the overall goals of the Act will be advanced.

RESPONSE: The planning aspects of this comment are addressed in Response number 1. The suggested lack of input is not accurate. The Department received comments on the April 2, 1990 Access Code proposal from counties, municipalities, and property owners. That proposal included desirable typical sections for most State highways. In February of 1991, the Department sent each county and municipality a copy of the proposed desirable typical sections within their borders and again requested comments. In March of 1991, the Department conducted two workshops to explain the desirable typical sections to county and municipal representatives. Many of the comments the Department subsequently received were reflected in the May 20, 1991 reproposal, which provided even further opportunity for public input. Still further, the Department responded to local comments by revising Appendix B, which was republished at 23 N.J.R. 2831, September 16, 1991.

179. COMMENT: Additional flexibility is needed to avoid a moratorium on development where a highway's desirable typical section cannot accommodate projected site traffic. The Commissioner should abolish the limit of the desirable typical section or a roadway on allowable proposed mitigation, or take other action which will enable development to proceed.

RESPONSE: The Department cannot meet the responsibilities set forth in the Act if it allows traffic to be added to State highway segments which have reached the capacity of the desirable typical section. N.J.A.C. 16:47-5, however, provides a procedure whereby anyone can request that a desirable typical section be changed.

180. COMMENT: The Department may not grant access if the applicant's fair share financial contribution is insufficient to resolve safety problems caused by site traffic. However, if a safety problem is located off-tract, it must either be existing or triggered by traffic growth. No criteria are presented for determining or mitigating a safety problem. Safety is often a subjective issue which is difficult to quantify or even consistently define. Yet, the basic right of access and development hinges upon the Department's determination. Therefore, objective criteria are essential.

RESPONSE: The Department agrees that safety is difficult to quantify and consistently define. N.J.S.A. 27:7-90e enables the Department to regulate access to protect public health, safety, and welfare. As with the exercise of all discretionary authority, the Commissioner must act reasonably and in the best interests of the State.

181. COMMENT: In many instances, the proposed desirable typical section is at considerable variance with the existing highway and may be more disruptive of the traffic flow than other available options.

RESPONSE: Please refer to Response Number 10 and 23. In addition, alternatives will be addressed at the time improvements to State highways are to be designed.

182. COMMENT: If the State highway is operating beyond the capacity of the desirable typical section, the Access Code states this would create an unsafe condition and, therefore, justifies the need for alternative access.

RESPONSE: N.J.A.C. 16:47-3.2(b) neither states that a highway operating beyond the capacity of the desirable typical section is unsafe, nor mentions alternative access.

N.J.A.C. 16:47-3.2(c)

183. COMMENT: While the Department may encourage shared access, the liability, maintenance, and effects on site traffic make such usage difficult at best.

RESPONSE: The Department recognizes that there are obstacles in establishing shared access. However, the benefits of shared access make its pursuit a worthwhile goal.

N.J.A.C. 16:47-3.3(c)

184. COMMENT: How does one define a regional benefit to traffic movement? For a major development a study area is to be defined. Since such benefits are generally stated in terms of reduced vehicle hours or vehicle miles of travel, does this constitute a region? The term region in the context of study area should be clarified as well as the nature of the benefits to be explored.

RESPONSE: A definition of regional benefit has been added to N.J.A.C. 16:47-1.1 to indicate that regional traffic benefit serves an area wide demand for the easier movement of all traffic, generally at one location. The improvement should fit into the overall local and regional land use and transportation plans. Regional benefit also indicates the proposed improvement does not exclusively serve the private interests of any one lot. A region may extend as far as the study area established pursuant to N.J.A.C. 16:47-4.36, but in no case less than one interchange on either side of the proposed interchange.

N.J.A.C. 16:47-3.3(d)

185. COMMENT: This subsection lacks flexibility in accommodating projects where the standards may not be met, but where a safe and efficient access can be demonstrated by the applicant. Wording should be inserted to simplify the permitting of interchanges which do not meet the criteria in this provision, since a variety of engineering factors influence whether an interchange can in fact be safely implemented.

RESPONSE: If a safe and efficient interchange may be added at a location which does not meet the interchange spacing requirements, then an applicant should seek a waiver. N.J.A.C. 16:47-4.35(h) has been added to establish the maximum interchange related waiver an applicant may expect.

N.J.A.C. 16:47-3.3(d)2

186. COMMENT: The minimum spacing for rural interchanges is three miles, yet recent Federal regulations establish a minimum of two miles.

RESPONSE: This provision has been changed to two miles to be consistent with Federal regulations.

N.J.A.C. 16:47-3.4

187. COMMENT: Traffic signals will become a scarce resource under the Code, and their placement will directly affect the development potential of a large number of lots, benefitting a few while injuring the majority. Similarly, the spacing criteria are very restrictive. For example, presently there are 12 new interchanges proposed along Route 1 between Route 295 in Lawrence and Jersey Avenue in North Brunswick. However, despite meeting the long term planning objectives for this key route, only a single interchange conforms with existing and future signal and interchange locations and the criteria of this section.

RESPONSE: Additional traffic signals will interrupt the free flow of through traffic. N.J.S.A. 27:7-90f indicates that access is subordinate to through traffic. N.J.A.C. 16:47-3.4 addresses the location of future traffic signals. This is not the same as the location of future interchanges. The interchanges proposed on Route 1 are to eliminate traffic signals, thereby improving the flow of through traffic.

188. COMMENT: Because signalized intersection locations will be so critical, the Code should be modified to require involvement by the county, the municipality, and lot owners in the determination process.

RESPONSE: In order to signalize a driveway on a State highway, the lot owner must obtain the approval of the Department and the municipality. Since the county has no authority in this determination, their lack of involvement should not be significant.

189. COMMENT: The Department should be required to provide expeditious processing of technical studies and to conduct the requisite public and agency meetings needed to establish the optimum signal location plan on a timely basis.

RESPONSE: The Department reviews studies in accordance with the time frames established in this Access Code. There are no requisite public or agency meetings needed to establish the optimal signal locations.

N.J.A.C. 16:47-3.4(a)

190. COMMENT: The Department should only require the traffic signal spacing standards to be met where a deficiency in terms of safety, not level of service, is demonstrable, such as queued left turns on the highway without a turn slot, and where an applicant is unwilling to submit to left turn restrictions.

RESPONSE: The Department does not agree with this suggestion. It is contrary to N.J.S.A. 27:7-90, which indicates that the State highway system should be efficient as well as safe.

N.J.A.C. 16:47-3.4(b)

191. COMMENT: When existing conditions cannot meet the band width requirements of the Code, the applicant should not bear the obligation to correct the existing deficiency. His obligation should be to ensure that the existing condition will not worsen.

RESPONSE: This provision requires that any new traffic signal shall not deteriorate existing substandard conditions. The Department recognizes that it is not practical for an applicant to improve band widths at existing locations through the installation of a new traffic signal.

192. COMMENT: This provision and N.J.A.C. 16:47-3.4(c) require that in order to install a new traffic signal a specific band width must be attained or exceeded. No allowance is made for field measurements of an existing band width, which may differ from the theoretical requirements of the Code, although N.J.A.C. 16:47-3.4(b)4 does allow some latitude. The wording should be added which would permit the applicant to field measure the band width and progression speed. If it can be demonstrated that the proposed signal does not further degrade that band width, even if it does not meet the criteria of this section, then this test for progression should be considered satisfied.

RESPONSE: The accommodation of field measurements should be addressed as a waiver, pursuant to N.J.A.C. 16:47-4.35.

N.J.A.C. 16:47-3.4(b)3

193. COMMENT: The optimum traffic signal location designation provision, outside of an adopted access management plan, should be deleted. Their locations should be determined through an appropriate planning process such as the procedure for adoption of an access management plan.

RESPONSE: Statewide, potential traffic signal locations are extraordinarily high. Therefore, a Statewide effort to identify potential sites for traffic signals would be too burdensome. Applicants, with assistance from the Department, will be able to locate potential traffic signals related to their developments.

N.J.A.C. 16:47-3.4(c)

194. COMMENT: While it may be desirable to have all traffic lights in the State no closer than one-half mile apart, this is just unreasonable in the confines of the urban areas of the country's densest state.

RESPONSE: In order to preserve mobility, traffic signals must be spaced to maximize the through volume capacity of the State highway.

195. COMMENT: Where little or no signalization exists, it is unnecessarily burdensome for applicants to provide optimum future signal locations for their subject highway segments.

RESPONSE: Please refer to Response number 199 at 23 N.J.R. 1536, May 20, 1991.

N.J.A.C. 16:47-3.5(a)

196. COMMENT: Some commenters support and endorse the spacing standard provisions contained in this subjection. While the provisions will still cause hardship, they are the result of careful deliberation and debate and attempt to strike a balance between the rights of adjoining lot owners and users and the traveling public. The Department should be congratulated for its work with this provision.

RESPONSE: The Department appreciates this endorsement of its efforts.

197. COMMENT: A recent news article indicated that the Department cut in half the number of seconds required for motorists to react to vehicles entering a State highway from 2.5 to 1.25.

RESPONSE: The Department representative who spoke at seminar covered in the article did not discuss reaction time. The Department does not know the source of this statement and does not agree with this statement.

198. COMMENT: The Department continues to rely exclusively on driveway spacing standards offered as options by the Federal Highway Administration. The Federal Highway Administration standards being proposed are being utilized out of context.

RESPONSE: Although the values shown in N.J.A.C. 16:47-3.5(a)4 are the same as those offered by the Federal Highway Administration research report, the Department proposed these because they were similar to the distances arrived at using several different methods for establishing the desirable distance between access points. These methods include American Association of State Highway Transportation Officials' A Policy on Geometric Design of Highways and Streets, Stopping Sight Distance, dry pavement, 2.0 second reaction time; New Jersey Division of Motor Vehicles, Stopping Sight Distance; a public commenter's alternative, stopping sight distance using 1.64 second reaction time; Institute of Transportation Engineers, Transportation and Traffic Engineering Handbook maximum acceleration to pace speed; a public commenter's geometric sight triangle; Louis Pignataro's PIEV reaction time; Tri-County Michigan driveway spacing standards; Tri-County Michigan Sight Triangle distances, and consensus of the Department's External Working Group. The Department has not accepted any method for establishing the desirable distance between access points and current research and practices have not identified any single, clear method of establishing spacing standards for unsignalized intersections; moreover, many proposed guidelines have never been implemented. The distances shown in N.J.A.C. 16:47-3.5(a)4 are used to determine the conformance of a lot and the number of access points allowed on a major traffic generator. The minimum distance between access points, as proposed in N.J.A.C. 16:47-3.8(i), is 24 feet. In addition, the values proposed by the Department meet the guidelines suggested by current national research and those recommended by the Ohio-Kentucky-Indiana Regional Council of Governments. The Department recognizes that strict application of traffic engineering criteria may push spacing requirements to 500 feet or more. However, such spacings may be unacceptable for land-use and perceived economic reasons in many urbanized and urban environments, where development pressures opt for shorter spacing. The Access Code achieves a reasonable balance between these conflicting requirements.

199. COMMENT: The spacing standards proposed are far too small for the purpose of regulating the spacing of driveways on high speed arterial highways, such as those found in suburban and rural portions of New Jersey. On these highways, the high speed of traffic makes the risk of accidents much greater than it is on slower speed roadways or on roadways with lower travel volumes. The severity of accidents which do occur are significantly worse. Pennsylvania has adopted a standard of 1000 feet on its highways.

RESPONSE: This comment is based on unsubstantiated assumptions. For example, the risk of accidents may not be a function of speed. Roads such as interstate highways and freeways have significantly lower accident rates than low speed roads. In addition, the National Highway Traffic Safety Administration reports that more crashes occur on 30 and 35 mile per hour roadways than at other speeds. The severity of an accident, however, is determined only by speed. One vehicle striking another at 45 miles per hour will do the same damage if it occurred in an urban, suburban, or rural setting. In this area, the National Highway Traffic Safety Administration indicates that the greatest number and percentage of severe or fata injury accidents occur on 50 and 55 mile per hour roads. In New Jersey in 1987 the accident rate on low traffic volume roads was higher than the rate on high traffic volume roads. The Pennsylvania Department of Transportation regulations Chapter 441 do not mention a 1,000 foot standard.

200. COMMENT: Single-family residential properties should be considered in evaluating the conformance of mid block lots because there is no guarantee over the future zoning or use of the single-family residential lot. The issue is more than whether the residential driveway generates a large amount of traffic, but that the access points created for lots adjacent to single family residence will create conditions that may not be in harmony with the adjacent single-family residence.

RESPONSE: Single-family residential driveways were excluded from the theoretical driveway location determination because they generate inconsequential traffic. The Department recognizes that the future use of a single-family residential lot may differ from its present use. However, the Department requires that applications be evaluated on the basis of conditions which exist, rather than those which may or may not occur in the future. The Department's position is set forth in N.J.A.C. 16:47-4.3(g). Florida's access code also exempts single-family residential driveways from spacing determinations. In addition, the Act amends N.J.S.A. 40:55D-62, the Municipal Land Use Law, to require that future zoning regulate land adjacent to State highways in conformity with the Access Code.

201. COMMENT: A special lot conformance test should be provided for large-acreage flag lots. Notwithstanding the limited frontage, if the flag lot satisfied the following tests it would be conforming, and full access would be permitted subject to the level of service and signal spacing tests: 1. The lot frontage is less than 100 feet and lot area is five acres or more for commercial property or ten acres or more for residential property, as defined in N.J.A.C. 16:47-4.3(n)1; 2. No alternative access is available, as defined in N.J.A.C. 16:47-4.3(n)1; or alternative access is not adequate for public safety, the particular use or neighborhood character; 3. Either a public street or a private driveway constructed to public street standards will be constructed through the flagstaff to serve the proposed development; 4. The lots on each side of the flagstaff and fronting the State highway meet the conformance criteria for corner lots, as defined in N.J.A.C. 16:47-3.5(a)4i, and as if the driveway or street were a public street; 5. Access to the lots on each side will be relocated to the new street running through the flagstaff. The lot to the right of the street will be permitted an entry driveway from the State highway, assuming no conflict with striped right or left-turn lanes, and the lot to the left will be permitted an exit driveway to the State highway; 6. No credits for shared access or alternative access, as set forth in N.J.A.C. 16:47-3.5(b)4 will be permitted; and 7. No new nonconforming subdivisions of this type will be permitted, as per N.J.A.C. 16:47-3.16(a). Under these conditions a reasonable access condition will be assured, which meets the overall spacing objectives of the Code and results in an improved shared-access condition for the existing lots as well. The final product will be consistent with the conforming subdivision envisioned in N.J.A.C. 16:47-3.5(f).

RESPONSE: The Department does not agree with the inclusion of this test. It would create some small frontage conforming flag lots, whereas larger frontage non-flag lots, similarly situated, would be non-conforming lots under the Code.

202. COMMENT: How do the currently proposed spacing standards better achieve the objectives of the Act than the spacing standards proposed last year?

RESPONSE: The Act recognizes that mobility and access conflict with one another and that different levels of each are appropriate on different classifications of roads. Public comment received on the initial proposal indicated that the Department placed so much emphasis on mobility that the economy of the State could be jeopardized. The Department has reconsidered the spacing provisions and now believes that, in this second proposal, it has appropriately balanced the need to manage access with the needs of lot owners.

203. COMMENT: The spacing distances have no technical basis. The distances are merely one-half of the length of a transition. Spacing should be based on highway speed, volume, gap, presence or absence of auxiliary lanes or shoulders following the Department's Design Manual, Roadway. In addition, line of sight plays a critical role and should be evaluated.

RESPONSE: Please refer to Response number 211 at 23 N.J.R. 1537, May 20, 1991.

204 COMMENT: The distance between driveways needs to be accommodated by standards that are more lax in the rural areas and more stringent than in the urban areas. Spacing distances must be connected to the physical environment surrounding the highway and not simply be a function of speed limit. Spacing distances should be the smallest in urban areas where high density land development, increased pedestrian conflicts, on-street parking, and a high level of activity and traffic control measures are present, and where development and redevelopment are encouraged by local and State governments. Suburban and suburbanizing areas require different treatment for driveway spacing just as they require different standards for land development. For example, there are differences in building setback, sidewalk requirements, traffic control frequency, impervious surface ratios, and percentage of land that can be built upon. Applying either a rural or urban standard to these areas has the potential to continue the patterns and situations that created the need for an Access Code. Finally, rural areas, as the Code acknowledges elsewhere, also require separate driveway spacing standards.

RESPONSE: The Department finds that speed is the most appropriate basis for spacing standards and the speeds in rural areas tend to be higher than those in urban areas. This creates a difference between average driveway spacing in the two environments. Also, please refer to response numbers 198, 199, and 202.

205. COMMENT: Except for truly urban areas, greater spacing distances are required, especially in suburbanizing areas, to protect the mobility and safety of the general motoring public. Larger distances have been used and withstood legal challenge in Colorado.

RESPONSE: The Department is aware of Colorado's success with its standards and considered it when developing standards for New Jersey. Please refer to Response number 202.

206. COMMENT: Larger spacing distances in developing and redeveloping areas would encourage lot owners to develop alternative plans including shared access and lot consolidation. That would be less dependent on direct highway access and would more likely result in creating more conforming lots.

RESPONSE: The Department is unable to define and categorize developing and redeveloping areas. In addition, please refer to Response number 202.

207. COMMENT: There is serious concern that the spacing distances will not result in much actual change in mobility, safety, or capacity over today's conditions.

RESPONSE: Please refer to Response number 48.

208. COMMENT: As the Department is likely aware, a study by the National Cooperative Highway Research Program is reviewing access management plans and spacing standards. A portion of the draft report points to the conclusion that most locales having some type of access management code with spacing standards much more stringent than now proposed in the Access Code. The Department is strongly urged to incorporate more restrictive spacing standards that are necessary in suburban and rural areas.

RESPONSE: The cited draft study contains a range of recommended spacing distances and the distances proposed in the Access Code fall within the range.

N.J.A.C. 16:47-3.5(a)2

209. COMMENT: The Department has proposed a complete prohibition on new driveway access for highways located on principal and minor arterials in rural areas.

RESPONSE: This is not correct. N.J.A.C. 16:47-3.5(a)2 enables all lots to have access, but they will be subject to vehicular use limitations.

210. COMMENT: For lots along an access level 2 highway, a larger spacing standard is essential. A spacing distance of 2,640 feet is recommended for use in the nonconforming lot formula. This would effectively limit most lots to a maximum of 100 trips.

RESPONSE: The Department believes that implementation of this recommendation will result in undue burdens on lot owners.

211. COMMENT: Since lots on a State highway segment designated access level 2 are nonconforming lots, these lots can only access the State highway at signalized intersections or interchanges without applying the vehicular use limitations. This forces State highway access to a minimum spacing of about one-half mile for the rural, high speed routes which comprise this access level.

RESPONSE: The Access Code allows new streets to be added to access level 2 highways. Indirect access, through these streets, would not be subject to vehicular use limitations. Also, there are no requirements that such streets be signalized or grade-separated.

212. COMMENT: There is no basis for deeming all lots on access level 2 segments nonconforming. This will unnecessarily impose maximum vehicular use limitations on access points situated on lots which have large highway frontages and which consequently meet or exceed the Code's minimum driveway spacing standards.

RESPONSE: Please refer to Response number 547.

N.J.A.C. 16:47-3.5(a)4

213. COMMENT: Historically many of the growth corridors have undergone a development pattern in which the lots fronting the State highway have been subdivided from larger tracts, leaving a flag lot with limited frontage for new street or driveway access. These flag lots will now be nonconforming lots with very limited development potential even though they conform to otherwise sound planning principles. To provide relief in this situation, it is recommended that a special lot conformance test be provided for large acreage flag lots.

RESPONSE: Please refer to Response number 201 and responses 258 at 23 N.J.R. 1540 and 261 at 23 N.J.R. 1541, May 20, 1991. Not all flag lots will be nonconforming lots. In addition, the Department does not agree that it is sound planning to provide a small frontage for a large traffic generator.

N.J.A.C. 16:47-3.5(a)4i

214. COMMENT: Intersections are more dangerous locations than the road segments between. Somewhat more stringent access regulations for corner lots would by no means eliminate the economic advantage which corner frontage provides a corner lot.

RESPONSE: The Department agrees that corner locations are different because of the inherent increase in conflicting traffic movements. In order to address this special area, the Department included corner clearance requirements in N.J.A.C. 16:47-3.8(1) which are more stringent than the driveway spacing requirements in N.J.A.C. 16:47-3.8(i).

N.J.A.C. 16:47-3.5(a)4ii

215. COMMENT: The provisions for mid block lots hold a potential developer captive to the frontage of adjacent lots. For example on a 55 mph highway, a 75 foot wide lot between two 600 foot wide lots would be conforming and there could be three driveways within 99 feet. Whereas a 550 foot wide lot between two 100 foot wide lots would be nonconforming and this lot is limited to 167 permissible trips if it was a rural area. This could be 11,000 square feet of retail space, whereas a conforming lot could host approximately 90,000 square feet of retail space.

RESPONSE: No lot owner is required to rely on the frontage of another. For a 55 mph highway, 660 feet of frontage will guarantee conformance. In the first example cited in the comment, it is true that the narrow lot will be conforming, but there can only be three driveways within 1,299 feet. In the second example cited, there could be three driveways within 574 feet. Since the Access Code seeks to provide flexibility and achieve an average driveway spacing, it is appropriate to limit trips when the spacing is too small, such as in the second case.

N.J.A.C. 16:47-3.5(b)

216. COMMENT: The vehicular use limit formulas should be revised to place no limit on L or R and change for the factors of 100 and 70 to 170 and 119 respectively.

RESPONSE: The Department finds that the suggested formulas would place negligible limitations on nonconforming lot, resulting in ineffective access management.

217. COMMENT: There should be no limit on L and R and the factors of 100 and 70 should be 200. This was agreed to at the External Working Group.

RESPONSE: The Department finds that the suggested formulas would place negligible limitations on nonconforming lot, resulting in ineffectiveness access management. The minutes of the External Working Group meetings show that the Department did not agree to limitless L and R.

218 COMMENT: A more appropriate multiplier would lie between 100 and 200, perhaps at 170.

RESPONSE: Please refer to Response number 217.

219. COMMENT: The 15 percent bonus should be increased to 25 percent for each shared access and alternative access.

RESPONSE: The Department finds the suggested percentage to be excessive. The Department's position provides a desirable balance between encouraging incentive for shared access and allowing an inappropriate amount of traffic from a nonconforming lot. The cumulative impacts of an additional 10 percent bonus would impede the Department's mandate to limit congestion created by traffic accessing nonconforming lots. The additional 10 percent increase would decrease the Department's ability to protect the safe and efficient movement of through traffic.

220. COMMENT: Measuring from the centerline of one lot to the centerline of the adjacent lot in essence allows a nonconforming lot owner to gain a proprietary interest in his neighbor's highway frontage. While this might be a legitimate approach to take if the lot owner has purchased access rights from the adjoining lot owner, it makes no sense if access rights have not been purchased. Unless a lot owner can guarantee that a neighboring lot will not be subdivided, or in some other fashion have its access conditions altered to impact the subject lot, no credit should be given for the status of lot frontage on a neighboring lot. Instead, a lot owner's access arrangements should be strictly defined by the conditions which are directly and uniquely associated with ownership of that lot.

RESPONSE: The method of measuring proposed by the Department accounts for those conditions which are directly and uniquely associated with a lot. It is undesirable to consider the characteristics of a lot without also considering the context of the lot. Under the Access Code, it is not necessary for the owner of one lot to purchase access rights from

a neighbor. Their proximity to one another necessitates mutual consideration when addressing access. This measurement method also treats both equally. Further, the method causes nonconforming lots to exist in pairs. The restriction on the creation of nonconforming lots reduces the likelihood that a neighboring lot will be subdivided.

221. COMMENT: The Code must treat existing developed lots and vacant lots differently. Vacant lots should not be afforded the same favor if no pre-existing access permit had been granted. The constant of 50 trips should be eliminated from the permissible peak-hour vehicular trip formulas.

RESPONSE: The permit system is based on traffic generation, not land use. The Department chooses not to differentiate between vacant lots and developed lots, and has established that any lot may generate at least 50 peak-hour trips.

222. COMMENT: The bonuses should be based on the total trip generation from a lot and the alternative access should be required to result in a reduction in the usage of the State highway driveway by an amount at least equal to the bonus trips.

RESPONSE: The access permit regulations apply to traffic between a lot and a State highway. The access permits issued by the Department do not regulate traffic between a lot and a non-State highway. This suggested bonus treatment would be inconsistent with this position. The Department is satisfied that the alternative or shared access prerequisite for the bonus is adequate without requiring the benefit to be quantified and then measured against the bonus.

223. COMMENT: Using the proposed traffic reduction formula, especially where current zoning would allow significantly higher lot coverage, could amount to a regulatory taking and thereby be subject to legal challenge.

RESPONSE: The Act revised N.J.S.A. 40:55D-62 to require that zoning regulate land adjacent to State highways in conformity with the Access Code. Also, please refer to Response number 255 at 23 N.J.R. 1540, May 20, 1991.

224. COMMENT: The vehicular use limitations purport to limit traffic generation on the lot. This exceeds the authority conferred upon the Department by the Legislature. By purporting to limit the vehicular use of an entire lot, the Access Code would impermissibly restrict those uses on lots with alternative access in addition to State highway access.

RESPONSE: The Department intended the limitations only apply to the State highway access. If there is alternative access to the lot, then the traffic using the alternative access is not included in this limitation. N.J.A.C. 16:47-3.5(b)5 has been amended to make this clear. Also, please refer to Response number 222.

225. COMMENT: Some inequities still remain in the provisions for nonconforming lots. A 77 acre, commercially zoned lot with 440 feet of frontage could be nonconforming because of a small commercial use on the adjacent lot. The formula must be amended to fairly compensate for large flag lot situations such as this.

RESPONSE: The Department finds that the formula properly limits traffic from this very large flag lot which has inadequate State highway frontage.

226. COMMENT: The limitations on site-generated traffic for nonconforming lots who want to undertake rehabilitation or redevelopment projects, such as constructing a bank in an unused portion of a shopping center parking lot, will be denied direct highway access because allowable trip levels will be exceeded.

RESPONSE: Direct access will not be denied in this instance. The permissible vehicular use limitations only apply to direct access. However, this will only be an issue if the lot needs a new access permit as a result of the addition of the bank. Many shopping centers can add a bank without creating a significant increase in traffic. In addition, please refer to response numbers 76 at 23 N.J.R. 1530 and 251 at 23 N.J.R. 1540, May 20, 1991.

227. COMMENT: While the driveway spacing used to determine the conformance of lots is less stringent than originally proposed, it will nevertheless negatively impact a number of lots along State highways. The vehicular use restrictions placed on lots that cannot meet the driveway spacing requirements will result in economic harm to lot owners who will be deprived of the reasonable use of their lot.

RESPONSE: Please refer to Response numbers 75 and 80 at 23 N.J.R. 1530 and 255 at 23 N.J.R. 1540, May 20, 1991.

228. COMMENT: The proposed rules must increase the incentives for owners of adjoining lots to cooperate in creating conforming highway access both in new developments and redevelopment. When such a large percentage of existing lots are nonconforming, the proposed rules are too generous and represent a short-sighted continuation of the current status quo. The standards and formulas governing nonconforming lots must be strengthened if the goals of the Act are to be achieved and the public expectations of the Act are to be met.

RESPONSE: It must be recognized that the Department cannot legally require the owners of two lots to work together. In addition, the Department has appropriately balanced the need to manage access against the creation of undue burdens on lot owners in the proposed standards and formulas governing nonconforming lots. Nonetheless, the Department has provided appropriate incentives for cooperation between the owners of nonconforming lots.

229. COMMENT: Although the Code does not propose to force any existing use onto a local road, it appears that the Code will do so in the future and seeks to encourage alternative access by providing bonuses to the maximum vehicular use on nonconforming lots utilizing alternative access.

RESPONSE: The bonus for a nonconforming lot utilizing alternative access was intended to encourage alternative access. The basis for this is established in Response number 144 at 23 N.J.R. 1533, May 20, 1991.

230. COMMENT: The maximum bonus is 30 percent of the amount produced using the formulas and this incentive feature is very nice and should be applauded.

RESPONSE: The Department appreciates the support and believes bonuses will have a positive effect on the management of highway access.

231. COMMENT: The implications of this Code are tremendous in that the number of trips from each nonconforming lot is controlled by formulas contained in the Code. These formulas contain a cap on land area, discriminating against flag lots and any lot larger than three acres in urban areas and two acres in rural areas.

RESPONSE: Flag lots are not discriminated against. Because their inadequate frontage frequently precludes safe and efficient access for large traffic volumes, the Code limits their traffic generation. The same is true for large acreage lots with inadequate frontage.

232. COMMENT: Bonus provisions should only be intended to encourage shared access and to promote traffic management techniques and not to shift the burden of regional highway access to local streets.

RESPONSE: The bonus provisions are only intended to encourage shared access and to promote traffic management techniques.

233. COMMENT: The depth of nonconforming lots should not be considered in establishing vehicular use limitations when their frontage on the highway creates the nonconformance.

RESPONSE: The Department believes the limitations should be based on all characteristics of the lot, including size. The Department recognizes that frontage is more important than acreage and as a result has proposed formulas with restrictive caps on acreage and no limitations on frontage.

234. COMMENT: The vehicular trip limitations, as now defined, are not limiting enough to have any meaningful effect.

RESPONSE: The Department disagrees and is satisfied that the vehicular use limitations are adequate.

235. COMMENT: The formulae include provisions for total lot area and a base of 50 peak hour trips as ways for increasing the number of total peak hour trips allowed. These are faulty premises. Total lot area has no direct relationship to the safety of lot frontage that is not wide enough to meet the proposed standards. The lot became nonconforming precisely because it could not meet the access spacing standard. Further, allowing a base of 50 peak-hour trips is also excessive considering the conflicting vehicle movements that a nonconforming lot contributes simply by being short on frontage. The formulae shold be revised to eliminate all credits for nonconforming lot depth and eliminate the base of 50 trips for vacant lots.

RESPONSE: Please refer to Response numbers 221 and 233.

N.J.A.C. 16:47-3.5(b)1

236. COMMENT: R is not defined in the formula in N.J.A.C. 16:47-3.5(b)2.

RESPONSE: An E was mistakenly printed instead of R. This has been corrected.

N.J.A.C. 16:47-3.5(b)2

237. COMMENT: A Sunday peak hour trip reference should be added.

RESPONSE: Please refer to Response number 138.

N.J.A.C. 16:47-3.5(c)

238. COMMENT: The text should say that the following number of access points on a State highway shall be permitted unless site specific conditions indicate that additional access points are warranted.

RESPONSE: This comment is based on a fundamentally different perspective than that of the Department and the text has not been modified to accommodate the comment. The suggestion is that the number of access points which follow are minimums and that additional access points may be appropriate. The burden is imposed on the Department to demonstrate that the minimums are appropriate. However, the Department drafted the proposal to establish the number of access points which follow as the maximums, leaving the burden of proof on the applicant to establish the need for more than a single access point. The proposed text enables the Department to effectively manage access, where the suggested text is less effective. According to recent research, driveways create side friction, primarily in the outside traffic lane. This friction reduces capacity, since through traffic avoids this lane. Accordingly, only one driveway should be provided for a minimum use generator and, in general, only one driveway per development should be provided for a minor generator. Major generators should have only one driveway per property, except where it is in the public interest to provide additional access points. This research calls minimum use generation as up to 50 trips per day, minor use generation as up to 200 peak hour trips, and major use generation as more than 200 peak hour trips. This provision has not been modified.

239. COMMENT: For clarity, there should be references to formulae in the text to reduce the chance for misinterpretation of Appendix I-4 to improve their clarity.

RESPONSE: Formulas have been added to N.J.A.C. 16:47-3.5(c)4 and 5 to improve their clarity.

N.J.A.C. 16:47-3.5(c)2

240. COMMENT: What guidelines define safety and operations? Are they sight distance, provisions for acceleration and declaration lanes, traffic signals, number of conflicts, etc.?

RESPONSE: Each driveway on the State highway system is a point of traffic conflict. Reducing the traffic conflicts improves efficiency and safety, except that if there are too few driveways then the queues may conflict with through traffic or may influence motorists to make unsafe maneuvers. The Department seeks the appropriate balance between these conditions. The Department bases other safety and operational determinations on the design standards contained in the Code and referred to in N.J.A.C. 16:47-1.1.

N.J.A.C. 16:47-3.5(c)3

241. COMMENT: What guidelines define safety and operations? Are they sight distance, provisions for acceleration and deceleration lanes, traffic signals, number of conflicts, etc.?

RESPONSE: Please refer to Response number 240.

N.J.A.C. 16:47-3.5(d)

242. COMMENT: More than two lots should be able to be treated as a single lot if they share one driveway.

RESPONSE: This revision has been made.

N.J.A.C. 16:47-3.5(e)

243. COMMENT: If a driveway volume is greater than that needed to warrant a traffic signal, as few as 75 vehicles per hour leaving a site, the access must be located at a traffic signal. This provision is far more restrictive than the originally proposed nonconforming lot vehicle use limitations. Under this rule most conforming lots will have limited access unless they happen to be located at an existing or optimal traffic signal location. It is not unreasonable to permit such access mid block. With a left-turn lane to serve entering traffic, it is not at all unrealistic to permit the 75 to 100 vehicles per hour to exit. With 40 and 50 turning right and left, reasonable operations are possible. On many of the major roadways in our State, these provisions will preclude any significant development whatsoever from occurring on the State highway system regardless of frontage, acreage, or willingness of the applicant to provide funding for, or construction of, roadway improvements. It will encourage the subdivision of large lots into smaller lots with individual access points and will discourage combining access for severl lots into single points of access. This requirement should be stricken from the Code.

RESPONSE: This provision applies mainly to undivided highways. The commenter appears to assume that all State highways are or will remain undivided. On undivided highways, only if most of the 75 vehicles turned left would a traffic signal be considered. The Department generally will require that traffic volumes at a driveway meet a four-hour minimum warrant before approving a traffic signal. Also, gaps from nearby signals may provide some relief for applicants with the traffic volumes mentioned. The reproposal is less restrictive because the applicant (1) does not have to consider whether a signal will be needed 10 years into the future and (2) does not have to identify the optimal location of future signals along a longer highway segment. As with other provisions of the Code, the Department will consider a waiver of this provision.

244. COMMENT: The spacing standards should be used to determine actual driveway locations.

RESPONSE: Please refer to Comment and Response number 232 at 23 N.J.R. 1539, May 20, 1991.

N.J.A.C. 16:47-3.5(e)1

245. COMMENT: Change whenever possible to whenever reasonably possible.

RESPONSE: This change has not been made. The law requires the Department to act reasonably, and the suggested addition does not add any clarification.

N.J.A.C. 16:47-3.5(e)2

246. COMMENT: The lack of recourse by the permittee should be replaced with after reaching agreement on an acceptable alternative access.

RESPONSE: This is not necessarily an alternative access issue. The lack of recourse by the permittee has been replaced with a reference to N.J.A.C. 16:47-4.33. That subsection contains the steps the Department must follow for the adjustment of access to change a driveway, or modification of access to eliminate a driveway.

N.J.A.C. 16:47-3.5(e)3

247. COMMENT: The lack of recourse by the permittee should be replaced with after reaching agreement on an acceptable alternative access.

RESPONSE: This is not necessarily an alternative access issue. The lack of recourse by the permittee has been replaced with a reference to N.J.A.C. 16:47-4.33. That section contains the steps the Department must follow for the adjustment of access to change a driveway, or modification of access to eliminate a driveway.

N.J.A.C. 16:47—3.5(e)6

248. COMMENT: Make this provision less restrictive by adding unless site specific conditions indicate that such access point will not result in an unsafe condition.

RESPONSE: Restricting this provision to safety provides no consideration for the capacity benefits achieved from uninterrupted traffic flow on auxiliary lanes. In addition, neither the Department nor the traffic engineering profession has established safety tresholds. This leaves the safety determination subjective and unpredictable. The Access Code is intended to eliminate subjectivity and improve predictability. The suggested change has not been made.

249. COMMENT: This provision constitutes a defacto no access line if the frontage of a mide block lot is entirely within the limits of a turning lane. If the Department does not allow access along an auxiliary lane, they must purchase the entire parcel due to their denial of access.

RESPONSE: The Department agrees with this comment if the lot does not have reasonable alternative access or if the Department does not provide reasonable alternative access.

250. COMMENT: This provision makes no allowance for geometric, traffic, or special conditions at the proposed driveway. It also does not distinguish between entry and exit driveways. An entry condition would have considerably less impact than would an exit from the site onto the State highway. It is recommended that the text be changed to be optional and that the Department be required to consider special conditions such as traffic patterns, geometric conditions, signal phasing and progression, and other special factors in making this determination. Apparently no studies have been performed to quantitatively document the extent or magnitude of safety or operational problems where access is permitted along right or left-turn lanes, or to demonstrate that those problems could be remedied by an across-the-board prohibition of access. Until such studies are performed, denial of access adjacent to striped left or right-turn lanes should be analyzed on a case-by-case basis.

RESPONSE: The Department will accept requests for waivers of this provision pursuant to N.J.A.C. 16:47-4.35. The Department does not

agree with the generalization that an entry condition would have considerably less impact than would an exit from the site onto the State highway. Please refer to response number 274 at 23 N.J.R. 1541 and Response numbers 276 and 277 at 23 N.J.R. 1542, May 20, 1991.

N.J.A.C. 16:47-3.5(f)

251. COMMENT: This provision should be deleted because nonconforming lots can be created as long as the lots conform to the restrictions placed upon nonconforming lots in the Access Code.

RESPONSE: Response number 143 provides the reasoning behind this provision. The text has been expanded to indicate that a proposed street which creates nonconforming lots will be acceptable if the nonconforming lots are denied access to the State highway.

252. COMMENT: The text in this provision conflicts with N.J.A.C. 16:47-3.5(a)2, which states that all lots are considered nonconforming for access level 2.

RESPONSE: These provisions are not in conflict. N.J.A.C. 16:47-3.5(f) precludes the creation of nonconforming lots by the addition of a street. Adding a street where lots are already nonconforming is not precluded.

253. COMMENT: Any entity desiring to connect a new street to a State highway now has the added burden of locating the street so that it does not create a nonconforming lot on a State highway. This restriction is a bit of an overkill to a roadway which may be needed to help in the regional traffic flow.

RESPONSE: If the regional need can be established, the Department would consider a waiver. It is also likely that any nonconforming lots created could use indirect access, as explained in Response number 251.

N.J.A.C. 16:47-3.6

254. COMMENT: Given the restrictions the Code places on municipalities, this is a gratuitous statement.

RESPONSE: N.J.A.C. 16:47-3.6 affirms the Department's commitment to abide by all local requirements which are not inconsistent with the Code.

N.J.A.C. 16:47-3.7(c)1

255. COMMENT: Change shall not be inferior to shall be a minimum of for parallelism with the requirements used for concrete pavement.

RESPONSE: This change has not been made. The requirements for concrete pavement are thickness requirements and a minimum dimension is appropriate. The requirements here are for strength and a minimum thickness is not appropriate.

N.J.A.C. 16:47-3.8(b)

256. COMMENT: Reference should be made to Figure 2 for illustration of the abbreviations.

RESPONSE: A reference to Figure 2 has been added.

N.J.A.C. 16:47-3.8(c)

257. COMMENT: The 12 foot edge clearance should be revised to the current standard of five feet.

RESPONSE: The Department is maintaining the 12 foot edge clearance. This is needed to equitably administer the 24 foot minimum distance between two driveways, as required by N.J.A.C. 16:47-3.8(i).

N.J.A.C. 16:47-3.8(i)

258. COMMENT: There should be minimum spacing standards for driveways on adjacent nonconforming lots.

RESPONSE: N.J.A.C. 16:47-3.8(i) establishes a minimum distance which applies to all driveways.

N.J.A.C. 16:47-3.8(k)

259. COMMENT: Delete the setback recommendations from the Code. The Code should not be interpreted to supplant the authority granted to municipalities under the Municipal Land Use Law. The Department lacks the jurisdiction to establish setback requirements and its attempt is ultra vires the Department's authority. This clear legal infirmity is not cured by the fact that the Department only recommends these setbacks.

RESPONSE: N.J.A.C. 16:41-12.7 has contained recommendations for setbacks for years. The Department is not aware of any misinterpretation of these recommendations. The Department, therefore, has no reason to believe that the setback recommendations in the Access Code will be misinterpreted.

260. COMMENT: Setbacks are recommended for only certain land uses. If the Department wants to suggest setbacks, they should apply uniformly to all land uses or none. There is no logic to the land uses selected in the Code.

RESPONSE: The setbacks are suggested for all land uses except for single family residential uses. N.J.A.C. 16:47-3.8(k)2 applies to minor uses and N.J.A.C. 16:47-3.8(k)3 applies to major uses.

261. COMMENT: Even if the Department could require setbacks, it should not require any applicant to locate structures in relation to, or to in any other way accommodate, the Department's desirable typical sections. The Department acknowledges that the desirable typical sections are nothing more than what the Department envisions for State highways in the future. It is, therefore, inequitable and impractical to expect an applicant to locate improvements on a site on the basis of the Department's long range plans for highway expansion which may never tak place. Rather, the Department should seek to utilize the DTS provisions in the application review process only for areas affected by funded projects listed on the Department's five year capital improvement plan. Any other requirement is unreasonable.

RESPONSE: Please refer to Response number 166.

N.J.A.C. 16:47-3.8(l)

262. COMMENT: The corner clearance provisions are burdensome and should be reduced to 12 feet for residential driveways and 25 feet for all other driveways.

RESPONSE: Current research into practices around the country recommends a minimum corner clearance of 150 feet for major collector roads (residential), which increases to 350 to 450 feet for major arterials. Florida recently adopted access management requirements which include a 75 foot minimum corner clearance requirement approaching an intersection and a 100 foot minimum corner clearnance requirement departing an intersection, with additional requirements which establish minimum distances as high as 230 feet. The Ohio, Kentucky, Indiana Regional Council of Governments recommends minimum corner clearances of 50 feet for local roads and from 85 to 230 foot minimums for arterial roads. The Department recognizes that, in general, New Jersey conditions differ from average conditions around the country, but they are not so different as to warrant distances as low as those suggested in this comment. It is clear that safety and efficiency benefits can be provided by separating conflict areas. The proposed corner clearances achieve this to a higher degree than those suggested in this comment.

263. COMMENT: The corner clearance requirements of 50 and 100 feet appear in general to be a good idea. However, a right turn only driveway, such as those commonly used for gas stations, has minimal conflicts and a shorter distance should be acceptable.

RESPONSE: Please refer to Response numbers 262 and 266.

264. COMMENT: The corner clearance should be measured from edge of travelled way to the edge of the driveway.

RESPONSE: When the Department developed the corner clearance distances, the method of measurement was also considered. The Department chose the radius method rather than the edge to edge method because the radius to radius method has been used in New Jersey for many years. The distances would have been greater under the measurement method suggested.

265. COMMENT: The corner clearance for a service station should be 15 feet since this would enable service station driveways to be appropriately designed, be consistent with existing design requirements, and not create an unsafe condition.

RESPONSE: Please refer to Response numbers 262 and 266.

266. COMMENT: A minimum corner clearance of 50 to 100 feet is unreasonable, as demonstrated by the functioning of existing service station driveways with small corner clearances. Further, such distances will not be able to be met on small corner lots. The existence of economic rationales disfavors, and the lack of any safety rationale disfavors, the imposition of these corner clearances. A more reasonable corner clearance distance should be proposed, at least for corner service stations which must be accessed by gasoline tanker trucks via the State highway.

RESPONSE: Although service stations with small corner clearances may function well, the Department's primary interest is in the operation of the State highway. The fact that the distances cannot be met on small corner lots is independent of the appropriateness of the corner clearances proposed. Corner clearance is not the main factor affecting tanker truck access, rather the issue is the tanker truck's ability to get into and out of the site. This comment fails to consider the capacity aspects of conflict points close to intersections. While safety is a consideration, so is capacity. The Department does not agree that motorists expections regarding conflicts are a function of the adjacent land use. In addition, please refer to Response number 262.

267. COMMENT: For a 100 foot corner clearance requirement placed on a typical service station with one-way ingress and one-way egress, the first driveway would have to be located approximately 100 feet along the lot frontage, with the second driveway centerline 50 feet from the first, and then second driveway curb return would have to be offset 12 feet from the property line. Therefore, the minimum lot frontage would have to be approximately 190 to 200 feet. An investigation was conducted to determine whether the proposed 100 foot corner clearance is necessary to maintain safety for driveways located adjacent to signalized intersections. Sixteen service stations were investigated in Monmouth and Ocean Counties on both divided and undivided State highways. The corner clearance for these service stations range from five to 30 feet. The police records indicate that over the last three years, there were a total of four accidents at all 16 service stations, with none of them related to ingress traffic movements, but rather the four were related to egress movements. Furthermore, upon review of the accident reports, it appears that the egress accidents were not a result of conflict between a driveway and an intersecting street, rather related to main line traffic. Therefore, the accidents would have occurred regardless of the driveway location.

RESPONSE: Please refer to Response number 265 and Response number 200 at 23 N.J.R. 1537, May 20, 1991.

268. COMMENT: A corner clearance of 50 feet should be adequate. This would enable most service stations to provide two one-way driveways without requiring an oversized lot to provide safe access to and from the site as well as efficient on-site circulation. Two exhibits have been provided in support of the 50 foot recommendation. They indicate that if the 100 foot corner clearance is provided, it would create additional movements on-site, as well as make fuel deliveries difficult.

RESPONSE: The Department has reviewed the two exhibits and finds both sites can meet the 100 foot corner clearance requirement and still have acceptable patron and fuel delivery circulation. In one case the building and pump islands would have to be reoriented to achieve this. The Department finds that the on-site changes are marginal when compared with the improvements to the safety and efficiency of State highways.

N.J.A.C. 16:47-3.8(m)

269. COMMENT: Replace the first line with as shown in Figure 1—Driveway Profile Controls.

RESPONSE: A similar change has been made.

270. COMMENT: The curb face for the driveway in fill section with curb should be one and one-half inches, not one and one-half feet.

RESPONSE: This correction has been made to Figure 1.

N.J.A.C. 16:47-3.8(n)

271. COMMENT: Figure 2 uses letter symbols and a legend. The text should reference such symbols for clarity.

RESPONSE: The letter symbols and legend have been made consistent with the text throughout N.J.A.C. 16:47-3.8.

272. COMMENT: There is a reference to an island and its offset, but no island is shown in Figure 2. An island should be pictured in Figure 2.

RESPONSE: The text has been modified to indicate that there may be an island. No island is shown in Figure 2 because this figure is only intended to illustrate the definitions. Islands are shown in Appendix C.

273. COMMENT: The parking offset is not shown on Figure 2.

RESPONSE: The parking offset has been added to Figure 2.

N.J.A.C. 16:47-3.8(p)

274. COMMENT: Since there is a reference to speed change lane, the design criteria should be referenced.

RESPONSE: The design criteria have not been referenced in this provision because they are referenced in the definition of design standards in N.J.A.C. 16:47-1.1.

N.J.A.C. 16:47-3.9(g)

275. COMMENT: What is the basis for the 1,500 vehicles per day? Is this vehicle trips or total two-way trips? This number should in some way be related to a major traffic generator, which generally has a high design access.

RESPONSE: The 1,500 vehicles are total trips to and from the site. This number is based on the criteria in the Federal Highway Administration Access Management for Streets and Highways course material.

N.J.A.C. 16:47-3.12(a)

276. COMMENT: Amend this provision to indicate that the Department will not assume any costs required as part of an access permit.

RESPONSE: This has been done.

N.J.A.C. 16:47-3.12(m)

277. COMMENT: If the Department requires permission from an adjacent lot owner to issue a permit for shared access, this thinking should be extended to prohibit access management plans from forcing shared access upon property owners.

RESPONSE: This provision does not address shared access. It addresses access on one lot which is dependent on traffic running across a portion of another lot. The Department sees no need to alter this provision as a result of this comment. Access management plans may require shared access after a public hearing and the approval of the municipality and the Department. Since shared access will meet the requirements of this Access Code, the requirements of N.J.S.A. 27:7-91f will be met.

278. COMMENT: This requires an agreement for shared access before an access permit can be issued. This only reinforces the possible legal ramifications associated with shared access as a means of enhancing traffic generation for a nonconforming lot or getting access. This makes it difficult, if not impossible, for such an owner to develop the lot within the zoning allowed.

RESPONSE: Please refer to Response number 277.

N.J.A.C. 16:47-3.15(c)

279. COMMENT: This provision should be deleted because the Department must approve access which crosses State property or its frontage.

RESPONSE: The Department agrees and this provision has been deleted.

N.J.A.C. 16:47-3.16(a)

280. COMMENT: Access to newly subdivided nonconforming lots should be allowed subject to either trip reduction formulas or accommodations within an adopted access management plan.

RESPONSE: Pursuant to N.J.S.A. 27:7-93, the Department will not approve access to a nonconforming lot which was created after adoption of the Access Code.

281. COMMENT: The rules, as proposed have the foreseen potential to usurp local zoning and land use regulations, decrease rateables, and, in many cases, obviate current master plans and zoning regulations.

RESPONSE: N.J.S.A. 40:55D-62d mandates that zoning ordinances regulate land adjacent to State highways in conformity with the Code, rather than obviate the need for master plans and zoning. In addition, please refer to Response number 335 at 23 N.J.R. 1545, May 20, 1991.

282. COMMENT: Prohibiting municipal planning and zoning boards from approving subdivisions unless lots conform to the Access Code is unreasonable since it requires survey information not supplied to the municipal boards nor required under the Municipal Land Use Law.

RESPONSE: Please refer to Response number 341 at 23 N.J.R. 1545, May 20, 1991.

283. COMMENT: The Department must recognize that the conditions which apply to land ownership on either side of a low are continually subject to change. What constitutes a 1,000 foot frontage today could easily be broken into much smaller frontages tomorrow.

RESPONSE: The Department recognizes that conditions change. The Access Code addresses this in N.J.A.C. 16:47-4.6(k) by recording permits so that future owners are aware of the conditions of access and in N.J.A.C. 16:47-4.3(a) by requiring a permit before a lot owner may alter access. In addition, N.J.A.C. 16:47-3.16(a) encumbers access to some lots which are subdivided in the future.

N.J.A.C. 16:47-3.16(b)

284. COMMENT: Denial of an access permit because alternative access is available is contrary to N.J.A.C. 16:47-3.2(a) and the Summary of the reproposal.

RESPONSE: This provision is not contrary to N.J.A.C. 16:47-3.2(a). It sets forth the requirements for municipalities when the Department acts as stated. These requirements are consistent with N.J.S.A. 27:7-95b.

285. COMMENT: This provision should be clarified to reflect that access will be permitted unless an unsafe condition is present.

RESPONSE: The reference to an unsafe condition has not been added, for the reasons explained in Response number 146.

N.J.A.C. 16:47-3.16(c)

286. COMMENT: This provision should be deleted because municipal zoning is neither compatible nor incompatible with the Access Code.

RESPONSE: This provision has been modified to indicate that traffic volumes from use variances should not exceed those traffic volumes allowed by the Access Code. N.J.S.A. 40:55D-62d, Power to zone, provides that municipal zoning of land adjacent to State highways [shall be] in conformity with the State highway access management code.

287. COMMENT: Encouraging municipalities to deny zoning variances is a clear usurpation of the municipal home rule powers vested in municipal governing bodies by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. An applicant may have a valid reason for a variance, effectively rezoning the lot. It is clear that this will lead to less intense residential uses along State highways, which is poor planning.

RESPONSE: There are no limitations on the Department's authority to encourage the denial of zoning variances. Since this provision is not binding on applicants or municipalities, it usurps nothing. Please refer to Response number 344 at 23 N.J.R. 1546, May 20, 1991.

N.J.A.C. 16:47-3.17(b)

288. COMMENT: The discretionary authority of the Commissioner to modify a proposed access or deny a permit that conforms with the Access Code if site specific highway operation and safety considerations so warrant is contrary to the purpose of the proposed rules. This provision should be deleted.

RESPONSE: Please refer to Response number 348 at 23 N.J.R. 1546, May 20, 1991.

N.J.A.C. 16:47-3.17(c)

289. COMMENT: This provision is inconsistent with an underlying principle of the Code. The Department is responsible for providing all necessary assistance in the establishment of alternative access. Therefore, this provision should be deleted.

RESPONSE: This provision was intended to apply to direct access to the State highway system, not to alternative access. It has been clarified. In addition, please refer to Response number 349 at 23 N.J.R. 1546, May 20, 1991.

N.J.A.C. 16:47-3.17(d)

290. COMMENT: Revise this provision to indicate the Department will only exercise the authority to build new roads or require access easements to lots which have no safe means of access to a State highway.

RESPONSE: The Department will not limit the authority granted by N.J.S.A. 27:7-97.

N.J.A.C. 16:47-4

291. COMMENT: Decentralized administration of permits through the Regional Maintenance Offices instead of a division in Trenton creates administrative problems.

RESPONSE: The Department disagrees and addressed its preference for a decentralized system in Response number 321, N.J.A.C. 16:47-3.13 at 23 N.J.R. 1544, May 20, 1991.

N.J.A.C. 16:47-4.2

292. COMMENT: The concurrent application section should contain a statement indicating that nothing in it relieves the Department from complying with the review time frames.

RESPONSE: This addition is not necessary because the provisions establishing the time frames have no inclusion for concurrent applications.

N.J.A.C. 16:47-4.3(a)

293. COMMENT: A permit should only be required of a lot having direct access to a State highway.

RESPONSE: This is what the Department intended. The text has been revised to include a reference to direct access.

294. COMMENT: A separate access permit should be required for each access point to a development involving access to more than one lot.

RESPONSE: Access permits cover all State highway access to a lot, not individual access points. Any lot having direct State highway access needs a permit, whether the access is only used by traffic from that lot or if the access is also used by traffic from other lots.

295. COMMENT: Lots relying on indirect or shared access, rather than direct State highway access, should be required to include deed restrictions stating the limitations on access which have been established through the permit review process.

RESPONSE: The owner of the lot which is covered by the permit is responsible for all traffic between the lot and the State highway. If the owner chooses to grant an easement to or require a deed restriction from the owner of another lot, there is no need for the Department to be involved in matters between the lot owners. However, the Department would have an interest if the easement lead to a significant increase in traffice or caused changes to access points.

296. COMMENT: An applicant filing an application for a single access point serving several lots should receive a credit rather than be exposed to multiple fees based on the number of lots.

RESPONSE: The only lot which needs to apply for a permit in this instance is the lot on which the access point will be located. All traffic using this access point should be covered by the permit.

297. COMMENT: Because of inconsistencies in lot configurations, it is conceivable that two projects of similar size, use, and traffic generation would be required to pay substantially different application and permit fees simply because of the lot configurations.

RESPONSE: Two projects of similar size, use, and traffic generation could be required to pay different application and permit fees if one project was on a single lot and the other project covered multiple lots. The Code requires every lot on which a State highway access point is located to have its own access permit. The Department does not regulate projects, their size, or the number of lots they may cover. It regulates access between lots and State highways.

298. COMMENT: What is the rationale for using any in this section rather than a? This seems to imply that permits could be required where access is not necessarily direct access.

RESPONSE: The Department did not intend to imply that these provisions apply where access is not direct. N.J.A.C. 16:47-4.3(a)1 through 8 any has been replaced with a, which is consistent with the language in N.J.S.A. 27:7-92a.

N.J.A.C. 16:47-4.3(a)4

299. COMMENT: The term access should be restricted to direct access.

RESPONSE: This is what the Department intended. The text has been revised to include a reference to direct access.

300. COMMENT: This provision should be amended to read expanding the facilities on a lot having access to any State highway if the expansion would result in a significant increase in traffic as defined herein. The Department does not have the authority to regulate expansions unless traffic is increased at a rate that would negatively impact the safety of the motoring public.

RESPONSE: The Department agrees with the text modifications and has made revisions similar to those suggested. The Department does not agree with the inference that a significant increase in traffic is a rate that would negatively impact the safety of the motoring public. The test of significance is based on N.J.S.A. 27:7-95.

N.J.A.C. 16:47-4.3(a)5

301. COMMENT: The term access should be restricted to direct access.

RESPONSE: This is what the Department intended. The text has been revised to include a reference to direct access.

302. COMMENT: This provision should be amended to read changing the use on a lot having access to any State highway if the change would result in a significant increase in traffic as defined herein. The Department does not have the authority to regulate changes of use unless traffic is increased at a rate that would negatively impact the safety of the motoring public.

RESPONSE: Please refer to Response number 300.

N.J.A.C. 16:47-4.3(a)6

303. COMMENT: The term access should be restricted to direct access.

RESPONSE: This is what the Department intended. The text has been revised to include a reference to direct access.

304. COMMENT: This provision should only apply when there is a significant increase in traffic.

RESPONSE: The Department maintains that subdividing a lot invalidates the permit for the lot which existed. New permits are needed for those new lots which have direct access.

N.J.A.C. 16:47-4.3(a)7

305. COMMENT: The term access should be restricted to direct access.

RESPONSE: This is what the Department intended. The text has been revised to include a reference to direct access.

306. COMMENT: This provision should only apply when there is a significant increase in traffic.

RESPONSE: The Department maintains that consolidating lots invalidates the permits for the lots which existed. A new permit is needed for the new lot.

N.J.A.C. 16:47-4.3(a)8

307. COMMENT: This provision should be deleted because it is too vague. The rules very clearly define those activities that require access permits.

RESPONSE: This provision covers all activities which may interfere with traffic. The Department needs the ability to regulate these activities in order to ensure the safe and efficient movement of people and goods on State highways.

N.J.A.C. 16:47-4.3(c)

308. COMMENT: To require a lot owner to produce a permit which may have been granted 15 years ago is unduly burdensome. Instead, lot owners should only be required to produce permits issued after the Access Code is adopted. What if the permit cannot be found? Will a lot owner's right to access be revoked? At the very least, the rules should provide that the Department will furnish the lot owner with a duplicate of a lost or destroyed permit before declaring a permit invalid.

RESPONSE: Please refer to Comment numbers 369 and 371 and Response number 371 at 23 N.J.R. 1547, May 20, 1991.

309. COMMENT: This section is inconsistent with the definition of grandfathered permit in N.J.A.C. 16:47-1.1. Some clarification is needed to determine whether the date of grandfathering is in 1970 or 1976.

RESPONSE: The clarification is shown in Appendix G. A reference to Appendix G has been added to the definition of grandfathered permit in N.J.A.C. 16:47-1.1.

310. COMMENT: It appears the permit for a county or municipal road could expire if there is a significant increase in traffic. If this is the case, there is concern by many that using a starting date of July 1, 1976 appears to count traffic volume increases since that time for county and municipal streets. Considering the amount of growth in vehicle miles traveled along State highways as well as the population and employment changes in New Jersey in the past 15 years, it would seem that most streets in existence more than a few years which intersect with a State highway will have experienced a significant traffic increase. Requiring counties and municipalities to pay for mitigation required by such increases is financially and practically unrealistic. The Department should not require mitigation for significant increases to traffic that occurred prior to the adoption of the Access Code for streets intersecting State highways.

RESPONSE: N.J.S.A. 27:7-92c establishes January 1, 1970 as the effective date for the need for access permits for driveways and streets which intersect State highways. This coincides with the effective beginning of the access permit system. The Department has evidence of all access points in existence as of July 1, 1976, so it is able to administer the requirements as of that date. Ever since then, N.J.A.C. 16:41-2.4(n) has held that permits expire upon a significant increase in traffic. Therefore this provision of the Access Code is not a new requirement and the Department sees no public benefit in giving up its right to enforce this requirement of existing rules.

311. COMMENT: This provision is burdensome. In a situation where traffic from a new development located in one municipality will access a nearby State highway by way of a municipal or county road in an adjacent muncipality, neither the county, the State, nor the second municipality has any approval authority over the new development. A significant increase in traffic caused by the new development in the first municipality could cause the access permit for the municipal or county road intersecting the State highway in the second municipality to expire. Until the third TRANSPLAN bill, the County Municipal Planning Partnership Act, is enacted, counties and towns such as the second municipality have no protection. This provision should be eliminated from the Access Code or withheld from inclusion until such time as some protection is provided to counties and neighboring municipalities.

RESPONSE: The Department will give consideration to hardship situations, such as activities beyond the control of a permittee, when considering a course of action in response to a permit violation.

N.J.A.C. 16:47-4.3(d)

312. COMMENT: In lieu of a contact at the Regional Maintenance Office, there should be a contact person or division at headquarters to coordinate with other divisions in the Department.

RESPONSE: The Department addressed this issue in Response number 321, N.J.A.C. 16:47-3.13, at the May 20, 1991 23 N.J.R. 1544.

N.J.A.C. 16:47-4.3(f)

313. COMMENT: Add that the application for shared access is to be submitted at the time of the development application for each lot.

RESPONSE: This addition has been made.

N.J.A.C. 16:47-4.3(i)

314. COMMENT: Revise this provision to indicate that it only applies to that portion of a lane addition within State highway jurisdiction.

RESPONSE: This change is not necessary because the Department does not have authority outside of its jurisdiction.

315. COMMENT: The word access at the beginning of this provision should be replaced with street intersection.

RESPONSE: This change has been made. It makes this provision consistent with the definition of street intersection application in N.J.A.C. 16:47-1.1.

316. COMMENT: This provision should be changed so that the county or municipal engineer is not required to be the permittee when improvements to a State highway intersection with a municipal or county road are being made in conjunction with a proposed development application and the developer is constructing the improvements. This is financially and legally burdensome.

RESPONSE: The county or municipal engineer is not the permittee. He or she is merely authorized to sign the permit on behalf of the local government. It would be inappropriate for the Department to issue a permit to an entity which was not responsible for the land which was the subject of the permit. The agency with jurisdiction over the local road must be the permittee. This provision of the Access Code parallels N.J.A.C. 16:41-7.2(a)1, which has functioned without burden for two years. It should be noted that N.J.A.C. 16:47-4.19(a) specifies that applications for new streets need not be signed by the county or municipal engineer, but he or she must sign the permit.

N.J.A.C. 16:47-4.3(k)1

317. COMMENT: Why has what constitutes a significant increase in traffic been eliminated here, yet the same criteria are included in the definitions?

RESPONSE: The definition of significant increase in traffic in N.J.A.C. 16:47-1.1 establishes the criteria for a significant increase in traffic. The criteria need not be repeated each time this term is repeated throughout the Code.

N.J.A.C. 16:47-4.3(k)2

318. COMMENT: Delete this provision because a significant increase in traffic will trigger a new permit.

RESPONSE: Please refer to Response numbers 304 and 306.

319. COMMENT: This provision should be replaced with one stating that access permits will remain valid for the original lot and driveway. The newly subdivided lot is not entitled to access.

RESPONSE: The Department does not agree with this suggested change because after the subdivision takes place, the original lot no longer exists.

N.J.A.C. 16:47-4.3(l)

320. COMMENT: Add a date of penalty commencement, which should be the date of the notice of violation.

RESPONSE: A date of penalty commencement has been added, but it is the date of expiration. This protects the permittee from penalties during the period provided to remedy the violation.

N.J.A.C. 16:47-4.3(n)

321. COMMENT: Revise this to establish safety as the criteria for revoking access. Some criteria or guidelines should be given as a basis for denial of access or removal of access.

RESPONSE: This revision has not been made for the reasons stated in Response number 146.

322. COMMENT: The Act does not mandate that the Department revoke access if reasonable alternative access exists.

RESPONSE: The Code does not mandate this either.

323. COMMENT: It is unclear whether direct access will be revoked where alternative access exists. Although the Summary indicates that the

Access Code does not preclude direct access when alternative access is available, there are numerous provisions which are clearly contradictory. In clarifying this cornerstone issue, the Department should develop a standard on which to base the determination that traffic efficiency is improved by the use of alternative access. This is an arbitrary determination that gives the Department the authority to close off existing highway access at the extreme expense of private lot owners. If the Department cannot establish that safety and mobility are impaired, then direct access should be allowed.

RESPONSE: N.J.A.C. 16:47-4.3(n) and (q) have been amended to be consistent with N.J.A.C. 16:47-3.2(a). They all make reference to the safety and efficiency of the State highway.

324. COMMENT: Where access is revoked, lot owners should be compensated for the loss of the utilization or value of their lot.

RESPONSE: N.J.S.A. 27:7-90f only requires compensation when all access to the general system of streets and highways is eliminated. This is not the case when direct access is revoked and alternative access is provided. However, if direct access is revoked and alternative access is required by the Department, N.J.S.A. 27:7-94d mandates that the Department also provide all necessary assistance to the lot owner in establishing the alternative access. This includes Departmental funding of access removal, relocation and associated engineering, on-site circulation improvements to accommodate the access changes, landscaping, and replacement of directional and identifying signs. In addition, please refer to Response number 82 at 23 N.J.R. 1530, May 20, 1991.

325. COMMENT: Traffic efficiency will not be improved by revoking direct access. On the contrary, by forcing businesses to use alternative access and by discouraging development along State highways, conflicts and congestion on the local road system will be increased. This will mean longer trip lengths and added inconvenience for motorists. More importantly, local roadways, many of which traverse through residential neighborhoods, may not be able to accommodate additional traffic and the safety of both motorists and residents will be impaired.

RESPONSE: Please refer to Response numbers 144 at 23 N.J.R. 1533 and 181 at 23 N.J.R. 1535, May 20, 1991.

326. COMMENT: As in the original proposal, the concept of what is reasonable remains an ambiguity. Revoking existing access through an arbitrary determination that a lot has access which the Department considers reasonable will have a severe negative impact.

RESPONSE: N.J.A.C. 16:47-4.3(n) reiterates the reasonable alternative access guidelines set forth in N.J.S.A. 27:7-94. When considering the reasonableness of alternative access, the Department will refer to these guidelines.

327. COMMENT: Traffic volumes on roads fronting private property have always had a major impact on land uses, and drastic increases in traffic volumes on the current local road network could have impacts on the current land uses by creating pressures to change from single-family residential uses to more intensive land uses such as small-scale offices or personal service businesses.

RESPONSE: If the Department foresees the need to revoke direct State highway access and require alternative access, it will first consider the potential impacts of the diverted traffic. If the Department requires an applicant to provide alternative access in addition to direct access, the Department expects that the municipality will also consider the potential impacts of the diverted traffic before granting municipal approvals.

328. COMMENT: It does not make sense to subject residents of a local road, which was never designed for such a purpose, to increased traffic and its subsequent dangers from vehicles which are seeking alternative routes.

RESPONSE: N.J.S.A. 27:7-94c and N.J.A.C. 16:47-4.3(n)1 require an alternative route to be of sufficient design to support the diverted site traffic.

N.J.A.C. 16:47-4.3(n)1i

329. COMMENT: Commercial lots, in particular are sensitive to the convenience and orientation of access points. If a site has been designed to be visible from or oriented to a particular frontage, there could be a terrible economic, aesthetic, and planning impact of the development if access is changed. This provision should be restricted by adding that there must be no significant change in the orientation of the site or the visibility of the site.

RESPONSE: The Access Code contains the same revocation restrictions as does the Act. The Act does not include the restriction suggested. Instead, N.J.S.A. 27:7-94d requires the Department to erect suitable signing when a new access location is provided.

N.J.A.C. 16:47-4.3(n)5

330. COMMENT: Provisions should be made for the use of signing such as those signs permitted on interstate highways in Delaware, Maryland, and New York. These type of signs provide a standard generic feature, yet allow the brand plaques or logos to provide specific identities for the individual commercial establishments.

RESPONSE: The Code requires generic, white message on green background signs because it would not be feasible for the Department to maintain an appropriate inventory of logos for all facilities with indirect access. Furthermore, there may be too many businesses at a given location to adequately sign for individual businesses.

N.J.A.C. 16:47-4.3(n)6

331. COMMENT: This provision should require work on county roads to be to county standards.

RESPONSE: This addition has been made. Also, the revocation will be filed with the county clerk and county planning board, pursuant to N.J.A.C. 16:47-4.3(n)3.

332. COMMENT: Middlesex County is pleased that the amendments made to the Access Code require the Department to assume responsibility for addressing local road impacts caused by diverted traffic whenever the Department revokes the State highway access permit for an existing developed lot and provides alternative access onto a local road. However, we further recommend that the nature of the improvements on local roads required from the impacts of diverted traffic be determined in collaboration with the appropriate municipal or county agencies.

RESPONSE: The Department intends to coordinate any work it performs on roads outside of its jurisdiction with the agency having jurisdiction.

333. COMMENT: In approving an application for a development which has frontage on both a State highway and county road, if the Department mandates access to the county facility rather than or in addition to access to the State highway, the Department does not need to address the impacts to the county road.

RESPONSE: The Department will address impacts to county roads as specified in Appendix H. The Department, however, may accept a determination by a county that it is not necessary for the Department to address impacts to a county road in a given location.

N.J.A.C. 16:47-4.3(o)

334. COMMENT: If the applicant has received municipal subdivision or site plan approval for the proposed activity, the applicant should be able to provide the Department with a copy of the planning board resolution instead of sending a copy of the application to the municipality. The same should hold for the county.

RESPONSE: This change has not been made because it lacks some of the benefits created by the text as proposed. In particular, it fails to give the municipality and county notice that the applicant has filed an access application, and it fails to enable the municipality and county to give comments to the Department for its consideration.

335. COMMENT: Specify that the municipal clerk should be of the municipality in which the development activity is proposed.

RESPONSE: This has been done.

336. COMMENT: Although the Code does offer the opportunity for municipal input, it does not specify to what extent the local comments will be considered in the process, since the final authority rests with the Commissioner.

RESPONSE: The Department will evaluate each set of municipal comments based on either its consistency with the Code or the extent to which it promotes the purposes and goals expressed in the Act. The final authority of the Commissioner only applies to the access. The final authority to approve the development rests with the municipality. An applicant must gain both approvals in order to develop or redevelop a lot.

337. COMMENT: In order to further integrate the access application review process with local government review processes, the Department might consider expanding the applicability of this provision to all access permits. A more inclusive procedure will ensure that all levels of government are aware of development proposals and their cumulative impacts. This may be especially relevant in areas where several medium-sized, 400 to 500 trips per day developments, are proposed along a stretch of State highway.

RESPONSE: The Department considered extending this provision to all access applications and decided against it for two reasons. First, the Act only provides 45 days for the Department to issue or deny a minor permit. There is insufficient time for a municipality or county to develop

comments, send them to the Regional Maintenance Office, and have the comments considered. Second, the resources of all levels of government are best applied where they may do the most good. Since there are many more minor applications than there are major applications, and few minor applications have significant impacts, the Department believes it is more prudent to focus attention and limited resources on the major applications which are expected to have greater traffic impacts.

N.J.A.C. 16:47-4.3(g)

338. COMMENT: Revise this provision to establish safety as the criteria for denying access.

RESPONSE: This revision has not been made for the reasons stated in Response number 146.

339. COMMENT: At the end of this provision, the county approval process should be referred to.

RESPONSE: This addition has been made.

340. COMMENT: The Act does not mandate that the Department revoke access if reasonable alternative access exists.

RESPONSE: The Code does not mandate this either.

341. COMMENT: This provision is inconsistent with N.J.A.C. 16:47-3.2(a) because it does not reflect any standards indicating when reasonable alternative access shall be required.

RESPONSE: This provision has been amended to include the same standard as that set forth in N.J.A.C. 16:47-3.2(a): reasonable alternative access will be required when it will substantially benefit the safety and efficiency of the State highway.

342. COMMENT: Provision should be added that counties and municipalities should be given an opportunity to comment when the Department intends to request access changes or deny access so the county or municipality can assess the impacts on roads under their respective jurisdictions.

RESPONSE: N.J.A.C. 16:47-4.3(o) requires that duplicate copies of all major access applications be sent to the county and municipality. These jurisdictions may provide comments to the Department for the Department's consideration during review of the application. It is unnecessary for the Department to notify counties and municipalities because they will become aware of the Department's requirements through the applicant, who should be required to provide evidence of State agency approvals before receipt of construction permits.

N.J.A.C. 16:47-4.3(r)

343. COMMENT: Increases in traffic on municipal roads should not cause the expiration of permits granted or deemed to have been granted for such roads. Therefore, since N.J.A.C. 16:47-4.3 fails to provide an exclusion for permits held by municipalities or counties, a section should be added which states that nothing in this section should be read to include permits held by municipalities or counties. This addition is clearly responsive to the purpose behind the Transportation Development District Act and the State Highway Access Management Act. Both were designed to address and control the tremendous expansion along State highways, not to discourage and constrict growth or expansion within the individual municipalities through which the State highways pass. In Response number 358 at 23 N.J.R. 1547, May 20, 1991, the Department indicated that if a municipal street has a significant increase in traffic, the permit for the street may expire. This concerns municipalities because it indicates a willingness for the Department to penalize municipalities for matters over which they may have little, if any, control. The Act granted the Department the authority to regulate lots abutting State highways. Contrary to the majority of the Code, which accomplishes this task, this position would allow the Department to regulate growth off State highways, an area clearly outside of the Department's jurisdiction. Unless the Department addresses this concern, it will be in violation of the law and outside of its jurisdiction. Therefore, the Department should adopt this amendment to avoid litigation concerning this matter.

RESPONSE: The Department does not agree with either the suggested addition or the notion that the two cited Acts provide a basis for distinguishing between traffic which reaches a State highway through driveways and traffic which reaches a State highway from sources other than driveways. The Department is not seeking to regulate growth. It is managing access based on the N.J.S.A. 27:7-92 a requirement that any person seeking to construct or open a driveway or public street or highway entering into a State highway must obtain an access permit. In addition, please refer to Response numbers 358 at 23 N.J.R. 1547 and 378 and 388 at 23 N.J.R. 1548, May 20 1991.

N.J.A.C. 16:47-4.4(a)

344. COMMENT: The threshold for a planning review is too low. The peak-hour trip threshold should be raised to at least 250 trips.

RESPONSE: The Department set forth the basis for the 200 peak-hour trip threshold in Response number 393 at 23 N.J.R. 1549, May 20, 1991.

345. COMMENT: Based on a 200 trips per hour threshold, all development including typically sized convenience stores, fast food restaurants, and drive-in banks would require a planning review. However, gas stations do not require a planning review under any circumstances. An example of the ramifications of this double standard is that a normally sized convenience store of 3,000 square feet would require a planning review, while a much larger convenience store/fast food restaurant/gas station site would not. This discrepancy appears to provide an unfair advantage to this type of business.

RESPONSE: There is no double standard or discrepancy. The cited larger convenience store/fast food restaurant/gas station site would not meet the definition of service station, in N.J.A.C. 16:47-1.1, because at least 175 percent of the site traffic would not be purchasing motor vehicle services. Please refer to Response number 394 at 23 N.J.R. 1549, May 20, 1991 for further explanation.

N.J.A.C. 16:47-4.4(e)

346. COMMENT: There is no allowance for passby or internal trips when determining the type of permit. Either these trips should be recognized for land uses such as convenience stores, fast food restaurants, and drive-in banks, or the planning review should be made non-applicable for these developments as well as service stations.

RESPONSE: N.J.S.A. 27:7-1 establishes the line between minor and major permits based on expected two-way traffic volumes between the lot and the State highway. Internal trips do not take place to and from the State highway, so they make no difference in this determination. However, passby trips enter and leave a State highway, so they are required by the Act to be considered in determining the type of permit.

N.J.A.C. 16:47-4.4(f)

347. COMMENT: Some land uses in the Institute of Transportation Engineers publication entitled *Trip Generation Report* have rates based on as few as two traffic studies. This results in inconsistencies in determining whether or not a planning review is required.

RESPONSE: The referenced source is the best information available in the country. It is relied on by the traffic engineering industry and was used to develop Appendix E. The Department recognizes that there are inconsistencies in the information, so the Department included N.J.A.C. 16:47-4.4(f) in these rules. This provision indicates that the Department may accept alternative evidence of representative rates when an applicant can demonstrate that the rates shown in Appendix E are not representative.

348. COMMENT: The Institute of Transportation Engineers publication entitled *Trip Generation Report* samples may or may not be representative of travel in various regions of the State because of local conditions such as transit accessibility. In such cases, local generation rates derived from surveys of similar land use activity and regions of the State should be considered, since they more closely approximate possible activity at the proposed site. The basis for establishing such rates, though, should be defined in the Code, and not left to the discretion of the applicant.

RESPONSE: Please refer to Response number 347. The Department has deliberately provided for the establishment of alternative rates because widely varied local conditions are difficult to address in rules.

N.J.A.C. 16:47-4.5

349. COMMENT: Any access permit application should not be considered complete without a local site plan or subdivision approval. Actions should only be taken on complete applications.

RESPONSE: The Department does not agree that it needs local site plan or subdivision approval before it can deem an application complete. Some developers desire to approach the Department first and others desire to approach a municipality first. By not specifying either path, the Department provides flexibility to lot owners. The Department agrees that actions should only be taken on complete applications. Also, please refer to Response number 352 at 23 N.J.R. 1546, May 20, 1991.

N.J.A.C. 16:47-4.5(a)

350. COMMENT: For a major project, such as a shopping center or an office park, the time frame for review is 175 days. In addition, if a traffic signal is involved there is another 45 days, and a developer

agreement may take an additional 85 days. If all of these were present the process would take 305 days, not including pre-application conference and conceptual design meetings. This is far too long and should be reviewed.

RESPONSE: This provision, as required by N.J.S.A. 27:7-91d, provides for the issuance of a major permit with a planning review within 200 days from the date of receipt of a complete application. Footnote number 2, which specifies 45 days if a traffic signal is involved, only applies to minor applications, not major applications. Developer agreements are not included within the permit approval time. N.J.A.C. 16:47-4.18(a) states that these shall be conditions of permits. The Department has again reviewed this process and it is as short as possible, given the constraints of limited resources.

351. COMMENT: In the table, street should be replaced with street intersection.

RESPONSE: This change has been made.

352. COMMENT: Clarification must be made to indicate if the completeness review is part of the time allowed for the entire review process.

RESPONSE: The Department has clarified this provision by including text to indicate that the completeness check is performed within the time frames listed.

N.J.A.C. 16:47-4.6(a)

353. COMMENT: In the table, street should be replaced with street intersection.

RESPONSE: This change has been made.

354. COMMENT: The application fees for even smaller projects seem disproportionately and excessively higher as compared to other agencies.

RESPONSE: Please refer to Response number 420 at 23 N.J.R. 1550, May 20, 1991.

355. COMMENT: The $50.00 fee for single-family residential lot subdivision or consolidation should be waived, as this seems an excessive burden for small landowners.

RESPONSE: The Department cannot waive fees. Experience has shown that residential subdivisions and consolidations are not always for small lots.

N.J.A.C. 16:47-4.6(b)

356. COMMENT: The Department's concerns for affordable housing projects are appreciated. However, the 20 percent fee reduction in the original proposal should be reestablished, rather than 10 percent.

RESPONSE: The original proposal provided a 20 percent fee reduction for projects with at least 20 percent affordable housing. Council on Affordable Housing representatives advised the Department that few developments had such large affordable housing components. They supported reducing the threshold and also reducing the fee reduction. Overall this was expected to lower fees in total and for a greater number of applicants. Consequently, the Department has not revised this provision as suggested. Also, please refer to Response number 424 at 23 N.J.R. 1550, May 20, 1991.

N.J.A.C. 16:47-4.6(d)1

357. COMMENT: This provision should be revised to state that the permit will not expire if extended or otherwise stated in the permit.

RESPONSE: This change has been made.

358. COMMENT: Because of numerous permitting requirements of municipal, county, and state regulatory authorities, this provision should be amended to provide that permits are valid for three years, with two one-year extensions available upon application to the Department. This would allow the period of validity for access permits to match and run with the period set forth for preliminary approvals in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

RESPONSE: Please refer to Response number 427 at 23 N.J.R. 1550, May 20, 1991.

N.J.A.C. 16:47-4.6(d)2

359. COMMENT: A permit should not expire if construction commenced within the year of permit issuance and the permittee should complete construction within one year of commencement.

RESPONSE: This provision has been changed to provide two years between permit issuance and the required completion of construction. This avoids the administrative burden of tracking the date of the start of construction. A similar change has been made to N.J.A.C. 16:47-4.3(k).

N.J.A.C. 16:47-4.6(f)

360. COMMENT: There should be a clarification that permits are not issued for traffic volumes.

RESPONSE: The type of permit application is determined by the traffic volume generated. This provision has been expanded to indicate that the daily and peak hour traffic volumes covered by each permit shall be a condition of that permit. Also, a permit expires when a significant increase in traffic occurs on a lot due to expansion or change of use. The traffic volumes must be on the permit in order to determine when an increase is significant.

N.J.A.C. 16:47-4.6(g)

361. COMMENT: When a developer is constructing improvements at a State highway and local road intersection, the developer should be required to post performance guaranteees to assure the installation of improvements. The State should not expect the county to post performance guarantees or assume liability under such circumstances, since the county and municipal governments have no control over when these State highway intersection improvements would be constructed by the developer.

RESPONSE: In the situation described, the local agency is the permittee and is fully responsible for all conditions of the permit. If the local agency chooses to have a developer act on behalf of the agency, then the agency may pass requirements of the permit along to the developer, but the local agency remains ultimately responsible. Since the local agency is the permittee, the agency has control over when the work will be performed.

N.J.A.C. 16:47-4.6(k)

362. COMMENT: It is unclear if the Department will record the permit or if the permittee must do it.

RESPONSE: This provision has been clarified by specifying that the Department will record the permit.

N.J.A.C. 16:47-4.6(l)

363. COMMENT: Add the ability for a permit to be tolled due to a pending application before another governmental entity.

RESPONSE: The suggested addition has not been made. The Department believes that an applicant has adequate control of application submissions to government entities to be responsible complying with the time frames established in this Access Code. N.J.A.C. 16:47-4.6(l) already addresses legal restraints beyond the control of the applicant.

N.J.A.C. 16:47-4.6(m)

364. COMMENT: The Department should provide a grandfathering provision which allows for all site plan and subdivision applications which have been filed with the municipality prior to the effective date of the Act to have one year from the effective date of the Act to file for an access permit or a concept review application in accordance with the rules and regulations.

RESPONSE: This suggestion has not been incorporated because it does not comply with N.J.S.A. 27:7-92d, whereas N.J.A.C. 16:47-4.6(m) as proposed does.

N.J.A.C. 16:47-4.6(n)

365. COMMENT: Add a provision that indicates that in the event an application is denied, the Department shall set forth the reasons for denial, which shall include references to published policies or design standards which support the denial.

RESPONSE: This addition has been made, but it refers to the denial of a permit, not a denial of an application.

N.J.A.C. 16:47-4.8(e)

366. COMMENT: The maximum reset time frame for a minor permit should be 10 days.

RESPONSE: Please refer to Response number 437 at 23 N.J.R. 1551, May 20, 1991.

N.J.A.C. 16:47-4.8(g)

367. COMMENT: Provide the Department greater latitude by concluding that applications may be rejected, rather than will be rejected.

RESPONSE: This provision has not been changed. The Department is satisfied with the latitude provided in the text as proposed.

N.J.A.C. 16:47-4.8(h)

368. COMMENT: The Department should be provided enough discretion to require a new application if the applicant unilaterally makes a significant change in the proposed development.

RESPONSE: Please refer to Response numbers 322 and 323 at 23 N.J.R. 1544, May 20, 1991.

N.J.A.C. 16:47-4.8(i)

369. COMMENT: The Department should limit its response time for issuing certificates of acceptance to 10 days.

RESPONSE: Certificates of Acceptance are not required for minor permits. Please refer to Response number 382.

N.J.A.C. 16:47-4.10(a)

370. COMMENT: In this provision, all detailed plans should be prepared by a licensed professional engineer.

RESPONSE: In the past, the Department has not required a licensed professional engineer to prepare the plans for a minor access application. The Department is satisfied that highway safety and efficiency have not been compromised. To require preparation of the plan by a licensed professional engineer creates an excessive burden on minor applicants.

N.J.A.C. 16:47-4.11(e)

371. COMMENT: The maximum reset time should be limited to 10 days.

RESPONSE: Please refer to Response number 437 at 23 N.J.R. 1551, May 20, 1991.

N.J.A.C. 16:47-4.11(f)

372. COMMENT: The Department should limit its response time for issuing certificates of acceptance to 10 days.

RESPONSE: Certificates of Acceptance are not required for major permits. Please refer to Response number 382.

N.J.A.C. 16:47-4.11(g)

373. COMMENT: Provide the Department greater latitude by concluding that applications may be rejected, rather than will be rejected.

RESPONSE: Please refer to Response number 367.

N.J.A.C. 16:47-4.11(h)

374. COMMENT: The Department should be provided enough discretion so that it may require a new application if the applicant unilaterally makes a significant change in the proposed development.

RESPONSE: Please refer to Response number 368.

N.J.A.C. 16:47-4.12(a)

375. COMMENT: In this provision, all plans should be prepared by a licensed professional engineer.

RESPONSE: Please refer to Response number 370.

N.J.A.C. 16:47-4.12(b)44

376. COMMENT: If the applicant has received municipal subdivision or site plan approval for the proposed activity, the applicant should be able to provide the Department with a copy of the planning board resolution instead of sending a copy of the application to the municipality. The same should hold for the county.

RESPONSE: Please refer to Response number 334.

N.J.A.C. 16:47-4.13(e)

377. COMMENT: The maximum reset time should be limited to 10 days.

RESPONSE: Please refer to Response number 371.

N.J.A.C. 16:47-4.13(g)

378. COMMENT: The maximum reset time should be limited to 10 days.

RESPONSE: Please refer to Response number 371.

N.J.A.C. 16:47-4.13(h)

379. COMMENT: Provide the Department greater latitude by concluding that applications may be rejected, rather than will be rejected.

RESPONSE: Please refer to Response number 367.

N.J.A.C. 16:47-4.13(i)

380. COMMENT: The Department should be provided enough discretion to require a new application if the applicant unilaterally makes a significant change in the proposed development.

RESPONSE: Please refer to Response number 368.

N.J.A.C. 16:47-4.13(l)

381. COMMENT: The time frame for issuance of the Certificate of Acceptance is unreasonable. The Certificate of Acceptance should be issued upon substantial compliance with the construction conditions of the permit so long as an unsafe condition is not created and the developer posts a performance bond or other guarantee to ensure that the work will be completed.

RESPONSE: Please refer to Response number 382.

N.J.A.C. 16:47-4.13(m)

382. COMMENT: The time frame for issuance of the Certificate of Acceptance is unreasonable. The Certificate of Acceptance should be issued upon substantial compliance with the construction conditions of the permit so long as an unsafe condition is not created and the developer posts a performance bond or other guarantee to ensure that the work will be completed.

RESPONSE: This provision has been modified to provide for issuance of the Certificate of Acceptance prior to completion if acceptable guarantees of completion are provided to the Department. However, the completion is not founded solely on safety. The public has a right to expect work to be completed for reasons other than safety.

N.J.A.C. 16:47-4.13(n)

383. COMMENT: Amend this provision to recognize temporary as well as permanent Certificates of Acceptance.

RESPONSE: N.J.A.C. 16:47-4.13(m) has been modified so that this recognition is not needed.

N.J.A.C. 16:47-4.13(o)

384. COMMENT: This sentence should be eliminated from the Code.

RESPONSE: This provision is required to protect the functional integrity of the State highway system, a need recognized in N.J.S.A. 27:7-90.2h.

385. COMMENT: This provision discourages alternative access onto a street intersecting a State highway. As a remedy, add that notwithstanding the foregoing, in the event that utilization of alternative access or shared access to the local agency's street reduces driveway trip activity on the State highway, then the local agency's street intersection permit is deemed to be increased in volume by the additional trip volumes.

RESPONSE: Allowing one permit to cause a change in another permit cannot be administratively implemented. Also, an access permit for a lot covers all trips using direct State highway access. This includes shared access and excludes trips using alternative access, thereby encouraging alternative access. Alternative access via a street is indirect access, which is not covered in an access permit for a lot.

386. COMMENT: What criteria cause a local agency's street intersection permit to expire?

RESPONSE: A significant increase in traffic, as defined in N.J.A.C. 16:47-1.1.

387. COMMENT: How does the county prevent a significant increase in traffic from occurring, when the municipality controls the intensity of land use?

RESPONSE: The act revised N.J.S.A. 40:55D-62 to require municipal zoning along county roads to conform with any access management code adopted by the county. This provides some protection to the county, because when the county is the holder of an access permit, it is responsible for complying with the permit conditions.

388. COMMENT: The Code now calls for the municipality or county to be the permittee. If State action causes the need for improvements to the State highway intersection or the approaches, the State and the developer should be required to devise and contribute to a mitigation plan. Such plan should also be approved by the appropriate local government.

RESPONSE: N.J.A.C. 16:47-4.19 requires that the local agency be the permittee. The Department expects that it would have approved of the activities addressed in the permit before signing the permit.

N.J.A.C. 16:47-4.14(a)

389. COMMENT: In this provision, all plans should be prepared by a licensed professional engineer.

RESPONSE: Please refer to Response number 370.

N.J.A.C. 16:47-4.14(b)46

390. COMMENT: If the applicant has received municipal subdivision or site plan approval for the proposed activity, the applicant should be able to provide the Department with a copy of the planning board resolution instead of sending a copy of the application to the municipality. The same should hold for the county.

RESPONSE: Please refer to Response number 335.

N.J.A.C. 16:47-4.15(c)

391. COMMENT: The concept approval should be extended by the Department on a discretionary basis when an extension request is submitted by the applicant.

RESPONSE: The Department has extended the one year life of a concept approval to two years. This eliminates the need for discretionary action and grants all applicants an additional year.

392. COMMENT: The concept approval should be good for two years and permits should be valid for two years. This would allow developers to confirm their access early in the game and afford them time to then obtain other permits and approvals.

RESPONSE: The Department has extended the concept approval time to two years as indicated in Response number 391. The Department has also extended the life of a permit to two years.

N.J.A.C. 16:47-4.18(a)

393. COMMENT: This provision should indicate that the listed instances are those when the Department may require a developer agreement.

RESPONSE: The proposed text indicates that these are instances when the Department will require a developer agreement. May was not used because of its lack of certainty and predictability.

394. COMMENT: There are no provisions for developer agreements in the Act.

RESPONSE: N.J.S.A. 27:7-92d grants the Commissioner the authority to include whatever terms and conditions the Commissioner finds necessary and convenient in access permits. N.J.A.C. 16:47-4.18 establishes when the Commissioner will include these terms and conditions in a developer agreement.

N.J.A.C. 16:47-4.18(a)2

395. COMMENT: A developer agreement should only be required if the off-site improvements are beyond the applicant's frontage.

RESPONSE: The Department chooses not to limit this provision in this manner, since its experience has shown that developer agreements are needed when certain types of work are performed within the applicant's frontage. The reference to off-site improvements has been deleted.

N.J.A.C. 16:47-4.18(c)

396. COMMENT: The additional time for processing developer agreements results in unnecessary delays in the access approval process, contrary to the dictates of the Act.

RESPONSE: Please refer to Response number 350.

N.J.A.C. 16:47-4.18(f)

397. COMMENT: The development community requires a limit on the Department's design review and construction inspection costs. This should be limited to 10 percent of the project cost.

RESPONSE: The Department's design review and construction inspection costs should be covered by fees paid by applicants and permittees. If the development community's responsibility for these costs were limited, the burden would improperly fall on the taxpayers of the State.

N.J.A.C. 16:47-4.19

398. COMMENT: It is strongly suggested that before the Access Code is adopted, a representative group of municipal and county planners and engineers meet with the Department to discuss street intersection permit issues.

RESPONSE: The Department has provided multiple opportunities for public comment on the Access Code and it has been responsive to those comments. Throughout the development of the Access Code the Department has made staff available to meet with interested individuals and groups. The Department continues this high degree of openness and will accept invitations to meetings as suggested, but will not delay adoption of the Access Code.

N.J.A.C. 16:47-4.19(a)1

399. COMMENT: In this provision, all plans should be prepared by a licensed professional engineer.

RESPONSE: Please refer to Response number 370.

N.J.A.C. 16:47-4.20(b)5

400. COMMENT: It has been the practice of the Department to sometimes accept perpetual easements from applicants instead of always requiring a deed conveying title. The text should reflect such an ability.

RESPONSE: This change has been made.

N.J.A.C. 16:47-4.20(b)6

401. COMMENT: It has been the practice of the Department to sometimes accept perpetual easements from applicants instead of always requiring a deed conveying title. The text should reflect such an ability and state that the easement is unencumbered.

RESPONSE: This change has been made.

N.J.A.C. 16:47-4.21

402. COMMENT: This section should state that in conjunction with the application fees already required from a developer, the Bureau of Traffic Engineering and Safety Programs will provide, at no cost, all information required to complete the traffic signal study. Currently, this Bureau charges time and materials to retrieve any information.

RESPONSE: The Bureau of Traffic Engineering and Safety Programs charges a nominal fee for traffic signal plans and timings. This information is frequently requested before an access application is submitted. The record keeping required to correlate these requests with access permits would not be cost effective and would be complicated by numerous requests which are not permit related.

N.J.A.C. 16:47-4.21(a)8

403. COMMENT: This provision appears to infer that a developer must restore a 30 percent band width where existing conditions have already deteriorated below 30 percent. This unfairly requires a developer to improve a highway beyond its existing capacity.

RESPONSE: This provision will allow the applicant to use a band width of 30 percent for the existing condition when it is analyzing an existing signalized intersection and the existing condition is worse than 30 percent. This does not mean that the applicant is responsible for the improvements to obtain the 30 percent band width. Any proposed traffic signal may not be approved unless the minimum band width is met, pursuant to N.J.A.C. 16:47-4.21(a)9.

N.J.A.C. 16:47-4.21(d)

404. COMMENT: There is no paper size specified for the 30 scale plans. Other parts of the Code specify 24 inches by 36 inches.

RESPONSE: The paper size suggested has been added.

N.J.A.C. 16:47-4.23(b)

405. COMMENT: An applicant should always have the option of constructing highway improvements instead of paying fair share financial contributions. This provision should be revised to reflect such an ability.

RESPONSE: N.J.A.C. 16:47-4.34(a) indicates that the Department may allow the applicant to construct the highway improvements. Therefore, there is no need to modify this provision.

N.J.A.C. 16:47-4.24(a)

406. COMMENT: The HCM provides that LOS E represents the limit of the acceptable level of delay. There should be allowed some deterioration within levels of service so long as the LOS does not deteriorate below the threshold LOS E and that the acceptable level of deterioration within a level of service would be one-half of the range of E.

RESPONSE: The statement from the HCM only applies to signalized intersections. Other statements regarding freeways, ramps, rural highways, and unsignalized intersections describe LOS E in terms the Department finds to be unacceptable. The Department's goal is to provide a safe and efficient transportation system. It would be contrary to this goal to settle for standards which are at the outer limit of acceptable delay. The Department has not altered the proposed LOS standards.

407. COMMENT: There are no grounds for distinguishing urban and rural LOS standards. The rural standards should be deleted and the proposed urban standards should be modified as suggested in Comment number 406 and applied to the entire State highway network.

RESPONSE: Please refer to Response number 6.

408. COMMENT: The LOS standards are more restrictive than in the original version of the Access Code. The Department seems to be endorsing a no growth policy. There are few urban highways, and fewer intersections, in the State that currently operate better than LOS E at peak hours. In rural areas, only the most remote highways operate at LOS B or better.

RESPONSE: The Department has been using those standards proposed for urban areas for the entire State since 1987. There has been a tremendous amount of growth since 1987, so this is not a no growth policy. It is a policy which requires an applicant to be responsible for its fair share of the cost of highway improvements at locations where

there is little capacity available to accommodate traffic generated by the applicant.

409. COMMENT: These requirements will hinder growth, development, and redevelopment. It is unreasonable and irrational to expect property owners to finance increases in capacity which are not attributable to their activities. Along some highway segments a lot owner may be required to pay substantial costs toward mitigation where the lot owner's activities may have no discernible impact on the highway.

RESPONSE: These requirements will manage access and, in turn, growth, development, and redevelopment. No lot owner will be asked to finance increases in capacity which are not attributable to his activities. A lot owner's fair share financial contribution will have a direct relationship to the cost of highway improvements necessitated by the increase in traffic.

410. COMMENT: Precluding any decline in the LOS on rural highway segments which operate at LOS B, C, or D and requiring mitigation for any decline even though no capacity increase would be necessitated is unreasonable.

RESPONSE: The stringent level of service standards in rural areas are intended to preserve the character of those areas. A capacity increase may be necessary to accommodate traffic from increased development. N.J.A.C. 16:47-4.34(m) indicates that the Department will return with interest fair share financial contributions which are not spent. The Department does not intend to require contributions toward highway improvements which it does not expect will be constructed.

411. COMMENT: Particularly in rural areas, the allowable level of service degradations should be eased so that the tremendous public and private funding expended for State highway improvements will be more fully utilized.

RESPONSE: The level of service standards are intended to protect the functional integrity of the State highway system and the public investment in that system for the present and future generations.

412. COMMENT: Because the issue of level of service has been elevated to such importance in the Code, the Department should immediately undertake a thorough review of its concepts, focusing on the applicability of the published standards to New Jersey in general and to the access management problem in particular and the ability of standard capacity calculation procedures to accurately reflect local operating conditions.

RESPONSE: The first portion of this comment is addressed in Response number 408. Because the Department deems the generally accepted capacity procedures on which it is relying to be applicable, it sees no need to undertake the research suggested in the second portion of this comment.

413. COMMENT: Limiting level of service provisions should all be reduced by an additional one-half of a level of service of deterioration in order to allow for a greater degree of development to be permitted along the State highway system. This section of the Code is too restrictive. Further, there is no technical merit to warrant the restrictive nature which has been placed in the Code.

RESPONSE: Plese refer to Response number 408.

414. COMMENT: A grade separated access interchange was constructed on Route 206 in order to provide a safe and high level of service to employees and to the public that uses Route 206 in this area. In addition, a means of access was provided consistent with expanding corporate facilities and further developing the site. The level of service standards for rural areas are so stringent that the interchange would not be able to support further development. Such a result would seem to be imposing level of service standards that are too strict. The standards should be relaxed to allow further expansion of the site using the interchange.

RESPONSE: The high level of service standards were proposed, consistent with emerging State policy, to preserve the rural character of existing rural areas. A high level of service for traffic movements is one of the qualities associated with rural character. The high standards protect the safety and efficiency of the State highway system.

N.J.A.C. 16:47-4.24(a)2

415. COMMENT: In the second line, delete the and place below before LOS.

RESPONSE: The Department does not find any change is needed to the text as proposed.

N.J.A.C. 16:47-4.26(a)

416. COMMENT: The HCM provides that LOS E represents the limit of the acceptable level of delay. There should be allowed some deterioration within levels of service so long as the LOS does not deteriorate below the threshold LOS E and that the acceptable level of deterioration within a level of service would be one-half of the range of E.

RESPONSE: Please refer to Response number 406.

417. COMMENT: There are no grounds for distinguishing urban and rural LOS standards. The rural standards should be deleted and proposed urban standards should be modified as suggested in Comment number 416 and applied to the entire State highway network.

RESPONSE: Please refer to Response number 6.

418. COMMENT: There is a dichotomy in the treatment of signalized versus unsignalized non-State highway intersection approaches. Whereas the signalized criteria permit any non-State highway approach to deteriorate to a v/c ratio of 1.2, implying level of service F, unsignalized approaches must operate at more stringent levels of service. This discrepancy should be resolved.

RESPONSE: Movements from a non-State highway approach to a signalized intersection are controlled by the traffic signal. Generally, poor levels of service can be safely tolerated. Movements at unsignalized intersections do not have the protection of a traffic signal. The levels of service are a function of the available gaps. Levels of service well above the F tolerated at signalized locations are required to ensure that enough acceptable gaps are available at unsignalized intersections to allow safe movements to be made.

N.J.A.C. 16:47-4.27

419. COMMENT: Many unsignalized intersections may have their reserve capacities lessened by development to less than the stated minimums, yet may not meet signal warrants or be approved by the Department for new signal installations due to their proximity to existing traffic signals.

RESPONSE: The Department agrees with this comment. Installing a traffic signal is not always an available mitigation measure. Furthermore, it is not the only potential mitigation measure. Local road widening, State highway widening, and dualization are examples of other measures potentially available.

420. COMMENT: New criteria based on the 1985 HCM technique define unduly stringent level of service standards for unsignalized intersections. Actual field application of the HCM unsignalized procedures on a national basis has repeatedly and extensively discredited the technique. The results of unsignalized intersection capacity analyses are misleading, severely understating the amount of available capacity and exaggerating poor levels of service. Justifying an extremely rstrictive requirement on flawed technical procedures is inherently untenable. Quantitative measurement of stop-sign controlled intersections is needed. To fill this gap a study of actual field operations will be needed, with the objective of defining critical gaps, level of service thresholds, and other criteria that can be applied to produce reasonable results.

RESPONSE: The Department maintains that the 1985 HCM is satisfactorily accurate, and represents the state of the art. The only supporting documentation supplied with the comment was reference to the Transportation Research Board's (TRB) "Program of Research in Highway Capacity" dated June, 1991. The Program recommends 21 separate research studies as part of a longer-range program to revise all HCM chapters by the year 2000. The Program cites justification for the unsignalized study, but does not use the words discredited, misleading, or flawed, and makes no reference to any field applications. TRB's "Transportation Research Circular Number 373" , July 1991, expands upon its June publication. It presents only one study which compares actual and calculated values. The study found that the critical gaps for each of the four conflicting maneuvers in the field were between two percent and six percent lower than the values specified in the HCM. Six percent of the longest critical gap is only one half of a second. The recommended quantitative measurement and gap study is precisely what the HCM is based upon, and what was done in the referenced study.

421. COMMENT: A large part of the system will be inaccessible except at signalized intersections. Given the tremendous number of roadways on the State highway system which experience adverse levels of service for driveways, it appears that an approach which simply tells an applicant that he is not allowed to develop his lot because of adverse levels of service at driveways is one that is obstructive in nature.

RESPONSE: Only lots generating in excess of 200 peak-hour trips will be subject to the level of service standards. The development of lots that do not meet the requirements for a planning review will not be restricted by these standards.

422. COMMENT: Unsignalized non-State highway approaches must operate at more stringent levels of service than signalized non-State highway approaches.

RESPONSE: Please refer to Response number 418.

N.J.A.C. 16:47-4.27(c)

423. COMMENT: The reserve capacity requirements result in no vehicle access movements permitted on two and four-lane undivided urban segments carrying more than 1,000 vehicles per hour and on a rural segment carrying more than 800 vehicles per hour if these criteria are to be respected. As an example, between 70 and 80 percent of the undivided State highays in Somerset County carry volumes in excess of these thresholds, so for all intents a very large part of the system is inaccessible except at signalized intersections. This condition is more restrictive than were the originally proposed nonconforming lot and vehicular use limitation rules.

RESPONSE: The Access Code is structured so that these requirements will only be applied against major traffic generators having at least 200 peak hour trips. The requirements do not apply to right turns from the State highway or to lower volume traffic generators. The Department received substantial comment that this would create a substantial burden on potential applicants. The Department received comments where reserve capacity operates satisfactory at less than 100; therefore, the reserve capacity limit has been relaxed from 100 to 0. A similar change has been made to N.J.A.C. 16:47-4.27(d).

N.J.A.C. 16:47-4.30(a)

424. COMMENT: Only a licensed New Jersey professional engineer should be able to complete and seal a traffic impact study, not a professional planner. The level of technical expertise involved in the trip distributions, scope of work, level of service analyses, and most importantly, the determination of intersection designs for mitigation, requires the specialized training and experience of an engineer. These are not part of a planner's education. As part of the narrative required, the preparer must also determine, describe, and define any improvements required or desired. Such improvements are generally of a traffic operational or geometric nature requiring knowledge of workability and constructability gained through engineering training. In addition, phasing and access plans are elements of design which must be assessed by an engineer to determine the feasibility from a design and construction standpoint. In short, design of this caliber requires an understanding and training in engineering, traffic signal design and operations, geometrics, drainage, and traffic control. In any case, in the division of responsibilities between engineers, surveyors, architects, planners, etc., the New Jersey Department of Law and Public Safety, Division of Consumer Affairs, who regulates these professions, in 1985 declared that a traffic impact study constitutes the practice of professional engineering and would require a New Jersey licensed professional engineer's seal and signature.

RESPONSE: This section has been revised so that only a licensed New Jersey professional engineer may complete and seal a traffic impact study. The engineering detail regarding geometric improvements, cost of those highway improvements, and in lieu construction or fair share financial contribution requires the skills of a licensed New Jersey professional engineer. The Department checked with both Professional Boards in the Department of Law and Public Safety and no written substantiation was received to contradict the Department's position. The Department encourages applicants to take a multi-disciplinary approach, including input from professional planners, architects, land surveyors, and professional engineers. Coordination between site engineering and traffic engineering will be beneficial to the applicant.

425. COMMENT: Since the Department is requiring traffic impact studies to be prepared by a professional, the reports should be reviewed under the direct supervision of a professional and all reviews sent out by the Regional Maintenance Engineer should be signed by a professional in responsible charge of the review.

RESPONSE: Please refer to Response number 462 at 23 N.J.R. 1551, May 20, 1991.

N.J.A.C. 16:47-4.30(b)4

426. COMMENT: An applicant should always have the option of constructing highway improvements instead of paying fair share financial contributions. This provision should be revised to reflect such an ability.

RESPONSE: Please refer to Response number 405.

N.J.A.C. 16:47-4.30(e)

427. COMMENT: The Access Code encourages the development of travel demand management plans to promote traffic reduction. However, the traffic impact study requirements require that ITE trip generation figures be used. It is not clear how the impact of the traffic reduction will be evaluated and benefit will result to the applicant. There has to be some incentive to the applicant to incur the cost and effort to develop and implement such a plan.

RESPONSE: The Department intended that the trip reduction be credited against the average trip generation figures for the site. This in turn reduces an applicant's fair share financial contribution. The provision has been clarified to indicate this.

428. COMMENT: Requirements pertaining to travel demand management plans in N.J.A.C. 16:47-4.30(e) and 4.39 exceed the authority conferred upon the Department in the Act. These plans are neither mentioned nor defined in the Act.

RESPONSE: Travel demand management plans are not required. N.J.A.C. 16:47-4.30(e) states that they are optional. N.J.A.C. 16:47-4.39 states that they are encouraged, but not required.

N.J.A.C. 16:47-4.30(g)7

429. COMMENT: Add unless mitigation improvements are proposed instead of fair share financial contributions to the text.

RESPONSE: This is an inappropriate addition because a fair share analysis is needed whether construction of improvements or if a financial contribution is proposed.

N.J.A.C. 16:47-4.32

430. COMMENT: The final level of the access appeal process within the Department may never reach the Commissioner. This violates the legislative intent. The rules should be amended to add a final level of appeal to the Commissioner.

RESPONSE: Please refer to Response number 474 of 23 N.J.R. 1553, May 20, 1991.

431. COMMENT: The standards and restrictions set forth in the Access Code are very specific and very rigid from a traffic design standpoint and their application will have a direct impact on zoning, land use, subdivision, and socioeconomic conditions within local communities. Although there will be far reaching impacts resulting from the implementation of these rules, the only appeal provisions are controlled solely within the Department. To provide for a fair and unbiased appeal process, a Board of Appeals should be created with interests other than exclusively the Department.

RESPONSE: The Code sets forth administrative remedies available to dissatisfied applicants. Nothing in the Code prevents such an applicant from seeking judicial review of a final agency determination.

432. COMMENT: The length of time for submitting a reconsideration should be extended from 30 days to 45 days to give the applicant sufficient time to prepare the conditions for appeal. This correlates with the Municipal Land Use Law appeal time for site plan and subdivision approval before a municipal board.

RESPONSE: The time has not been changed because there is no correlation between an access permit appeal and an appeal for site plan and subdivision approval before a municipal board.

N.J.A.C. 16:47-4.33(a)

433. COMMENT: This provision should be modified to expressly set forth that the determinations regarding changes to access shall be based upon the existence of an unsafe condition.

RESPONSE: Please refer to Response number 146.

N.J.A.C. 16:47-4.33(b)3ii

434. COMMENT: This provision should specify that the county clerk and county planning board will be notified if the alternative access is to a county road.

RESPONSE: This change has been made to this provision and to N.J.A.C. 16:47-4.3(n)3.

N.J.A.C. 16:47-4.33(b)3vii

435. COMMENT: When the Department provides alternative access onto a local road, the affected government should be allowed input into any improvements.

RESPONSE: Please refer to Response number 332.

N.J.A.C. 16:47-4.34

436. COMMENT: An applicant should only be responsible for mitigating traffic impacts at locations required to be studied in accordance with the Code. This responsibility should be limited to the traffic impacts created by new trips generated by the applicant's develop-

ment, and that the applicant is not responsible to mitigate existing traffic conditions or background growth.

RESPONSE: Clarifications have been made to N.J.A.C. 16:47-4.34(a), (e), (f), and (l) to make clear that the Department intended to limit responsibility to traffic impacts created by new trips generated by the applicant's development.

437. COMMENT: The fair share determination method is unnecessarily complex. It would be more equitable along a roadway section to determine the portion of facility capacity that an applicant's traffic consumes. This would be calculated by dividing the site trip assignment on that link by the capacity of the link in the improved condition. Based on the DTS, the existing or future total traffic volumes need not be known, only the site traffic. The Department could establish a link capacity for each DTS type, thus creating a formula based on division of the DTS capacity by the site trips. For intersections, a concept design meeting the DTS standard should be prepared by the applicant. Signalized intersections would have their capacity calculated as suggested in the Code, while unsignalized intersections would have volumes adjusted to determine an intersection volume at reserve capacity 0. The fair share then would simply be the site's traffic volume divided by the total intersection capacity traffic volume.

RESPONSE: The fair share formulas proposed by the Department ensure that the taxpayers of the State are not made responsible for the cost of improvements necessitated by private development. This comment suggests dividing site traffic by the capacity of the DTS, which makes the taxpayers responsible, contrary to the Department's intention. The other aspects of this comment are only true for uninterrupted flow analyses and only if default values are used for traffic characteristics such as vehicle mix and peak-hour factor. It is not appropriate to use default values where actual values are reasonably obtainable. The Department does not agree that there is merit to the establishment of uninterrupted flow capacities for the entire State highway system before Access Code implementation. The formula for uninterrupted flow capacity only involves the multiplication of a constant by several variables. These variables must be determined by the applicant for other Traffic Impact Study analyses anyway.

438. COMMENT: Assuming that the process of developing a mitigation plan can be managed so that it does not unreasonably burden the applicant or conflict with other planning processes, the techniques for calculating fair share financial contributions proposed in the Code are reasonable.

RESPONSE: The Department agrees with this comment.

439. COMMENT: There are two technical problems that relate to the calculation of capacities before and after mitigation, which should be resolved before applying the fair share formulae. First, the HCM clearly states that it is not possible to directly compare an unsignalized level of service with a signalized analysis level of service. Even ignoring the difficulties with the unsignalized procedures, it is not appropriate to compare levels of service, capacities, or violation components before and after signalization to establish capacity due to mitigation. Second, there is no definition in the Code of capacity before mitigation for a new, signalized intersection. In either event, changing a stop sign to a signal or adding an all new intersection, the base capacity cannot be defined in a manner consistent with that prescribed for a traffic signal. A method of defining this base capacity should be developed and added to this section of the Code.

RESPONSE: The Code does not directly compare unsignalized and signalized levels of service. The Code defines capacity such that the capacity of an intersection before signalization can be compared with the capacity after signalization. Please refer to N.J.A.C. 16:47-4.34(g). When a new, signalized intersection is accepted by the Department as mitigation, a comparison will be made between the capacity of the unmitigated location and the combined capacity of the mitigated location and the new intersection. In such a situation, the applicant should seek conceptual approval of the new intersection, and then discuss the specifics of the capacity calculations with the Department to ensure a mutual understanding.

N.J.A.C. 16:47-4.34(a)

440. COMMENT: The applicant should have the option of electing to construct improvements as opposed to the Department allowing them.

RESPONSE: Please refer to Response number 405.

N.J.A.C. 16:47-4.34(c)

441. COMMENT: The Department should not impose any additional qualifications or requirements on a project located within a TDD. The TDD conditions supersede this Code and all fair share highway costs computed within the TDD assessment formula should constitute the complete fair costs for the applicant. The Code wraps around the TDD planning process, rather than being complementary to it. The boundaries of the TDD, which are carefully drawn through a multi-jurisdictional public participation process, would not be binding on the Department; and the planning and implementation programs of the TDD would be of less significance than those administratively imposed through the permitting process. This is an inappropriate subordination of the planning and implementation powers of the TDD Act. Instead, if a corridor problem is sufficiently critical to require this level of involvement, the Department should use its powers under the TDD Act to remedy it.

RESPONSE: The Department strongly disagrees with this comment. A lot seeking access to a State highway may be located within the boundaries of the TDD. In this case, the applicant need not address traffic impacts within the District because they will be covered by the TDD fee. However, the Access Code still holds the applicant responsible for impacts outside of the District. If a lot is located outside of the TDD, then the applicant is responsible for addressing all site traffic impacts, including those within the TDD. This applicant must look into the TDD because the site traffic is considered as background traffic within the TDD. Because this background traffic will be generated by the applicant's development, the applicant should properly bear all responsibility related to it.

N.J.A.C. 16:47-4.34(d)

442. COMMENT: It is unclear how these rules will interrelate with the functioning of Transportation Development Districts.

RESPONSE: Please refer to Response number 480 at 23 N.J.R. 1554, May 20, 1991.

N.J.A.C. 16:47-4.34(g)

443. COMMENT: The capacity for individual analysis locations should be calculated using accepted methods as defined in the 1985 HCM or superseding editions. The capacity of signalized intersections is shown on the Capacity Analysis Work Sheet and is the sum of the individual Lane Group Capacities.

RESPONSE: If the procedures set forth in the Code are followed they should not be cumbersome and should leave no room for individual interpretation. Although these procedures are based on the standards and procedures of the HCM, the Code is consistent over the different types of analyses even where the HCM is not. The comment's recommendations are inconsistent with the HCM. The HCM states: "The capacity of the full intersection is not a significant concept and is not specifically defined herein. Rarely do all movements at an intersection become saturated at the same time of day. It is the ability of individual movements to move through the intersection with some efficiency which is the critical concern." The Code is consistent with the HCM in maintaining that capacity is reached when the critical movement is at the limit of efficiency. At signalized intersections the HCM does not relate capacity to level of service. Thus, the comment's recommended wording for N.J.A.C. 16:47-4.34(g) is inconsistent with itself. The Department did not propose to use the sum of lane-group capacities calculated from Figure 9-10 of the HCM because they cannot be summed to measure of the capacity of the intersection. The lane group capacities in the HCM printout are the volumes for the saturation flow of each lane group given that the other lane group are at the traffic volumes entered by the analyzes. In other words, the volumes of the other lane groups are held constant in order to calculate the capacity of the lane group in question. The summation of these lane-group capacities can, therefore, have no meaning since movements that were saturated in the calculation of one capacity were not saturated in the calculation of another capacity. The Access Code and the HCM are consistent with this statement. Neither sum the lane-group capacities. Great care was taken to insure that the procedures in the Code were based on a thorough understanding of the HCM and were consistent with its concepts.

444. COMMENT: Reference is made to applying traffic condition factors for determination of capacity before and after site trips. Capacity is a singular measure of traffic volume. Contrary to the HCM, a comparison of demand traffic before and after development to capacity should be made since peaking characteristics of traffic and vehicle mix affect demand traffic. Capacity is the measurement of the number of vehicles expressed in passenger car equivalents per hour that pass a given point in an hour, termed service volume. Traffic through-put is the actual measure of the number of vehicles that can pass a point under prevailing conditions, also expressed in passenger car equivalents per hour and

termed approach volume. For ease of analysis, adjustment of approach traffic volume which is variable over time for peaking characteristics and vehicle mix is preferred when multiple hours are being assessed. Service volume at capacity should reflect physical and operational parameters to facilitate such analysis.

RESPONSE: Capacity, as used in the Code, is defined in N.J.A.C. 16:47-4.34(g). In some cases, this definition is inconsistent with the use of the term in the HCM. The use of capacity in the calculations is consistent with this comment.

N.J.A.C. 16:47-4.34(i)

445. COMMENT: Since a traffic impact study is completed early in the process and usually as part of a concept review application, it is not reasonable to determine the cost of improvements at that time, particularly those remote from the site, to the degree required in the Code, unless the Department has general dollar values they can supply for the required items such as right-of-way acquisition, construction costs, construction management, permits, and environmental cleanup.

RESPONSE: The Department produces guidelines for designers of highway improvement projects which will help applicants estimate some of the cited costs. This information will be available to applicants. The Department hopes to be able to track the costs listed in this provision so that at a future time it may be able to standardize estimating costs.

N.J.A.C. 16:47-4.34(l)

446. COMMENT: The applicant should have the option of electing to construct improvements as opposed to the Department allowing them.

RESPONSE: Please refer to Response number 440.

N.J.A.C. 16:47-4.34(m)

447. COMMENT: It is not clear whether the developer is entitled to interest if the money is returned after 15 years.

RESPONSE: The Department has clarified this provision by indicating that accrued interest shall also be returned. In addition, N.J.A.C. 16:47-4.34(o) and (p) have been added to further how the Department will handle fair share financial contributions.

448. COMMENT: The nature of the designated accounts is not discussed. Could these funds be used by the State to support artificial deficit reduction accounting procedures in the State's budget?

RESPONSE: The Department anticipates using escrow accounts to hold fair share financial contributions. The funds in these accounts would not be considered State funds until they are transferred to State accounts earmarked for highway improvements at the locations identified at the time of the collection of the funds.

449. COMMENT: Will the Department immediately institute an improvement at a location once the private sector's fair share financial contributions for mitigation have been contributed, unilaterally assuming the background growth's costs itself? These procedures must be established and published for comment prior to their implementation.

RESPONSE: The Department intends to track the funds obtained from developers by proposed project location. When the Department prioritizes projects for inclusion in its capital program, it will consider the available funds obtained from the private sector as well as the necessary Department contribution. N.J.A.C. 16:47-4.34(m), which has been published for comment, encompasses the procedures referenced in the comment.

450. COMMENT: If this sytem is to work, the public sector must prepare and adopt comprehensive plans for collection and utilization of off-tract costs. Such plans need to address other sources of revenue as well. The Code and the Act have no provisions for comprehensive planning of the State, county and local highway system, but require extensive analysis of area-wide impacts and improvements through the review of individual permit applications. The imposition of these responsibilities and costs onto lot owners is essentially an admission of failure, recognizing that those existing powers are inadequate or poorly exercised. The solution is not to further burden the lot owner, but to strengthen the public planning process to accomplish what it is intended to do, such as balance competing objectives. The extensive impact areas that will be generated by the Code's study area criteria will cause the mitigation programs to encompass entire highway corridors for most significant projects. The process of developing a mitigation plan overlaps the comprehensive planning provisions of the Transportation Development District Act, the Municipal Land Use Law, and others. The responsibility and involvement of a lot owner should be limited for developing area-wide transportation improvement programs. The process should be such that it is possible to expeditiously define a set of improvements that are most beneficial to the entire area, and balancing the needs of both the motoring public and lot owners. Off-tract improvements should be stratified. If there is an operative plan for improvements in the corridor, such as would be produced by TDD, master plan circulation element, or other planning process, then the developer should be charged his fair share of all improvements appearing in the plan. If, on the other hand, there is no such plan, then the planning responsibility of the developer should be limited by defining the mitigation at a limited set of locations, such as the first signalized or grade separated interchange in each direction. Only when a comprehensive planning process has been completed should developers be charged the full amounts required by the Code. While this restriction would limit the Department's ability to collect improvement funds, it would also create incentives for the Department, counties, and municipalities to undertake the appropriate planning studies that are required for needed transportation planning with public involvement.

RESPONSE: N.J.A.C. 16:47-4.34(m) specifies the requirements for applicants. The tracking and spending of collected funds, as well as other sources of revenue, will be addressed internally by the Department. The public has not provided the Department with the resources needed to plan the State highway system to the level of detail suggested by this comment and no incentive short of added resources will fill this void. It is not reasonable to expect the Department to allow the system to deteriorate because of its inability to undertake such advanced planning. It is not legal for the Department to charge a developer a fair share of a master plan or some other plan which does not identify the amount of site traffic. Additionally, it is unreasonable to limit the study area to an arbitrary distance, such as to the nearest traffic signal, when it is apparent that site traffic causes significant impacts further from the site. The Department does not agree that most significant projects will be required to study entire State highway corridors.

451. COMMENT: It appears that the purpose of these standards is not to necessarily have improvements made, but to collect fair share financial contributions for future improvements necessitated by traffic attributable to the development to be held for up to 15 years. However, if the developer pays the contribution, builds his site, but the Department fails to construct the improvements, with the existing road system somehow accommodating the traffic, were the improvements identified really necessitated by the development or just a mathematical exercise based on arbitrary and too restrictive level of service standards?

RESPONSE: The Department expects only to collect fair share financial contributions toward improvements which will be made. Since the Department must return unspent funds, there is no benefit to anyone to collect funds which will not be spent for their intended purposes.

452. COMMENT: Once the Department accepts a fair share financial contribution for an intersection it will be obligated to build the improvement or return the funds. This could become an extreme financial burden to the Department in future years. As time goes on, if any of the remaining intersections or road sections are not improved, then the Code requires that at the end of 15 years the developer's contributions be returned. This would be no problem if the funds had been escrowed, but if they were spent in actual construction at another location, then Department must make the refund out of its own resources. When extrapolated to the hundreds of intersections that will be subject to mitigation contributions each year, the refund burden could be impossible to meet with existing capital funding levels. Therefore, the cash flow implications of the Code's requirements should be carefully reviewed before these requirements are implemented.

RESPONSE: Please refer to Response number 448.

453. COMMENT: Since the Department is holding these funds, then the applicant, not the owner of record after 15 years, should be entitled to the money with interest unless this is spelled out as part of the sales agreement for the lot.

RESPONSE: The Department does not expect to hold the funds in escrow. They are to be held by a banking or similar institution, under contract to the Department. The Department views the contribution, accrued interest, the permit, and the requirements of the permit to be obligations which run with title to the lot. If a lot is sold, the escrow account balance should be a factor in establishing the selling price. From a practical perspective, the Department has no means of maintaining contact with the former owner of a lot.

N.J.A.C. 16:47-4.34(n)

454. COMMENT: If an applicant dedicates right-of-way as part of a fair share financial contribution, the value of the dedication should be a credit against the contribution.

RESPONSE: The Department agrees with this and has added this provision to address the issue.

N.J.A.C. 16:47-4.35

455. COMMENT: The Department should be able to waive fees.

RESPONSE: Although the Department has no authority to waive fees, it may waive the requirement for an application, and thereby eliminate the fee. Also, the Department may waive the requirement for a traffic impact study, and thereby reduce the fees associated with a major application with a planning review.

456. COMMENT: If the Department waives the fair share financial contribution requirements, the Department should be prepared to provide technical and financial assistance to mitigate adverse impacts.

RESPONSE: The Department provides technical advice to all applicants. However, the Department will not design improvements for applicants. The Department is not prepared to provide financial assistance to applicants. To do so would add another competitor for scarce State resources. The Department's policy making ability would be diminished if the Department would become driven by the demands of growth and development. Funds earmarked for major policy initiatives, such as expanding mass transit, could be diluted in favor of corporate support.

457. COMMENT: If a project can be built without substantial detriment to the safety and operation of the highway and without substantially impairing the intent and purpose of the Act and the Access Code, the particular design standards and requirements of the Code should be carefully reviewed to insure that other applicants are not being required to comply with requirements which do not improve conditions pursuant to the intent of the Code.

RESPONSE: The Department intends to monitor its activities under the Access Code and propose changes which are appropriate based on the experience derived from working with the Code. The Department will be especially cautious in the area of waivers.

458. COMMENT: The Department must be willing to take real world approaches to the issues of highway access for major development projects, instead of merely a literal interpretation of the Code. Given the far reaching impacts of these untried regulations, any other approach will quickly grind most access applications into years of standstill.

RESPONSE: Please refer to Response number 482 at 23 N.J.R. 1554, May 20, 1991.

459. COMMENT: The Department should develop a more specific waiver process that establishes criteria upon which waivers would be granted.

RESPONSE: The Department deliberately kept the waiver provisions as broad and as flexible as possible. If experience gained in the future suggests the need to make the provisions more specific, the Department will propose appropriate modifications to these rules.

460. COMMENT: The Code has permissive and prohibitive requirements which will direct the provision of access, and in most cases these requirements do not give the Department flexibility to respond to, nor require it to consider, other engineering and planning issues and their potential priorities. The formal process for waivers is lengthy. The chief difficulty of a waiver-based procedure is that it will discourage the application of engineering and planning judgement in favor of a cookbook approach, since the Department will naturally resist granting frequent waivers. This problem will be compounded in the early months of the Code's implementation, when it will be important to adjust the Code's provisions to real-world situations. The procedures should be revised to encourage or even require the Department to consider additional information and issues in the design and review of site access facilities.

RESPONSE: The waiver provisions have few limitations which would restrict the Department from considering the engineering and planning issues raised by an applicant. There is no time extension provided to evaluate waivers. In order to limit the necessity for waiver applications, the Department has considered both common and less common occurrences in developing the standards for this Code. Although the Department has established minimum application requirements, applicants are not precluded from submitting more information.

N.J.A.C. 16:47-4.35(a)

461. COMMENT: The last sentence should be amended so that waivers apply to the entire Access Code and allow the Department the power to grant waivers where it deems appropriate.

RESPONSE: The Department is satisfied that the text, as drafted, allows it to grant waivers in those areas of the Access Code where they may be needed.

N.J.A.C. 16:47-4.35(c)

462. COMMENT: Excessive lot frontages are required to meet the requirements for multiple access points on a lot.

RESPONSE: Please refer to Response number 211 at 23 N.J.R. 1537, May 20, 1991.

N.J.A.C. 16:47-4.35(d)

463. COMMENT: The list should be noted as being illustrative of the type of reason which may be used to support a waiver request, but not be an exhaustive list.

RESPONSE: This change has been made.

N.J.A.C. 16:47-4.35(d)10

464. COMMENT: Waivers should not be provided for low and moderate income housing projects. A low and moderate income project does not by nature warrant a waiver of sound technical standards which could jeopardize the health, safety, and welfare of the public.

RESPONSE: The Department supports the State goal of providing affordable housing and deems such projects eligible for special consideration. The Department, however, will not grant waivers which could jeopardize the health, safety, and welfare of the public, for affordable housing projects or for any other projects.

N.J.A.C. 16:47-4.36

465. COMMENT: This section may require an applicant to study an area of 20 miles or more. This far exceeds any notion of rational nexus.

RESPONSE: Since traffic may be coming from 20 miles or more to the site, the Department believes that a direct relationship to the site may be established, thereby satisfying the rational nexus requirements.

466. COMMENT: Based on an analysis of one site, the criteria for determining the geographic scope of studies to mitigate traffic impacts and for calculating fair share financial contributions result in too large a study area and should be modified.

RESPONSE: Backup information submitted with this comment demonstrated that a significant impact is possible at a considerable distance from the site. Where significant impacts, as defined in this Access Code, occur, the Department may require applicants to be responsible for a fair share financial contribution. The Department recognizes that the study area for some developments is extensive. However, the Department has not received any acceptable alternative proposals for accurately determining study areas and fair share financial contributions.

467. COMMENT: This process is duplicative because two or more applicants may be studying the same location and arriving at different results.

RESPONSE: The Department will share the information it receives from past applicants with future applicants. This should reduce duplication and produce consistent results. The Department already does this with traffic counts.

468. COMMENT: The Department's prior policy of studying one interchange on either side of a site was better.

RESPONSE: The Department's prior practice was published in the Guide to Highway Access Permits. It required analyses at each access point and adjacent intersections or any other location as necessary within the analysis area. There were no guidelines for establishing analysis areas. This practice did not result in the equitable or consistent treatment of applicants, and frequently failed to address capacity and safety programs caused by site traffic. The proposed rules enable an applicant to anticipate the size of the study area and the locations to be analyzed.

469. COMMENT: The Code fails to address the fact that the vast majority of the traffic required to be analyzed is not traffic that is being added to the State highway system, but rather is traffic that is being relocated from other points on the State highway system.

RESPONSE: The Code addresses this issue by omitting from the applicant's responsibility the half of each trip that is remote from the site, by requiring analyses only where 10 percent of the site's daily traffic and 100 peak-hour site trips accumulate, and by allowing credits for passby trips. If the applicant has data to support a more refined approach, the data will be considered.

470. COMMENT: No credit is provided against mitigation for the increase in capacity at locations from which traffic has been relocated.

RESPONSE: Credit will be given if the applicant quantifies an increase in capacity at locations from which traffic has been relocated.

471. COMMENT: The concept of deriving a study area from trip distances is far too theoretical. How does the Department anticipate

determining the length associated with each site generated trip and determining its impact on the State highway system? Such assessment would require a knowledge of the origin or destination of each trip to and from the site. The assignment of such trips to the State highway system as well as county and municipal roads would entail use of MINUTP, UTPS, TransPlan, or similar multi-modal transportation model and at best is highly speculative. Also, the traffic engineer would need to assess the impact of all other known developments and road improvements throughout the study area including changes in population and employment. Who will assure the consistency of such a database and the improvements and developments to be considered? Since the extent of the study area for a major industrial office park may be in the order of one-half hour driving time, such an effort will add extensive cost to the application for a major development.

RESPONSE: For years, applicants have been able to meet the Department's prior requirements, which necessitated forecasting trip arrival and departure distributions. This task is not possible without assumptions about destinations. By relying only on the half-trip closest to the site, the least accurate portion of the trip is eliminated. In addition, please refer to Response number 467.

472. COMMENT: This provision should limit the study area to the nearest intersection on either side of the site access point.

RESPONSE: Please refer to Response number 468.

473. COMMENT: Driveways other than the applicant's access points should not be considered study locations. The Commissioner should eliminate this requirement as a matter of policy.

RESPONSE: The Department agrees this could pose a burden on applicants. There are many constraints which make it difficult for an applicant to work in another's driveway. N.J.A.C. 16:47-4.36(a)3 has been added to eliminate all driveways as study area locations, unless the driveways are for the applicant's lot. The interaction of vehicles between driveways adjacent to an applicant's proposed driveway will be examined as a design and engineering consideration.

474. COMMENT: The definition of half-trip needs clarification.

RESPONSE: The Department believes that the use of this term in this provision is adequately clear. A trip has two ends, an origin and destination. An applicant's responsibility ends at the halfway point or middle of the trip to or from the site. Beyond that point, it is the responsibility of the other trip end. Using a half-trip eliminates the possibility of having two applicants responsible for the same level of service violation.

475. COMMENT: In N.J.A.C. 16:47-4.4, 200 peak-hour trips determines the need for a traffic impact study, yet in this provision an impact analysis is required for all areas with a traffic generation of 100 trips or more.

RESPONSE: The 200 peak-hour trip threshold is used to determine the type of access permit and the need for a traffic impact study. Then, 100 peak-hour trips are part of the considerations for identifying locations where a significant traffic impact may occur.

476. COMMENT: The Code ignores the need for comprehensive public sector plans as the basis for establishing off-tract improvements programs and allocating their costs.

RESPONSE: Appendix B is a master plan which addresses all State highways. It establishes a comprehensive public sector plan to be used as the basis for establishing off-tract improvements and allocating costs.

N.J.A.C. 16:47-4.37

477. COMMENT: Since a developer must pay an access application fee, the Department should waive the $250.00 permit fee currently charged for traffic counting at each State highway.

RESPONSE: Permits for highway occupancy are not addressed in the Access Code. However, the Department recognizes the connection between the need to obtain traffic counts and access applications and is streamlining the highway occupancy permit requirements for traffic counting.

N.J.A.C. 16:47-4.37(c)

478. COMMENT: Machine counts should be required in the vicinity of site access points to verify the through movement volumes in each direction on the State highway. It is far beyond the existing policy of the Department and unnecessary to require machine counts on each approach to a signalized intersection within the study area.

RESPONSE: N.J.A.C. 16:47-4.37(c) requires one week of machine counts on each approach to a signalized intersection in order to ensure that locations with high daily variations are adequately covered. N.J.A.C. 16:47-4.37(e) allows for alternate proposals, but implies that this is only for a limited set of circumstances. The first sentence was intended only as an example. Subsection (e) has been clarified by deletion of the first sentence.

479. COMMENT: The machine count requirements to corroborate manual counts are excessive. A one week count somewhere along the State highway would be appropriate, together with one or two 24-hour counts on the lesser roads. This should clearly indicate that the peak has or has not been counted.

RESPONSE: Please see Response number 478.

N.J.A.C. 16:47-4.38

480. COMMENT: Counting background traffic is sensitive to double counting. The background growth rates provided by the Department should allow for anticipated traffic that would already be included in the normal anticipated growth rate.

RESPONSE: An access application is based on the highway configuration and traffic volumes which exist at the time of application. Traffic counts do not completely show these conditions, because other developments which are entitled to generate traffic may not be doing so at the time of the traffic count. This anticipated traffic is added to the counts to establish the conditions at the time of application. Since the subject development will not open on the date of the application, the growth rate is used to adjust the traffic volumes to what can be expected at the time the development is to open. Please refer to N.J.A.C. 16:47-4.30(f). There is no double counting using this method.

N.J.A.C. 16:47-4.38(a)

481. COMMENT: It is not clear if the background growth rates provided by the Department will be prepared by highway segment, municipality, county, or Statewide. If the background growth rates are not down to the highway segment level, the use of these rates will result in an inaccurate impact analysis.

RESPONSE: The Department produced a table of growth rates based on the functional classification of the road, the county in which it is located, and whether it is in an urban or rural area. The Department is satisfied with the accuracy of this approach, which provides a higher level of accuracy than does counting traffic on one day. In the past the Department provided growth rates by highway segment. This proved to be a burden on both the Department and applicants. These proposed rules were developed in response to comments provided by applicants.

N.J.A.C. 16:47-4.39

482. COMMENT: The proposed rules seem not to address trip reduction possibilities of volunteer transportation management associations or proposed mandatory trip reduction legislation.

RESPONSE: Please refer to Response number 463 at 23 N.J.R. 1553, May 20, 1991.

483. COMMENT: A developer who volunteers to participate in a transportation management association is automatically required to report compliance. There does not appear to be sufficient incentive to offset the reporting efforts.

RESPONSE: Although the Access Code does not expressly describe the incentive, the traffic reduction achieved by participating in a transportation management association reduces site generated traffic. This then reduces the LOS violation component, and consequently the fair share financial contributions which may be required of a developer. Participation will be a condition of continued access and the reporting requirement ensures compliance.

484. COMMENT: The language in this section should be modified to require major developments to submit a traffic demand management plan and to comply with the provisions of the local Transportation Management Association in those areas where such an organization exists.

RESPONSE: Please refer to Response numbers 463, 467, and 468 at 23 N.J.R. 1553, May 20, 1991.

N.J.A.C. 16:47-4.39(f)5

485. COMMENT: There is no need to restrict this provision to small businesses within a complex.

RESPONSE: The Department did not intend this provision to apply only to smaller businesses. The Department agrees and has deleted the reference.

N.J.A.C. 16:47-4.40

486. COMMENT: This section should be deleted because a significant increase in traffic will trigger requiring a new permit.

RESPONSE: Please refer to Response numbers 304 and 306.

N.J.A.C. 16:47-4.41

487. COMMENT: The checklist requirements for minor subdivisions require significant engineering and surveying information not required by the Municipal Land Use Law and generally not available for municipal applications.

RESPONSE: Lot consolidation and subdivision permits are access permits which must contain the information needed to authorize the number, location, and traffic volumes associated with access to each lot. The information needed for a local approval is not adequate for the State highway access approval.

488. COMMENT: The application requirements should be based on the intensity of use and the anticipated traffic generation, rather than the classification of the subdivision.

RESPONSE: N.J.A.C. 16:47-4.41 only refers to changes to lot lines. This is independent of traffic generation. If there are changes in traffic generation, then an application for other than lot consolidation or subdivision is required. These other application and permit fees are a function of traffic generation.

N.J.A.C. 16:47-4.41(a)

489. COMMENT: In this provision, all plans should be prepared by a licensed professional engineer.

RESPONSE: Please refer to Response number 370.

N.J.A.C. 16:47-5.1(a)

490. COMMENT: The reference to access classification should be explained as including but not being limited to the access level, the desirable typical section, and the cell number.

RESPONSE: A change similar to this has been made to this provision and the definitions of access classification and desirable typical section at N.J.A.C. 16:47-1.1. For further clarification, N.J.A.C. 16:47-2.3 has been added.

491. COMMENT: There should not be a limit on the length of a segment to be reclassified.

RESPONSE: The Department is imposing the limits in order to establish consistency and in order to minimize requests to reclassify very short highway segments.

492. COMMENT: Based on the definition of segment, an owner may be required to address notice to owners miles from his or her lot. Based on CAFRA regulations, municipal zoning ordinances, and general legal requirements when a change to a lot is being requested, such legal notice extends 200 feet from the lot line. Also, this stipulation does not take into account the size of the lot or usage, and treats a major development potentially equal to a minor development, thus burdening the smaller owner financially if an unaffected party should simply raise objections. The scale of the action should be based on the impact potential of the proposed site, not on an arbitrary distance following the criteria for traffic impact assessment and only be relevant for a potential major development.

RESPONSE: This comment fails to recognize that the change sought is to the classification of the highway, not to the lot. The size of the lot, the magnitude of the development, and the use of the lot are likely to be insignificant factors.

N.J.A.C. 16:47-5.2(b)

493. COMMENT: A provision should be added to require official municipal and county concurrence with the request for change of access classification. As N.J.A.C. 16:47-5.1(a) now states, any person may request such a change. However, in reflection on the municipal and county review which has already taken place via the desirable typical section process, and in accordance with N.J.A.C. 16:47-8.5(b), municipalities and counties are to be directly involved in any decision regarding access classification changes.

RESPONSE: The Department has not added the requirement for municipal and county concurrence. N.J.A.C. 16:47-5.4 requires the Department to notify municipalities and counties of requests for classification changes received by the Department. A municipality or county may then choose to submit comments which the Department will consider pursuant to N.J.A.C. 16:47-5.5(a), when deciding upon the request.

N.J.A.C. 16:47-5.3

494. COMMENT: The Department should list the information needed to complete an incomplete application.

RESPONSE: This addition has been made.

N.J.A.C. 16:47-5.6(a)

495. COMMENT: Add a provision that the respective municipality and county may also petition for reconsideration even if they were not the applicant.

RESPONSE: Such a provision has not been added. Municipalities and counties are not entitled to petition for reconsideration of applications filed by others. However, municipalities and counties may comment upon proposed classification changes during the public comment period referred to in N.J.A.C. 16:47-5.5(c).

N.J.A.C. 16:47-5.6(b)

496. COMMENT: The Commissioner should state reasons for not granting reconsiderations and for rejecting applications.

RESPONSE: This addition has been made.

N.J.A.C. 16:47-6

497. COMMENT: The Department is applauded for its recognition of access management plans. The acceptance and encouragement of that tool will encourage municipalities to consider access alongside zoning in its master plans.

RESPONSE: The Department appreciates this supportive comment.

498. COMMENT: The Access Code will become another force to move local planning efforts into regional awareness and participation. It will still result in piecemeal planning by focusing on site specifics rather than the highway corridor in question. If municipalities having State highways as a primary component of their roadway network want to remain as a player in determining the type and intensity of land uses along these highways, they must prepare and implement access management plans.

RESPONSE: The Department supports the development of access management plans. Such plans integrate State and local planning and link land use intensity to transportation system capacity.

499. COMMENT: Access management plans will benefit participating municipalities and counties because local planning input will be taken into account; there will be a coherent frame of reference for dealing with access issues, thereby becoming the basis for future land use decisions; there will be predictability to the development community and equity of treatment in the review process; negotiation, design, and approval of access on State highways will be expedited; piecemeal development of transportation and circulation plans will be reduced, thereby requiring coordination and cooperation between municipalities and the county; and highway segments will have an improved carrying capacity, thereby allowing higher density development.

RESPONSE: The Department agrees with this comment.

500. COMMENT: Access management plan adoption prior to Access Code adoption is vital to the local and state government coordination. Municipal zoning, land use, and development regulations must be reviewed to determine compatibility to the Code. Access management plans and corridor master plans should be mandatory and incorporated into the Code.

RESPONSE: N.J.S.A. 27:7-91f indicates that the Commissioner may adopt access management plans as supplements to the Access Code. This precludes adopting access management plans prior to the adoption of the Access Code. This section of the Act also precludes the Commissioner from adopting any access management plan before the conditions of the plan have been incorporated into the master plan and development ordinances of the municipality. The Commissioner does not have the authority to require the municipality to incorporate the access management plan conditions into the municipal master plan and development ordinances.

501. COMMENT: There should be greater consistency between access management plans and the concepts for growth and development as specified in the proposed State Development and Redevelopment Plan. Except for priority segments where the public health, safety, and welfare may be adversely impacted, the Department should wait until the State Plan has been adopted before formulating and adopting access management plans. In addition, the reference to the State Development and Redevelopment Plan in N.J.A.C. 16:47-8.4 should be strengthened and clarified and moved to N.J.A.C. 16:47-6.

RESPONSE: The Act contains no requirement to wait for the State Plan adoption before access management plan adoption. The Department sees no need to include such requirements in the Code.

502. COMMENT: In order for counties and municipalities to be interested in undertaking the development of an access management plan, incentives need to be provided to entice them into the process.

RESPONSE: N.J.A.C. 16:47-4.17 contains reduced time frames for obtaining access permits in areas covered by access management plans. This is the only direct incentive provided in the Code. However, the Code includes indirect incentives. There would be improved carrying capacity for the highway. Coordinated local and State planning and requirements for access would provide predictability for lot owners. Also, the costs for planning would be shared.

503. COMMENT: All players must be equal partners if the access management planning process is to succeed.

RESPONSE: The Department expects most access management plans to be prepared in cooperation with a single municipality. In these cases the Department and the municipality would be equal partners, based on N.J.A.C. 16:46-6.5(c).

504. COMMENT: If possible, the Department should provide incentives for communities to undertake preparation of access management plans. An example of such an incentive would be a waiver for an area with an access management plan, pursuant to N.J.A.C. 16:47-4.35. The Department might also consider providing resources, either as an identified line item in the Department's planning budget or as a discretionary award.

RESPONSE: It would be inappropriate for the Department to grant waivers in order to induce the preparation of access management plans. In addition, N.J.S.A. 27:7-91f requires that access management plans comply with or exceed the standards in the Access Code. The Department is considering the use of budgeted funds and discretionary awards to assist in the preparation of access management plans.

N.J.A.C. 16:47-6.1(a)2

505. COMMENT: An access management plan for a State highway should become the coherent frame of reference for considering access issues. The Code should be revised to allow for a plan which, due to existing highway and community character, cannot comply with or exceed the standards of the Code.

RESPONSE: The Department agrees that an access management plan should become the reference for access issues. However, the Department is precluded by the Act from agreeing with the other statement. Please refer to Response number 488 at 23 N.J.R. 1554, May 20, 1991.

506. COMMENT: A provision should be added to allow access management plans that effectively regulate traffic and improvements while deviating from the letter of the Access Code. To the extent that N.J.S.A. 27:7-91f requires the access management plan to comply with or exceed the parameters of the Access Code, such an added provision would be consistent. The Department has the authority to grant waivers and other relief from the standards of the Code when a waiver will not violate the purpose or intent of the Act. The Department should allow itself the ability to sanction plans that are specifically tailored to an area and regulate that area as effectively as the Code. This flexibility will allow the Department to accurately address the concerns which led to the adoption of the Act, and have those purposes carried out by the most efficient authoritative body. Such an amendment would give the Department that flexibility and is entirely consistent with the Codes as a whole.

RESPONSE: The Department intended to include waivers in access management plans and has amended N.J.A.C. 16:47-6.1(a)2 to provide for waivers.

N.J.A.C. 16:47-6.1(a)3

507. COMMENT: The means of direct access identified should be acceptable, rather than appropriate.

RESPONSE: The text uses appropriate because that word is used in N.J.S.A. 27:7-91f.

508. COMMENT: Add the word State before highway segment.

RESPONSE: This addition has been made.

N.J.A.C. 16:47-6.2(a)

509. COMMENT: There should be flexibility incorporated into the application of the access management plan. Restrictions on the ability to grant variances and waivers for portions of adopted ordinances is also not in accordance with N.J.S.A. 40:55D-60, 70, etc. and is beyond the Act's authorization.

RESPONSE: Flexibility is provided in N.J.A.C. 16:47-6.11(a), which sets forth the procedures for minor and major revisions to adopted access management plans.

N.J.A.C. 16:47-6.3

510. COMMENT: Pending access applications should be exempt from the requirements of an access management plan which is adopted after the date of the access application. Conversely, access applications in accordance with municipal and county ordinances already revised in anticipation of an access management plan should be reviewed under the requirements of the access management plan if different from N.J.A.C. 16:47-3 and 4.

RESPONSE: This provision has been modified to reflect these concerns.

N.J.A.C. 16:47-6.4(a)1

511. COMMENT: The contents of an access management plan should include the location of all public transportation facilities and routes in the study area as well as bicycle paths. These are important attributes should a TDM plan and program be advisable.

RESPONSE: These suggestions have been reflected.

512. COMMENT: Are the factors in subparagraphs (a)1 vii, viii, and ix needed to be quantified so precisely at this point in the process? If the data are available from the Department or previous traffic studies, they should be made available to the initiating public agency.

RESPONSE: The commenter evidently failed to understand that the factors listed in N.J.A.C. 16:47-6.4(a) are the contents of the completed access management plan report.

N.J.A.C. 16:47-6.4(a)1vi

513. COMMENT: Delete where from the first line.

RESPONSE: This provision is clearer with the where remaining.

N.J.A.C. 16:47-6.4(a)1viii

514. COMMENT: Projections of traffic generation should be based on other regulatory constraints as well as zoning.

RESPONSE: This addition has been made.

515. COMMENT: Projections of traffic generation should be for all lots, not just for conforming lots.

RESPONSE: Only conforming lots are addressed in this provision. Nonconforming lots are addressed in N.J.A.C. 16:47-6.4(a)1vii.

N.J.A.C. 16:47-6.4(a)3

516. COMMENT: Many municipalities have their tax maps at a scale of one inch equals 400 feet. This scale seems detailed enough to provide the information necessary. To not overburden municipal resources, municipalities should not be required to prepare base maps at 100 and 200 scales.

RESPONSE: The Department does not believe 400 scale mapping will be adequate. The Department expects that it will be able to work together with municipalities to prepare mapping without creating a burden.

N.J.A.C. 16:47-6.4(a)3ii

517. COMMENT: Delete which from the first line.

RESPONSE: This deletion has been made.

518. COMMENT: This study area is too narrowly focused to account for very nearby, large, industrial or office park type sites that are dependent on the nearby State highway. In some cases, 500 feet will not even cover an entire parking lot associated with a commercial lot fronting on the highway. The study area width should be increased to at least 2,000 feet from the centerline of the State highway segment.

RESPONSE: The Department believes that a 2,000 foot half-width for a study area would be more than necessary in most cases. The referenced provision already requires that entire lots fronting on the State highway be included in the study area and the Department finds this to be adequate.

N.J.A.C. 16:47-6.4(a)3viii

519. COMMENT: Limit the utilities to those within State highway right-of-way.

RESPONSE: This change has been made.

N.J.A.C. 16:47-6.5(a)

520. COMMENT: An access management plan will have substantial impact on existing lot owners along the State highway, however no provision is made for their participation in the process. Notice should be published in a local newspaper of general circulation of the Department's intent to begin the development of an access management plan, and provision should be made for public participation starting at that time.

RESPONSE: Please refer to Response number 523.

N.J.A.C. 16:47-6.5(a)5

521. COMMENT: This section should be amended to include both county and municipality, not county or municipality.

RESPONSE: This amendment has been made.

N.J.A.C. 16:47-6.5(a)6

522. COMMENT: What is the head of a transportation development district? Should this be the county clerk or similar position at the municipal level if the county is not involved?

RESPONSE: The head of a transportation development district is called the agent. This is the official designated to be responsible for the district.

523. COMMENT: The public should be able to comment on the Department's proposal to develop an access management plan.

RESPONSE: The rules provide for notification to local elected officials. The Department expects these officials to represent their constituents at the early stages of the development of an access management plan. The opportunity for the general public to provide input is provided in later stages.

N.J.A.C. 16:47-6.5(b)

524. COMMENT: This section should be revised to enable counties to directly initiate access management plans.

RESPONSE: Please refer to Response number 495 at 23 N.J.R. 1555, May 20, 1991.

N.J.A.C. 16:47-6.5(c)

525. COMMENT: The Department ought to carry a much greater portion of the burden of developing an access management plan: 1. as a stronger incentive, 2. since the State is the largest benefactor, 3. since most municipalities do not have adequate financial or technical resources to adequately prepare an access management plan, and 4. since the Department does have broad public technical resources, greater participation by the Department has the possibility of eliminating duplicate analysis by others.

RESPONSE: The Department does not have the financial resources to participate to a greater extent in the development of access management plans. Further, the Act establishes that access management plans are joint efforts. Because the partners have equal approval authority, it makes sense for them to share financial responsibility for the development of the access management plan.

N.J.A.C. 16:47-6.5(e)

526. COMMENT: The language should be amended to require a specific finding of fact that there is no substantial merit in the preparation of the access management plan.

RESPONSE: It is not appropriate to limit the Commissioner's discretionary authority with regard to the preparation of access management plans. Fiscal and other constraints may preclude the Commissioner from proceeding with a plan which has merit. The Department will indicate reasons when electing not to advance an access management plan.

N.J.A.C. 16:47-6.5(f)3

527. COMMENT: To ensure that there is adequate dialogue on all relevant planning issues relating to the establishment of an access management plan, the Department should require that each municipality participating in the formulation of a plan designate a planner to represent the municipality in that process. Such a planner designee will have an understanding of the comprehensive planning process in that community and will help to ensure that there is a proper integration of transportation and land use planning goals in the formulation of the access management plan.

RESPONSE: N.J.A.C. 16:47-6.5(f)3 allows a municipality to designate anyone as a primary contact person. The Department sees no need to limit the municipality's discretion with regard to the designation of this contact person.

N.J.A.C. 16:47-6.5(i)

528. COMMENT: This provision should be changed so that the initiating agency chairs the working committee, not the Department.

RESPONSE: The Department representative shall chair the working committee in order to provide consistency among various access management plans.

N.J.A.C. 16:47-6.5(k)

529. COMMENT: The chronicle of the start and the completion dates of the different tasks and a complete set of progress reports are required to be submitted earlier in the process and should be deleted from this provision.

RESPONSE: The Department does not believe it is unreasonable to require the submission of a complete history of the development of the access management plan to the Commissioner at the time the plan is completed.

N.J.A.C. 16:47-6.6(a)

530. COMMENT: Once an access management plan is initially completed, notices to affected property owners should be by registered mail, return receipt requested.

RESPONSE: The registered mail notice is not mandated by the Act and would be a burden on the Department.

N.J.A.C. 16:47-6.6(b)

531. COMMENT: Those parties making comments on the proposed access management plan should be advised of any major revision and be provided opportunity to comment upon it.

RESPONSE: This provision requires a new public hearing if there are major changes to the access management plan. Such a new hearing would have to be preceded by a public notice as set forth in N.J.A.C. 16:47-6.6(a). Although nothing precludes the sending of individual notices, such notices are not required.

N.J.A.C. 16:47-6.7

532. COMMENT: This process implies that any future revision to the Land Use Ordinances will require acceptance by the Commissioner, even if not dealing with changes to the access management plan segment. Assuming these plans are developed throughout the State, the logistics of certification and acceptance will become unwieldly at best.

RESPONSE: The Department does not agree that revision to the Land Use Ordinances will require acceptance by the Commissioner.

533. COMMENT: Provisions for enforcement, waivers, or variances are not accounted for in this process.

RESPONSE: Pursuant to N.J.A.C. 16:47-6.1(a)1, the Commissioner will not adopt the access management plan until the governing body of the municipality has incorporated the access management plan conditions into its land development ordinances. Waivers and variances are addressed in N.J.A.C. 16:47-6.11.

N.J.A.C. 16:47-6.11(a)

534. COMMENT: Revisions should also be considered at the request of the other noticed public agencies listed in N.J.A.C. 16:47-6.5(a) or affected property owners. The limitation to those who participated in the development of the access management plan should be deleted.

RESPONSE: The reference to other public agencies has been added. Property owners have not been added. They should address their concerns to their elected officials, who should then act on their behalf. Because the Department believes that non-participants should not be able to initiate a revision, only those who participate in the development of the access management plan may request revisions.

535. COMMENT: It is implied that site development approval which includes a variance from either the Planning Board or Zoning Board of Adjustment must undergo this revision process, especially if there is a change in the number of driveways. Does the access management plan preclude the powers of zoning by eliminating the board's ability to approve a variance for a particular land use if it is not consistent with the access management plan?

RESPONSE: These Boards must either act in accordance with the approved access management plan, or seek changes to the plan and have them approved before acting contrary to the approved access management plan.

N.J.A.C. 16:47-7.1

536. COMMENT: This section is inconsistent with the grandfathering of existing highway access and should be deleted.

RESPONSE: This section is consistent with N.J.S.A. 27:7A-5 and has not been deleted.

537. COMMENT: When the Commissioner proposes to designate limited access on a State highway segment, the Commissioner should be required to give reasons for the change in access classification.

RESPONSE: N.J.S.A. 27:7A-5 provides the Commissioner with unrestricted authority with regard to the designation of limited access highway segments. This change has, therefore, not been made.

N.J.A.C. 16:47-8.4

538. COMMENT: The enabling legislation for the State Development and Redevelopment Plan does not provide for regulatory authorities. Until such time as the State statutes are amended to grants such authority to the Plan, the Plan should only be used as a guide to counties and municipalities, and not as a regulatory tool for State agencies.

RESPONSE: The Department recognizes that the State Development and Redevelopment Plan lacks regulatory authority. However, the Department has the authority to propose and adopt regulations under the statutory authority granted to the Department. The Department intends to exercise its authority in a manner consistent with the policies, themes, and intentions contained in the Plan. The Department will act in accordance with the procedure established for the adoption of rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The Access Code has been amended to make this clear.

N.J.A.C. 16:47-8.5

539. COMMENT: Within one year of adopting should be replaced with within one year of adoption of.

RESPONSE: This change has been made.

N.J.A.C. 16:47-8.5(b)

540. COMMENT: The meetings with each county should be expanded to include representatives from each municipality, because frequently the issues and concerns at the municipal level are different than those at the county level.

RESPONSE: Municipal representatives are not excluded from these meetings. Counties are free to invite municipalities. Throughout the development of the Access Code, the Department has asked municipalities to channel their responses to the Department through the counties, or send responses directly to the Department and send copies to the counties. This approach is intended to increase cooperation and understanding between the different levels of government.

541. COMMENT: The Access Code should not become effective for any segment of highway until the Department has met with the county and municipal representatives to discuss possible changes.

RESPONSE: Please refer to Response number 10.

542. COMMENT: The Department should start an immediate dialogue with counties and municipalities to establish the comprehensive planning mechanisms that are needed to effectively implement the Code.

RESPONSE: N.J.A.C. 16:47-8.5(a) contains the Department's commitment to meet with counties in the year following adoption of the Code. This will not address comprehensive planning, as indicated in Response number 52.

Appendix A

543. COMMENT: Cells 1 through 3 should be reclassified as access level 2.

RESPONSE: These cells have not been reclassified because of the burden it would place on development in urban areas.

544. COMMENT: The Department should consult with FHWA to determine whether the standards in this appendix or other FHWA standards could be appropriately applied Statewide and in rural environments.

RESPONSE: The Department developed the access classification matrix from the functional classification system required by FHWA. FHWA allows states to develop their own implementation standards, such as the designation of access levels.

545. COMMENT: The urban and rural designation does not provide sufficient detail to characterize the State highway system. Clearly, Route 21 in downtown Newark is far different than Route 1 in South Brunswick, yet both are classified as urban.

RESPONSE: The classification of highways was based on FHWA criteria and was done in a cooperative manner between State and local officials. The 1990 daily traffic volumes on Route 21 in Newark and Route 1 in South Brunswick are basically the same, and both function as arterial highways. Generally, the long-term benefits of the Access Code will be more noticeable in less intensely developed areas rather than in older more developed areas or central business districts where roadside development limits access management. Most urban areas in the State more closely resemble the planner's suburban definition rather then the city's central business district definition. N.J.A.C. 16:47-5 provides a process by which anyone may request a highway classification change.

546. COMMENT: An examination of the highway segments which comprise access level 2 reveals a surprising degree of inconsistency. Rather than the virtually expressway-like character that would be expected of such segments, they are exemplified by two and four lane, divided and undivided highways with a substantial number of abutting lots and developments. Typical routes in this category include Route 22 from Clinton to Readington, Route 31 for portions from Hopewell to Oxford, Route 40 for portions from Buena Vista to Egg Harbor, Route 46 through Mt. Olive, and others. It is not obvious what distinguishes these segments from similar segments with access levels 3 or 4. Given the substantial access limitations which are imposed on the lots fronting on access level 2 segments, they should be carefully reviewed by the Department and affected counties, municipalities, and lot owners to insure that they are correctly classified.

RESPONSE: Access level 2 State highway segments are rural arterials with high speed, divided desirable typical sections. These characteristics may not be apparent from a current view of such a highway segment. All counties, municipalities, and lot owners have had multiple opportunities to comment on the classifications. Counties will have further opportunities, as set forth in N.J.A.C. 16:47-8.5(b). As set forth in N.J.A.C. 16:47-5, anyone may request a classification change.

547. COMMENT: The Department should reevaluate the determination and classification of access level 2 State highways. This is an arbitrary classification for a number of State highway segments. A number of the access level 2 roadways are two lane facilities with shoulders that currently have uses in which left and right turning movements are permitted. The denial of access or left turning prohibition will have a detrimental impact on traffic to and from these lots as well as the State highway. However, should the Code not be revised as it pertains to access level 2 highways, a lot owner should be permitted to provide a traffic engineering evaluation to the Department to determine the appropriate access configuration.

RESPONSE: The Department has not changed its position regarding access level 2 highways. The designation is not arbitrary: it is applied uniformly to rural, high speed arterial highways, with divided desirable typical sections. Direct access is permitted to lots along these highways, subject to vehicular use limitations. Pursuant to N.J.A.C. 16:47-3.1(c), access to highways which are currently undivided will be based on the existing highway configuration. This means that left turns would be allowed. A traffic engineering evaluation is not usually needed to determine the appropriate access configuration.

548. COMMENT: Major and minor high-speed collector in rural areas, cells 39 and 45, should be reclassified as access level 4, now that the Access Code considers all lots conforming in access level 6. This would be in keeping with other cell changes which reduce turning movements in rural areas. In effect there is no spacing standard for access level 6. High-speed major and minor collectors, especially two-lane rural roads, need stricter control to maintain capacity, speed, and safety and to protect their functional integrity.

RESPONSE: The Department reviewed the 37 miles of State highways which fell in these cells and found that most had low traffic volumes and nearby parallel routes which serve as arterial highways. Based on these findings, cells 39 and 45 have not been reclassified. However, the Department will discuss these classifications with county representatives, pursuant to N.J.A.C. 16:47-8.5(b). In addition, although there are no nonconforming lots along access level 6 highways, access points must meet the corner clearance, edge clearance, and design standard requirements.

Appendix B

549. COMMENT: The proposed desirable typical section of 6A for Route 70 will not minimize congestion, improve safety, and protect the environment.

RESPONSE: The Department disagrees with this comment. Construction work is now in progress to provide six lanes on a section of Route 70. This will lead to less congestion and improved safety. The required environmental clearances have been obtained and appropriate environmental protection measures are included in the construction.

550. COMMENT: If restricted access is meant to control, limit, or put a cap on traffic generating development along State highway, why would Cherry Hill receive a level three designation along Route 70 at a time when the Delaware Valley Regional Planning Commission in their 1990 Regional Mobility Policy Analysis refers to Cherry Hill as an emerging metropolitan subcenter, an attraction of regional growth?

RESPONSE: Route 70 in Cherry Hill was classified based on Appendix A and the comments the Department received on the Access Code. The Delaware Valley Regional Planning Commission has not submitted any comments on the Access Code to the Department.

Appendix C

551. COMMENT: Figures C5–C9 and C6–C10 are very similar. What is the purpose of these schematics, since they show a simple forward or reverse fly-over? There are numerous other grade separation schemes that may be viable.

RESPONSE: Since Figures C5 and C6 were similar to Figures C9 and C10 respectively, the latter two have been deleted.

552. COMMENT: Note 1 of Figure 12 should indicate that acceleration and deceleration lanes may extend beyond the lot lines without affecting existing or proposed adjoining lot access.

RESPONSE: Note number 1 was changed to read acceleration/deceleration lanes may extend beyond lot lines. When the auxiliary lane is constructed the applicant must address existing access to affected lots. Proposed access would be addressed at the time of application for that access.

Appendix E1

553. COMMENT: Weighted averages for individual service stations were not used and should have been used. Weighted averages would provide more appropriate results.

RESPONSE: The proposed average daily traffic volumes for the various types of service stations are the same as the weighted average. The two facilities that had minimarts in excess of 2,500 square feet were removed from the data base, since they did not fit the definition of a service station with minimart. One was eliminated since it had more than 25 percent of the traffic using the site for just the minimart and the other one had insufficient information to determine that it satisfied the definition. The deletion of these two sites did alter the average daily traffic from 1379 to 1224 vehicles and the AM and PM peak hour volumes from 137 and 133 trips to 128 and 129 trips respectively. These changes were reflected in Appendix E1 at 23 N.J.R. 2846 on September 16, 1991.

Appendix G

554. COMMENT: The diagram indicates that if access existed prior to July 1, 1976, the owner who has a permit may be penalized. If the owner does not have a permit, the access is grandfathered and assumed to be a permitted use regardless of the nature and intensity of use or the type of access which has been provided. If, however, an owner did obtain a permit and the current access does not match the permit, the permit will be declared not valid.

RESPONSE: The holder of a permit is always responsible for complying with the conditions of the permit. When there is no permit, the Department has no means of proving that access is improper. Consequently, the absence of a permit leaves the Department no choice but to grandfather the activity and access.

Appendix I

555. COMMENT: Appendices I-1 through I-4 are difficult to interpret. The use of simple formulas referencing the symbols used would provide clearer guidance. The spacing distance tables should be cited.

RESPONSE: Formulas have been added for the convenience of those who prefer equations to text. The spacing distance reference has been added.

Appendix K

556. COMMENT: Corner clearance should be denoted as (c) to be consistent with the definition.

RESPONSE: The Department sees no need to use a symbol when the term itself is used.

Service Stations

557. COMMENT: The Code is not clear that a modification, upgrade, or expansion of a service station, which still remains within the definition of a service station, does not require a new permit. The Code should clearly state that such activities do not require a new permit unless driveways are being modified. In the event that driveways are to be modified, a minor permit only should be required.

RESPONSE: N.J.A.C. 16:47-4.3(a) addresses all of the activities referred to in this comment, except the type of permit required. Based on N.J.A.C. 16:47-4.4(a) and its reference to Appendix E, a major permit would be required for a service station where the driveways are to be modified, not a minor permit as suggested. In addition, please refer to Response number 520 at 23 N.J.R. 1556, May 20, 1991.

558. COMMENT: Service stations are different from other uses since they are necessary for any highway system and they are not traffic generators. Unique treatment was therefore appropriate because service stations are unique.

RESPONSE: Please refer to response number 519 at 23 N.J.R. 1556, May 20, 1991.

559. COMMENT: The special nature of service station uses necessitates unique on-site traffic patterns, with a significant separation between entry onto the site and exit from the site. The Access Code disregards internal circulation.

RESPONSE: The Department does not agree that service stations require special treatment. On-site circulation is considered in the review of access to all lots, regardless of the land use. N.J.A.C. 16:47-3.8(i) only establishes a minimum distance between driveways. Applicants are free to propose greater separations.

560. COMMENT: The trip limits for nonconforming lots should not apply to service stations because service stations are a necessary presence along the State highway network, they provide a service essential to the utilization of the network and to the overall safety of vehicle operations, and they do not themselves generate new traffic. Consequently the imposition of vehicular use limitations is not only unfair and impactical, but may also deprive the motoring public of truly essential products and services.

RESPONSE: Motorists would find service stations even if none were allowed on State highways. The presence of service stations on State highways is traditional to the industry, but not necessarily to motorists, as evidenced by the survival of freeways and interstate highways. The imposition of traffic limitations has been applied consistently to all access.

561. COMMENT: The level of service standards should not apply to service stations because service stations do not generate a significant proportion of new traffic and they cannot reasonably be precluded from access if trip generation figures would result in an impermissible deterioration of the level of service.

RESPONSE: The level of service standards in N.J.A.C. 16:47-4.24 are used in traffic impact studies. Traffic impact studies are only required for major applications with a planning review. Since Appendix E1 indicates that service stations do not qualify for a planning review, they do not need traffic impact studies and the level of service standards are not applicable.

562. COMMENT: The denial of access to a State highway is not conducive to the operation of a service station in which 50 percent or more of the traffic patronizing the site is pass-by traffic. The restriction of access via alternative means will reduce pass-by patrons, increase the number of turning movements within the site versus the standard pattern of right-in/right-out circulation, and fuel deliveries would become more difficult and would require the site to be redesigned in a manner to accommodate tractor trailer vehicles which may not be conducive to the standard service station layout. Service stations should be exempt from alternative access requirements where any service station facility exists along a State highway which generates 50 percent or more of its traffic from the existing highway. Under such circumstances the restriction of only using alternative access shall be considered unreasonable and access in the form of ingress and egress to the State highway shall be granted.

RESPONSE: This commenter misinterprets N.J.A.C. 16:47-3.2(a). Please refer to Response numbers 521, 528, and 531 at 23 N.J.R. 1557, May 20, 1991.

AGENCY NOTE: The following list shows sections of N.J.A.C. 16:47 effective April 20, 1992 which replace sections of N.J.A.C. 16:41-2:

New Citation	Old Citation
SUBCHAPTER 1.	
16:47-1.1 Definitions	16:41-2.3 Definitions
SUBCHAPTER 3.	
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Summary of Agency-Initiated Changes:

N.J.A.C. 16:41-2.2(e) has been added in order to provide flexibility for the applicant to have the application handled based on the Access Code before its operative date.

The definition of design standards in N.J.A.C. 16:47-1.1 has been expanded to include 14, "A Policy on Geometric Design of Highway and Streets, 1984." It contains the standards required by the Federal Highway Administration for acceleration and deceleration lanes on interstate highways and is referred to in N.J.A.C. 16:47-3.5(e)10. In addition, N.J.A.C. 16:47-3.5(e)10 has been revised to distinguish between State highways and interstate highways. The requirements for State highways continue to be based on the New Jersey Department of Transportation "Design Manual-Roadway". The requirements for interstate highways are based on the standards required by the Federal Highway Administration.

The definition of lot in N.J.A.C. 16:47-1.1 has been clarified to include all land adjacent to State highways within this definition.

The definition of urban in N.J.A.C. 16:47-1.1 has been clarified by the addition of a reference to the Federal law which contains the definition which the Department used to establish urban classifications.

Throughout the Code, references to safety and operations have been replaced by safety and efficiency, in order to maintain consistency with the wording of N.J.S.A. 27:790a. These references occurred at N.J.A.C. 16:47-3.2(a), 3.5(c)2 and 3.5(c)3.

The reference to capacity in N.J.A.C. 16:47-3.2(b) has been clarified by establishing level of service E as capacity.

N.J.A.C. 16:47-3.9 contains the provisions which address curb. On June 14, 1991, the Department revised its policy related to curb face in order to provide a higher level of safety on State highways. N.J.A.C. 16:47-3.9(d)1 and 2 and (h) have all been modified to be consistent with revised Department policy.

The Department has expanded N.J.A.C. 16:47-3.13(d) to instruct applicants where to return guiderail which they remove.

N.J.S.A. 40:55D-62d precludes the creation of nonconforming lots after the effective date of the Access Code. The Department has stated in N.J.A.C. 16:47-3.16(a) that this prohibition was intended to restrict nonconforming lots in existence as of the effective date of the Access Code from being subdivided.

N.J.A.C. 16:47-3.16(c) referred to intensity of variance which was not quantified from a transportation perspective. The Department has replaced this phrase with a reference to traffic volumes.

Appendix E1 contains trip generation rates which the Department is adopting and which supercede trip generation rates in the "5th Edition Trip Generation Report" published by the Institute of Traffic Engineers. N.J.A.C. 16:47-4.4(c) has been modified to account for the use of Appendix E1.

The Code contained timeframes for all action required by the Department. Timeframes requiring applicants to progress applications were not included in all areas of the Code. N.J.A.C. 16:47-4.5(d), 4.8(e), 4.11(e), 4.13(g) and 4.40(e) have all been supplemented with a requirement that an applicant respond to a Department request for information within 90 days.

The Department simplified the text of N.J.A.C. 16:47-4.6(1). The requirements have not been changed.

The Department modified N.J.A.C. 16:47-4.7 to enable applicants to address drainage, curb, sidewalks, and lot consolidation within an access application. The May 20, 1991 proposal required separate applications and permits for each of these activities. Combining multiple activities into a single permit will reduce the burden and costs associated with permits for applicants as well as reducing the administrative burden on the Department.

Recent Department experience has shown that the location of easements has a bearing on the location of access points. In order for the Department and applicants to consider the presense of easements, the easements must be reflected on the application. Accordingly, the application checklists in N.J.A.C. 16:47-4.9(b)23, 4.10(b)38, 4.12(b)45, 4.14(b)47, and 4.16(b)23 have been expanded to include the location of any access easements.

The Governor's Task Force on Government Regulations provided recommendations to the Department during the summer of 1991. One of the recommendations suggested that the Department's electrical personnel be involved early in the application process. The Department has addressed this suggestion by requiring that applicants indicate potential involvement with Department electrical facilities at the time applicants request preapplication meetings. This is reflected by the addition of N.J.A.C. 16:47-4.13(b)8.

The Department modified N.J.A.C. 16:47-4.3(p), which pertains to the permit process and Pinelands area, to comply with the requirements of N.J.A.C. 7:50-4.81 regarding the completeness of access applications for lots within the Pinelands area. The application checklists in N.J.A.C. 16:47-4.9, 4.10, 4.12 and 4.14 were also modified to establish applicability of the Pinelands requirements.

N.J.A.C. 16:47-4.30(c)6x referred to transit route. The Department clarified this by mentioning that transit stops are considered part of the route.

Comment numbers 443 and 444 address the determination of capacity as set forth at N.J.A.C. 16:47-4.34(g). The Department recognized that clarification beyond that which was sought in these comments would be helpful. The reference to minor approaches has been clarified with the substitution of non-State highway approaches. The V/C ratio has been clarified by indicating that it applies to lane groups. The undefined term scenario has been replaced by the term analysis point. And an explanation of factoring has been added.

The May 20, 1991 proposal included improper references from N.J.A.C. 16:47-4.35 to N.J.A.C. 16:47-4.38(c). These references have been corrected.

The definition of transportation management association in N.J.A.C. 16:47-1.1 indicated that corporations brokered transportation services. This has been changed to coordinated transportation services, which is a more accurate description of the services these associations provide.

Although the Department is able to make the entire Access Code effective upon adoption, it chooses to delay implementation of many provisions until September 21, 1992. This is in the best interest of the Department and the public because it provides an opportunity for training and preparation before many of the new requirements must be implemented. Those provisions which are operative as of April 20, 1991 are generally consistent with current Department practices.

The Department made clarifications and technical corrections to: N.J.A.C. 16:47-2.5, Uninterrupted-flow standards; 16:47-4.26, Signalized Intersection Analyses; 16:47-4.28, Weaving Area Standards; and N.J.A.C. 16:47-4.29, Ramp Standards to be consistent with the general level of service standards at N.J.A.C. 16:47-4.24 and the standards referenced in the "1985 Highway Capacity Manual", *Special Report 209* in Chapters 4, 5, and 9. These modifications do not pose a substantive burden on the affected public.

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

16:41-2.2 Authority

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

(d) All access applications received ***by the Department*** after *[the effective date of N.J.A.C. 16:47-4]* ***September 21, 1992*** shall be processed in accordance with N.J.A.C. 16:47. All access applications received by the Department prior to *[the effective date of N.J.A.C. 16:47-4]* ***September 21, 1992*** shall be processed in accordance with N.J.A.C 16:41 ***with the exception that those provisions of N.J.A.C. 16:47 which are operative April 20, 1992 shall be applied to all applications received on or after April 20, 1992*** if:

1. A complete access application or concept review application has been received by the Department; and

2. Any of the following approvals *[has]* ***have*** been granted the applicant by the appropriate municipal approval authority pursuant to N.J.S.A. 40:55D-1 et seq.:

i. Preliminary site plan; or

ii. Subdivision; or

iii. General development plan.

(e) Between April 20, 1992 and September 21, 1992, an applicant with an application pending before the Department may make a one-time election to comply either with N.J.A.C. 16:47 or N.J.A.C. 16:41.

AGENCY NOTE: The following table of contents for the adopted Access Code is provided by the Department for the convenience of readers of the adopted rules.

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STATE HIGHWAY ACCESS MANAGEMENT CODE

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SUBCHAPTER 1. DEFINITIONS

16:47-1.1 Definitions

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

"Access application" means a document submitted to the Department to initiate the access permit process.

"Access classification" means an identification system for regulating access, based on function, environment, and traffic characteristics. The access classification system is applicable to all streets and highways within the State. ***A change in the function, surrounding environment, traffic characteristics, speed limit, or desirable typical section may be a basis for changing the access classification and associated access level.***

"Access Code" means the State Highway Access Management Code adopted by the Commissioner pursuant to Section 3 of the State Highway Access Management Act of 1989, P.L. 1989, c.32.

"Access level" means the allowable turning movements to and from access points on a State highway segment based on the highway access classification.

"Access management plan" means a plan showing the design of access for every lot on a State highway segment developed jointly by the Department, the municipality in which the highway is located, and the county, if a county road intersects the segment.

"Access permit" means a permit issued by the Department for the construction, maintenance, and use of a driveway or public street or highway connecting to a State highway.

"Access point" means the location of the intersection of a highway or street or driveway with the highway.

"Access point offset" means the distance between the centerlines of access points on opposite sides of undivided highways and the distance between the centerlines of an access point and a median opening on a divided highway.

"Accessible principal arterial" means the classification category for a roadway that is part of an interconnected network of continuous routes serving transportation corridors with high traffic volumes and long trips, the primary function of which is to provide safe and efficient service for major traffic movements in which access is subordinate.

"Alternate work arrangement programs" means programs that alter the traditional work-day schedule of arrivals and departures to avoid peak-hour congestion. These programs may include flex-time, a compressed work week, and staggered hours.

"Alternative access" means the ability ***of any vehicle*** to enter a State highway indirectly through another improved roadway instead of directly from a lot across its State highway frontage. ***Emergency or service access shall not be construed as alternative access.***

"Applicant" means a private party or entity, municipality, county, or any public agency applying for an access permit. The applicant shall own the lot where the access is sought.

"Applicant time" means *[the]* ***a*** period of time between a Department request for revisions or information and its receipt by the Department. Time during this period is not counted in the Department time frames. Following a determination that an application is incomplete or unacceptable for review by a Regional Maintenance Office, Major Permit Unit, or the Bureau of Access and Development Impact Analysis, time frames will be reset to the beginning of that step of that unit's review time. ***The Department will publish a list of steps and the associated time frames for each type of application.***

"Application approval" means Department approval or acceptance of a proposed highway access plan, for which a permit may be granted.

"Application conference" means a meeting held between the applicant and Department representatives during the review process.

"Arterial" means a transportation route, which may have signalized intersections, that primarily serves through traffic and provides access as a secondary function.

"Authority" means the governing body or public official charged with the jurisdiction for control and maintenance of a highway.

"Auxiliary lane" means a lane striped for use, but not for through traffic use.

"Band width" means the time in elapsed seconds between the passing of the first and last possible vehicle in a group of vehicles moving at the design speed *[of]* ***through*** a progressive traffic signal system.

"Berm" means the area from the curbline to the right-of-way line. It is generally raised six inches. This is also the sidewalk, border, or utility area (see "sidewalk area").

"Bifurcated driveway" means a roadway with two separate road openings, one for ingress to, and one for egress from, a street or highway.

"Buspool" means a bus service, usually administered by an employer, with limited pickup and destination stops, guaranteed seats, and advance ticket purchase. Club buses are buspools administered by the riders.

"Carpool" means two or more people commuting on a regular basis to and from work by means of a vehicle with a seating capacity of nine passengers or less, either using one car and sharing expenses, or alternating vehicles used so that no money changes hands.

"Car" means any motorized vehicle having two or more axles.

"Certificate of acceptance" means a document issued by the Department to indicate that the permittee for a major permit with a planning review has satisfactorily met the construction conditions of the permit. This certificate is required in advance of using the access and obtaining a certificate of occupancy.

"Change of lot use" means any alteration of the functions performed on a lot.

"Collector road" means the classification category for roads that primarily serve intra-county trips characterized by moderate volume and speed, and that provide for land access, traffic circulation, and access to arterial routes.

"Commissioner" means the Commissioner of the New Jersey Department of Transportation or such persons as may be designated by the Commissioner.

"Complete application" means an access application satisfying Department form and content requirements ***set forth in this Access Code,*** thereby making it acceptable for Department review.

"Component factors" means the road; right-of-way; grading, surface, and subsurface drainage provisions; curbs, gutters, catch basins, foundations, shoulders and slopes, wearing surfaces, bridges, culverts, retaining walls, intersections, private entrances, guiderails, trees, illumination, guideposts and signs, ornamentation, and monuments.

"Compressed work week program" means a program which allocates the working hours into fewer than five days per week or fewer than 10 days per two week period, such as four-day work week or nine-day eighty-hour schedule.

"Concept review application" means an access application for a general analysis of the access and highway improvements associated with a future major access application.

"Conforming lot" means a lot which meets the standards for spacing between lot centerlines.

"Corner clearance (C)" means the distance along the curbline between the point of curvature of the corner radius and the point of curvature of the nearest curbline opening.

"Corner lot" means a lot with one frontage on a State highway and an adjacent frontage on a road that intersects the State highway.

"County road" means a road taken over by, controlled by, built by, maintained by, or otherwise under the jurisdiction of the county.

"Curbline" means a line, whether curbing exists or not, which is the outer edge of the shoulder or paved highway.

"Curbline opening (C.O.)" means the overall opening dimension at the curbline*[, whether curbing exists or not,]* measured between the points of tangency of the driveway *[and the curbline]* ***radii if curbing exists or the maximum width of opening at the curbline if curbing does not exist***.

"Daily traffic movements" means the highest estimated two-way traffic volume using a lot during a 24-hour period.

"Day" means calendar day, unless otherwise specified.

"Deficiency meeting" means a meeting held at the request of the Department or the applicant between the applicant and DOT Department representatives to discuss an incomplete or unacceptable application.

"Department" means the New Jersey Department of Transportation.

"Department time" means the period of time between receipt of a complete permit application and fee by the Department and issuance of a permit, less any applicant time.

"Depressed curb" means a 1 1/2 inch face curb within a curbline opening.

"Design review" means the review of major access and concept review applications performed by the Major Permits Unit of the Regional Design Office at the Department.

"Design standards" means standards for design based on one or more of the following:

1. "New Jersey Department of Transportation Design Manual—Roadway", March 3, 1987 or superseding issue, available from the Bureau of Design Standards.

2. "The New Jersey Department of Transportation Design Manual—Bridges and Structures", 1987 or superseding issue, available from the Bureau of Structural Design.

3. "A Policy on Design Standards Interstate System", 1987 or superseding issue, available through American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol St., N.W., Washington, D.C. 20001.

4. "Guide and Regulations for Highway Access Permits", 1991 or superseding issue which contains this Access Code and additional information, available from the Department's Regional Maintenance Offices.

5. Supplemental specifications SI-89 ELECT and standard details, or superseding issue available from the Bureau of Electrical Engineering.

6. Institute of Transportation Engineers "*[4th]* ***5th*** Edition Trip Generation", *[1987]* ***1991*** or superseding issue, available through Institute of Transportation Engineers, 525 School St., S.W., Suite 410, Washington, D.C. 20024-2729, ITE Publ. No. 1R-016B.

7. 1985 "Highway Capacity Manual" Special Report 209, or superseding issue, available through Transportation Research Board, National Research Council, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.

8. "Bicycle Compatible Roadways", December 1982, or superseding issue available from the Bureau of Suburban Mobility.

9. "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD), 1988 or superseding issue, available through Institute of Transportation Engineers, 525 School St., S.W., Suite 410, Washington, D.C. 20024-2729.

10. Hamelink, M.D., "Volume Warrants for Left-Turn Storage Lanes at Unsignalized Grade Intersections," Highway Research Record 211, National Research Council, available through Transportation Research Board, 2101 Constitution Ave. N.W., Washington, D.C. 20418, 1967.

11. Stover, Virgil G. and Koepke, Frank J., "Transportation and Land Development," Institute of Transportation Engineers, 525 School Street S.W., Suite 410, Washington, D.C. 20024-2729, 1988.

12. Standard Specifications for Road and Bridge Construction, New Jersey Department of Transportation, 1989 or superseding edition, available from the Bureau of Construction Services.

13. Jack E. Leisch, "Capacity Analysis Techniques for Design of Signalized Intersections", Figure 9, U.S. Department of Transportation, Federal Highway Administration.

14. "A Policy on Geometric Design of Highways and Streets, 1984" or superseding issue, available through American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol St., N.W., Washington, D.C. 20001.

"Desirable typical section" means the Department's long range plan for State highway configurations, as shown in Appendix B. Each desirable typical section shows the number of through lanes. It does not generally show auxiliary lanes. ***If the Department changes the desirable typical section of a State highway segment, the access classification and access level may also change.***

"Developer agreement" means a contract between the Department and a lot owner which allows a lot abutting a highway to have access to the highway and requires the Department and lot owner to satisfy special obligations.

"Distance between driveways (D)" means the distance measured along the curbline between curbline openings of two adjacent driveways.

"Divided highway" means a highway having access on only one side of the direction of travel.

"Driveway" means a private roadway providing access to a street or highway. ***A driveway is not a road, street, boulevard, highway, or parkway.***

"Driveway angle (Y)" means the angle between the driveway centerline and curbline.

"Driveway width (W)" means the narrowest width of driveway, within the sidewalk area, measured perpendicular to the driveway.

"Edge clearance (E)" means the distance measured along the curbline from the extended lot line to the curbline opening.

"Employee transportation coordinator (ETC)" or "ridesharing coordinator" means a person selected to develop, implement, and administer an employee transportation program. These duties may include registering employees for a ride-match program, coordinating the formation of car/van/buspools, promoting the use of public transit, and monitoring employee participation in the program.

"Expansion of lot use" means any increase in the floor area or function performed on a lot.

"Expiration" means the formal termination of an access permit.

"Extended lot line (E.L.L.)" means a line, radial or perpendicular to the highway centerline, at each end of the frontage, extending from the right-of-way line to the curbline.

"Fair share financial contribution" means the sum of the applicant's proportionate costs at each location where level of service violations occur. ***The proportionate costs must have a rational nexus with the traffic growth attributable to the development of the lot for which the permit is requested.***

"Floor area ratio" means the sum of the area of all floors of buildings or structures***, gross floor area,*** compared to the total area of the lot.

"Four-day forty-hour schedule or four-day work week" means a compressed work week schedule in which full time personnel work their usual number of weekly hours in four days.

"Freeway" means a multi-lane divided highway having a minimum of two lanes in each direction and limited access.

"Frontage" means the length along the highway right-of-way line of a single lot between the side lot lines.

"Frontage road" means a service road, usually parallel to the State highway, designed to reduce the number of streets and driveways that intersect a State highway.

"Government driveway" means an entrance or driveway exclusively serving a public school, Federal, State, municipal, or county facility.

"Grandfathered permit" means the access permit assumed to exist for a lot with access prior to January 1, 1970 when no subsequent or previous permit has been issued for the lot. A grandfathered permit allows continuation of the lot access and used in existence on January 1, 1970. ***See Appendix G.***

"High speed rural" means the access classification for roadways in rural environments where the posted speed limit is 50 miles per hour (mph) or greater.

"High speed urban" means the access classification for roadways in urban environments where the posted speed limit is 45 mph or greater.

"Highway" means a public right-of-way, whether open or improved or not, including all existing factors of improvements.

"Improvement" means the original work on a road or right-of-way which converts it into a road which shall, with reasonable repairs thereto, at all seasons of the year, be firm, smooth, and convenient for travel. "Improvement" shall consist of location; grading; surface and subsurface drainage provisions, including curbs, gutters, catch

basins, foundations, shoulders and slopes, wearing surface, bridges, culverts, retaining walls, intersections, private entrances, guard rails, shade trees, illumination, guideposts and signs, ornamentation and monumenting. "Improvement" also may consist of alterations to driveways and local streets, acquisition of right-of-way, construction of service roads, and other actions designed to enhance the functional integrity of a highway. All of these component factors need not be included in an original improvement.

"Improvement capacity" means the difference between the highway capacity after it has been improved and the capacity which existed before the improvement. These capacities are determined at the level of service boundary between E and F ***as defined by the "1985 Highway Capacity Manual" Special Report 209***, with the exception of non-State highway approaches to signalized intersections where a volume to capacity (V/C) ratio ***of 1.2 on the side street approach*** applies.

["Inside radius (U)" means the inside or smaller radius on a driveway.]

"Intensity of use" means the number of dwelling units per acre for residential development and floor area ratio for nonresidential development, such as commercial, office, and industrial.

"Interchange" means a grade-separated, bridged, system of access to and from highways where vehicles may move from one roadway to another without crossing ***mainline*** streams of traffic.

"Intersection" means the location where two or more roadways ***, other than driveways,*** cross at grade, without a bridge.

"Joint planning process" means the process of developing a draft access management plan.

"Level of service (LOS)" means a description of traffic conditions along a given roadway or at a particular intersection. The level of service ranges from "A", which is the best, to "F", which is the worst. It reflects factors such as speed, travel time, freedom to maneuver, traffic interruptions, and delay. The ***"*1985 Highway Capacity Manual*"* *Special Report 209*** has a detailed description of this concept.

"Limited access highway" means a highway, especially designed for through traffic, over which abutting lot owners have no right to light, air, or direct access. Interstate highways, parkways, and freeways are considered limited access highways.

"Local road" means the access classification for roads whose purpose is to provide direct access to abutting land and roads of higher classification. Mobility is lower than for other classifications and through movements are discouraged, especially in urban areas.

"Lot" means a single tax map parcel. ***All land adjacent to a State highway is considered to be on a lot.***

"Lot centerline" means the mid-point of the State highway frontage of a lot. For partial denial of access lots, the lot centerline is presumed to be the point of beginning or ending of the denial of access. See Appendix I-3.

"Low speed rural" means the access classification for roadways in rural environments with posted speed limits 45 mph or less.

"Low speed urban" means the access classification for roadways in urban environments with posted speed limits 40 mph or less.

"Maintenance means the continuous work or in kind replacement required to hold a driveway, road or structure against deterioration due to wear and tear, and to preserve the general character of the original improvement without alteration in any of its component factors.

"Major access applications (or permits)" means access applications (or permits) for lots with an expected two-way traffic volume of 500 or more *[vehicles]* ***vehicle trips*** per day to and from the use or uses.

"Major access applications (or permits) with planning review" means access applications (or permits) for lots with an expected two-way traffic volume of 500 or more *[vehicles]* ***vehicle trips*** per day and with an expected peak-hour volume of 200 or more *[vehicles]* ***vehicle trips*** to and from the use or uses.

"Major collector" means a type of collector road in rural areas that serves important intra-county traffic corridors and provides service to major traffic generators.

"Major traffic generator" means the use or uses which generates a total of 500 or more vehicle trips per day, to and from the use or uses.

"Maximum vehicular use limits" means the greatest number of vehicles per A.M. P.M. or Saturday peak hour allowed to access a nonconforming lot.

"Median" means that portion of a divided highway that separates traffic proceeding in opposite directions.

"Median opening" means a paved area bisecting opposite directions of a divided roadway. A median opening is designed to permit traffic to cross at least one direction of travel.

"Midblock lot" means a lot with one frontage on a State highway that is between two other lots that have frontage on *[the same]* ***a*** State highway.

"Minor access applications (or permits)" means access applications (or permits) for lots with an expected two-way traffic volume of less than 500 *[vehicles]* ***vehicle trips*** per day to and from the use or uses.

"Minor arterial" means the access classification for roadways that serve trips of moderate length. Access to abutting properties is minimized, controlled, or regulated. These highways interconnect with, and augment, the principal highway system. Mobility is less than on accessible principle arterials.

"Minor collector" means a type of collector road in rural areas that serves smaller places and towns and connects local traffic.

"Minor traffic generator" means the use or uses which generates less than a total of 500 vehicle trips per day, to and from the use or uses.

"Mode split" means a breakdown of the transportation means used by commuters to travel to work. This includes single-occupant vehicles, carpools or vanpools, buspools, public transportation, bicycles, pedestrians, or other modes.

"Monitoring" means the measuring of ridesharing modes at a work site. It entails keeping a record of how the employees travel to and from work and how many employees drive alone, share a ride, or walk to work.

"Monolithic curb" means a curb and gutter constructed as one unit.

"Multi-lane undivided highway" means a highway consisting of three or more lanes with two or more lanes designated for one direction and with no physical barriers separating opposite directions of travel.

"Nine-day schedule" means a compressed two-week work schedule in which full time personnel work their usual number of hours for a two-week/10-day pay period in nine days.

"Nonconforming lot" means a lot in existence prior to the adoption of the Access Code which does not meet the standards for spacing between lot centerlines.

"Outparcel" means a lot, adjacent to a roadway, that interrupts the frontage of another lot.

"Outside radius (R)" means the outside or larger curve radius on a driveway.

"Parkway" means a type of limited access highway.

"Partial denial of access lot" means a lot which has had some portion of its potential State highway access through its frontage acquired by the Department.

"Passby" means a vehicle which stops at the site after coming directly from the traffic stream going by the site headed for an ultimate destination other than the site.

"Peak hour" means the 60 consecutive minutes during which the highest traffic volume occurs along a roadway or through a driveway.

"Permittee" means the owner of a lot which has an access permit or the municipality or county having a permit for a street.

"Planning review" means the review of the more complex major access government driveway, or concept review applications performed by the Bureau of Access and Development Impact Analysis at the Department.

"Pre-application conference" means a meeting between a potential applicant and Department representatives before the submission of an application.

"Previously anticipated daily movements" means the estimated, 24-hour, two-way site-traffic count entered on the access application and included in the permit.

"Public utility" means every individual, co-partnership, association, corporation, or joint stock company, their lessees, trustees, or receivers appointed by any court, owning, operating, managing or controlling within the State of New Jersey a steam railroad, street railway, traction railway, canal, express, subway, pipeline, gas, electric, light, heat, power, water, oil, sewer, telephone, telegraph system, plant, or equipment for public use under privileges granted by the State or any political subdivision thereof.

"Rational nexus" means a clear, direct and substantial relationship between a particular development and the public improvements required of the applicant.

"Reconstruction" means the rebuilding of an existing improved road or access point, involving changes to its configuration.

"Regional benefit" means an improvement which serves an areawide demand for the improved movement of all traffic. The improvement should fit into overall local and regional land use and transportation plans. Regional benefit also indicates that the proposed improvement does not exclusively serve the private interests of any one lot. A region may extend as far as the study area established pursuant to N.J.A.C. 16:47-4.36, but in no case less than one intersection on either side of the proposed intersection.

"Repair" means minor repairs or minor replacements in one or more of the component factors covered by the permit which may be required by reason of storm or other cause in order that there may be restored a condition requiring only maintenance.

"Residence and business driveway" means the entrance or driveway serving a combination of private residence and business use with an expected two-way traffic volume of less than 500 vehicles per day for the combined uses.

"Resurfacing" means work done on an improved road involving a new, or partially new, pavement, with or without change of width, but without a change in grade or alignment.

"Revocation" means termination of an access permit by the Commissioner after a determination that alternative access is completed and available for use.

"Reverse frontage" means frontage on an access road constructed at the rear of lots fronting on the State highway.

"Right-of-way" means highway property and property rights***, including easements,*** owned and controlled by the Department.

"Right-of-way line (R.O.W. line)" means the outer edge of State highway property, separating highway property from the abutting lots owned by others.

"Road" means a highway other than a street, boulevard, or parkway.

"Route" means a highway or set of highways including roads, streets, boulevards, parkways, bridges and culverts needed to provide direct transportation between designated points.

"Rural" means an environment used for access classification purposes based on the U. S. Census Bureau data and standards and definitions in the Highway Federal Aid Law, 23 U.S.C.A. 101 et seq.

"Satellite office" means an office used by employees who are telecommuting.

"Segment" means the portion of the State highway between the closest existing traffic signals on each side of or along the frontage of the applicant's lot.

"Service station" means a motor fuel dispensing facility at which at least 75 percent of the average daily traffic purchases gasoline, petroleum products, or other services for motor vehicle services.

"Setback" means the distance between the right-of-way line and permanent structures, such as buildings, gasoline pump islands, display stands, or other artificial objects.

"Shared driveway" or "shared access" means a single driveway serving two or more adjoining lots. A shared driveway may cross a lot line, enabling a lot without direct highway access to have access to the highway.

"Shoulder" means the portion of the roadway that lies between the edge of the traveled way and curbline, excluding auxiliary lanes.

"Sidewalk area" means that portion of the right-of-way that lies between the curbline and right-of-way line regardless of whether a sidewalk exists.

"Signal spacing" means the distance between traffic signals along a roadway.

"Significant increase in traffic" means vehicular use exceeding the previously anticipated two-way traffic generated by a lot by *[the greater of]*:

1. 100 movements during the peak hour of the highway or the development; *[or]* ***and***

2. 10 percent of the previously anticipated daily movements. See Appendix J.

"Single family residential driveway" means the entrance or driveway exclusively serving a single-family residence.

"Speed-change lane" means an auxiliary lane, deceleration lane, or acceleration lane, including tapered areas, primarily for the deceleration or acceleration of vehicles entering or leaving the through traffic lanes.

"Start date" (for access management plans) means the date that the last resolution authorizing municipal and county participation in the joint planning process is received by the Commissioner.

"State highway" means a road owned, taken over, controlled, built, maintained, or otherwise under the jurisdiction of the State.

"State highway system" means the network of State highways.

"Street" means any public or private right-of-way, whether open or improved or not, including all existing factors of improvements, where:

1. In a distance of 1,320 feet on its centerline, there are 20 or more houses within 100 feet of the centerline;

2. The governing body in charge thereof and the Commissioner may declare a street; or

3. The incorporated municipality is over 12,000 in population.

"Street intersection applications (or permits)" means applications (or permits) for any new streets ***intersecting a State highway*** or increases in the number of lanes ***intersecting a State highway*** on existing streets *[intersecting a State highway]*.

"Street improvement applications (or permit***s***)" means applications (or permits) for any change to an existing street such as geometric and grade changes, which does not increase the number of lanes intersecting the State highway.

"Subject highway segment" means the segment of the State highway system covered by the access management plan. If the segment is divided and forms the boundary between two or more municipalities or two or more counties, it shall be considered located within only those municipalities and counties covered by the access management plan.

"Take over" means action by the Department in assuming the control and maintenance of a part of the State highway system.

"Telecommuting" means a work arrangement for performing work electronically, where employees work at a location other than the conventional office. This place may be the home, in a subordinate office, or an office close to home.

"Theoretical driveway location (TDL)" means the center of the State highway frontage of any lot. It is used to calculate whether a lot is conforming.

"Traffic growth rate" means the rate at which traffic volumes are projected to increase over a period of time. It is expressed as a percentage that is compounded annually.

"Traffic impact study" means a report analyzing anticipated roadway conditions with and without an applicant's development. The report includes an analysis of mitigation measures and a calculation of fair share financial contributions.

"Transportation demand management plan" means a system of actions and time tables the purpose of which is to alleviate traffic problems through improved management of vehicle trip demand. The actions are structured either to reduce the use of single occupancy vehicles or to encourage travel during less congested time periods.

"Transportation management *[associations]* ***association*** *[(TMAs)]* ***(TMA)***" means a nonprofit New Jersey based corporation that *[brokers]* ***coordinates*** transportation services including, but not limited to, public transportation, vanpools, carpools,

bicycling, and pedestrian modes to corporations, employees, individuals, and other groups.

"Traveled way" means the portion of the roadway provided for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Two-lane highway" means a highway consisting of two traffic lanes (one per direction).

"Undivided highway" means a highway having access on both sides of the direction of travel.

"Urban" means a type of roadway environment used for access classification based on the U.S. Census Bureau data and standards ***and definitions in the Highway Federal Aid Law, 23 U.S.C.A. 101 et seq.***.

"Vanpool" means *[eight]* ***seven*** or more people commuting on a *[daily]* ***regular*** basis to and from work by means of a vehicle with seating for *[not less than eight nor]* ***not*** more than 15 adult passengers and has a registration certificate and registration plates pursuant to N.J.S.A. 39:3-27.19.

"V/C ratio" means a fraction the numerator of which is the number of vehicles passing a given point in a unit of time and the denominator of which is the theoretical capacity of the roadway at that point for the same unit of time.

"Vehicle trip" means a car moving from an origination point to a destination point.

"Weaving" means the crossing of two or more traffic streams traveling in the same general direction along a significant length of highway, without the aid of traffic control devices. Weaving areas are formed when a merge area is closely followed by a diverge area, or when an entrance ramp is closely followed by an exit ramp and the two ramps are joined by an auxiliary lane.

"Waiver" means the Department's intentional relinquishment of its right to wholly enforce provisions of the Access Code. Waivers may either reduce or eliminate requirements.

SUBCHAPTER 2. ACCESS CLASSIFICATIONS

16:47-2.1 General requirements

There are *[hereby]* established the following access classifications for the State highway system as set forth in Appendix A of this Access Code, ***and*** incorporated herein by reference. The access classifications are based on access class, urban or rural area, speed limit, and highway configuration of the desirable typical section.

16:47-2.2 Requirements for each State highway segment

The access classification, access level, cell number, and desirable typical section for any particular State highway segment shall be determined by reference to ***Appendix A and*** Appendix B of this Access Code, incorporated herein by reference. Each access classification shall be applied to both sides of the roadway***, unless otherwise noted***.

***16:47-2.3 Access classification change**

The Commissioner will evaluate requests to change access classifications pursuant to N.J.A.C. 16:47-5. An access classification change to a State highway segment may affect the milepost limits, access classification, desirable typical section, cell number, and access levels. Generally, the access classification matrix in Appendix A will be used to determine the designation in Appendix B. A change in the designation of urban or rural environment, or in the designation of high and low speed could change the access classification shown in Appendix B.*

SUBCHAPTER 3. ACCESS STANDARDS

16:47-3.1 Access levels for access classifications

(a) There are hereby established the following access levels (AL) for the State highway system:

1. AL 1—fully controlled access: Access is prohibited on interstates, toll roads, freeways, and limited access highways, except at grade-separated interchanges. Figures C-5 and C-6 of Appendix C, Access Levels Diagrams, illustrate such access.

2. AL 2—access via street intersections or grade-separated interchanges and nonconforming lot access points: The designs set forth in Figures C-7 *[through C-11]* ***and C-8*** of Appendix C, Access Levels Diagrams, illustrate such access. For AL *[1]* ***2***, the location standards set forth in N.J.A.C. 16:47-3.3, 3.4, and 3.5 are applicable.

3. AL 3—right-turn access to and from an access point and left-turn access via a signalized jughandle: Figures *[C-12 and C-15]* ***C-9 through C-13*** of Appendix C, Access Levels Diagrams, illustrate such access. The jughandle may or may not be at access point. For AL 3, the location standards set forth in N.J.A.C. 16:47-3.4 and 3.5 are applicable.

4. AL 4—right-turn access to and from an access point, left-turn ingress via a left-turn lane, and left-turn egress from an access point: Figures C-*[16]****14*** through C-*[20]****18*** of Appendix C, Access Levels Diagrams, illustrate such access. The left-turn lane may or may not be at the access point for a divided highway and will be at the access point for an undivided highway. For AL 4, the location standards set forth in N.J.A.C. 16:47-3.4 are applicable if the highway is divided or if the traffic volumes at the intersection with the State highway meet the criteria for warrants set forth in Part 4C of the ***"***Manual on Uniform Traffic Control Devices for Streets and Highways***"*** (U.S. Department of Transportation, Federal Highway Administration 1988 edition or superseding edition). The location standards set forth in N.J.A.C. 16:47-3.3, 3.4 and 3.5 are applicable in all other cases.

5. AL 5—access to and from an access point: Figures C-*[21]* ***19*** through C-*[25]****23*** of Appendix C, Access Levels Diagrams, illustrate such access. Meeting traffic signal warrants is not required for the installation of a left-turn lane. For AL 5, the location standards set forth in N.J.A.C. 16:47-3.4 are applicable if the traffic volumes at the intersection of the access point with the State highway meet the criteria for warrants set forth in Part 4C of the ***"***Manual on Uniform Traffic Control Devices for Streets and Highways***"*** (U.S. Department of Transportation, Federal Highway Administration 1988 edition or superseding edition). The location standards set forth in N.J.A.C. 16:47-3.5 are applicable in all other cases.

6. AL 6—access to and from the State highway and an access point, provided that there is an edge clearance of at least 12 feet, the access point is at least 24 feet from the nearest access points, suitable sight lines exist and the access does not otherwise create an unsafe condition. The Department will *[generally]* include frontage roads and service roads that parallel State highhways in this classification. The design set forth in Figure C-*[26]****24*** of Appendix C, access level diagrams, illustrates such access. For AL 6, the location standards set forth in N.J.A.C. 16:47-3.4 and 3.5 are applicable.

(b) Nonconforming lot access may be allowed for all access levels, except for access level 1. Figures C-2, C-3, and C-4 of Appendix C of this chapter, incorporated herein by reference, illustrate such nonconforming access.

(c) The access level permitted on each segment of the State highway system shall be determined by reference to Appendix B. If the desirable typical section does not match the existing State highway configuration, the access allowed shall be based on the existing configuration and include ***access*** provisions for accommodating the desirable typical section in the future.

(d) The owner of a lot fronting on a State highway segment may apply for ***the access applicable to*** a more restrictive access level than that for which the segment is designated, with access level 1 being the most restrictive access classification.

(e) The access permitted for each access level on State highways is summarized on Figure C-1.

16:47-3.2 Access on State highway segments

(a) Access points *[shall]* will be allowed on State highway segments subject to the restrictions set forth in this subchapter. However, the Department may also require alternative access if ***the Commissioner determines that*** the alternative access will benefit the safety and *[operation]* ***efficiency*** of the State highway. The governmental agency having jurisdiction for control of the road connected to the alternative access may seek appropriate mitigation associated with the traffic using the alternative access.

(b) Access shall not be permitted on the State highway if the desirable typical section for the State highway segment as shown in

Appendix B does not have sufficient capacity ***at LOSE*** to carry existing traffic plus traffic to be generated by the applicant's lot. The Department may also not grant access if the applicant's fair share financial contribution is insufficient to resolve safety problems caused by site traffic.

(c) The Department encourages shared access, alternative access, frontage roads, reverse frontage roads, and other similar measures to minimize the number of access points on the State highway system.

16:47-3.3 Location of interchanges

(a) An interchange may be located along a State highway with an access level of 1 to 5 as determined in the manner set forth in the following subsections.

(b) An interchange may be permitted when at least one of the following conditions is met:

1. Two divided multi-lane accessible principal arterials cross;

2. If a traffic signal is installed at the location proposed for the interchange and the green time available would be less than 50 percent for accessible principal arterials or less than 40 percent for minor arterials;

3. A new at-grade signalized intersection at the same location would not result in level of service C or better on the through movement of the State highway during any peak period when the closest signalized approaches on the State highway on both sides of the location of such intersections are not already at level of service D or worse for the through movement on the State highway;

4. An existing at-grade signalized intersection at the proposed location operates at overall level of service F during any peak period and there is no reasonable improvement that can be made to provide sufficient capacity;

5. A major public street intersection is located near a major traffic generator proposed to be served by the intersection and it would not be feasible to provide effective traffic signal progression along the artery for both the through traffic and the traffic which would be generated by the major traffic generator; or

6. The minimum pecentage band widths would not be maintained.

(c) Interchanges proposed to serve major traffic generators may be permitted only if, in addition to meeting the requirements set forth in (b) above, a regional benefit to traffic movements can be demonstrated, and at least one of the following three conditions is met:

1. The major traffic generator is located along an accessible principal arterial where direct access or left-turns are either prohibited by this Access Code or would otherwise be undesirable as determined by the Commissioner;

2. The traffic flows entering or leaving the traffic generator would reduce the highway green time per cycle for any traffic signal which would serve the traffic generator to less than 50 percent for accessible principal arterials and less than 40 percent for minor arterials; or

3. The location which would otherwise be signalized does not meet the traffic signal spacing criteria set forth in N.J.A.C. 16:47-3.4 and signalization of the access point would impede the progressive flow along the highway.

(d) The distance between interchanges shall be measured from the interchanges' center points. The center points shall be the midpoint of the extremities of the ramp system for the interchange.

1. An interchange on a State highway segment *[with urban characteristics]* ***classified as urban***, as determined using Appendices A and B, shall be at least one mile from the closest existing interchange.

2. An interchange on a State highway segment *[with rural characteristics]* ***classified as rural***, as determined using Appendices A and B, shall be at least *[three]* ***two*** miles from the closest existing interchange.

3. An interchange shall be separated from a full-movement intersection by at least the required traffic signal spacing except for an interchange which may be permitted as a result of (c)3 above. The distance shall be measured from the interchange's center point to the point of intersection. Refer to Appendix D, incorporated herein by reference, for spacing requirements.

16:47-3.4 Location of traffic signals and other provisions

(a) The location of traffic signals applies to access levels 2 through 6. A traffic signal may be placed only at locations along a State highway where the conditions set forth in this section are met. The location of traffic signals shall take precedence over the location of unsignalized access points where there is a conflict. The traffic signal spacing criteria shown in Appendix D and permit requirements in N.J.A.C. 16:47-4.21 shall be complied with.

(b) If the Commissioner has designated optimal traffic signal locations for future traffic signals along a State highway segment within which a traffic signal is proposed or if such segment is less than one mile in length, the following shall apply:

1. A traffic signal may be permitted within the segment at the designated optimal location or at another location if, in the case of the latter, the applicant demonstrates that:

i. The traffic signal meets the criteria for warrants set forth in part 4C of the *"*Manual on Uniform Traffic Control Devices for Street and Highways*"* (U.S. Department of Transportation, Federal Highway Administration 1988 edition or a superseding edition); and

ii. The minimum band width percentages on the State highway are attained or exceeded as follows:

Access Classification of Highway by Environment	Minimum Acceptable Through Band Width
Urban	
Accessible Principal Arterial	50 percent
Minor Arterial	40 percent
Collector and Local	30 percent
Rural	
Accessible Principal Arterial	50 percent
Minor Arterial	40 percent
Major Collector	35 percent
Minor Collector and Local	30 percent

Note: Access classification may be determined by reference to Appendix A, Access Classification Matrix, and Appendix B.

2. The segment used in making the determination set forth in N.J.A.C. 16:47-3.4 shall be designated by the Commissioner after recommendation by the applicant. ***In no case shall the limits for analyzing band width extend more than one traffic signal outside of the study area established pursuant to N.J.A.C. 16:47-4.36.***

3. In designating optimal locations for future traffic signals, the Commissioner may apply Appendix D, "Optimum Spacing of Signalized Intersections for Various Progressive Speeds and Cycle Lengths," in whichever direction along the State highway is deemed appropriate and may exclude locations where specific circumstances, as determined by the Commissioner, preclude future signalization. Applicants should contact the Bureau of Traffic Engineering and Safety Programs for traffic signal information.

4. Minimum band width percentages on the State highway shall be calculated based upon posted speed limits and cycle lengths, unless otherwise specified by the Department, using computer software acceptable to the Commissioner, and shall assume the operation of the existing traffic signals and of traffic signals at the optimal locations designated by the Commissioner, in the latter case using the appropriate cycle based on applying Appendix D.

(c) If the Commissioner has not designated optimal traffic signal locations along a State highway segment within which a traffic signal is proposed and such segment is one mile or more in length, the following shall apply:

1. A traffic signal shall be permitted within the segment if the applicant identifies the optimal location of future traffic signals along the segment and:

i. The traffic signal is proposed to be placed at an optimal location identified; or

ii. The applicant demonstrates that the standards set forth in this section have been met.

2. The segment used in making the determination set forth in (c)1 above shall be designated by the Commissioner, after recommenda-

tion by the applicant. ***In no case shall the limits for analyzing band width extend more than one traffic signal outside of the boundary of the study area established puirsuant to N.J.A.C. 16:47-36.***

3. In identifying optimal locations for future traffic signals, the applicant shall apply Appendix D, "Optimum Spacing for Signalized Intersections for Various Progressive Speeds and Cycle Lengths," in whichever direction along the State highway the Commissioner deems appropriate and shall exclude locations where specific circumstances preclude future signalization. Applicants should contact the Bureau of Traffic Engineering and Safety Programs for traffic signal information.

4. Minimum band width percentages on the State highway shall be calculated based upon posted speed limits and cycle lengths, unless otherwise specified by the Department, using computer software acceptable to the Commissioner, and shall assume operation of the existing traffic signals and of traffic signals at the optimal locations identified, in the latter case using the appropriate cycle based on applying Appendix D.

(d) The location of signalized access points also shall comply with the standards for unsignalized access points set forth in N.J.A.C. 16:47-3.5.

(e) Nothing in this Access Code shall be interpreted as requiring the Commissioner to authorize a traffic signal at any location. The Commissioner may, pursuant to the criteria for warrants set forth in Part 4C of the ***"*Manual on Uniform Traffic Control Devices for Streets and Highways*"*, U.S. Department of Transportation, Federal Highway Administration 1988 edition or superseding edition), grant the access as proposed, require design modifications as deemed necessary, restrict one or more turning movements to reduce impacts, or deny the access.

16:47-3.5 Unsignalized access points

(a) The conformance of lots shall be as determined below. This is illustrated in a flowchart, Appendix F, incorporated herein by reference.

1. Any lot on a State highway segment either used for a single-family residential unit or vacant and zoned for one single-family residential unit shall be a conforming lot.

2. Any lot on a State highway segment designated access level 2 shall be a nonconforming lot, except for those described in (a)1 above. If the lot is nonconforming, the permissible vehicular use limitations set forth in (b) below shall be a condition of the permit.

3. Any lot on a State highway segment designated access level 6 shall be a conforming lot.

4. The conformance of lots not described in (a)1, 2 or 3 above shall be determined using the following spacing distances:

Spacing Distance

Posted Speed Limit (mph)	Distance (in feet)
20	85
25	105
30	125
35	150
40	185
45	230
50	275
55	330

i. Regarding corner lots, see Appendix I-1. A corner lot is conforming if the distance between its centerline and the centerline of the next adjacent, non single-family residential lot is greater than or equal to the spacing distance and the conditions of either (a)4i (1) or (2) below are met. A lot either with one single-family residential unit or vacant and zoned for one single-family residential unit shall not be considered as an adjacent lot, but its frontage shall be included when determining the distance to the centerline of the next adjacent lot.

(1) When alternative access will not be provided to the adjacent side street, the distance between the lot centerline and the centerline of the adjacent side street right-of-way is greater than or equal to the spacing distance.

(2) When alternative access will be provided to the adjacent side street and one-half of the State highway frontage plus one-half of the side street frontage is greater than or equal to the spacing distance required on the State highway.

ii. Regarding midblock lots, see Appendix I-2. A midblock lot is conforming if the distance between its centerline and the centerlines of each of the next adjacent, non single-family residential lots is greater than or equal to the spacing distance. A lot either with one single-family residential unit or vacant and zoned for one single-family residential unit shall not be considered as an adjacent lot, but its frontage shall be included when determining the distance to the centerline of the next adjacent lot.

iii. Regarding partial denial of access lots, see Appendix I-3. A partial denial of access lot is conforming if, in the direction access is permitted, the distance between its presumed centerline and the centerline of the next adjacent, non single-family residential lot is greater than or equal to the spacing distance. A lot either with one single-family residential unit or vacant and zoned for one single-family residential unit shall not be considered as an adjacent lot, but its frontage shall be included when determining the distance to the centerline of the next adjacent lot.

(b) The vehicular use limitations to be included as a condition of the permit for a nonconforming lot shall be determined as follows:

1. The abbreviations and meaning of the variables used in the equations below are as follows:

S	Spacing distance, based on the posted speed limit and (a)4 above.
L	Left distance between the lot centerline and either the centerline of the next adjacent non single-family residential lot, the centerline of the adjacent side street for a corner lot, or one-half of the State highway frontage plus one-half of the side street frontage for a corner lot with alternative access. The maximum distance for L cannot exceed S.
*[E]**R*	Right distance measured similar to L above. The maximum distance for R cannot exceed S.
A	Acreage of the lot, but no greater than 3.0 on urban State highway segments and 2.0 on rural State highway segments.
V	Permissible peak hour vehicular trips (total to and from the lot).

2. For urban State highway segments, the highest A.M., P.M., or Saturday permissible peak-hour vehicular trips for the direct access between the lot and the State highway shall be determined using the following formula:

$$V = 50 + \left(\frac{L + R}{2 \times S}\right)^2 \times A \times 100$$

$$^{L}max = S$$
$$^{R}max = S$$
$$^{A}max = 3.0$$

3. For rural State highway segments, the highest A.M., P.M., or Saturday permissible peak-hour vehicular trips for the direct access between the lot and the State highway shall be determined using the following formula:

$$V = 50 + \left(\frac{L + R}{2 \times S}\right)^2 \times A \times 70$$

$$^{L}max = S$$
$$^{R}max = S$$
$$^{A}max = 2.0$$

4. The Department shall increase the permissible peak-hour vehicular use (V) by a 15 percent bonus if a lot has either of the features in (b)4i or ii below. There is a maximum of two bonuses (Vmax = 1.3V) for those lots having both of the features in (b)4i and ii below.

i. Shared State highway access with another lot which has State highway frontage. Motorists must be able to drive directly between the two lots.

ii. Alternative access to a street other than the State highway.

5. The Commissioner shall impose a maximum vehicular use limitation, calculated using the formulas in (b)2 through 4 above, as a condition of an access permit on each nonconforming lot. The traffic generation of the lot shall not exceed the vehicular use limitation based on the average traffic operation of the use proposed on the lot, as derived from the Institute of Transportation Engineers' publication entitled ***5th Edition*** Trip Generation, *[4th Edition,]* superseding edition, or superseding rates adopted by the Department. For land uses not included in these sources or when an applicant believes these rates are not representative, the Department may accept alternative evidence of representative rates. ***On lots with alternative access the vehicular use limitations only apply to the State highway access.***

(c) The number of access points on the State highway shall be one for a nonconforming lot and shall be determined as set forth below for a conforming lot. On divided highways two one-way access points may be substituted for each two-way access point.

1. One two-way access point shall be allowed for a minor permit even if the conditions of (c)4, 5 or 6 below are met.

2. A maximum of two two-way access points may be allowed for a major permit if the second access point will significantly benefit the safety and *[operation]* ***efficiency*** of the State highway and meet the requirements in (c)4 or 6 below.

3. Two or three two-way access points may be allowed for a major permit with a planning review if the second and third access points will significantly benefit the safety and *[operation]* ***efficiency*** of the State highway and meet the requirements in (c)4, 5 or 6 below.

4. Two two-way access points may be allowed on a midblock lot which has a minimum of three times the spacing distance between the centerlines of each of the next adjacent non single-family residential lots. See Appendix I-4. ***($L_2 + R_2 > 3 \times S$)***

5. Three two-way access points may be allowed on a midblock lot which has a minimum of four times the spacing distance between the centerline of each of the next adjacent non-single family residential lots. See Appendix I-4. ***($L_2 + R_2 > 4 \times S$)***

6. A maximum of two two-way access points may be allowed on a corner lot which has at least three times the spacing distance between the centerline of the next adjacent non single-family residential lot and:

i. The centerline of the adjacent side street; or

ii. The centerline of the side street frontage when measured along the lot frontage and when alternative access is provided to the adjacent side street.

(d) Two ***or more*** adjacent lots can be treated as a single lot if the lots share a single driveway. The determination of conformance set forth in (a)4 above, shall then be made for the combination. If the combination is conforming, then no vehicular use limitations shall be applied. If the combination is nonconforming, then the permissible vehicular use limitations set forth in (b) above shall be determined for the combination.

(e) The location of unsignalized access points shall be established using the access point control dimensions set forth in N.J.A.C. 16:47-3.8(h) and (k) and safety considerations based on sight distance and other geometric requirements found in the ***"*New Jersey Department of Transportation Design Manual *[for Roadways]* ***—Roadways"***. Unsignalized access points shall only be located where the traffic volumes at the access points do not meet the warrants set forth in Part 4C of the ***"*Manual on Uniform Traffic Control Devices for Streets and Highways*"*** (U.S. Department of Transportation, Federal Highway Administration 1988 edition or a superseding edition). Unsignalized access points, whether on conforming or nonconforming lots, shall also be subject to the following requirements:

1. Whenever possible, unsignalized access points on divided highways for major traffic generators involving left-turn ingress and egress should be located at existing median breaks, if any exist, and where access points would conform to the traffic signal spacing requirements set forth in N.J.A.C. 16:47-3.4.

2. If future traffic volumes could warrant installing a traffic signal and signalized spacing requirements cannot be met, as a condition of the access permit, the Commissioner may *[provide that]* ***,*** at such time ***as*** future traffic volumes are reached***,*** *[he or she may]* close the left-turn access *[with no recourse by the permittee]* ***in accordance with N.J.A.C. 16:47-4.33(b)***.

3. If an undivided highway becomes divided, as a condition of the access permit, the Commissioner may at such time close the left-turn access *[with no recourse by the permittee]* ***in accordance with N.J.A.C. 16:47-4.33(b)***.

4. For access points on a divided highway, the following apply whenever possible:

i. The spacing of right-turn access on each side of a divided highway may be treated separately.

ii. Where left-turns at median breaks are involved, the access shall line up or be offset from the median break by at least the minimum spacing distance or 300 feet, whichever is greater.

5. Whenever possible, on undivided highways, access on both sides of the road shall be aligned. Where this is not possible, it is desirable to have the centerlines of access points offset at least 200 feet.

6. No access point shall be located along a striped right or left-turn lane where the lane is at its full width. This prohibition does not apply along two-way left-turn lanes.

7. An access point may have a bifurcated driveway with separate driveways for ingress and egress. The distance between such driveways shall be at least 50 feet measured centerline to centerline.

8. A left-turn lane shall be provided for access points on State highway segments with access level 4 when the criteria set forth in ***"*Transportation and Land Development*"***, Figure 5-14 and ***"*** Highway Research Record 211*"***, ***"*Volume Warrants for Left-Turn Storage Lanes at Unsignalized Grade Intersections*"***, incorporated herein by reference, are met. Left-turn access shall be prohibited if the criteria have been met but there is insufficient space for a left-turn lane, unless the Commissioner determines that left-turns can be made safely, considering traffic volumes and sight distances.

9. If the criteria set forth in ***"*Transportation and Land Development*"***, Figure 5-14, and ***"*Highway Research Record 211*"***, ***"*Volume Warrants for Left-Turn Storage Lanes at Unsignalized Grade Intersections*"***, incorporated herein by reference, have not been met, the Commissioner may decide to permit left-turn access, pursuant to (e)8 above, if the applicant improves the highway shoulder to enable the bypassing of vehicles waiting to turn left into the access point.

10. Acceleration and deceleration lanes shall be provided in accordance with the ***"*New Jersey Department of Transportation Design Manual-Roadway*"*** ***for all State highways except for interstate highways. Acceleration and deceleration lanes on interstate highways shall be provided in accordance with the American Association of State Highway and Transportation Officials, "A Policy on Geometric Design of Highways and Streets", 1984 or superseding edition***.

11. Access points shall be designed to enable vehicles to leave the State highway without restriction, queuing, or hesitation on the highway. Access shall not be approved for parking areas that require backing maneuvers within the State highway right-of-way. All off-street parking areas must include on-site maneuvering areas and aisles to permit vehicles to enter and exit the site without hesitation.

12. Approval of an access point in accordance with the terms of the Access Code does not relieve the permittee of an obligation to provide any requirements deemed necessary under N.J.A.C. 16:47-4.34.

(f) *[A]* ***On all State highways classified as access level 2, new street intersections may be created, even if they cause nonconforming lots to be less conforming. On all State highways classified as access level 3, 4, and 5, a*** street proposed to extend to the State highway may only intersect a State highway if it does not create nonconforming lots on either side of the intersection ***or if the nonconforming lots created have no direct access to the State highway***.

16:47-3.6 Setback and driveway width

The Department will respect local building, zoning, and setback ordinances; variances; rules; and regulations which do not conflict with Department requirements.

16:47-3.7 Driveway surfacing

(a) The Department has jurisdiction over driveways within the limits of its right-of-way; however, the Department is not responsible for maintaining driveways.

(b) Paving of driveways is not to extend beyond the curbline into the highway shoulder or travel lane area. The existing grade of the highway shoulder or travel lane shall be maintained at all times.

(c) All driveways shall be paved with concrete or bituminous material between the curbline and the right-of-way line.

1. Bituminous driveways shall not be inferior to four inches of bituminous stabilized base with a bituminous concrete surface two inches thick. All unsuitable base material shall be removed before the driveway pavement is constructed.

2. Concrete driveways shall be constructed of Class B concrete, at least six inches thick. All unsuitable base material shall be removed before the driveway pavement is constructed.

16:47-3.8 Access point control dimensions for streets and driveways

(a) The requirements for residential driveways apply to single-family residential lots and combined residential and business lots. The requirements for all other driveways are referred to as non-residential.

(b) The abbreviations used in this subchapter ***and Figure 2*** and their meanings are as follows:

L.L.	—Lot Line
R.	—Radius
CL.	—Centerline of Highway
E.	—Edge Clearance
E.L.L.	—Extended Lot Line
E.T.W.	—Edge of Traveled Way
MAX.	—Maximum
MIN.	—Minimum
R.O.W.	—Right-of-Way
S.W.	—Sidewalk
VAR.	—Variable Dimension
P	—Parking *[offset]* ***Offset***
***S.**	***—Setback***
***Y.**	***—Access Point Angle***
***W.**	***—Access Point Width***
C.O.	—Curbline Opening

(c) All portions of the driveway shall be within the extended lot lines. The edge clearance (E) shall not be less than 12 feet. This is measured from the extended lot line along the curbline to the beginning of the curbline opening.

(d) The curbline opening (C.O.) shall be as follows:

1. Residential: 12 feet to 30 feet.

2. Non-residential: minimum 24 feet, maximum desirable 50 feet.

(e) Driveway width (W) shall be as follows:

1. Residential: Eight feet to 26 feet.

2. Non-residential as follows:

i. One-way operation: Entrance or exit minimum 20 feet, maximum desirable 34 feet and maximum allowable 40 feet.

ii. Two-way operation: minimum 20 feet, maximum allowable 46 feet.

(f) Street width (W) shall be as follows:

1. Residential: 24 feet to 50 feet.

2. Non-residential: 30 feet minimum.

(g) The access point angle (Y) shall be as follows:

1. One-way operation: 45 degrees minimum.

2. Two-way operation: As close to 90 degrees to the State highway as site conditions will permit with a minimum of 60 degrees.

(h) Radius (R) shall be as follows:

1. Residential: 30 feet maximum. Refer to Figure C-3, Appendix C.

2. Non-residential: Refer to Figures C-2 and C-4, Appendix C.

(i) The distance between driveways shall be 24 feet minimum as measured between curbline openings.

(j) The area between access points and extending from the curb or shoulder line to the right-of-way line shall be raised six inches above the surface of the adjacent drives and seeded, sodded, or otherwise, improved.

(k) The Department recommends the following setbacks from the right-of-way line from the Department's desirable typical section to any building or structures:

1. Gasoline pump islands should be a minimum of 15 feet outside the right-of-way line for the Department's desirable typical section.

2. Gasoline service stations, minor businesses, and retention or detention basins should be a minimum of 40 feet outside the right-of-way line for the Department's desirable typical section.

3. Major restaurants and businesses should be a minimum of 50 feet outside the right-of-way line for the Department's desirable typical section.

(l) The corner clearance shall be measured between the end of the curb return of the intersecting street and the beginning of the curb return or beginning of the depressed curb for the driveway as illustrated in Appendix K, incorporated herein by reference. The distance shall be as follows:

1. A minimum of 12 feet for single-family residential driveways.

2. A minimum of 50 feet for all driveways in the vicinity of unsignalized intersections, except for single-family residential driveways, on any one of the following:

i. All access level 6 roadways;

ii. All roadways with a posted speed limit of 25 miles per hour; *[and]* ***or***

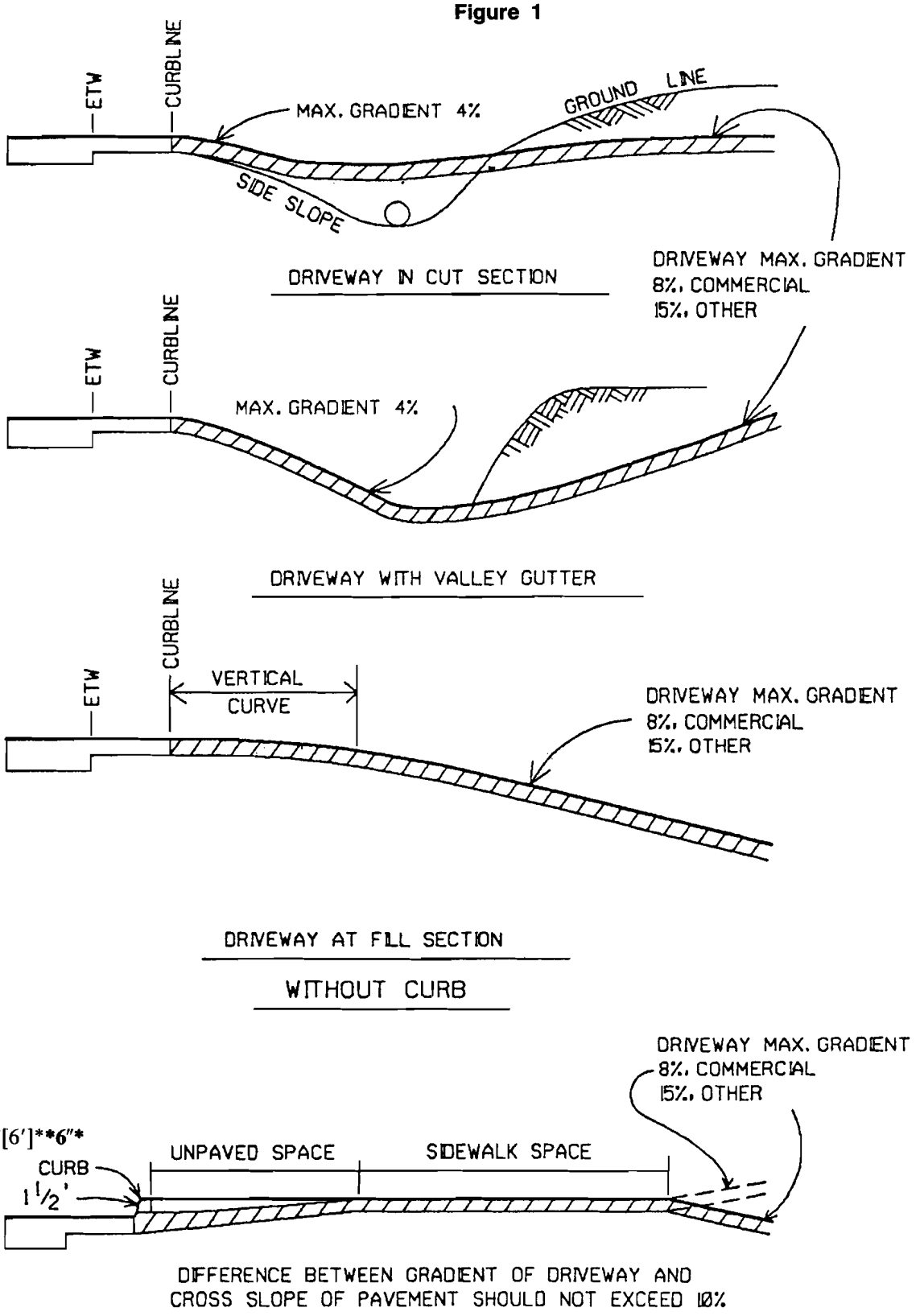
iii. All locations with at least a 10 foot shoulder.

3. A minimum of 100 feet for all driveways in the vicinity of signalized intersections and locations not covered in (l)1 and 2 above.

(m) Figure 1 below shows *[typical driveway profiles]* ***driveway profile controls***. The use of a swale or pipe underdrain for proper drainage of uncurbed portions of highways is indicated. The bottom profile shows a driveway sloping upward to the sidewalk to assure proper drainage. Beyond the sidewalk the driveway may slope either upward or downward depending upon the topography at the site. Where curbs are used along the roadway and sidewalks are provided or contemplated, the grade of the driveway should usually fit the plane of the sidewalk. If the difference in elevation of the curbline and the sidewalk is such that this is not practical, then the sidewalk should be lowered to provide a suitable grade for the driveway. In such case, the surface of the sidewalk should be sloped gently from either side of the driveway. Vertical curves on driveways should be flat enough to prevent dragging of the vehicle undercarriage and to provide adequate sight distance.

1. Maximum grades: four percent within 25 feet of curbline for driveways; four percent within 50 feet of curbline for streets.

Figure 1



ETW = EDGE OF TRAVEL WAY

WITH CURB

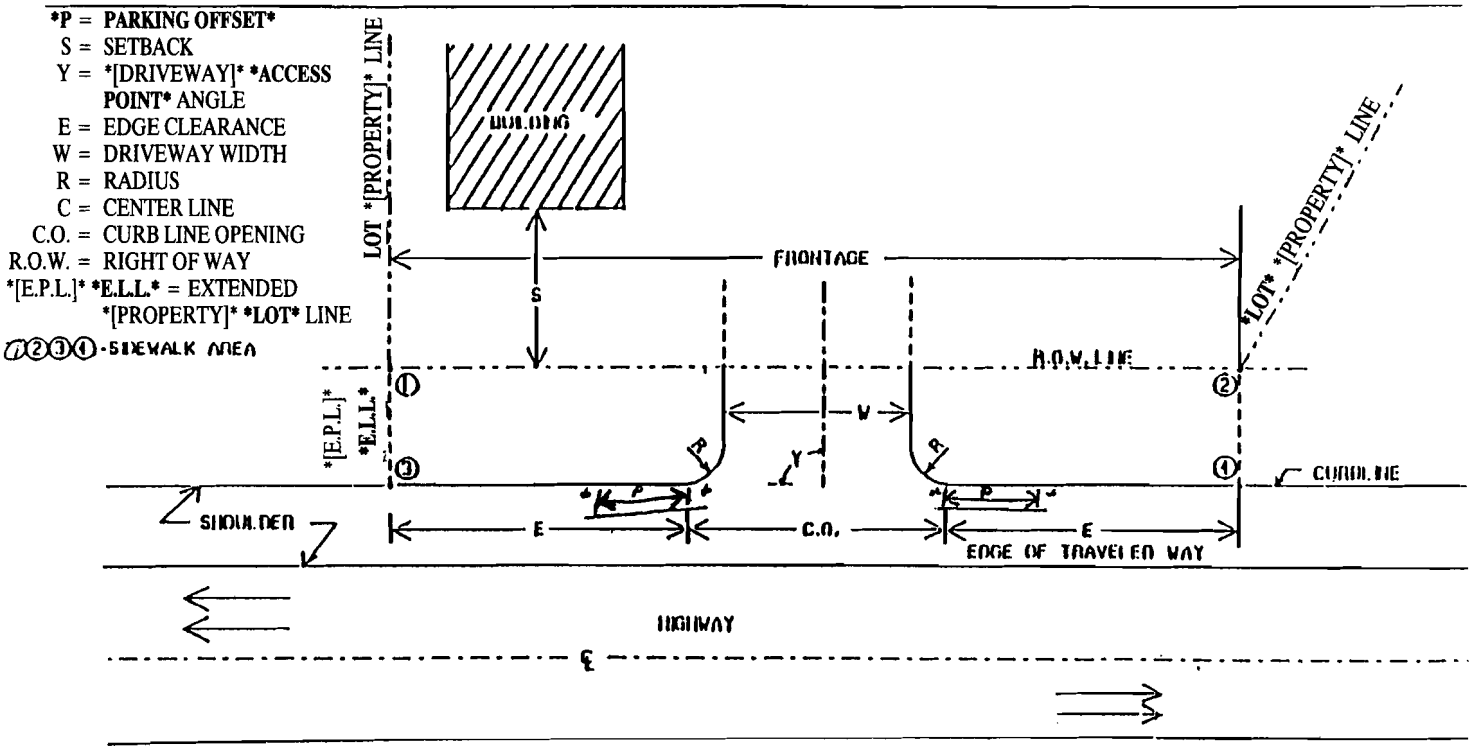
NOT TO SCALE

DRIVEWAY PROFILE CONTROLS

(n) Figure 2 below is a diagrammatic sketch and layout to illustrate and suggest geometrical designs for driveways for major traffic generators. Figure 2 shows a driveway on a four-lane undivided highway. The preferred angle of the drive is 90 degrees. Lot frontage, the volume of traffic, and the design vehicle will be the determining factors governing the size radii used. The starting points of the radii must have the minimum edge clearance of 12 feet. *[The]* ***If there is an island in the driveway, the*** island must be offset*[,]* by a minimum of three feet from the curbline. The minimum area of *[the]* ***an*** island is 75 square feet.

(o) Curb construction is indicated on the following sketches. On such designs, the Department requires the construction of nine inch by 18 inch white concrete vertical curb (see Figure 3). Curb depressions may be omitted when constructing driveways which have curbed radii and are always omitted when constructing street intersections. All islands must be paved with either concrete or bituminous concrete.

Figure 2

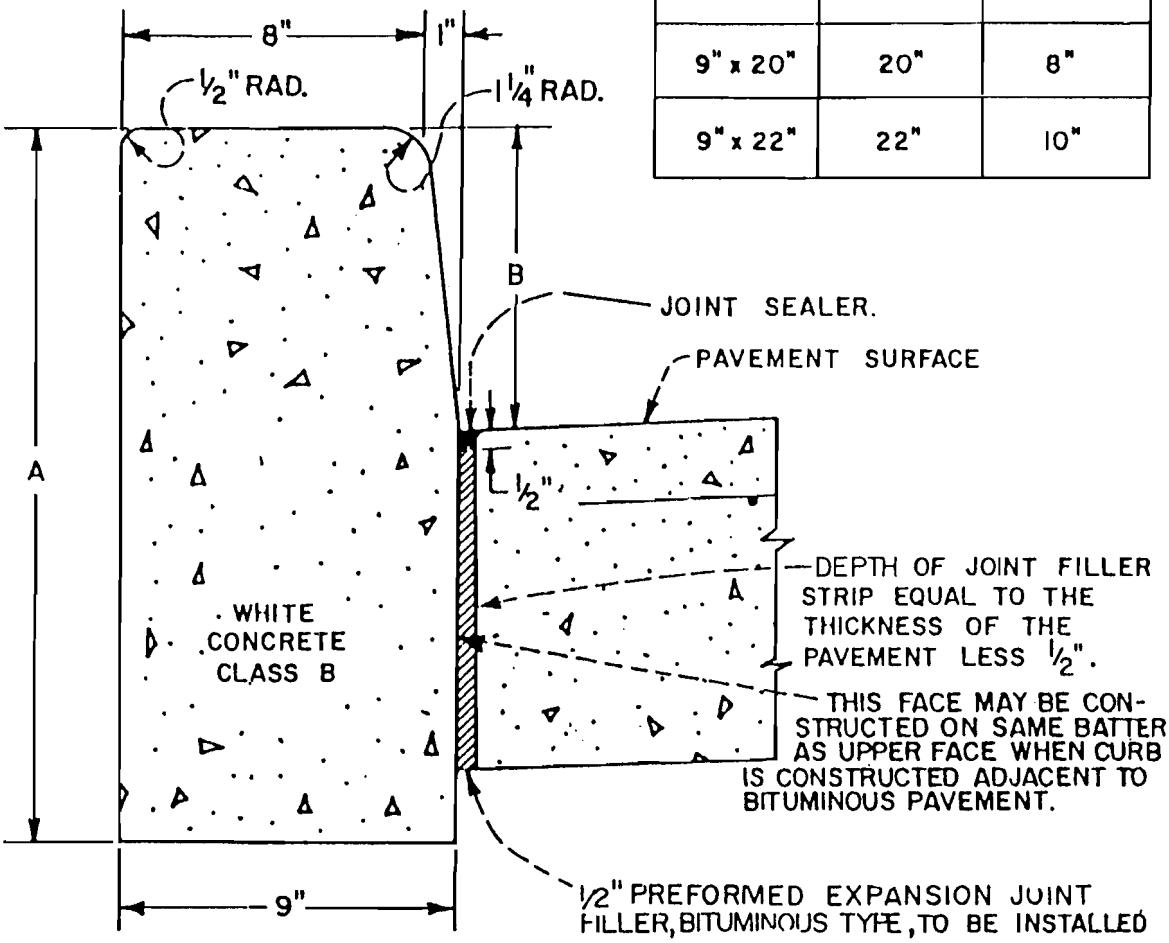


SINGLE DRIVEWAY - DIAGRAMMATIC
FOR ILLUSTRATING DEFINITIONS

NOT TO SCALE

Figure 3

CURB SIZE	DIM. A	DIM. B
9" x 16"	*16"*	*4"*
9" x 18"	18"	6"
9" x 20"	20"	8"
9" x 22"	22"	10"



TRANSVERSE JOINTS ½" WIDE SHALL BE INSTALLED IN THE CURB 20'-0" APART AND SHALL BE FILLED WITH PREFORMED BITUMINOUS-IMPREGNATED FIBER JOINT FILLER RECESSED ¼" IN FROM FRONT FACE AND TOP OF CURB.
EXPANSION JOINTS THRU AND ADJACENT TO THE CURB SHALL BE INCLUDED IN THE UNIT PRICE BID FOR CURB.

WHITE CONCRETE VERTICAL CURB

(p) The parking offset (P) shall be a minimum of 10 feet beyond the curbline opening.

(q) A speed change lane shall be of sufficient width and length to enable a driver to maneuver a vehicle onto it properly and, once on it, to make the necessary change between highway speeds and the lower speed on the turning roadway. This lane may also function as a storage lane for turning traffic.

16:47-3.9 Curb

(a) The Department may require curb construction along any frontage. A need for curb construction shall be noted as a condition of the permit. The Department is not responsible for maintaining curb.

(b) All curb to be constructed within State highway right-of-way shall be white concrete, Class "B", air-entrained, and shall conform to *"*Standard Specifications for Road and Bridge Construction*"* and Figure 3 following N.J.A.C. 16:47-3.8(o). White concrete is composed of white cement, white sand, and light-colored coarse aggregate. The Department may allow grey curb in an area where grey curb exists.

(c) Class "B" concrete shall be 3300 PSI mix.

(d) The alignment shall be as shown on the plans. The grade of the top of the curb shall parallel the grade of the highway*[, but be six inches higher, except along]* ***and shall satisfy the height requirements listed in 1. and 2. below. The grade of*** the curbline at depressed curbs*[, where it]* shall be 1½ inches higher ***than the grade of the highway***.

1. For highways with a design speed of 50 mph or greater, the curb size shall not exceed nine inch by 16 inch, with a four-inch face; and

2. For highways with a design speed of less than 50 mph, the curb size should desirably be nine inch by 16 inch, with a four-inch face. Where there may be sidewalks, nine inch by 18 inch, with a six-inch face, may be used.

(e) Expansion joints shall be provided in curb adjacent to joints in abutting concrete pavement and at approximately equal distances of not more than 20 feet, except as otherwise specified as a condition of a permit.

(f) The curb top shall be finished with a wood float to an even, smooth and dense surface and, as soon as the forms can be removed, the face shall be similarly finished. The edges of the curb shall be rounded to the required radius with suitable edging tools.

(g) Where curb exists or is to be constructed, all driveways are to have depressed curbs, constructed in accordance with Figure 4 below, except depressed curbs may be omitted if there is an island in the driveway or if the driveway will carry more than 1,500 vehicles per day.

1. To construct a depressed curb when curbing exists, the permittee will be required to entirely remove that section of existing curb to a joint and replace it with new curb.

2. Depressed curbs will not be provided on new highway construction unless the improvement of the abutting lot is in progress or is contemplated in the immediate future, in which case the lot owner must first obtain an access permit.

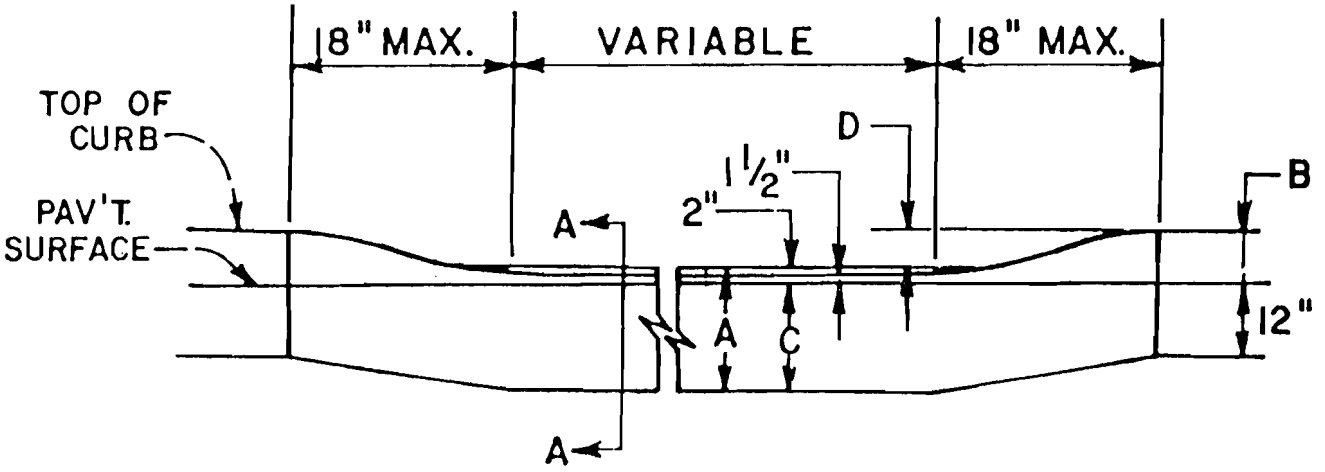
3. The top of the depressed section of curb shall be 1½ inches higher than and parallel to the established curbline grade.

4. Depressed curb shall not be constructed as an integral part of concrete ramps or aprons.

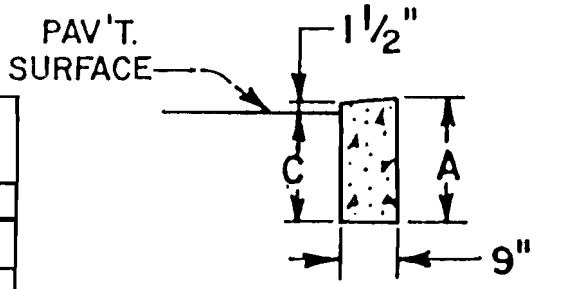
5. Existing monolithic curb shall be chiseled off to a line 1½ inches above curbline grade after which the broken surface shall be finished with a 1:2 Portland cement mortar mixture to present a smooth and even surface.

(h) The approach ends shall have a 10 foot transition, from a two inch face to *[a]* ***the appropriate four or*** six inch face, as shown on the following Figure 5 below. The approach ends of curbed islands shall also have 10 foot transitions, from a two inch face to *[a]* ***the appropriate four or*** six inch face, as shown on Figure 4 below. All transitions shall have joints at the ***four or*** six inch face end.

Figure 4



CURB SIZE	DIM. A	DIM. B	DIM. C	DIM. D
9" x 16"	*16"*	*4"*	*14"*	*2½"*
9"x18"	18"	6"	16"	4½"
9"x20"	20"	8"	18"	6½"
9"x22"	22"	10"	20"	8½"

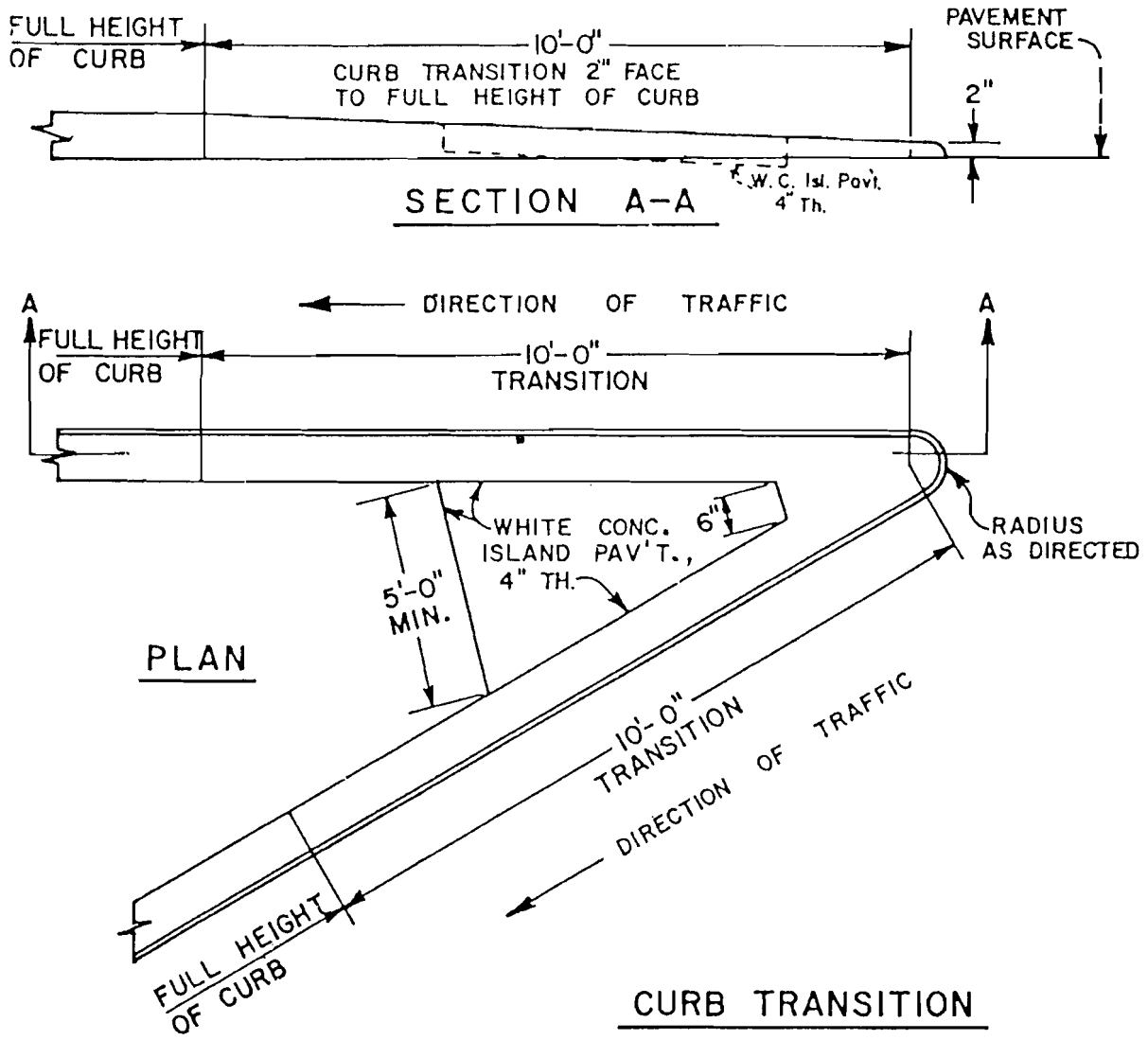


SECTION A-A

METHOD OF DEPRESSING CURB AT DRIVEWAYS

NOT TO SCALE

Figure 5



16:47-3.10 Sidewalk area

(a) The sidewalk area shall be graded to ***comply with the requirements of N.J.A.C. 16:47-3.9(d), which is either four or*** six inches above the shoulder grade of the highway and have a minimum of four inches of topsoil, which shall either be fertilized, seeded, and mulched or sodded in accordance with *""*Standard Specifications for Road and Bridge Construction*""*. Planting may be done with the approval of the Department; however, clear zones and sight distance standards shall be met. The Department favors the construction of sidewalk; however, sidewalks are not required unless specified by the Department, the applicant, or local ordinance. Curb ramps for the physically handicapped shall be provided when required by Section 5-07.2 of the *""*New Jersey Department of Transportation Design Manual-Roadway*""*. The Department is not responsible for maintaining sidewalk.

(b) Concrete sidewalk shall be as follows:

1. Concrete sidewalk to be constructed within State highway right-of-way shall be Class B air-entrained concrete, and shall conform to the requirements set forth in *""*Standard Specifications for Road and Bridge Construction*""* unless specifically otherwise allowed in the permit. The subgrade shall also be prepared in accordance with these specifications.

2. The concrete proportion shall consist of one part Portland cement, two parts sand, and four parts crushed stone or washed gravel as provided in *""*Standard Specifications for Road and Bridge Construction*""*, Section 914, and be constructed no less than four inches thick.

3. Alignment and grade shall be as shown on the plans.

4. Transverse expansion joints shall be one-half inch wide, provided at intervals of not more than 20 feet, and filled with prefabricated bituminous cellular type joint filler.

5. Longitudinal joints shall be one-quarter inch wide, provided between curbs and abutting sidewalks, and filled with bituminous type joint filler.

6. Transverse surface grooves shall be cut in sidewalk between expansion joints at intervals equal to the sidewalk width.

7. Slope shall be one-quarter inch per foot rising from the top of the adjacent curb.

8. The top of the sidewalk shall be finished with a wood float, followed by brushing with a wet soft-hair brush to a neat and workmanlike surface. All edges shall be neatly rounded to one-quarter inch.

16:47-3.11 Installation of drainage pipes

(a) The Department has jurisdiction over ditches and construction of drainage facilities that fall within the limits of its right-of-way or easement.

(b) Where ditches exist, drainage pipes of size and material approved by the Department are to be installed beneath driveways.

(c) Where ditches exist and conditions are favorable, installation of a continuous drainage pipe of proper size may be permitted.

1. Where installation of drainage pipe exceeds 350 feet in length, a manhole must be constructed midway between the ends. Installation of drainage pipe longer than 350 feet will not be permitted without intermittent manholes.

2. All runs of drainage pipe must be terminated at manholes, inlets, flared end sections, or headwalls.

16:47-3.12 General restrictions

(a) The Department will not assume any cost involved in the installation of drainage facilities ***required as part of an access permit***.

(b) No part of highway right-of-way shall be used for any private purpose or uses associated with private purposes. The sidewalk area shall be kept clear of buildings, sales exhibits, signs, parking areas, service equipment, and appurtenances.

(c) Trimming or removal of trees or shrubbery within highway right-of-way is not authorized, except as indicated in N.J.A.C. 16:47-3.15(b).

(d) No advertising signs or devices shall be erected on or overhanging State highway right-of-way, nor shall any portion thereof be used for the display of merchandise. The Department can only authorize the erection and maintenance of signs on public property that are regulatory, directional, and warning signs allowed by State laws or authorized by the Department in conjunction with alternative access as set forth in N.J.A.C. 16:47-4.3(n)8.

*[1.]***(e)*** No person shall place, maintain, or display upon or in view of any highway, any unauthorized traffic sign, device, or other contrivance which purports to be or is an imitation of, or of such a nature as to be mistaken for, an official traffic sign or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official sign and no person shall place or maintain, nor shall any public authority permit upon any highway, any traffic sign, or any traffic signal bearing thereon or on its support, any commercial advertising.

*[(e)]***(f)*** The permittee shall properly safeguard all work performed under the permit and maintain sufficient warning lights, Department approved signs, and safety devices for the protection of the traveling public until the work has been completed.

*[(f)]***(g)*** The permittee shall defend, indemnify, protect, and hold harmless the State and its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of, any act, error, or omission of the permittee, its agents, servants, and employees in the performance of the work covered by a permit.

*[(g)]***(h)*** Work shall be so conducted that there shall be no interference with any Department structure or facility, on, over, or under the highway, unless permitted by the Department.

*[(h)]***(i)*** Unless curb or curb returns are installed, the Department will not approve construction of driveways closer than five feet to inlets or catch basins.

*[(i)]***(j)*** Where a lot adjacent to the highway is to be filled to the highway grade, the permittee may be required to make provision, at his own expense, for disposition of highway drainage by installing pipes of adequate size and material, inlets, catch basins, manholes, headwalls, and ditches as may be necessary to protect the State's drainage rights. Interference with drainage installations must be avoided. The existing cross-section and drainage of highways shall not be disturbed. The longitudinal flow of water along the curbline shall not be interrupted, and it shall be the responsibility of the permittee to make adequate provision for all transverse, lateral, and longitudinal drainage affecting his construction.

*[(j)]***(k)*** No openings shall be permitted in newly constructed or resurfaced highways for a period of five years, without the consent of the Commissioner. This restriction does not apply to the construction of access points.

*[(k)]***(l)*** The Department will not authorize construction work within the limits of its right-of-way which will adversely affect the stability, appearance, or designed function of the highway itself, or any of its component or auxiliary structures.

*[(l)]***(m)*** All lighting equipment for roadside establishments must be located off highway right-of-way.

*[(m)]***(n)*** The Department will not approve any access plan that routes site traffic to or through another lot unless the applicant provides adequate documentation of permission from the other lot owner.

16:47-3.13 Relocations or removals within driveway areas

(a) The Department has jurisdiction over all structures within the limits of its right-of-way and easements.

(b) Removal of curb is not authorized, except in accordance with N.J.A.C. 16:47-3.9.

(c) Permission may be obtained for the relocation of an inlet where storm sewers, highway grades, and other conditions are favorable. All work will be at the expense of the permittee and shall be constructed in accordance with Department *"*Standard Specifications for Road and Bridge Construction*"*.

(d) The permittee shall remove guide rail once the fill behind the guide rail has been completed to the satisfaction of the Department. ***The guide rail remains the property of the State and shall be delivered, undamaged, to the location specified in the permit.***

(e) The permittee shall relocate regulatory, directional and warning signs, at the permittee's expense, providing a satisfactory location can be found.

(f) The Department may allow the relocation of State-owned electrical facilities providing a new location satisfactory to the Department can be found. This also applies to pavement detectors, pullboxes, conduits, and other constituent parts. Relocations shall be at the permittee's expense. Where structures are owned by a county or municipality, the applicant shall obtain written county or municipal permission before access is requested.

(g) Permission may be granted for construction of a driveway which requires the relocation of a utility pole or fire hydrant. Utility poles and fire hydrants shall not be permitted on channeling islands. Utility poles and fire hydrants should be relocated as close to the right-of-way line as possible. The relocation shall be arranged by the permittee with the utility company or municipality. The Department will not pay for relocation, except as required pursuant to N.J.S.A. 27:7-44.9. Should a utility pole have attached to it service connections for any State-owned facility, the Department will relocate the service at the permittee's expense.

(h) Relocation of utility poles carrying the Department's lighting system usually cannot be permitted. These are placed in accordance with a carefully designed spacing pattern. However, should a new design be appropriate, it shall be at the permittee's expense.

(i) At locations on highways where metal pole lighting exists, electrical conduit or direct buried high voltage cables are located adjacent to the inside of curb, at a depth of approximately 18 inches below the top of earth. Extreme care must be exercised not to damage conduit or cables during removal of curb and construction of access points. It will be necessary to protect cables by encasing them in fiber conduit with an envelope of concrete. The permittee shall notify the Department District Electrical Supervisor at least three working days prior to any excavation adjacent to curb.

(j) When applications require movement or relocation of highway facilities by the Department, the applicant shall assume all expenses involved in the movement or relocation of the highway facilities and any expenses for additional facilities necessitated by the move. The Department will have the work completed.

16:47-3.14 Materials and workmanship

(a) Construction within highway right-of-way is subject to inspection and approval by the Department.

1. The work, as far as is practicable, must conform in quality and appearance to similar Department construction.

2. Materials shall conform to the Department *"*Standard Specifications for Road and Bridge Construction*"*, unless otherwise specified in this Access Code or in the permit.

3. The Department may assign an inspector to the job whose time and expenses shall be charged to the permittee.

(b) The cost of construction work and materials shall be entirely at the permittee's expense. The Department will not share in any expense or do any construction work pertaining to driveways.

16:47-3.15 General information

(a) The Department will not expend public funds in assisting abutting lot owners to obtain access to the highway.

(b) Only ground cover which will not exceed 12 inches in height ***at full maturity*** may be allowed within the sidewalk area, subject to Department approval. Plantings shall not interfere with sight distance.

[(c) Driveways cannot be authorized which cross or otherwise encroach upon State property or its frontage.]

*[(d)]***(c)*** Dedications or donations of land shall comply with prevailing Federal laws and Federal Highway Administration regulations.

16:47-3.16 Municipal and county actions

(a) As of *[the effective date of the adoption of this Access Code]* ***September 21, 1992***, no lot abutting a State highway shall be subdivided in a manner which would create additional lots abutting that highway unless all the abutting lots created are conforming under the Access Code or restricted from access to the State highway. Direct access from subdivided lots to a State highway shall only be permitted ***by the Department*** if the access meets the requirements of conforming lots under this Access Code. ***Nonconforming lots in existence as of September 21, 1992 shall not be subdivided in a manner which would make them less conforming, except that those nonconforming lots on State highways classified as access level 2 may be subdivided because of the creation of new street intersections.***

(b) When the Department either denies an access application or revokes an existing access permit because alternative access is available, the decision of the Department with regard to the appropriate access location shall be final, the action of any municipal or county body to the contrary notwithstanding. Any subsequent municipal or county review shall abide by the Department's decision. The municipality or county may require additions or changes in the design of the development in accordance with any applicable provisions of its development review ordinances provided that such additional requirements do not conflict with the Department's decision.

(c) Municipalities are encouraged not to grant a zoning variance for a lot abutting a State highway when the *[intensity of variance]* ***traffic volume from the*** use would not be in conformance with the ***traffic volume allowed pursuant to the*** Access Code. The Department will not issue a permit for traffic volumes which exceed those allowed under the Access Code.

(d) The Department shall issue a Certificate of Acceptance to permittees for major access points with a planning review and send a copy to the municipal building inspector and the municipal engineer. Municipalities shall not issue certificates of occupancy until they have received a copy of the Certificate of Acceptance.

(e) Any municipality or county may build new roads or acquire access easements, by purchase or condemnation, to provide alternative access to existing developed lots which have no other means of access except to a State highway.

(f) Any municipality or county may acquire, by purchase or condemnation, any right of access to any highway upon a determination that the public health, safety and welfare require it.

(g) Municipalities and counties are encouraged to seek appropriate mitigation from applicants when the Department requires alternative access under N.J.A.C. 16:47-3.2(a) or 4.3(g). See Appendix H, incorporated herein by reference, Cases 2 and 3.

(h) Municipalities and counties may submit comments on major access applications to the Department's Major Permits Unit in the Regional Design Office within 30 days of receipt of a duplicate copy of the application from the applicant as required in N.J.A.C. 16:47-4.3(o).

16:47-3.17 Department actions

(a) For access levels 2 through 6 along a State highway, *[subsections (b) and (c)]* ***paragraphs (a)1 and 2*** below apply.

*[(b)]***1.*** The Commissioner may modify a proposed access or deny an access permit application otherwise in conformance with this Access Code if site-specific highway *[operation]* ***efficiency*** and safety considerations so warrant.

*[(c)]***2.*** Nothing set forth in this Access Code shall be interpreted as requiring the Department at its own expense to signalize, construct or improve access points ***on the State highway system*** or make other improvements related thereto.

*[(d)]***(b)*** The Department may build new roads or acquire access easements, by purchase or condemnation, to provide alternative access to existing developed lots which have no other means of access except to a State highway.

*[(e)]***(c)*** The Department may acquire, by purchase or condemnation, any right of access to any highway upon a determination that the public health, safety and welfare require it.

SUBCHAPTER 4. PERMITS

16:47-4.1 Applications for staged development

Applications for staged development will be approved if the access plan at each phase of development satisfies minimum design standards. If the development is staged, the applicant shall indicate the maximum development potential, under zoning, for the undeveloped portion of the lot.

16:47-4.2 Concurrent applications

When the Department receives an application which may affect the same section of a State highway as another application for which a permit has not yet been issued, the Department will coordinate the review of both applications and determine the fair share financial contribution or highway improvements for both sites combined. The responsibility will be proportioned between the two applicants based on their respective amounts of site traffic.

16:47-4.3 Permit process

(a) Each lot owner shall obtain a permit from the Department before performing any of the activities listed below. Separate applications and permits are needed for each ***street or*** lot ***having direct access to the State highway*** *[or street]*:

1. Constructing one or more driveways or streets intersecting *[any]* ***a*** State highway;
2. Changing or modifying any existing driveway or street intersecting *[any]* ***a*** State highway;
3. Constructing sidewalk, curb, drainage, or any other related work within the limits of *[any]* ***a*** State highway right-of-way;
4. *[Significantly expanding]* ***Expanding*** the facilities on a lot ***,*** having access to *[any]* ***a*** State highway***, to the extent that a significant increase in traffic results***;
5. *[Significantly changing]* ***Changing*** the use on a lot***,*** having access to *[any]* ***a*** State highway***, to the extent that significant increase in traffic results***;
6. Subdividing a lot having access to *[any]* ***a*** State highway (any resultant lot which has direct State highway access needs a permit);
7. Consolidating a lot having access to *[any]* ***a*** State highway; or
8. Initiating any activity which may interfere with the free and safe movement of normal highway traffic on *[any]* ***a*** State highway.

(b) An access permit is not needed to perform maintenance and in-kind replacement.

(c) All driveways and streets in existence prior to July 1, 1976 shall be considered to have been constructed in accordance with an access permit, even if no permit was issued. All driveways and streets constructed after July 1, 1976 must have had permits issued or they are presumed not to have permits. The Department shall administer this provision as shown in Appendix G, incorporated herein by reference.

(d) An applicant shall complete the proper application form and submit it to the appropriate Regional Maintenance Office. The Regional Maintenance Office will determine if permits are necessary, confirm that the applicant has applied for the proper type of permit,

coordinate the review with other Department offices, and issue letters confirming that permits are not needed, when appropriate.

(e) An application shall not be considered to have been submitted and processing of a permit application shall not begin, unless and until, the proper fee for the application has been submitted.

(f) Applications pertain to lots, not access points. Applications for driveways can only be signed by the lot owner or a representative holding an appropriate power of attorney. For *[share]* ***shared*** access between lots, ***at the time of the development application for each lot,*** an application and separate fee shall be submitted for each lot, signed by *[the]* ***each*** lot owner. For easements or access through lots adjacent to the highway, the application shall be signed by the owner of the lot adjacent to the highway.

(g) Applications shall reflect conditions that exist at the time the application is submitted to the Regional Maintenance Office and include all State, county, municipal or private projects that have been advertised for construction or awarded, as appropriate.

(h) All State highways shall be identified by route number. Direction of travel shall be based on the general orientation of the route as designated by the Department. These directions may differ from the orientation of the particular highway segment.

(i) *[Access]* ***Street intersection*** applications must be submitted for all lane additions to existing streets and new streets. Street improvement applications must be submitted for all other proposed changes to existing streets. Applications for new streets and lane additions to existing streets can be signed by an adjacent lot owner or the county or municipal engineer. Applications for other changes to existing streets can only be signed by the county or municipal engineer.

(j) There are three different categories of access applications. They are shown in N.J.A.C. 16:47-4.4(a) and are based on traffic generation, as determined by reference to the Institute of Transportation Engineers (ITE) publication entitled *[Trip Generation, 4th Edition,]* ***"5th Edition, Trip Generation,"*** *[superceding]* ***superseding*** edition, or *[superceding]* ***superseding*** rates adopted by the Department. For land uses not listed in these sources or when an applicant believes these rates are not representative, the Department may accept alternative evidence of representative rates.

(k) Permits expire when the permittee violates any permit conditions. In addition to site-specified conditions imposed by the Department, all future permits shall include the following conditions:

1. A permit expires when the use of the lot served by the permit is expanded or changes resulting in a significant increase in traffic;

2. The lot covered by the permit shall not be subdivided or consolidated with another lot;

3. Work must be started within *[one year]* ***two years*** of the date the permit was issued ***unless stated otherwise in the permit***;

4. Adequate advance warning for motorists approaching the construction site is required at all times during access construction, in conformance with the ***"*Manual on Uniform Traffic Control Devices for Streets and Highways.*"*** This may include the use of signs, flashers, barricades, drums, and flaggers;

5. The Department may restrict the hours of work on or immediately adjacent to a State highway due to peak-hour traffic demands or other pertinent roadway operations;

6. The permittee shall make a copy of the permit available for review at the construction site; and

7. The conditions of the permit are binding upon all successors in interest in the lot.

(l) When the Department becomes aware that a permit condition has been violated, it shall notify the permittee, in writing, that *[he]* ***the permittee*** has 30 days within which to remedy the violation. Failure to remedy the violation within the specified time limit will cause expiration of the permit. The Department will provide written notice of the effective date of the expiration and may seek the civil penalties provided for in N.J.S.A. 27:7-44.1 or other available remedies. ***The penalties shall commence on the day following the date of expiration.***

(m) When the holder of an expired permit applies for a new permit, the application shall reflect the expanded or changed use as well as the continuing uses covered in the expired permit. Only traffic generated by the expanded or changed use will be used to determine the highway impacts.

(n) The Department may revoke any permit after *[determining]* ***the Commissioner determines*** that reasonable alternative access is available for the lot served by the permit ***and that elimination of direct access will benefit the safety and efficiency of the State highway***. The permit shall not be revoked until the alternative access is completed and available for use. Prior to revocation, the Department shall:

1. Determine that the lot has reasonable access to the general system of streets and highways in the State, other than its State highway access, and that:

i. For a lot zoned or used for commercial purposes, has access onto any parallel or perpendicular street, highway, easement, service road, or common driveway, which is of sufficient design to support commercial traffic to the site, and is situated so that motorists will have a convenient, direct, and well-marked means of reaching the site and returning to the State highway. Commercial purposes include, but are not limited to:

(1) Wholesale facilities;

(2) Retail facilities;

(3) Service establishments;

(4) Office buildings;

(5) Research buildings; and

(6) Residential parcels of at least 25 acres and at least four residential units per acre;

ii. For a lot zoned or used for industrial purposes, has access onto any improved public street, highway, access road, or easement across an industrial access road, which is of sufficient design to support necessary truck and employee access as required by the industry;

iii. For a lot zoned or used for residential or agricultural purposes (except as provided in (n)1i(6) above), has access onto any improved public street or highway; and

iv. For a lot used for purposes other than that for which it is zoned, has access as required above for the more intense use;

2. Provide to the lot owner and all lessees:

i. Ninety days written notice of the right to request a hearing in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1;

ii. A plan depicting reasonable alternative access and signing; and

iii. A plan depicting the improvements the Department will make to provide the access;

3. File a copy of the plan with the municipal clerk and the planning board secretary of the municipality in which the lot is located***. If the alternative access is to a county road, the Department shall also send a copy of the plan to the county clerk and county planning board***;

4. Provide all necessary assistance in the establishment of the alternative access. Such assistance shall include, but not be limited to, payment of the costs and expenses associated with:

i. Removal of existing driveways;

ii. Construction of alternative access;

iii. Engineering design;

iv. On-site circulation improvements to accommodate the changes in access;

v. Landscaping to replace that disturbed by the changes in access;

vi. Replacement of directional and identifying signs as provided in 5 below;

vii. Acquisition of lands or rights or interests in lands to accommodate the changes in access; and

viii. Acquisition of any other right required to accommodate the changes in access.

5. Erect on the State highway and on connecting local highways suitable signs directing motorists to the new access location. When the Department provides signing for alternative access, it shall use generic, white messages on green background signs of no more than eight square feet. The signing shall be placed in locations designated by the Commissioner and be maintained for a period of one year

after the opening of the alternative access, after which time the Department may remove the signs; and

6. Provide the necessary roadway pavement structure and road widths meeting municipal standards *[as determined by the Department]* ***for municipal roads and county standards for county roads*** for local roads traversed by traffic using the alternative access ***in lieu of the State highway access*** *[which would not otherwise use those roads]*. The Department shall also provide a level of service to accommodate existing traffic plus site-generated traffic meeting the requirements of N.J.A.C. 16:47-4.24 through 4.29. The Department shall not have responsibility for maintaining these local roads.

(o) At the time of submission of any major access application, the applicant shall submit duplicate copies of the application to the *[appropriate]* municipal clerk ***of the municipality in which the lot is located*** and county planning board and advise that the municipality and county have 30 days to submit any comments to the Major Permits Unit.

(p) Prior to submitting any access application for development within the Pinelands area, the applicant shall give notice to the Pinelands Commission pursuant to *[in]* N.J.A.C. 7:50-4.83. ***The application submitted to the Department shall indicate the applicant's compliance with the requirements of N.J.A.C. 7:50-4.81.***

(q) The Department may deny direct access to a State highway if reasonable alternative access exists. The Department may also require alternative access in addition to direct State highway access ***if the Commissioner determines the alternative access will benefit the safety and efficiency of the State highway***. In both cases, the Department shall not be responsible for addressing impacts on local roads. The applicant may be responsible for addressing local road impacts through the municipal approval process ***and county approval process***. See Appendix H.

(r) Any lot owner who expands or changes the use of the lot subject to an existing or grandfathered access permit which was issued or effective *[before the adoption of this Access Code]* ***April 20, 1992*** shall file an application for a new access permit if the expansion or change in use will result in a signficant increase in traffic.

16:47-4.4 Type of permit and review determination

(a) The Department shall determine the types of applications required. Single-family residential permits, residence and business combined permits, and government driveway permits shall be classified based on the definitions in N.J.A.C. 16:47-1.1. The Department shall be guided by Appendix E ***and Appendix E1***, Access Application Thresholds, incorporated herein by reference, in determining the other types of applications and in determining which Department units will review an application. Any use generating less than 500 ***vehicle*** trips per day to and from the lot requires a minor application. Any use generating 500 or more ***vehicle*** trips per day and less than 200 peak-hour ***vehicle*** trips to and from the lot requires a major application*[. Any use generating 500 or more ***vehicle*** trips per day and 200 or more peak*-*hour ***vehicle*** trips to and from the lot requires a major application]* with a planning review.

(b) The type of application required for lots having more than one use can be *[determined]* ***estimated*** using Appendix E ***and Appendix E1*** in the following manner:

1. With the size of each use and the 500 trip column, calculate the proportion of the proposed size by use to the 500 daily trip unit values. Next sum these proportions. If the sum is less than 1.00, then the application will be a minor. If the sum is equal to or greater than 1.00, then the application will be a major and require the second test.

2. With the size of each use and the 200 trip column, calculate the proportion of the proposed size by use to the 200 peak-hour trip unit values. Next sum these proportions. If the sum is less than 1.00, then the application is a major. If the sum is equal to or greater than 1.00, then the application is a major with planning review.

(c) The chart in Appendix E ***and Appendix E1*** should be used only to *[determine]* ***estimate trip generation and assist in determining*** the type of application. Applicants should contact the Regional Maintenance Offices for assistance on the use of the table. *[Any]* ***The type of application, any*** required traffic analysis for potential traffic signals***,*** or traffic impact study shall use the *[actual]* trip generation process *[described in]* ***derived from*** the Institute of Transportation Engineers publication entitled ***"5th Edition*** Trip Generation Report,***"*** *[4th edition]* or superseding edition ***including the use of superseded trip generation rates adopted by the Department***.

(d) If the applicant either fails to specify a land use or specifies "flexspace," the Department will review the application based on a worst-case traffic scenario.

(e) No deductions shall be allowed for *[pass-by]* ***passby*** or internal trips when determining the type of permit.

(f) Peak-hour trips from traffic generation rates for applications and permits shall be the highest average rates of the A.M., P.M., and Saturday peak hours found in the Institute of Transportation Engineers publication entitled ***"5th Edition*** Trip Generation Report***"*** *[4th edition]*, or superseding edition, or superseding rates adopted by the Department. Daily traffic volumes shall be the highest average rates of the weekday and weekend rates found in the same source. For land uses not listed in these sources or when an applicant believes these rates are not representative, the Department may accept alternative evidence of representative rates. The Department will not accept a series of daily, weekly, or monthly traffic counts as a basis for establishing a long-term average rate.

16:47-4.5 Access permit applications

(a) The maximum time frames for the review of various types of applications are summarized below. They are for the Department only and do not include any applicant time or time for Federal Highway Administration reviews of work on interstate highways, interchanges or ramps. ***The Department's check of the completeness of an application is included in these time frames.***

DEPARTMENT TIME FOR APPLICATIONS ACCEPTED FOR REVIEW (IN DAYS)[1]

	Form	Minor[2]	Major	Major with Planning Review
Single Family Residential Driveway	MT- 32	35	NA	NA
Residence and Business Driveway	MT- 32	35	NA	NA
Minor	MT- 32	35	NA	NA
Government Driveway	MT- 32	35	100	175
Major Use	MT- 32	NA	100	175
Street ***Intersection***	MT- 32	35	100	175
Concept Reviews	MT- 32	NA	100	175
Street Improvement	MT-120A	35	NA	NA
Lot Subdivision or Consolidation	MT-***155***	NA	50	NA

Notes

(NA means Not Applicable)

1. Times are for applications in areas not covered by access management plans. Refer to N.J.A.C. 16:47-4.17 for reduced times in these areas.
2. If a traffic signal is involved, the review may take 45 additional days.

(b) The time for the Department review of an application may be extended with the written consent of the applicant.

(c) Potential applicants shall schedule a pre-application conference with the Major Permits Unit for major applications with a planning review.

(d) When an applicant fails to respond to a Department request for information within 90 days of the request, the application shall be considered withdrawn.

16:47-4.6 Permits and permit fees

(a) The non-refundable fees for access applications, permits, and renewals are set forth below. Fees shall be in the form of a check or money order made payable to the Department. Cash will not be accepted. The application fee shall be submitted with the application, but the permit fee should not be submitted until the applicant returns the signed permit to the Regional Maintenance Office. The Department shall not issue a permit until the proper fee for the permit has been collected and the permit has been signed.

Type	Application Fee Each Lot	Permit Fee Each Lot	Renewal Fee Each Lot
Single Family Residential Driveway	$ 35.00	$ 15.00	$ 15.00
Residence and Business Driveway	75.00	25.00	25.00
Government Driveway	150.00	500.00	250.00
Minor	265.00	85.00	85.00
Major	3,750.00	1,250.00	250.00
Major with Planning Review	9,000.00	3,000.00	250.00
Concept Reviews	500.00	—	—
Street ***Intersection***	150.00	500.00	250.00
Street Improvement	5.00	25.00	25.00
Lot Subdivision or Consolidation	200.00	50.00	—

(b) Developments containing at least *[a]* 10 percent of the housing units on the site set-aside for low and moderate income residents, pursuant to the Fair Housing Act, P.L. 1985, c.222, N.J.S.A. 52:27D-301 et seq., or under court settlement, are entitled to a 10 percent reduction in the permit fee. To be eligible for this reduction, the applicant shall submit the full application fee and an affidavit from the municipal approving authority, certifying that the 10 percent requirement has been met. Upon approval of the access, the Department will reduce the permit fee by 10 percent of the total application and permit fees combined. The renewal fees are not subject to reduction.

(c) A permit issued by the Department affords the permittee the right to construct, maintain, and use a driveway or street connecting to a State highway under the terms and conditions of the permit. Approval of an access application does not accord the applicant any of these rights.

(d) A permittee may construct an access point intersecting a State highway except:

1. When the construction work under the permit***, including those permits issued under N.J.A.C. 16:41,*** is not started within *[one year]* ***two years*** of the date the permit was issued, the permit expires***, unless stated otherwise in the permit***. The permittee shall submit a new application, with supporting documentation as set forth in the checklists in N.J.A.C. 16:47-4.9(b), 4.10(b), 4.12(b) or 4.14(b), which reflects changes and the fee appropriate at the time of the new application.

2. A permit expires if all construction work under the permit***, including those permits issued under N.J.A.C. 16:41,*** is not completed within *[one year]* ***two years*** of the date the permit was issued, unless *[extended or otherwise]* stated ***otherwise*** in the permit ***or extended by renewal***. Upon expiration, the Department may use the remedies described in (g) below to restore any disturbed area.

(e) When the construction work under the permit***, including those permits issued under N.J.A.C. 16:41,*** is started within *[one year]* ***two years*** of the date of ***permit*** issuance *[and]* ***but*** cannot be completed in the indicated time, the permittee shall request an extension of time in writing from the appropriate Regional Maintenance Office and submit the required renewal fee in the form of a check or money order. The Department may approve one one-year extension.

(f) The Department may impose those site-specific terms and conditions it deems necessary and convenient when issuing permits. ***Every permit will include the daily and peak hour traffic volumes permitted for the lot.***

(g) As a condition of any permit the Department may require a bond or certified check in an amount sufficient to guarantee or insure proper maintenance or restoration of the area disturbed by the applicant. If it becomes necessary for Department forces or contractors to make repairs, for any reason, the cost of such work shall be borne by the applicant.

(h) The permittee shall notify the Regional Maintenance Office at least 72 hours prior to starting work, in order that the Department may have a representative at the site. The access shall be completed in an expeditious and safe manner. It is the responsibility of the permittee to complete the construction of the access according to the terms and conditions of the permit.

(i) Permittees may maintain and repair their access points under their permit.

(j) A permittee may use the access points designated in a permit.

(k) *[Each]* ***The Department will have each*** permit *[will be]* recorded in the county in which the subject lot is located.

(l) If, *[during the period of approval of an application, the applicant]* ***after issuance of a permit by the Department, a permittee*** is barred or prevented, directly or indirectly, from proceeding with the development by a legal action instituted by any State agency, political subdivision, or any other individual or party or by a directive, or order issued by any State agency, political subdivision, or court of competent jurisdiction, the *[running of the period of approval under this Code shall be suspended for the period of time said legal action is pending or such directive or order is in effect. After the applicant notifies the Regional Maintenance Office of the legal action, the date of suspension of the approval running time shall be the effective date of the filing of such legal action, directive or order. In order to restart the approval running time the applicant shall be required to provide the Regional Maintenance Office with written notice. If written notice is not given within 30 days of the suspension, the suspension will be considered to be lifted as of 30 days after effective date of any order, directive, judgement, or other form of resolution]* ***period of time prescribed by this Code for construction of an access point intersecting a State highway shall be tolled during the pendency of said legal action, directive, or order. The remaining access construction time shall again begin to run from the date on which the legal directive or order is removed. The permittee shall notify the Regional Maintenance Office in writing within 30 days of the date of such resolution or removal*.**

(m) The Department shall act upon applications and permits according to existing rules (N.J.A.C. 16:41) for those projects for which a complete access application or concept review application has been received by the Department and which have also received either preliminary site plan approval or subdivision approval from the municipal approval authority pursuant to P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.), or an approved general development plan as of *[the effective date of this Access Code]* ***September 21, 1992***. Permit applications for all other projects shall be acted upon according to this Access Code.

(n) If the Department denies a permit, the denial letter shall set forth the reasons for the denial and include references to published policies and standards which support the denial.

16:47-4.7 Companion Department permits

Access permits do not cover all types of occupancy of the Department's right-of-way. Other permit applications may be required in conjunction with the access application. These applications will become companion applications to the access application. They will be reviewed together. All of the required permits will be issued at the same time. ***The Department may accept one access application for combining activities for access, drainage, curb, sidewalk, and lot consolidation and issue a single access permit to authorize all of these activities.***

16:47-4.8 Minor access permits process

(a) The Regional Maintenance Office will determine whether an application meets the criteria for the type of application applied for and whether the application is acceptable for review, and send a written notice of these determinations to the applicant within 10 days of receipt. If the application is unacceptable, the notification will contain a request for specific additional information.

(b) A minor application will be reviewed and either approved or denied within a maximum of 30 calendar days of receipt of a complete application, unless a traffic signal is involved. Permits will be issued within a maximum of 35 calendar days of receipt of a complete application if the application is approved, unless a traffic signal is involved.

(c) The Regional Maintenance Office will advise the applicant of the results of the Department's review. If the application is approved, the Regional Maintenance Office will request from the applicant the submission of the permit documents and the permit fee.

(d) The applicant shall submit the completed and signed permit documents and permit fee to the Regional Maintenance Office within 180 days of the Regional Maintenance Office notice of approval. Applicants failing to respond on time will have their applications rejected.

(e) When the Department requests information from the applicant, the step in the process and its associated time frame will restart once the Department receives the information. ***If the applicant does not provide the Department with the requested information within 90 days of the request, the application shall be considered withdrawn.***

(f) Minor applications that require modification of traffic signals must be reviewed by the Bureau of Traffic Engineering and Safety Programs and the Bureau of Electrical Engineering. Minor permits may be issued conditionally, subject to approval of traffic signal work. The final approval may extend the minor application review time by 45 days.

(g) If the Regional Maintenance Office finds either the same form deficiency or the same technical content deficiency three times in an applicant's submissions, then the application will be rejected and the applicant must reapply and submit a new application and fee.

(h) If the applicant changes the proposed development or access plan in response to Department comments, a new application and fee will not be required unless the applicant fails to eliminate all deficiencies within three submissions. If the applicant unilaterally changes the proposed development or access plan, however, a new application and fee shall always be submitted.

(i) After the permittee constructs the access and meets all conditions of the permit, the permittee shall notify the Regional Maintenance Office, in writing. Within 30 calendar days of its receipt of the notice, the Regional Maintenance Office will notify the permittee if any corrective action is required by the permittee.

16:47-4.9 Minor access permits checklist for single-family residential and residence and business combined

(a) Applications for minor access permits for single-family residential and residence and business combined shall be accompanied by six copies of a detailed sketch or plan to a scale of one inch equals 30 feet or one inch equals 50 feet showing the location and type of proposed driveways in relation to the curbline. Plan sheet size shall not exceed 24 inches by 36 inches. Topographic features shall be shown for the lot frontage and the frontage of the adjacent lots.

(b) The following information shall be submitted with the application:

1. Copy of tax map showing block number, lot number and lot lines;
2. Right-of-way line from Department desirable typical section;
3. Setback and location of structures;
4. Curb—existing and proposed;
5. Sidewalks—existing and proposed;
6. Trees within Department right-of-way;
7. Signs—regulatory, warning, directional, and private;
8. Utility poles;
9. Locations of all lot driveways—existing and proposed;
10. Driveway width;
11. Driveway alignment with respect to the highway;
12. Curbline openings;
13. Highway electrical installations;
14. Corner clearance;
15. Edge clearance;
16. Estimated 24-hour traffic count for the lot and each access point;
17. Type of driveway and apron construction (concrete, bituminous, gravel);
18. Justification for exceptions to design standards;
19. Length of lot frontage along highway;

20. Distance to nearest traffic signals if less than 250 feet—preceding (in feet) following (in feet);
21. Zoning designation for lot; *[and]*
22. Waivers requested*[.]**;*
23. Location of any access easements on the lot; and
24. Applicability of the Pinelands Act.

(c) A temporary traffic control plan for each stage of construction may be required at the discretion of the Department.

16:47-4.10 Minor access permits checklist for other minor traffic generators

(a) Applications for minor access permits for other minor traffic generators shall be accompanied by eight copies of detailed plans to a scale of one inch equals 30 feet or one inch equals 50 feet. Plan sheet size shall not exceed 24 inches by 36 inches. Topographic features shall be shown on both sides of undivided roads and one side of divided roads for 500 feet beyond the lot frontage in each direction.

(b) The following information shall be submitted with the application:

1. Lot location map (Maps should reference at least two cross streets on each side of the lot, milepost, north arrow and scale);
2. Copy of tax map showing block number, lot number and lot lines;
3. Right-of-way line from Department desirable typical section;
4. Setback and location of structures;
5. Curb—existing and proposed;
6. Sidewalks—existing and proposed;
7. Trees within Department right-of-way;
8. Signs—regulatory, warning, directional, and private;
9. Utility poles;
10. Highway electrical installations;
11. Locations of all lot driveways—existing and proposed;
12. Driveway width;
13. Driveway alignment with respect to the highway;
14. Curbline openings;
15. Edge clearance;
16. Type of driveway and apron construction (concrete, bituminous, gravel);
17. Contours—existing and proposed;
18. Corner clearance;
19. Driveway and island radii;
20. Estimated 24-hour and highway peak-hour traffic count for the lot and each access point;
21. Number of lanes on the highway;
22. Speed-change lanes (acceleration, deceleration, left turn slots);
23. Lane and shoulder widths;
24. Typical pavement sections (within Department right-of-way)—existing and proposed including cross slopes, widths, pavement types, and thicknesses;
25. Location of centerline on undivided highways and median of divided highways;
26. Location of existing median openings on divided highways;
27. Location of existing driveways on opposite side of undivided highways;
28. Dimensions from the lot line to the edge of pavement;
29. Number of new units for residential use; rooms for hotels and motels; square footage for retail, office, or warehouse; or appropriate unit of measure for other land use;
30. Parking facilities and internal traffic circulation;
31. Highway traffic striping—existing and proposed;
32. Construction details;
33. Justification for exceptions to design standards;
34. Length of lot frontage along highway;
35. Distance to nearest traffic signal if less than 250 feet—preceding (in feet) following (in feet);
36. Zoning designation for lot; *[and]*
37. Waivers requested*[.]**;*
38. Location of any access easements on the lot; and
39. Applicability of the Pinelands Act.

(c) A temporary traffic control plan for each stage of construction may be required at the discretion of the Department.

16:47-4.11 Major access permits process

(a) The Regional Maintenance Office will determine whether an application meets the criteria for the type of application applied for and whether the application is acceptable for review and send a written notice of these determinations to the applicant within 10 days of receipt. The Regional Maintenance Office will forward those applications it deems acceptable to the Major Permits Unit and, if the applications involve traffic signals, to the Bureau of Traffic Engineering and Safety Programs and the Bureau of Electrical Engineering. The Major Permits Unit will send notice of acceptability of the application to the applicant within 30 days of receipt by the Department.

(b) A major application will be reviewed and either approved or denied within a maximum of 95 days. A permit will be issued within a maximum of 100 days of receipt of a complete application if the application is approved.

(c) The Regional Maintenance Office will advise the applicant of the results of the Department's review. If the application is approved, the Regional Maintenance Office will request from the applicant submission of the permit documents and the permit fee.

(d) The applicant shall submit the completed and signed permit documents and permit fee to the Regional Maintenance Office within 180 calendar days of the Regional Maintenance Office notice of approval. Applicants failing to respond on time will have their applications rejected.

(e) When the Department requests information from the applicant, the step in the process and its associated time frame will restart once the Department receives the information. ***If the applicant does not provide the Department with the requested information within 90 days of the request, the application shall be considered withdrawn.***

(f) The permittee shall notify the Regional Maintenance Office in writing after the permittee constructs the access and meets all conditions of the permit. The Regional Maintenance Office will notify the permittee if any corrective action is required by the permittee within 30 calendar days of its receipt of the notice.

(g) If the Regional Maintenance Office or Major Permits Unit finds either the same form deficiency or the same technical content deficiency three times in an applicant's submissions, then the application will be rejected and the applicant must reapply and submit a new application and fee.

(h) If the applicant changes the proposed development or access plan in response to Department comments, a new application and fee will not be required unless the applicant fails to eliminate all deficiencies within three submissions. If the applicant unilaterally changes the proposed development or access plan, however, a new application and fee shall always be submitted.

16:47-4.12 Major access permits checklist

(a) Applications for major access permits shall be accompanied by eight copies of detailed plans to a scale of one inch equals 30 feet or one inch equals 50 feet. Plan sheet size shall not exceed 24 inches by 36 inches. Plans prepared for local site-plan approval may not contain sufficient information for highway access approval.

(b) The following information shall be submitted with the application:

1. Lot location map (The Key map must reference at least two cross streets on each side of the lot, milepost, north arrow and scale);
2. Copy of tax map showing block number, lot number and lot lines;
3. Right-of-way line from Department desirable typical section;
4. Topography showing all highway features within 500 feet of the lot frontage on both sides of undivided roads and up to the centerline on divided roads;
5. Setback and location of structures;
6. Curb—existing and proposed;
7. Sidewalks—existing and proposed;
8. Trees within Department right-of-way;
9. Signs—regulatory, warning, directional, and private;

10. Utility poles;
11. Highway electrical installations;
12. Locations of all lot driveways—existing and proposed;
13. Driveway width;
14. Driveway alignment with respect to the highway;
15. Curbline openings;
16. Edge clearance;
17. Type of driveway and apron construction (concrete or bituminous);
18. Contours—existing and proposed;
19. Corner clearance;
20. Driveway and island radii;
21. Estimated 24-hour and highway peak-hour traffic count for the lot and each access point;
22. Number of lanes on the highway;
23. Speed-change lanes (acceleration, deceleration, left turn slots);
24. Lane and shoulder widths;
25. Typical pavement sections (within Department right-of-way)—existing and proposed, including cross slopes, widths, pavement types and thicknesses;
26. Location of centerline on undivided highways and median of divided highways;
27. Location of existing median openings on divided highways, within 1,000 feet of site;
28. Location of existing driveways on opposite side of undivided highways;
29. Dimensions from the lot line to the edge of pavement;
30. Number of new units for residential use; rooms for hotels and motels; square footage for retail, office, or warehouse; or appropriate unit of measure for other land use;
31. Parking facilities and internal traffic circulation;
32. Traffic patterns—existing and proposed;
33. Highway traffic striping—existing and proposed;
34. Construction details;
35. Type of vehicles anticipated;
36. Attachments to Department drainage system—existing and proposed;
37. Drainage calculations—existing and proposed;
38. Changes to existing traffic signals;
39. New traffic signals and MUTCD warrant numbers;
40. Length of lot frontage along highway;
41. Distance to nearest traffic signal if less than 500 feet—preceding (in feet), following (in feet);
42. Zoning designation for lot;
43. Waivers requested; *[and]*
44. Copies of transmittals of duplicate applications to the municipal clerk and county planning board*[.]***;***

45. Location of any access easements on the lot; and

46. Applicability of the Pinelands Act.

(c) A temporary traffic control plan for each stage of construction may be required at the discretion of the Department.

16:47-4.13 Major access permits with planning review process

(a) Potential applicants shall schedule a pre-application conference with the Major Permits Unit for major applications that will be reviewed by the Bureau of Access and Development Impact Analysis.

(b) Potential applicants considering submission of major applications requiring a planning review shall send the Major Permits Unit a letter including the following information for the proposed development:

1. Lot location noting route, direction, milepost, *[township]* ***municipality*** and county;
2. Size and type of each different land use;
3. Access and highway improvement schemes under consideration;
4. Trip generation, distribution and assignment for each land use and time period analyzed;
5. Opening date or staging for development;
6. Buildout year; *[and]*
7. Suggested agenda for pre-application meeting*[.]***; and***

8. Involvement with a Department electrical facility such as, but not limited to, a traffic signal or highway lighting.

(c) The Major Permits Unit will schedule the pre-application conference. The Department recommends the applicant be accompanied by a traffic engineer at the pre-application conference.

(d) The potential applicant shall discuss the locations to be studied and the contents of the traffic impact study with ***a representative of*** the Bureau of Access and Development Impact Analysis at the pre-application conference.

(e) The Regional Maintenance Office will notify the applicant in writing of acceptance or rejection of the application and verify the type of permit within 10 days of receipt. The Regional Maintenance Office will forward those applications it deems acceptable for review to the Major Permits Unit, the Bureau of Traffic Engineering and Safety Programs, the Bureau of Electrical Engineering, and the Bureau of Access and Development Impact Analysis. The Major Permits Unit will send a written notice of acceptability of the application for review to the applicant within 30 days of receipt by the Department.

(f) A major application with planning review will be reviewed and either approved or denied within a maximum of 170 days of receipt of a complete application. A permit will be issued within a maximum of 175 days of receipt of a complete application if the application is approved.

(g) When the Department requests information from the applicant, the step in the process and its associated time frame will restart once the Department receives the information. ***If the applicant does not provide the Department with the requested information within 90 days of the request, the application shall be considered withdrawn.***

(h) If the Regional Maintenance Office, Major Permits Unit, or Bureau of Access and Development Impact Analysis finds either the same form deficiency or the same technical content deficiency three times in an applicant's submissions, then the application will be rejected and the applicant must reapply and submit a new application and fee.

(i) If the applicant changes the proposed development or access plan in response to Department comments, a new application and fee will not be required unless the applicant fails to eliminate all deficiencies within three submissions. If the applicant unilaterally changes the proposed development or access plan, however, a new application and the fee shall always be submitted.

(j) The Regional Maintenance Office will advise the applicant of the results of the Department's review. If the application is approved, the Regional Maintenance Office will request from the applicant submission of the permit documents and fee.

(k) The applicant shall submit the completed and signed permit documents and permit fee to the Regional Maintenance Office within 180 days of the Regional Maintenance Office notice of approval. Applicants failing to respond on time will have their applications rejected.

(l) After the permittee constructs the access and meets all conditions of the permit, the permittee shall notify the Regional Maintenance Office, in writing. Within 30 calendar days of its receipt of the notice, the Regional Maintenance Office will notify the permittee if any corrective action is required by the permittee.

(m) A Certificate of Acceptance will be issued to the permittee and a copy sent to the municipal building inspector within 10 calendar days of the Regional Maintenance Office's finding that the access conforms to the conditions of the permit. ***The Certificate of Acceptance may be issued after substantial completion of the construction within state right-of-way and prior to the completion of all work if the applicant provides a performance bond or other guarantee acceptable to the Department to ensure the work will be completed.***

(n) The permittee shall not use the access and a municipality shall not issue a certificate of occupancy until the Department has issued a Certificate of Acceptance. Use of the access prior to issuance of a Certificate of Acceptance shall subject the permittee to penalties under N.J.S.A. 27:7-44.1 and all other remedies available to the Department.

(o) Major applications with planning reviews that propose alternative access to a street which intersects a State highway may lead

to a significant increase in traffic on the street at its State highway intersection. This could cause the local agency's street intersection permit to expire.

16:47-4.14 Major access permits with planning review checklist

(a) Applications for major access permits with planning review shall be accompanied by five copies of the traffic impact study, nine copies of detailed plans to a scale of one inch equals 30 feet or one inch equals 50 feet. Plan sheet size shall not exceed 24 inches by 36 inches. Plans prepared for local site-plan approval may not contain sufficient information for highway access approval.

(b) The following information shall be submitted with the application:

1. Lot location map (The Key map must reference at least two cross streets on each side of the lot, milepost, north arrow and scale);
2. Copy of tax map showing block number, lot number and lot lines;
3. Right-of-way line from Department desirable typical section;
4. Topography showing all highway features within 500 feet of the lot frontage on both sides of undivided roads and up to the centerline on divided roads;
5. Setback and location of structures;
6. Curb—existing and proposed;
7. Sidewalks—existing and proposed;
8. Trees within Department right-of-way;
9. Signs—regulatory, warning, directional, and private;
10. Utility poles;
11. Highway electrical installations;
12. Locations of all lot driveways—existing and proposed;
13. Location of nearest driveway on adjacent lots, including type of operation using adjacent driveways;
14. Driveway width;
15. Driveway alignment with respect to the highway;
16. Curbline openings;
17. Edge clearance;
18. Type of driveway and apron construction (concrete or bituminous);
19. Contours—existing and proposed;
20. Corner clearance;
21. Driveway and island radii;
22. Estimated 24-hour and highway peak-hour traffic count for the lot and each access point;
23. Number of lanes on the highway;
24. Speed-change lanes (acceleration, deceleration, left-turn slots);
25. Lane and shoulder widths;
26. Typical pavement sections (within Department right-of-way)—existing and proposed, including cross slopes, widths, pavement types and thicknesses;
27. Location of centerline on undivided highways and median of divided highways;
28. Location of existing median openings on divided highways;
29. Location of existing driveways on opposite side of undivided highways;
30. Dimensions from the lot line to the edge of pavement;
31. Number of new units for residential units; rooms for hotels and motels; square footage for retail, office, or warehouse; or appropriate unit of measure for other land uses;
32. Parking facilities and internal traffic circulation;
33. Traffic patterns—existing and proposed;
34. Highway traffic striping—existing and proposed;
35. Construction details;
36. Type of vehicles anticipated;
37. Attachments to Department drainage system—existing and proposed;
38. Drainage calculations—existing and proposed;
39. Changes to existing traffic signals;
40. New traffic signals and MUTCD warrant numbers;
41. Proposed site and highway transportation improvements;
42. Length of lot frontage along highway;
43. Distance to nearest traffic signal—preceding (in feet), following (in feet);
44. Zoning designation for lot;
45. Waivers requested; *[and]*
46. Copies of transmittals of duplicate applications to the municipal clerk and county planning board*[.]***;***

47. Location of any access easement on the lot; and

48. Applicability of the Pinelands Act.

(c) A temporary traffic control plan for each stage of construction may be required at the discretion of the Department.

16:47-4.15 Concept review process

(a) When significant highway improvements will be involved in an access review, the applicant may initiate the access approval process through a concept review. Concept reviews may also be used for initiating the approval process for developments that are not expected to be constructed within *[one year]* ***two years*** of ***the date of an*** access *[approval]* ***permit***. The concept review enables the applicant to obtain Department feedback without the expense of preparing detailed plans.

(b) When seeking to obtain conceptual approval for a major access permit before preparing full-scale plans, the applicant shall submit a concept review application with plans or a sketch, including the support information listed in N.J.A.C 16:47-4.17. A traffic impact study shall be included if a planning review is required.

(c) A concept review application will be processed using the same procedure and time frames applicable to the appropriate major access permit application. At the conclusion of the concept review, the Regional Maintenance Office will issue a letter providing conceptual approval or rejection of the applicant's concept. If the concept is rejected, the Regional Maintenance Office will recommend actions necessary to achieve concept approval. If the concept is approved, the applicant must submit a permit application within *[one year]* ***two years*** of the date of conceptual approval. Failure to submit a permit application within *[one year]* ***two years*** shall result in the automatic expiration of the concept approval.

16:47-4.16 Concept review checklist

(a) An application for concept review shall be accompanied by nine copies of a plan to a scale no greater than one inch equals 100 feet, preferably one inch equals 50 feet. Plan sheets shall not exceed 24 inches by 36 inches. If a planning review is required, the application shall also be accompanied by five copies of the traffic impact study. The application shall provide sufficient information to enable the Department to determine the feasibility of the proposed project, but extensive construction details are not required.

(b) The following information shall be included in the application:

1. Proposed use and size of buildings;
2. Lot location, including existing topography within 1,000 feet in each direction;
3. Copy of tax map showing block number, lot number and lot lines;
4. Right-of-way line from Department desirable typical section;
5. Driveway widths;
6. Driveway alignments;
7. Curbline openings;
8. Estimated 24-hour and highway peak-hour traffic count for the lot and each access point;
9. Type of construction (Concrete, bituminous, gravel, etc.);
10. Parking facilities and internal traffic circulation;
11. Speed change lanes (Acceleration, deceleration, left turn slots);
12. Traffic signals—existing and proposed;
13. Lane and shoulder widths;
14. Number of lanes on the highway;
15. Location of centerline on undivided highways and median on divided highways;
16. Location of existing median openings on divided highways;
17. Traffic pattern changes;
18. Typical section—existing and proposed, including widths and pavement types;
19. Length of lot frontage along highway;
20. Zoning designation of lot;
21. Waivers requested; *[and]*

22. Copies of transmittals of duplicate applications to the municipal clerk and county planning board*[.]**; and***

23. Location of any access easements on the lot.

16:47-4.17 Department review times for lots addressed in approved access management plans

(a) The Department review times for lots addressed in approved access management plans follow:

1. For minor access permits, use the same process as referred to in N.J.A.C. 16:47-4.8, except the 30 days for the Regional Maintenance Office response to the applicant shall be reduced to 20 days.

2. For major access permits with planning review, use the same process as referred to in N.J.A.C. 16:47-4.13, except the 170 days for the Department review shall be reduced to 140 days.

16:47-4.18 Developer agreements

(a) The Department will require a developer agreement as a condition of an access permit whenever any of the following conditions exists:

1. Project and highway improvement phasing;

[2. Off-site improvements;]

*[3.]***2.*** Right-of-way dedication with conditions;

*[4.]***3.*** Department involvement in right-of-way acquisition;

*[5.]***4.*** Dedicated public streets as part of traffic pattern for maintenance of traffic for construction;

*[6.]***5.*** Highway improvements requiring daily monitoring by a resident engineer; or

*[7.]***6.*** Fair-share financial contributions.

(b) At its sole discretion, the Department may require a developer agreement as a condition of an access permit whenever any of the following conditions exist. The Major Permits Unit shall notify the applicant of such a determination after the completion of the planning review.

1. The nature of the project or highway improvements so warrant;

2. Construction extends beyond the applicant's lot frontage; or

3. The applicant implements a travel demand management plan.

(c) The processing of developer agreements will require 85 days of Department time in addition to the application review time. When the Regional Maintenance Office issues the permit, execution of the developer agreement shall be one of the conditions. No construction shall be performed within Department right-of-way prior to the execution of the developer agreement.

(d) Applicant time for developer agreements shall include:

1. The time required by the applicant to review and approve the agreement;

2. The time to obtain local, State or Federal approvals, authorizations, resolutions, or permits; and

3. The time needed to prepare final access construction plans and related documents.

(e) Any fees paid to the Department as part of the access application ***and*** concept review processes shall be credited against any payment required pursuant to a developer agreement. The total payment required shall not be less than the total of the application and permit fees.

(f) The estimated reimbursable Department costs for ***access application review,*** design review***,*** and construction inspection, when included in a developer agreement, shall be based on estimates prepared by the Department. The actual reimbursable Department costs shall be the actual costs incurred by the Department.

(g) The applicant shall obtain and provide the Major Permits Unit with copies of any other agency approvals required for work within ultimate, proposed Department right-of-way.

16:47-4.19 Street intersections

(a) For new streets, applications for street intersections shall be accompanied by the items listed below. These applications are not required to be signed by the county or municipal engineer involved. When the Department responds to the applicant and furnishes permit documents for signature, the permit must be signed by the county or municipal engineer involved.

1. Eight copies of a plan with the intersection enlarged at a scale of one inch equals 30 feet showing such detail as curb, gutter, sidewalk, curb returns, and drainage structures;

2. Profiles;

3. A copy of the county or municipal resolution accepting the street, if one has been passed. If no resolution has been passed, a resolution is not required for the acceptance of the application; and

4. All items on the checklist for either minor application, major application, or major application with planning review, as appropriate.

(b) For existing streets, the following application requirements apply:

1. Applications for increases in the number of lanes intersecting the State highway shall be processed in the same manner as those for a new street.

2. Applications involving no increase in the number of lanes intersecting the State highway are street improvement applications. These applications shall be accompanied by eight copies of a plan with the intersection enlarged at a scale of one inch equals 30 feet showing such detail as curb, gutter, sidewalk, curb radii, and drainage structures. These applications and permits shall be signed by the county or municipal engineer involved.

16:47-4.20 Right-of-way dedication

(a) The Department complies with prevailing laws and Federal Highway Administration regulations for dedications and donations of land.

(b) Right-of-way dedications shall be accompanied by:

1. Two copies of a letter or agreement from the present owner indicating his knowledge that the land to be dedicated has value and his willingness to waive all rights to receive compensation from the State for these lands and access rights which he will dedicate to the State at no cost;

2. One copy of a 22 inch by 36 inch mylar General Property Parcel Map at a scale of one inch equals 30 feet.

3. Two copies of a metes and bounds description of the land to be dedicated to the State;

4. Two copies of the existing deed;

5. A deed of conveyance ***or perpetual easement*** for the right-of-way dedication to the State of New Jersey; and

6. A *[certificate]* ***report*** of title setting forth that the State of New Jersey is vested with good and marketable title ***or, in the event that an easement is being conveyed, that the easement is not unencumbered, or any rights held by others***. Said *[certificate]* ***report*** is to be issued by a title company authorized to do business in the State of New Jersey.

(c) The applicant shall submit the proposed deed and the report of *[titles]* ***title*** to the Major Permits Unit for review and approval by the Title Bureau. The applicant shall be responsible for clearing all exceptions shown on the report of title.

16:47-4.21 Traffic signals

(a) Traffic signals may be approved by the Bureau of Traffic Engineering and Safety Programs, during the application process. When a study is required for a potential traffic signal, the study shall be completed and sealed by a New Jersey licensed professional engineer and shall include:

1. Consideration of all access that is existing and approved future access locations as well as advertised roadway and traffic signal improvements, for a distance of at least one traffic signal spacing standard in each direction;

2. Substantiation that a traffic signal is warranted by criterion listed in the current ***"*Manual on Uniform Traffic Control Device for Streets and Highways*"***;

3. Evaluation of current data assuming approved applications are in place based on their estimated build-out years;

4. Use of current and predicted travel speed, travel time, and delay time;

5. Documentation that the location of the potential traffic signal is consistent with N.J.A.C. 16:47-3.4;

6. Progression study using a cycle length of between 90 and 120 seconds or as determined by the Bureau of Traffic Engineering and Safety Programs;

7. Peak-hour operation speed obtained from the Bureau of Traffic Engineering and Safety Programs;

8. Use of the applicable minimum highway band width as stated in N.J.A.C. 16:47-3.4. The Bureau of Traffic Engineering and Safety Programs may allow a 30 percent minimum highway band width when existing *[locations]* ***band width for traffic signals on either side of the proposed traffic signal*** are at or below 30 percent;

9. Use of the applicable minimum highway band width as stated in N.J.A.C. 16:47-3.4 or 40 percent minimum highway band width, whichever is more restrictive, if the traffic signal is proposed at the new access point;

10. Use of the green time, in seconds, shall accommodate pedestrian movement;

11. Use of trip generation estimates based on the Institute of Transportation Engineers publication entitled ***"5th Edition*** Trip Generation,*"* *[4th Edition]* or superseding edition, or superseding rates adopted by the Department;

12. Information, data, and reference sources shall be documented;

13. Evaluation of the level of service and delays for all traffic movements;

14. Accurate and legible diagrams;

15. Documentation of all assumptions and adjustment factors;

16. Comparative analysis of all available alternatives including a no-build alternative;

17. A summary analysis that clearly indicates when level of service and delay standards are or are not met;

18. Safety analysis, including the interaction of adjacent conflict points and movements;

19. A conceptual design showing all geometric elements and dimensions with a detailed explanation of any elements that may need a waiver; and

20. Any additional supporting information and analyses, including waivers, if applicable.

(b) The construction of an access point at or near a signalized intersection usually necessitates the installation of additional traffic signal equipment. The Department shall review the application proposing additional equipment and shall determine whether the additional facilities are adequate. All equipment shall be installed in accordance with *"*Standard Specifications for Road and Bridge Construction*"* under Department supervision. At the request of the permittee, the Department may agree to perform the traffic signal modification. The traffic signal modification work and all electrical equipment will be at the permittee's expense.

(c) When the Bureau of Traffic Engineering and Safety Programs approves a traffic signal, the Bureau of Electrical Engineering will prepare a cost-sharing agreement that shall be independent of any developer agreement, but shall be a condition of the permit. The traffic signal agreement will provide for the participation of the applicant and the Department in the cost of installation, maintenance, and operation of any proposed traffic signals.

(d) All traffic striping plans and traffic signal plans shall be at a scale of one inch equals 30 feet. ***Plan sheet size shall not exceed 24 inches by 36 inches.*** Traffic signal designs shall be submitted in accordance with *"*Manual on Uniform Traffic Control Devices for Streets and Highways*"* requirements.

16:47-4.22 (Reserved)

16:47-4.23 Analysis years

(a) Traffic analyses shall be performed by the applicant for the year in which the development is fully built out.

(b) Fair-share financial contributions or highway improvements and development may be phased, as long as appropriate fair-share financial contributions are made in advance of each phase. When then fair-share financial contributions and the development are phased, the years to be analyzed will be for the years in which fair-share financial contributions are made.

(c) The applicant should not limit the traffic analysis focus to the specific location identified where an unacceptable deterioration of the LOS standards has been identified. In many cases it is preferable to direct site-generated traffic to other roadways. In other cases, improvements apart from the problem site may divert enough background traffic to make room for the site generated traffic and thus mitigate the impacts. Most capacity analyses assume that each intersection is acting independently; therefore, care must be taken to interpret the interactions between intersections and adjacent driveways.

(d) The following table summarizes the requirements of this section:

Development Phases	Years to be Analyzed
Single (no improvements)	Build out
Single (with improvements)	Improvement
Multiple (no improvements)	Build out of each phase
Multiple (with improvements)	Completion of each improvement

16:47-4.24 General level of service standards

(a) General LOS standards for State highway segments and State highway approaches to intersections are based on the LOS of the highway segments at the time the access opens and the urban or rural designations of the highway segments as determined using Appendices A and B. ***These LOS standards, and those in N.J.A.C. 16:47-4.25 through 4.29, apply to applications classified as majors with planning review.***

1. For urban highway segments anticipated to operate at:

i. LOS A or B, deterioration to the midpoint of LOS C will be allowed;

ii. LOS C or D, deterioration of one-half of LOS D will be allowed, provided the LOS does not enter LOS E;

iii. LOS E or F, no deterioration will be allowed.

2. For rural highway segments anticipated to operate at:

i. LOS A or B, deterioration may not drop the LOS below B;

ii. LOS C, D, E, or F, no deterioration will be allowed.

16:47-4.25 Uninterrupted-flow standards

(a) Uninterrupted-flow standards for determining fair-share financial contributions are as follows:

1. The general standards listed in N.J.A.C. 16:47-4.24 apply. ***LOS will be measured by the volume to capacity ratio (V/C) and conform to the values shown in Tables 3-1, 7-1, and 8-1 of the "1985 Highway Capacity Manual," Special Report 209, or superseding issue. Table 3-1 does not define LOS B or the midpoint of LOS C. Both are herein defined as a V/C equal to 0.67.***

2. For a section of urban highway operating at or below LOS C under the no-build condition, the uninterrupted-flow V/C ratio shall not increase more than 0.1.

16:47-4.26 Signalized intersection standards

(a) Signalized intersection standards for determining fair-share contributions for State highway approaches are as follows:

1. The general standards listed in N.J.A.C. 16:47-4.24 apply. ***LOS will be measured by stopped delay per vehicle per Table 9-1 of the "1985 Highway Capacity Manual," Special Report 209, or superseding issue.***

2. For all movements on:

i. An urban State highway approach operating at or below LOS C***, delay exceeds 15 seconds,*** under the no-build condition, the delay for the approach under the build condition shall not exceed the delay for the approach under the no-build condition by more than 7.5 seconds, and the actual delay shall not exceed 40 seconds, the maximum possible at LOS D. Exceptions may be made to the delay standards for left turn lanes on State highway approaches, but the left turns must not back up onto the through lanes;

ii. A rural State highway approach operating at or above LOS B under the no-build condition, the delay for the approach under the build condition shall not exceed 15 seconds, the maximum possible at LOS B. Exceptions may be made to the delay standards for left turn lanes on State highway approaches, but the left turns must not back up onto the through lanes.

3. Delay will be used to compare build and no-build conditions when the ***no build*** V/C ratio is less than or equal to 1.2. V/C

ratio will be used to compare build and no-build conditions when the ***no build*** V/C ratio exceeds 1.2.

4. If any no-build movement on:

i. An urban State highway approach has a V/C ratio greater than 1.2, then the build conditions shall not increase the V/C ratio on that movement;

ii. A rural State highway approach operates at a LOS below B (delay exceeds 15 seconds), then the build conditions shall not increase the delay on that movement. Also, a no-build V/C ratio exceeding 1.2 shall not be increased.

5. Comments on the interaction of conflicting movements at adjacent driveways and roadways are required.

6. If there is a traffic signal within 2,640 feet of the lot, an arterial analysis may be required.

(b) Signalized intersection standards for determining fair share financial contributions for non-State highway approaches are as follows:

1. No movement on a non-State highway approach shall have a build V/C ratio exceeding 1.2. If, however, the no-build is already over 1.2, then the applicant cannot worsen the existing V/C ratio. Lengthy delays may be tolerated on the minor approaches, but jughandles will not be permitted to back up onto the State highway. The tolerance of lengthy delays on the minor approaches is based on the presumption that the minor road has a lower functional classification than an arterial. If the minor road is an arterial, the appropriate standards for the specific location will be addressed at the pre-application conference.

2. Comments on the interaction of conflicting movements at adjacent access points may be required.

(c) The tables in Appendix L, incorporated herein by reference, summarize the requirements of this section.

16:47-4.27 Unsignalized intersection standards

(a) The general standards listed in N.J.A.C. 16:47-4.24 apply to an unsignalized intersection.

(b) The applicant shall perform the unsignalized intersection analysis for determining fair-share financial contributions, which should be based on the levels of service, reserve capacity, and traffic volumes at the appropriate peak hour. Turns may not cause excessive disruption to through traffic and may not be allowed when acceptance of substandard gaps is promoted. In some cases elimination of the movement and diversion of the demand to a nearby location is the preferred treatment. Comments on the interaction of conflicting movements at adjacent access points may be required.

(c) For street intersections in:

1. Urban areas with a no-build LOS of A or B, the reserve capacity may decrease to 250. With a no-build LOS of C *[of]***, D*, or E*** the reserve capacity may decrease by 50, but shall not be less than *[100]* ***0***. No-build reserve capacities below *[100]* ***0*** shall not be decreased;

2. Rural areas with a no-build LOS of A or B, the build reserve capacity may decrease to 300. No-build reserve capacities below 300 shall not be decreased.

(d) For driveways in:

1. Urban areas with a no-build LOS of *[D]* ***E*** or better, the reserve capacity may decrease to *[100]* ***0***. No-build reserve capacities below *[100]* ***0*** shall not be decreased. ***Reserve capacities for new driveways shall not be less than 0.***

2. Rural areas:

i. Left turns from the State highway to the driveway with no-build LOS of A or B, the reserve capacity may decrease to 300. No-build reserve capacities below 300 shall not be decreased. ***Reserve capacities for new driveways shall not be less than 300.***

ii. Right and left turns from the driveway with no-build LOS of *[D]* ***E*** or better, the reserve capacity may decrease to *[100]* ***0***. No-build reserve capacities below *[100]* ***0*** shall not be decreased. ***Reserve capacities for new driveways shall not be less than 0.***

16:47-4.28 Weaving area standards

[The potential for site traffic to deteriorate weaving area traffic flow and the methods to quantify such deterioration shall be discussed at the pre-application meeting. Although weaving and non-weaving speeds are independent, it is desirable that these speeds be balanced. The addition of build traffic shall maintain the balance.]

(a) The general standards listed in N.J.A.C. 16:47-4.24 apply for freeways. LOS will be measured by weaving speed and non-weaving speed and conform with the values shown in Table 4-6 of the "1985 Highway Capacity Manual," Special Report 209, or superseding issue.

(b) For non-freeways, the potential for site traffic to deteriorate weaving area traffic flow and the methods to quantify such deterioration shall be discussed at the pre-application meeting. Although weaving and non-weaving speeds are independent, it is desirable that these speeds be balanced. The addition of build traffic shall maintain the balance.

16:47-4.29 Ramp standards

(a) Ramp standards are based on the level of service criteria shown in Table 5-1 of the ***"1985*** *["]*Highway Capacity Manual" ***, Special Report 209, or superseding issue. Table 5-1 does not define LOS B or the midpoint of LOS C. Both are herein defined as the freeway flow rate on a 50 mph design speed freeway exceeds 2,600 passenger cars per hour on a four-lane freeway, 3,900 passenger cars per hour on a six-lane freeway, and 5,200 passenger cars per hour on an eight-lane freeway.***

(b) On urban State highway segments:

1. For a merge or diverge operating at LOS A or B under the no-build condition, the LOS shall be allowed to deteriorate to the midpoint of LOS C.

2. For a merge or diverge operating at or below LOS C under the no-build condition, the increase in the merge or diverge flow rate shall not exceed 150, and the actual merge flow rate shall not exceed 1,750 and the diverge flow rate shall not exceed 1,800. These are the maximum merge and diverge traffic flow rates possible for LSO D.

3. For no-build LOS E or F, no increase shall be allowed in the merge and diverge traffic flow rates.

(c) On rural State highway segments:

1. For a merge or diverge operating at LOS A or B under the no-build condition, the LOS shall not deteriorate below LOS B.

2. For a merge or diverse operating at or below LOS C under the no-build condition, no increase shall be allowed in the merge and diverge traffic flow rate.

16:47-4.30 Traffic impact studies for major access and concept review applications

(a) A traffic impact study is required for concept review applications reviewed by the Bureau of Access and Development Impact Analysis and major access applications with a planning review. ***The pages of the traffic impact study shall be numbered and the topics shall be addressed in the same sequence as they appear in this subsection.*** The study shall be completed and sealed by a New Jersey licensed professional engineer *[or professional planner]*.

(b) A traffic impact study shall include a narrative summary as follows:

1. The narrative summary should be in the beginning of the report and should indicate the size and type of development and the proposed access plan. It should either indicate that the access points are in conformance with the Access Code or refer to the waiver request accompanying the application.

2. The narrative summary should establish that the LOS standards set forth in N.J.A.C. 16:47-4.24 through 4.29 are met. If they are not met, the narrative summary shall evaluate and provide detailed justification for the applicant's proposals.

3. Figures should show the location of the lot and access points.

4. Any fair-share financial contributions determined necessary to mitigate traffic impacts according to N.J.A.C. 16:47-4.34 shall be generally described and illustrated.

5. Any improvements not required by these rules, but desired by the applicant, should be presented along with facts indicative of their workability.

6. Issues raised at the pre-application conference shall be addressed in summary form.

(c) A traffic impact study shall include a project description, including the following:

1. The applicant and project name;

2. A location map;

3. A project description based on sizes and land use types which are compatible with those land uses listed in the Institute of Transportation Engineers publication entitled ***"5th Edition*** Trip Generation***"***, *[4th edition,]* superseding edition or other uses listed by the Department. For land uses not listed in this source or when an applicant believes these uses are not representative, the Department may accept alternative evidence of representative uses;

4. Unique functional or operational activities which relate to atypical trip making activity such as ridesharing participation, bus intercept areas, recreational use facilities, or travel demand management plans pursuant to N.J.A.C. 16:47-4.39;

5. Project phasing identifying the year of development activities per phase and proposed access plans;

6. A transportation system inventory, which is a description of the physical, functional and operational characteristics of the study area highway system and, where appropriate, local transit service. The description should provide, where pertinent, data on:

i. Peak-hour volumes;

ii. Number of lanes;

iii. Cross section;

iv. Intersection traffic signals and configuration;

v. Traffic signal progression;

vi. Percentage of heavy trucks;

vii. Grades;

viii. Adjacent access point locations;

ix. Jurisdiction;

x. Transit *[route; and]* ***routes and stops;***

xi. Transit frequency

7. Shared access agreements; and

8. Proposed transportation improvements.

(d) A traffic impact study shall include a traffic analysis. Extensive documentation is required for the Department to review and accept the traffic volumes presented in a traffic analysis. The logic and calculations that produce these volumes must be shown.

1. For trip generation, applicants shall use the Institute of Transportation Engineers publication entitled ***"5th Edition*** Trip Generation***"***, *[4th edition,]* superseding edition, or superceding rates adopted by the Department. For land uses not listed in this source or when an applicant believes these rates are not representative, the Department may accept alternative evidence of representative rates. The rates shall be summarized in tabular form for each analysis time period and indicate size, type, and appropriate ITE land use code. The applicant must seek prior approval from the Department or request a waiver for trip generation rates other than those specified above. The documentation must cite specific locations and describe the land use in detail. Facts supporting the use of rates from these locations must be supplied.

i. The peak-hour traffic analysis must identify site, roadway, and coincidental peak-hour conditions, and the beginning and end of the peak-hour used. It shall show the combination of site and background traffic which causes the most critical impacts. The peak-hour will generally be the A.M. and P.M. weekday highway peak-hours. The Department may, depending on project characteristics, consider other peak-hours, such as Saturday afternoon or evening.

ii. For mixed-use developments, internal trips should be addressed in the trip distribution section.

2. For trip distribution, the procedure and rationale shall be documented. Trip tables for each land use on the lot shall be shown. The documentation shall tie the trip table to the data source, such as U.S. Census Journey to Work, marketing studies, or employment data. Where existing travel patterns are used for all or a component of the site's traffic, an explanation is required as to why the expected patterns are likely to replicate these existing patterns.

3. The traffic assignment shall follow logically from the trip distribution. Any special conditions must be explained.

i. Peak-hour traffic volumes covering the analysis area shall be depicted graphically. They must identify site generated, primary, passby, and total traffic.

ii. Entering and exiting traffic shall be routed on public roadways and the applicant's lot. Routing on any other lot shall meet the requirements of N.J.A.C. 16:47-3.12(m).

4. Support shall be provided for any credits or reductions for passby trips or mixed-use developments. Included shall be an explanation of how these trips are being captured and a demonstration that the existing traffic volume is high enough to support the rates used. ***Because of the highly judgmental nature of passby trips, it is important to discuss them at the pre-application conference. An agreement on the rates or an agreement on the approved can be reached at the conference.***

[i. Because of the highly judgmental nature of passby trips, it is important to discuss them at the pre-application conference. An agreement on the rates or an agreement on the approach can be reached at the conference.]

5. The study locations shall be established pursuant to N.J.A.C. 16:47-4.36.

(e) A traffic impact study may include a travel demand management plan. This is an optional plan as set forth in N.J.A.C. 16:47-4.39. ***The trip reduction anticipated in an approved travel demand management plan shall be deemed to reduce the site trips, thereby also reducing site traffic impacts and associated fair share financial obligations.***

(f) Highway traffic volumes shall be prepared for the build year or such other years as may be appropriate due to project phasing or programmed highway improvements. The traffic volumes shall be determined by applying background traffic growth rates, prepared pursuant to N.J.A.C. 16:47-4.38, to traffic counts, obtained pursuant to N.J.A.C. 16:47-4.37. The traffic volumes shall represent the traffic volumes anticipated on the date the access is to open.

(g) The traffic impact study shall include a capacity analysis.

1. The ***"*1985 Highway Capacity Manual***"*** (HCM)***, Special Report 209, or superseding issue*** is the standard for capacity analysis. The use of other procedures must be justified and documented. Capacity work sheets must be provided as an appendix to the traffic impact study. The Department will accept calculations performed using computer software based on the HCM. The Department preference is for McTrans software. The Bureau of Access and Development Impact Analysis shall approve the use of other software. Any deviation from the HCM accepted values shall be fully documented. Default values shall not be used when actual values are reasonably available or obtainable.

2. Capacity analysis shall be performed at each access point for the lot and the study locations identified in N.J.A.C. 16:47-4.36. The interaction of conflicting traffic movements shall be addressed in the traffic impact study.

3. Impacts should be evaluated with and without development traffic and with and without any proposed transportation improvements for the build years. For phased developments, no-build analyses for latter phases are not to include traffic and improvements from earlier phases of the development.

4. Alternate access availability shall be addressed.

5. The no-build analysis of future years shall be based on traffic signal timing which is possible with the existing traffic signal hardware and will be appropriate for the future year no-build traffic volumes. The build analysis may use traffic signal timing changes which are possible with the existing traffic signal hardware and comply with the standards for progression pursuant to N.J.A.C. 16:47-4.21(a)6.

6. Summary tables shall show, as appropriate to the type of analysis, volume, number of lanes, green time, volume to capacity ratio, delay, LOS, and reserve capacity for each lane group or movement on each approach. These tables shall facilitate comparison of build and no-build conditions and of existing and improved configurations based on the LOS standards. Sample summary tables are shown in Appendix M, incorporated herein by reference.

7. A fair share analysis prepared pursuant to N.J.A.C. 16:47-4.34 shall be included.

16:47-4.31 Design standards

(a) For improvements made to all State highways, except interstate highways, Department design standards shall apply. These standards are set forth in the American Association of State Highway Transportation Officials (AASHTO) publication "A Policy on Geometric Design of Highway and Streets," incorporated herein by reference, and the *"*New Jersey Department of Transportation Design Manual—Roadway*"* and the *"*New Jersey Department of Transportation Design Manual—Bridges and Structures*"*. In the case of a discrepancy, the Department manual will govern over the AASHTO publication.

(b) For interstate highways, the design standards are defined in the AASHTO publication "A Policy on Design Standards Interstate System," incorporated herein by reference. All new improvements shall conform to these standards. However, if it proves to be infeasible to do so, the improvements shall be designed to the interstate standards that were in effect at the time of the original interstate construction.

16:47-4.32 Appeal process

(a) The appeal process for minor permits is as follows:

1. The applicant shall submit a written request for reconsideration to the Regional Maintenance Office within 30 days of a notice of rejection or unacceptable permit conditions. The request shall include reasons for the appeal. Within seven days of receipt, the Regional Maintenance Office shall forward the request to the Regional Director, with pertinent documents, and advise the applicant of this action.

2. Within 10 days of receipt of the reconsideration request, the Regional Director will determine whether to grant the reconsideration request. If the request is granted, the Regional Director will schedule a meeting, within 30 days, with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Regional Director shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Regional Director denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Regional Director, the applicant may submit an appeal to the Assistant Commissioner, Construction and Maintenance, within 15 days.

4. The Assistant Commissioner, Construction and Maintenance, shall schedule an informal hearing within 10 days of his or her receipt of the applicant's appeal. At the hearing, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan.

5. In reaching the final agency decision, the Assistant Commissioner, Construction and Maintenance, shall consider the criteria set forth in the Act and these rules, the lot owner's right of reasonable access to the general system of streets and highways in the State and the public's right and interest in a safe and efficient highway system. The Assistant Commissioner, Construction and Maintenance, shall render the final agency decision, with reasons, within 10 days of the informal hearing and so notify the applicant in writing.

(b) The appeal process for all major permits, concept reviews, and developer agreements shall be as follows:

1. The applicant shall submit a written request for reconsideration to the Major Permits Unit within 30 days of a notice of rejection or unacceptable permit conditions. The request shall include reasons for the appeal. Within seven days of receipt, The Major Permits Unit shall forward the request to the Regional Design Engineer, with pertinent documents, and advise the applicant of this action.

2. Within 10 days of receipt of the reconsideration request, the Regional Design Engineer will determine whether to grant the reconsideration request. If the request is granted, the Regional Design Engineer will schedule a meeting within 30 days with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Regional Design Engineer shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Regional Design Engineer denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Regional Design Engineer, the applicant may submit an appeal to the Assistant Commissioner, Design and Right-of-way, within 15 days.

4. The Assistant Commissioner, Design and Right of Way, shall schedule an informal hearing within 10 days of his or her receipt of the applicant's appeal. At the hearing, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan.

5. In reaching the final agency decision, the Assistant Commissioner, Design and Right of Way, shall consider the criteria set forth in the Act and these regulations, the lot owner's right of reasonable access to the general system of streets and highways in the State and the public's right and interest in a safe and efficient highway system. The Assistant Commissioner, Design and Right of Way, shall render the final agency decision, with reasons, within 10 days of the informal hearing and so notify the applicant in writing.

16:47-4.33 Department initiated projects and permits

(a) The Department, either in conjunction with its construction projects or through separate access projects, may construct, revoke or modify highway access to provide access conforming to this chapter. The Department project design may use regulations in existence at the time it initiated the design of those projects that have not advanced beyond the completion of Phase 2 of the Department's plan development process.

(b) The Department's activities shall be classified as one of the following:

1. Adjustment of access:

i. This is restricted to moving access points away from the centerline of the highway, such as when the highway is widened.

ii. Lot owners will not be notified individually of the Department's decision to adjust an access point unless right-of-way is also being acquired. Public notice of the project will be provided prior to the beginning of construction.

iii. The Department may issue permits to the owners of lots that did not have issued permits or lots with grandfathered permits.

2. Modification of access:

i. This is restricted to changing the number of access points, changing the width of an access point by more than five feet, and changing the location of an access point by more than 10 feet. The changes shall be in accordance with the requirements of N.J.A.C. 16:47-3.4, 3.5 and 3.8. The modifications shall enable continuation of the apparent existing use on the lot;

ii. The Department shall notify each lot owner in writing of the proposed access modification and provide the lot owner with a plan showing the modification prior to beginning construction;

iii. The Department shall issue permits to the owners of lots with modified access; or

3. Alternative access;

i. This is restricted to providing access to a road other than the subject State highway and shall be administered as a revocation;

ii. The Department shall notify each lot owner and lessee, of the proposed alternative access, include a copy of the plan, and file a copy of the plan with the municipal clerk and the planning board secretary of the municipality. ***If the alternative access is to a county road, the Department shall also send a copy of the plan to the county clerk and county planning board.***

iii. The notice shall indicate that the lot owner has a right to a hearing regarding the revocation of the existing access and the sufficiency of the proposed alternative access;

iv. The lot owner shall respond to the Department in writing within 30 days of receipt of the notice, advising the Department of either the acceptance of the alternative access plan or the appeal of the plan. The Department shall deem the lot owner's failure to respond to the notice as a waiver of the owner's right to a hearing. Any requested hearings on the appeal shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and shall be held at least 90 days after the notice required in (b)3ii above;

v. The Department may hold an informal meeting with the lot owner to resolve any differences;

vi. The Department shall issue permits to the owners of lots with alternative access;

vii. When the Department revokes the State highway access permit for an existing developed lot and provides alternative access onto a local road, the Department shall be responsible for addressing the local road impacts caused by the diverted traffic from the development as specified in N.J.A.C. 16:47-4.3(n)6 *[(see Appendix H, Case 1)]*. ***The Department shall administer this provision as shown in Appendix H, incorporated herein by reference.***

(c) Permits issued by the Department for Department initiated actions shall be at no cost to the lot owner.

16:47-4.34 Fairshare financial contributions

(a) The Department may require fair-share financial contributions towards the cost of constructing capacity improvements to the State highway system necessitated by traffic attributable to the development of the lot ***at those study locations determined in accordance with N.J.A.C. 16:47-4.36 where the LOS violates the standards set forth in N.J.A.C. 16:47-4.24 through 4.29***. These improvements may include roadway and structure widenings, frontage roads, intersection improvements, structures, reverse frontage roads, and alternative access. Alternately, the Department may permit the applicant to construct the improvement at the applicant's expense and under Department supervision.

(b) Those improvements which benefit only the applicant shall be entirely the applicant's responsibility and are not considered in the fair share determination. Examples of this are acceleration and deceleration lanes for access points, left turn slots which only provide access to a site, and traffic signals located at the applicant's driveways.

(c) If a lot falls within the boundaries of a designated Transportation Development District (TDD) and the development is subject to a TDD fee assessment, then the Department can only require financial contributions towards the cost of constructing capacity improvements to the State highway system outside the TDD boundaries.

(d) Applicants are responsible for the fair share of the cost of mitigation at each study area location where a LOS violation occurs as determined by analysis pursuant to N.J.A.C. 16:47-4.36.

(e) Site traffic is comprised of the LOS violation component and the acceptable component, as follows: Site Traffic = LOS Violation Component + Acceptable Component. The LOS violation component is comprised of those ***site generated*** trips which violate the LOS standards ***at study locations determined in accordance with N.J.A.C. 16:47-4.36***. The acceptable component is comprised of those ***site-generated*** trips which do not violate the LOS standards.

(f) Mitigation at each location pursuant to (a) above shall add capacity sufficient to accommodate *[the background traffic anticipated to exist when]* ***the anticipated increase in traffic between build and no-build conditions at the time*** the access opens *[and the applicant's site traffic]* without violations of the LOS standards in N.J.A.C. 16:47-4.24 through 4.29. Mitigation shall also be compatible with, but shall not exceed, the desirable typical section for the State highway segment as shown in Appendix B.

(g) The capacity increase created by mitigation shall be equal to the capacity after mitigation minus the capacity before mitigation as reflected in the following formula: Capacity Increase = Capacity After Mitigation—Capacity Before Mitigation. "Capacity" means the maximum traffic volume possible with LOS E. The only *[exception is minor]* ***exceptions are non-State highway*** approaches to signalized intersections, which shall not be at capacity until *[the]* ***a lane group*** V/C ratio equals 1.2. Capacity before mitigation will be that of the analysis point's existing configuration under prevailing traffic conditions, such as peak-hour factor and heavy vehicle factor, given the pattern of existing traffic. Capacity after mitigation will be that of the analysis point's proposed (mitigated) configuration under prevailing traffic conditions, such as peak-hour factor and heavy vehicles factor, given the pattern of existing traffic combined with site traffic. When more than one measure of level of service is possible at an analysis point, such as the various movements at an intersection, then the most sensitive measure shall determine the capacity. *[Volumes]* ***Traffic volumes*** for all movements shall be factored by a constant so that all movements will remain a fixed percentage of the total volume at the analysis point until the maximum attainable volume is achieved without the capacity of any movement being exceeded. The sum of the ***traffic*** volumes of all movements is the capacity for that *[scenario]* ***analysis point. At signalized intersections where the level of service of each movement is not a direct function of the traffic volume of another movement, each lane group may be factored independently to determine its capacity, and the lane group capacities added to determine the capacity of the entire intersection. In factoring the lane groups, the traffic volumes should not exceed those which can be reasonably expected to occur at the entire intersection.***

Capacity Increase = Capacity After Mitigation–Capacity Before Mitigation*

(h) The fair share proportion at a location shall be equal to the LOS violation component divided by the capacity increase, as reflected in the following formula:

$$\text{Fair Share Proportion} = \frac{\text{LOS Violation Component}}{\text{Capacity Increase}}$$

(i) The cost of mitigation at a location shall be the cost for the Department to provide the mitigation. This includes:

1. Design of the mitigation;
2. Right-of-way appraisal and acquisition;
3. Construction of the mitigation;
4. Management of the construction; and
5. Environment cleanup, permits and mitigation.

Mitigation Cost = Sum of the above mitigation elements

(j) The fair share at a location shall be equal to the fair share proportion times the cost of the mitigation, as reflected in the following formula: Fair Share = Fair Share Proportion × Mitigation Cost.

(k) The fair-share financial contribution shall be equal to the sum of the applicant's fair shares at all locations where level of service violations occur. If, in the Department's sole discretion, it does not anticipate that the mitigation identified for a location in (f) above will be implemented within 15 years of the date of the permit, then the applicant shall have no fair share responsibility at that location. If the application qualifies for reduced fees as set forth in N.J.A.C. 16:47-4.6(b), then the total fair share for the residential component of the lot shall be reduced by the same proportion as the low and moderate income units to the total number of units covered by the application.

(l) If the Department permits the applicant to construct highway improvements under (a) above, then these improvements are to be at locations***, studied in accordance with N.J.A.C. 16:47-4.36,*** where LOS violations occur. In determining the highway improvement to be constructed as a condition of permit approval, the Department shall consider the needs of the applicant and the public.

(m) The Department shall hold all fair-share financial contributions in a designated account which shall identify the fair share amount for each location. Funds may be expended on any of the activities listed in (i) above for any locations identified in (d) above. The Department and the applicant may agree to apply the fair share financial contribution to improvements at less than all of the identified locations. The Department shall refund any *[contributions]* ***contribution and accrued interest*** applicable to the improvement of an identified location if the improvement is not implemented within 15 years. The refund shall be made to the owner of the lot at the end of the 15 years.

(n) If the Department accepts a right-of-way dedication, the value of dedicated lands shall be a credit against the fair share financial contribution.

(o) The Department will not require fair share financial contributions towards the cost of highway improvements which the Department does not expect will be constructed within 15 years. However, the Department may not approve applications if it finds unacceptable the condition that would be caused by the addition of site traffic to a location which will not be improved within 15 years.

(p) The Department may release fair share financial contributions and accrued interest, or any portion thereof, to any federal,

state, regional, or local entity, or to any person or private entity as the Department deems appropriate for the implementation of highway improvements at locations identified in (d) above.*

16:47-4.35 Waivers

(a) No waivers or other relief from design standards or other provisions of N.J.A.C. 16:47-3 and 4 may be granted unless the waiver can be granted without substantial detriment to the safety and operation of the highway and without substantially impairing the intent and purpose of the Act and this Access Code. The Department will not grant waivers from fees, but may waive application requirements or the requirements for applicants.

(b) If an applicant wishes to seek a waiver, a request must be submitted as an attachment to the permit application. The request for waiver shall state reasons why a waiver is appropriate and include documentation to support the waiver.

(c) If a waiver is granted, the approval will be incorporated in the conditions of the permit.

(d) *[The following may be used to support a waiver request]* ***Possible bases for waiver requests include, but are not limited to***:

1. Existing substandard conditions;
2. Existing social, economic or environmental constraints;
3. Unique character of a lot;
4. Unreasonableness of strict application of the Access Code under particular circumstances;
5. A boundary such as urban/rural, speed limit, or access classification falling within the frontage of the lot;
6. A lot within an urban enterprise zone;
7. Conflict between the requirements of the Access Code and the requirements of:

i. The Pinelands Commission or the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;

ii. CAFRA:

iii. The Freshwater Wetlands Act, N.J.S.A. 13:9B-1 et seq.;

iv. The Stream Encroachment Act, N.J.S.A. 58:16A-50 et seq.; and

v. Federal Flood Hazard Zone Regulations.

8. Lower access classification or capacity of the State highway than that applicable to an intersecting county or municipal street;
9. Municipal, county or other approving agency imposition of conditions beyond the control of the applicant. If this occurs during the Department application process and the applicant provides documentation of these conditions, the Department will not require a new application and fees as specified in N.J.A.C. 16:47-4.8(h), 4.11(h) and 4.13(i);
10. Low or moderate income housing, proposed pursuant to the Fair Housing Act, P.L. 1985, c.222, N.J.S.A. 52:27D-301 et seq., or under court settlement; and
11. The applicant can provide evidence that the major or minor type of permit which the Department would determine pursuant to N.J.A.C. 16:47-4.4 is inappropriate. This may include alternative evidence for traffic generation, pursuant to N.J.A.C. 16:47-4.4(f), which differs from the information in Appendix E.

(e) Any waiver granted shall only be considered a waiver of a particular standard or provision. It shall not constitute an approval of an application.

(f) The Department shall not grant a waiver associated with N.J.A.C. 16:47-3.5(a)4 which would reduce the spacing distance to less than the distance required at five miles per hour less than the posted speed limit.

(g) The Department shall not grant a waiver associated with N.J.A.C. 16:47-3.8(c)2 for a curbline opening exceeding 80 feet. The Department may approve curbline openings and driveway widths for non-residential driveways *[per N.J.A.C. 16:47-3.8(c)]* which exceed, but *[be]* ***are*** as close as possible to, the maximum desirable width when:

1. There is no highway shoulder or auxiliary lane and at least two large trucks per peak hour or 10 large trucks per day will use the driveway; and
2. The geometry precludes safe turns as a result of the shape of the lot or its location on the highway.

(h) The Department shall not grant a waiver associated with N.J.A.C. 16:47-3.3(d) which would reduce the interchange spacing distance to less than one-half mile on a State segment classified as urban or less than one mile on a State highway segment classified as rural.

16:47-4.36 Traffic impact study area

(a) Traffic impact study locations shall be established as follows:

1. The half of each trip furthest from the site shall be eliminated. The applicant's responsibility for all trips between the lot and another destination ceases at the midpoint of each trip. This determination shall be made based on a trip table which identifies origins and destinations.

[(b)] ***2.*** Those locations having the greater of 100 new half-trips during the highway or site peak-hours or 10 percent of the anticipated ***daily*** site traffic shall be analyzed. Intersections, uninterrupted flow sections, weaving sections, merges, and diverges are examples of locations which are subject to analysis.

3. Driveways to lots except for the applicant's driveways shall not be considered study area locations.

16:47-4.37 Traffic counts

(a) Traffic counts shall be taken by the applicant or, if available at the Department, obtained from the Department for locations within the study area to be analyzed.

(b) Traffic counts shall be shown by 15-minute intervals over a period long enough to establish a peak hour. This period is generally two hours. During this period, there shall be no conditions such as detours, accidents, or inclement weather that could affect traffic volumes. Traffic counts shall not be taken on or near holidays or other special events when traffic may not be representative of average daily traffic.

(c) Traffic counts performed outside the seasonal peak period shall be adjusted to the peak period. Traffic count data taken within 12 months of the application date are required. Classified manual turning-movement counts for one day shall be supported by one week of machine counts. To be acceptable, a manual count must be within 10 percent of the machine count on each approach that day, considering the total for the manual counting period. Weekday peak-hour manual counts shall be factored to agree with the weekday machine count for the highest hour of the week. Saturday manual counts, if within 10 percent of the machine counts, need not be factored but shall encompass the machine peak hour for the day. There shall be a machine count for each approach to a signalized intersection. All count material shall be included in *[to]* the traffic impact study as an appendix. The Department may require evidence of proper calibration of automatic traffic recorder (ATR) equipment.

(d) Vehicle classification must be sufficient to address the needs of the capacity analysis in N.J.A.C. 16:47-4.30(g). However, where large percentages of multi-axle vehicles are present it may be necessary to more finely stratify the classification in order to conform to the machine count.

(e) *[When a large number of counts are required at adjacent intersections, some economies of scale may be possible with regard to machine counts.]* At or after a pre-application meeting, the Department may approve alternative proposals for counting programs as long as they conform to the intent of (b) through (d) above.

16:47-4.38 Background traffic growth rates

(a) The Department shall publish background traffic growth rates which cover the entire State.

(b) These rates are only for use for access applications submitted to the Department.

(c) The Department shall update these rates every two years.

(d) Background traffic growth rates do not include specific developments. Applicants shall add to background traffic the average anticipated traffic from major traffic generators which:

1. Existed, but were inactive, at the time the applicant took traffic counts;
2. Were under construction at the time the applicant took traffic counts;
3. Opened since the applicant took traffic counts; and

4. Were issued an access permit by the Department since the applicant took traffic counts.

16:47-4.39 Travel demand management plan

(a) The Department encourages, but does not require, applicants to submit a travel demand management (TDM) plan to reduce vehicle miles of travel to and from the lot and to seek active participation from a transportation management association serving its area to act as an advisor to the site development plan. The Department reserves the right to require an applicant to comply with the provisions of a proposed travel demand management plan as a condition of an access permit.

(b) A travel demand management plan contains specific strategies which focus on reducing travel, especially peak-period travel. It is a plan that uses the existing transportation infrastructure more efficiently. The strategies that can be implemented at a worksite are TDM strategies.

(c) Any mode-share adjustments to lot-generated vehicular activity shall be justified and documented. The projected vehicle miles of travel to and from the lot may be reduced if the lot is located within one-quarter mile of an existing public transportation service, such as a public bus line, a rail transit line, a commuter railroad station, or a passenger ferry (waterborne) service. The availability of adequate and convenient public transportation service to areas of prospective employee, tenant and customer origins and destinations shall be substantiated.

(d) The goals of a TDM plan are to reduce traffic congestion, air pollution, energy consumption, and the costs of commuting to work. The objectives are to increase the number of commuters arriving at work, beyond those that would occur without incentives, by, but not limited to, carpools, vanpools, public transportation, bicycles, and walking and to increase the number of commuters who work on a variable work-hour schedule or work from home. These objectives are accomplished by implementing any of the following array of strategies to change commuting behavior which include, but are not limited to:

1. Buspool or subscription bus;
2. Carpool;
3. Alternative work-hour programs;
i. Compressed work weeks;
ii. Flextime; and
iii. Staggered hours.
4. Satellite office;
5. Telecommuting;
6. Vanpool;
7. Bicycling;
8. Walking; and
9. Shuttle services.

(e) The TDM plan should include a traffic reduction program which will specify the measures the lot owner will accept as permit conditions to reduce total peak-period travel and concentration of trips. The plan may include, but need not be limited to:

1. Facilitating employee use of public transportation;
2. Facilitating employee use of carpools/vanpools;
3. Establishing and facilitating employee use of alternative work-hour programs;
4. Encouraging and facilitating employee use of bicycling and walking;
5. Consolidating courier services;
6. Working with transit providers to establish new service;
7. Establishing a transportation office with an employee transportation coordinator; and/or
8. Working with a transportation management association to provide information and assistance to employees.

(f) The TDM plan may include, but not be limited to, the following measures, which are applicable to the lot:

1. Preferred parking for carpool/vanpool participants;
2. Construction of transit shelters;
3. Round-trip shuttle service between the lot and a train or bus station or remote parking facilities;
4. Establishment of an in-house or third-party vanpool program;
5. Establishment of an information center or contracting with a TMA to coordinate carpool/vanpool and transit efforts among *[smaller]* businesses within a complex;
6. Establishment of access and safety programs for pedestrians and bicyclists;
7. Selling transit passes or providing transit subsidies; and/or
8. Consolidating self-contained services to minimize the need for travel for nonwork trips, such as postal service, food services, and internal convenience shopping facilities.

(g) The applicant may include a travel demand management plan designed to encourage residents and employees use of ridesharing programs and mass transit. Such measures could include provision of vanpool or park and ride parking lots or building and maintaining shelters at public transportation pick up points. If the applicant incorporates such measures, then follow-up status reports could be required. If the applicant incorporates a travel demand management plan, then the applicant shall provide the Department with annual follow-up status reports.

16:47-4.40 Lot consolidation or subdivision permits process

(a) The Regional Maintenance Office will determine whether an application meets the criteria for the type of application applied for and the application is acceptable for review. The Regional Maintenance Office will then send a written notice of these determinations to the applicant within 10 days of receipt and forward those applications it deems acceptable to the Major Permits Unit. The Major Permits Unit will send notice of acceptability of the application to the applicant within 30 days of receipt by the Department.

(b) The application will be reviewed and either approved or denied within a maximum of 45 days. A permit will be issued within a maximum of 50 days of receipt of a complete application if the application is approved.

(c) The Regional Maintenance Office will advise the applicant of the results of the Department's review. If the application is approved, the Regional Maintenance Office will request from the applicant submission of the permit documents and the permit fee.

(d) The applicant shall submit the completed and signed permit documents and permit fee to the Regional Maintenance Office within 180 calendar days of the Regional Maintenance Office notice of approval. Applicants failing to respond on time will have their applications rejected.

(e) When the Department requests information from the applicant, the step in the process and its associated time frame will restart once the Department receives the information. ***If the applicant does not provide the Department with the requested information within 90 days of the request, the application shall be considered withdrawn.***

(f) If the Regional Maintenance Office or Major Permits Unit finds either the same form deficiency or the same technical content deficiency three times in an applicant's submissions, then the application will be rejected and the applicant must reapply and submit a new application and fee.

(g) If the applicant changes the proposed lot consolidation or subdivision in response to Department comments, a new application and fee will not be required unless the applicant fails to eliminate all deficiencies within three submissions. If the applicant unilaterally changes the lot consolidation or subdivision, however, a new application and fee shall always be submitted.

(h) A lot consolidation or subdivision permit only applies to lot consolidation or subdivision. Such a permit does not authorize any physical change, only changes to lot lines. Any *[changes]* ***change*** to an existing access point or the addition or removal of an access point *[shall be covered]* ***must be authorized*** by an access permit instead.

16:47-4.41 Lot consolidation or subdivision permits checklist

(a) Applications for lot consolidations or subdivisions shall be accompanied by eight copies of detailed plans to a scale of one inch equals 30 feet or one inch equals 50 feet. Plan sheet size shall not exceed 24 inches by 36 inches.

(b) The following information shall be submitted for both the lot consolidation and subdivision applications:

1. Site location map (The Key map must reference at least two cross streets on each side of the property, milepost, north arrow and scale);
2. Zoning designation for lot;
3. Copy of tax map showing existing: block number, lot number and lot lines;
4. Topography, on the lot and its frontage;
5. Length of lot frontage along highway and frontage of next adjacent non-single-family residential lots;
6. Locations of all existing lot driveways;
7. Curbline openings;
8. Driveway width;
9. Driveway alignment with respect to the highway;
10. Edge clearance;
11. Corner clearance;
12. Driveway and island radii;
13. Number of existing units for residential use; rooms for hotels and motels; square footage for retail, office, and warehouse; or appropriate unit of measure for other land use;
14. Type of vehicles anticipated;
15. Estimated 24-hour and highway peak-hour traffic count for the existing development on the lot(s) and each access point;
16. Dimensions from the lot line to the edge of pavement; and
17. Copies of transmittals of duplicate applications to the municipal clerk and county planning board.

SUBCHAPTER 5. PROCEDURE FOR CHANGES IN CLASSIFICATION

16:47-5.1 Requests for change in classification

(a) Any person may request a change in the access classification of a segment of the State highway system, ***including, but not limited to, the access level, the desirable typical section, and the access class.*** *[provided that the]* ***The*** proposed change *[is]* ***shall be*** for the following segment length or greater:
1. Accessible principal arterials—one mile;
2. Minor arterials—one-half mile;
3. Major or minor collectors—one-half mile; and
4. Local roads—one-half mile.

(b) Any request to change the access classification of a segment of the State highway system made pursuant to the procedures described in this subchapter is in addition to, and not in lieu of, any other administrative or other remedy a person may have under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., or any other law.

16:47-5.2 Application requirements for change in classification

(a) Each request for a change in access classification shall be made on an application form prescribed by the Commissioner and shall be submitted to:

Commissioner, Attention: Bureau of Access and Development Impact Analysis
N.J. Department of Transportation
CN 609
1035 Parkway Avenue
Trenton, New Jersey 08625

(b) The application shall include:
1. A map at a scale of one inch equals 100 feet, one inch equals 200 feet, or one inch equals 400 feet, showing the route number, the highway segment for which the change is proposed, the counties and municipalities within which the segment is located, the cross-streets nearest the segment ends, and, if such information is available, the limits by milepost;
2. A description of the roadway segment, including segment length;
3. The existing number of lanes in each direction;
4. Whether a median or divider is present;
5. Existing land uses and intensity of use;
6. A list of lots for which development applications have been filed and the nature of such applications;
7. Existing zoning;
8. The current access classification or classifications for the segment;
9. The proposed access classification or classifications;
10. A statement of justification supporting the proposed change, identifying *[those]* factors ***such as muncipal and county master plans*** that would indicate that the segment's present access classification requires modification and *[indicating]* ***identifying*** the negative consequences, if any, of retaining the current access classification;
11. Any other relevant data supporting the need to change the access classification; and
12. Copies of notices sent return receipt requested to the owners of all lots located along and within 200 feet beyond the ends of the subject highway segment. The notices shall advise the owners that they have 10 days in which to submit comments regarding the proposed change directly to the address specified in (a) above.

16:47-5.3 Review of application

The Bureau of Access and Development Impact Analysis shall notify the applicant within 20 days of receipt thereof as to whether or not the application is complete. ***If the application is incomplete, the notice shall list those items needed to complete the application.*** The applicant may submit within 60 days of the date of a notice that the application is incomplete such additional information as is necessary to complete the application. The Bureau of Access and Development Impact Analysis shall notify the applicant within 20 days of receipt of additional information as to whether or not the application is complete. The application shall be rejected if the Commissioner determines that a complete application has not been submitted within the specified period of time.

16:47-5.4 Notice to counties, municipalities, and metropolitan planning organizations

The Manager, Bureau of Access and Development Impact Analysis, shall forward a copy of the completed application, within 10 days of the date of the notice of a complete application, to all county and municipal clerks and the metropolitan planning organization within which the segment is located.

16:47-5.5 Decision on request for classification

(a) In evaluating the application, the Commissioner shall consider the existing access classifications of adjacent segments of the State highway system and the county and municipal road networks, conformity with municipal and county master plans and development ordinances and with the State Development and Redevelopment Plan, access classification criteria set forth in N.J.A.C. 16:47-2.1, and other appropriate factors.

(b) The Commissioner shall advise the applicant in writing within 50 days of the receipt of a complete application as to whether or not the classification change request has been accepted or rejected and, in either case, shall provide the applicant with reasons for the determination.

(c) Any accepted change in the access classification of a segment of highway shall be promulgated as an amendment to N.J.A.C. 16:47-2.1, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. A proposed change is subject to a public comment period of 30 days.

16:47-5.6 Petition for reconsideration

(a) The applicant may petition the Commissioner in writing within 20 days of receipt of the Commissioner's determination to reject the requested change in classification for reconsideration of that determination. The petition must set forth the reasons why reconsideration is being sought and must set forth, in full, any additional information supporting the request for a change in classification.

(b) The Commissioner shall advise the applicant in writing within 10 days of receipt of the reconsideration petition as to whether or not reconsideration has been granted. ***If reconsideration is not granted, the Commissioner shall advise the applicant of the reasons for such a determination.*** The Commissioner shall advise the applicant within 30 days of a decision to grant reconsideration, as to whether or not the application has been approved or rejected upon reconsideration ***and state the reasons for the decision***.

SUBCHAPTER 6. ACCESS MANAGEMENT PLANS

16:47-6.1 Authority

(a) The Commissioner may adopt access management plans for State highways provided that the following conditions are met:

1. The governing body of the municipality has incorporated the access management plan conditions into its land development ordinances and master plan as set forth in N.J.A.C. 16:47-6.7;

2. The access management plan complies with or exceeds the standards established in N.J.A.C. 16:47-2, 3 and 4 of the Access Code**, as modified by those waivers which meet the requirements set forth in N.J.A.C. 16:47-4.35***; and

3. An appropriate means of access has been identified in such plan for every lot within the subject **State** highway segment.

16:47-6.2 Effect of adoption

(a) An access management plan, when adopted by the Commissioner, shall be binding upon the Department and upon the municipalities and counties which have modified their master plans and development ordinances in accordance therewith. All approvals and decisions shall be in accordance with the access management plan.

(b) An adopted access management plan may not be abandoned by any party without the joint agreement of all parties.

(c) An adopted access management plan may not be revised except in the manner set forth in N.J.A.C. 16:47-6.10.

(d) An adopted access management plan shall govern access on the subject **State** highway segment. When an access management plan is adopted for a State highway segment that serves as a boundary between two or more counties or municipalities and one or more of the counties or municipalities on one side of the State highway choose not to participate, then the access in the nonparticipating entities shall be compatible with the adopted access management plan.

16:47-6.3 Effect on access applications prior to approval of an access management plan

The standards governing access onto the State highway system set forth in N.J.A.C. 16:47-3 and 4 shall apply to all access permits for lots which are not subject to an adopted access management plan, and decisions on permit applications may not be delayed or deferred pending adoption of an access management plan. ***The provisions of an adopted access management plan shall only apply to complete access applications received by the Department after the date of adoption, unless the applicant agrees to comply with the anticipated provisions of a pending access management plan.***

16:47-6.4 Contents

(a) The access management plan shall consist of a report and map:

1. The report shall identify the following:

i. The subject highway segment by route number, directions, and milepost limits;

ii. All existing and future access points and shared access points on the State highway and alternative access points on parallel or perpendicular streets;

iii. All participants in the joint planning process;

iv. All transportation development districts located in whole or in part within the study area;

v. Any transportation management associations serving the study area;

vi. Any contiguous municipality or county where proposed improvements may be located;

vii. The vehicular use limitations for all nonconforming lots;

viii. Projections of traffic generation based on *[the]* zoning *[of]* ***and other regulatory constraints applicable to*** all conforming lots;

ix. Projections of State highway traffic volumes based on buildout and the capacity of the desirable typical section; *[and]*

x. Recommendations for changes to the access classification or desirable typical section*[.]***; and***

xi. Any public transportation facilities and routes and bicycle paths in the study area.

2. The report may also identify the following:

i. The estimated cost of the proposed improvements;

ii. The cost shares to be borne by the Department and participating public agency;

iii. The responsibilities of each of the participants for the improvements contemplated by the plan;

iv. The manner in which the timing and sequence of construction of the improvements is to be determined;

v. Provisions for temporary access pending completion of the improvements set forth in the access management plan; and

vi. Other appropriate factors.

3. The map shall be at a scale of one inch equals 100 feet or one inch equals 200 feet, shall be on sheets no larger than 24 inches by 36 inches, and shall include:

i. The subject highway segment with route number;

ii. The study area*[, which]* shall extend 1,000 feet beyond each end of the subject highway segment and have a width of at least 500 feet from the centerline of such segment. The study area shall include all lots having frontage on the State highway in their entirety, proposed improvements, and all other lots on which the proposed improvements will be located;

iii. Tax map block and lot, current land use, and zoning classification for each lot within the study area;

iv. The boundaries of all municipalities and counties located within the study area;

v. All existing and proposed roadways and driveways intersecting the subject highway segment and any other roadways and driveways which provide access from lots fronting on the subject highway segment;

vi. All existing traffic control devices along the subject highway segment and access points;

vii. A scaled plan setting forth in schematic form the proposed improvements intended to provide access to the general systems of streets and highways for each lot having frontage on the subject highway segment for which access is designed and for any other lot for which the access management plan has designed access; and

viii. Highway lighting and underground utilities ***within State highway right-of-way***.

16:47-6.5 Process

(a) The Department may propose the development of an access management plan for any lots fronting on any segment of the State highway system. The proposal shall be initiated by notice to:

1. The mayor of any municipality within which the subject highway segment is located;

2. The mayor of any other municipality within which any proposed improvements designed to provide access to lots fronting on the segment are located;

3. The mayor of any municipality whose local roads would provide access from the lots covered by the access management plan to the subject highway segment;

4. The chief governing official of any county within which the segment is located if a county road intersects such segment;

5. The mayor or chief governing official of any contiguous municipality *[or]* ***and chief governing official of any*** county if the improvements contemplated by the access management plan necessitate coordinated improvements in such municipality or county or if the cooperation of such municipality and county is otherwise necessary;

6. The heads of transportation development districts within which the proposed improvements or lots for which access is designed are located;

7. The heads of transportation management associations whose geographical jurisdiction encompasses all or a portion of a subject highway segment;

8. The heads of independent toll road authorities having jurisdiction over a roadway or ramp intersecting the subject highway segment; and

9. The heads of the metropolitan planning organizations whose geographical jurisdiction encompasses all or a portion of a subject highway segment.

(b) Any municipality may notify the Department by letter addressed to the Commissioner, Attention, Bureau of Access and Development Impact Analysis, New Jersey Department of Transporation, CN 609, 1035 Parkway Avenue, Trenton, New Jersey 08625, of a proposal to develop an access management plan for lots fronting on a subject highway segment, provided that the municipality is one within which such segment is located or is one within which improvements proposed to be made as part of the plan or are located or within which a municipal road which would provide access to the lots fronting on the segment is located. At the same time, the municipality shall notify these persons identified in (a) above. Any county interested in initiating an access management plan for a State highway shall ask the affected municipalities to proceed as required in this subsection.

(c) The public agency initiating the proposal shall bear 50 percent of the cost of developing the access management plan, and the remaining cost shall be shared equally by the other public agencies participating in the joint planning process, except that the expenses for reproduction, travel, communication, and supplies shall be borne by each public agency. Costs to be shared shall include the time of on-staff professionals and of consultants. In the case of joint initiation, one public agency shall be designated as the initiator and shall be responsible for conveying the 50 percent cost share to the Department.

(d) The Commissioner shall arrange for a preliminary meeting or meetings as soon as practical between representatives of the Bureau of Access and Development Impact Analysis and the public agencies which received notice pursuant to (a) above. In the case of a municipally-initiated proposal, however, the first meeting shall take place not later than 60 days after receipt by the Commissioner of the notice from the municipality. At the meeting or meetings, the public agency initiating the proposal shall present such proposal in such detail as it deems appropriate.

(e) The Commissioner, within 30 days of the last preliminary meeting, shall send to the represented public agencies written notice of the Department's decision whether or not to proceed with the development of the access management plan.

(f) Should the invited municipalities and counties decide to proceed with the development of the access management plan, the municipal governing body or county board of chosen freeholders shall, after receipt of a written notice from the Commissioner indicating that the Department agrees to proceed, adopt resolutions:

1. Agreeing to enter into the joint planning process with the Department;

2. Agreeing to share in the cost of developing such plan, either by providing in-kind services or cash contributions, and specifying the respective shares of each municipality and county and of the Department; and

3. Designating a primary contact person who shall be authorized to act on behalf of the municipality or county.

(g) Should any of the heads of organizations listed in (a)6 through 9 above receiving notice decide to participate in the development of the access management plan, they shall notify the Commissioner thereof, in writing, and, when so doing, designate a primary contact person.

(h) The Commissioner, shall notify each primary contact person, within 120 days of sending the notice pursuant to (e) above, that all resolutions have been received and that the joint planning process may begin. The date of this notice shall be known as the start date for the proposed access management plan. The Commissioner may also, at his or her discretion, provide such notification even if:

1. A municipality or county does not submit such resolution, in which case the access management plan shall not set forth means of access to or improvements on lots within such county or municipality; or

2. An independent toll road authority, transportation development district, transportation management association, or metropolitan planning organization fails to provide notice.

(i) The primary contact people shall constitute the working committee for the access management plan and shall be jointly responsible for maintaining the progress of the work activities. The committee shall be chaired by the Department's primary contact person. Meetings shall be held as often as necessary to formulate the access management plan, but no less than once a month. All primary contact people shall receive advance written notice of the meetings.

(j) A progress report signed by all members of the working committee shall be submitted to the Commissioner every 90 days from the start date.

(k) The committee shall submit the proposed access management plan, in the form of the report and map set forth in N.J.A.C. 16:47-6.4, to the Commissioner within 360 days of the start date or such later time as may be agreed to by the Commissioner upon a showing by the working committee that completion within the required time is impractical. The extension shall be no greater than 180 days. At the time the proposed access management plan is submitted, each contact person, other than the Department representative, shall submit a resolution from the governing body of his or her municipality or county approving the draft access management plan. At such time, the working committee shall also submit such background reports as are necessary. Such reports shall include at least the names of the working committee members, a chronicle of the start and the completion dates of the different tasks, copies of all municipal and county resolutions, and a complete set of all progress reports and such engineering plans as have been prepared in support of the access management plan.

16:47-6.6 Public notice and hearing

(a) The Department, municipalities, and counties participating in the joint planning process, upon completion and submission of the access management plan, shall hold a public hearing thereon at a location designated by the Commissioner. A minimum of 15 days notice thereof shall be provided in a local newspaper of general circulation and by mail to owners of lots for which access is designed and upon which any improvements set forth in the plan are located, and to all municipalities and counties located within 200 feet of such lots. The notice shall give the time and place of the hearing and provide that public comments on the proposed plan may be made to the Commissioner.

(b) The working committee shall meet and review the comments made during the public comment period within 60 days after the public comment period. It shall make whatever amendments to the access management plan are appropriate in light of the comments and within 60 days of such meeting, submit any revisions to the plan to the Commissioner. Such revisions shall be signed by all members of the working committee. Revisions that propose changes in the location, but not the number, of driveways and streets shall be classified as minor revisions and shall not require a new public hearing. All other revisions shall be classified as major, unless otherwise designated by the Commissioner, and shall require a new public hearing.

16:47-6.7 Incorporation

Upon completion of the review of public comments by the working committee and such revisions to the access management plan conditions as may be made, the governing bodies of the municipalities and counties which participated in the joint planning process shall incorporate the access management plan into their land development ordinances and the planning boards of such municipalities and counties shall amend their master plans to incorporate the access management plan. Certified copies of the ordinances and master plan amendments shall be forwarded to the Commissioner.

16:47-6.8 Termination or withdrawal

(a) The Commissioner may terminate the work activity if the working committee fails to complete the draft access management plan or to review the public comments and revise the access plan in a timely manner, or the municipalities or counties fail to adopt the ordinance and master plan amendments. In the case of withdrawal by the Department, the work activity shall terminate.

(b) Any participant in the joint planning process may withdraw at any time by so notifying all other participants thereof. The notice shall state the reasons for such withdrawal. In the case of withdrawal

by a municipality, the work activity shall terminate in that municipality.

(c) Upon withdrawal or termination, each party shall pay its share of the cost expended to date for developing the access management plan.

16:47-6.9 Adoption

Within 60 days of receipt of all of the municipal ordinances and master plan amendments, the Commissioner shall incorporate the access management plan into the Access Code in the manner established for adoption of rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

16:47-6.10 Access permit coordination

Upon the adoption of the access management plan, access permits along the highway segment will be processed according to N.J.A.C 16:47-4.17.

16:47-6.11 Revisions

(a) The Commissioner and any muncipality *[or]* *,* county*, **or other noticed public agency listed in N.J.A.C. 16:47-6.5(a)*** which participates in an access management plan may request a revision therein by mailing a letter to all participants setting forth the proposed changes. Within 60 days of such notification, the Commissioner shall schedule a meeting of all members of the original working committee, or such successors as are designated to discuss the revisions. This subsequent working committee shall at least contain representatives from the Department and the municipality. The Commissioner shall determine within 30 days of such meeting whether the proposed revisions are major or minor. The Commissioner shall classify proposed revisions as minor whenever such revisions propose changes in the location of, but not in the number of, driveways or streets which are the subject of the access management plan or whenever it is determined that the proposed revisions should otherwise be treated as minor. All other proposed revisions shall be treated as major. Major revisions may require additional study and shall require public notice and hearing as set forth by N.J.A.C. 16:47-6.6. Major revisions shall also require acceptance by the working committee, adoption of conforming municipal and county ordinances and master plan amendments, and incorporation into the Access Code by the Commissioner. Revisions shall be completed and submitted within the time frame and in the manner set forth in (b) and (c) below.

(b) Minor revisions shall require acceptance by the working committee, adoption of conforming municipal and county ordinance and master plan amendments, and incorporation into the Access Code by the Commissioner. They shall be accepted by the working committee within 90 days of the first meeting of the committee. The party initiating the proposed revisions shall be responsible for all costs associated with reevaluating and changing the access management plan.

(c) Major revisions may require additional study and shall meet all requirements set forth in N.J.A.C. 16:47-6.5 through 6.9.

SUBCHAPTER 7. DESIGNATION OF LIMITED ACCESS

16:47-7.1 Procedures

After ensuring adequate alternative access, the Commissioner may propose the designation of limited access for any segment of the State highway system. The proposal shall be initiated by notice to the mayor or chief governing official of any municipality within which the subject highway segment is located and the metropolitan planning organization. Notification shall also be made to the governing body of any county within which the segment is located. The Department shall also notify legislative representatives of the legislative district(s) and any contiguous municipality or county if the proposed designation will affect traffic patterns in such municipality or county.

16:47-7.2 Public notice and hearing

The Department shall hold a public hearing for the designation of limited access at a location within one of the affected municipalities. A minimum of 15 days notice of the public hearing shall be provided in a local newspaper of general circulation and by return receipt requested mail to owners of lots within the segment and to all municipalities and counties located within 200 feet along and beyond the ends of the segment of highway. The notice shall give the time and place of the hearing and provide for the receipt of public comments.

16:47-7.3 Decision

(a) The Commissioner shall decide upon the limited access designation considering the safe and efficient movement of people and goods and the public comments. The Commissioner's written determination shall include the reasons for the decision and address the public comments.

(b) Notice of decision shall be provided to all municipalities and counties located within 200 feet of the highway segment.

(c) The designation of a limited access highway segment shall be promulgated as an amendment to this subsection, pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 8. ACCESS CODE REVISIONS

16:47-8.1 Procedure

The Commissioner may modify these rules, as deemed appropriate, under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

16:47-8.2 Legislature notice

The Commissioner shall notify the Senate Transportation and Communications Committee, or its successor, and the Assembly Transportation and Communications Committee, or its successor, of any proposed revisions to the Access Code in writing at the time the revisions are proposed for adoption under the provisions of the Administrative Procedure Act.

16:47-8.3 Census

The Commissioner shall modify the Access Code, as appropriate, after obtaining U.S. Census information.

16:47-8.4 State Development and Redevelopment Plan

The Commissioner shall modify the Access Code, as appropriate, to support an adopted State Development and Redevelopment Plan. The Commissioner shall review the Access Code whenever the Plan is updated and make appropriate modifications. ***The modifications shall be incorporated into the Access Code in the manner established for adoption of rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.***

16:47-8.5 Access classifications

(a) All recommended revisions to the access classifications and desirable typical sections included in the Access Code proposal that are received during the comment period shall be reviewed by the Department. The Department shall make those revisions it determines to be warranted and adopt the changes after adoption of the Access Code in accordance with N.J.A.C. 16:47-5.5(c).

(b) Within one year of *[adopting]* ***the adoption of*** this Access Code, each county may recommend revisions to the access classifications and desirable typical sections of each State highway segment within the county boundaries. The Department shall make those revisions it determines to be warranted and adopt the changes in accordance with N.J.A.C. 16:47-5.5(c).

SUBCHAPTER 9. COUNTY AND MUNICIPAL ACCESS CODES

16:47-9.1 General requirements

(a) For roads and highways under its control, any county or municipality may adopt an access code which satisfies the standards embodied in N.J.A.C. 16:47-1 through 8 and provides reasonable access by abutting landowners to roads and highways.

(b) When requirements of State, county, and municipal access codes apply to the same roadway, lot, or access point, the requirements of the State code shall take precedence over the requirements of county and municipal codes.

AGENCY NOTE: Appendices A through E in the original proposal (see 22 N.J.R. 1092 through 1111) are replaced by Appendices A through E1 proposed herein. The original proposed Appendices are not reproduced herein.

AGENCY NOTE: Proposed Appendices B, E and J are not adopted. They were superceded by the proposal, at 23 N.J.R. 2831(b), of proposed Appendices B, E, E1 and J, which were adopted elsewhere in this issue of the New Jersey Register.

APPENDIX A

ACCESS CLASSIFICATION MATRIX
BASED ON DESIRABLE TYPICAL SECTIONS

URBAN CHARACTERISTICS												
	HIGH SPEED >=45 MPH						LOW SPEED <45 MPH					
	DIVIDED		UNDIV MULTI-LANE		2-LANE		DIVIDED		UNDIV MULTI-LANE		2-LANE	
ACCESS CLASS	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL
ACCESSIBLE PRINCIPAL ARTERIALS	3	(1)	4	(2)	4	(3)	3	(4)	4	(5)	5	(6)
MINOR ARTERIALS	3/4	(7)	4	(8)	5	(9)	3/4	(10)	4	(11)	5	(12)
COLLECTOR ROADS	4	(13)	5	(14)	6	(15)	4	(16)	5	(17)	6	(18)
LOCAL ROADS	4	(19)	6	(20)	6	(21)	4	(22)	6	(23)	6	(24)

RURAL CHARACTERISTICS												
	HIGH SPEED >=50 MPH						LOW SPEED <50 MPH					
	DIVIDED		UNDIV MULTI-LANE		2-LANE		DIVIDED		UNDIV MULTI-LANE		2-LANE	
ACCESS CLASS	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL	ACCESS LEVEL	CELL
ACCESSIBLE PRINCIPAL ARTERIALS	2	(25)	4	(26)	4	(27)	3	(28)	4	(29)	5	(30)
MINOR ARTERIALS	2	(31)	4	(32)	5	(33)	3/4	(34)	4	(35)	5	(36)
MAJOR COLLECTORS	3/4	(37)	5	(38)	6	(39)	4	(40)	5	(41)	6	(42)
MINOR COLLECTORS	4	(43)	5	(44)	6	(45)	4	(46)	5	(47)	6	(48)
LOCAL ROADS	4	(49)	6	(50)	6	(51)	4	(52)	6	(53)	6	(54)

ACCESS LEVEL	DESCRIPTION
1	FULLY CONTROLLED ACCESS (ACCESS CELL 0)
2	ACCESS AT STREET INTERSECTIONS OR GRADE-SEPARATED INTERCHANGES
3	RIGHT-TURN ACCESS TO AND FROM AN ACCESS POINT WITH LEFT-TURN ACCESS VIA JUGHANDLE WHERE SIGNALIZED SPACING STANDARDS MET
4	RIGHT-TURN ACCESS TO AND FROM AN ACCESS POINT, LEFT-TURN INGRESS VIA A LEFT-TURN LANE, AND LEFT-TURN EGRESS FROM AN ACCESS POINT
5	ACCESS TO AND FROM AN ACCESS POINT LIMITED BY SPACING REQUIREMENTS AND SAFETY CONSIDERATIONS
6	ACCESS TO AND FROM AN ACCESS POINT, LIMITED BY EDGE CLEARANCE AND SAFETY CONSIDERATIONS

NOTE FOR CELLS WITH ACCESS LEVEL 3/4; ACCESS LEVEL WILL DEPEND ON DEPARTMENT PLANS FOR THE ROUTE.

APPENDIX C

ACCESS PERMITTED ON STATE HIGHWAYS BASED ON DESIRABLE TYPICAL SECTION

ACCESS LEVEL	DIVIDED OR UNDIVIDED	PERMISSIBLE TURNING MOVEMENTS				LEFT TURN TREATMENTS			
		AT INTERCHANGE	AT STREET	AT CONFORMING LOT DRIVEWAY	AT NONCONFORMING LOT DRIVEWAY	LEFT TURNS AT INTERCHANGE	LEFT TURNS VIA JUGHANDLE	LEFT TURNS VIA LEFT-TURN LANE	LEFT TURNS WITHOUT LEFT-TURN LANE
1.	DIVIDED	L & R	NONE	NONE	NONE	YES	NO	NO	NO
2.	DIVIDED	L & R	L & R	NONE	R	YES	YES	NO	NO
3.	DIVIDED	L & R	L & R	L & R	L & R	YES	YES	NO	NO
4.	EITHER	L & R	L & R	L & R	L & R	YES	MAYBE	YES	NO
5.	UNDIVIDED	L & R	L & R	L & R	L & R	YES	NA	MAYBE	YES
6.	UNDIVIDED	L & R	L & R	L & R	NA	YES	NA	MAYBE	YES

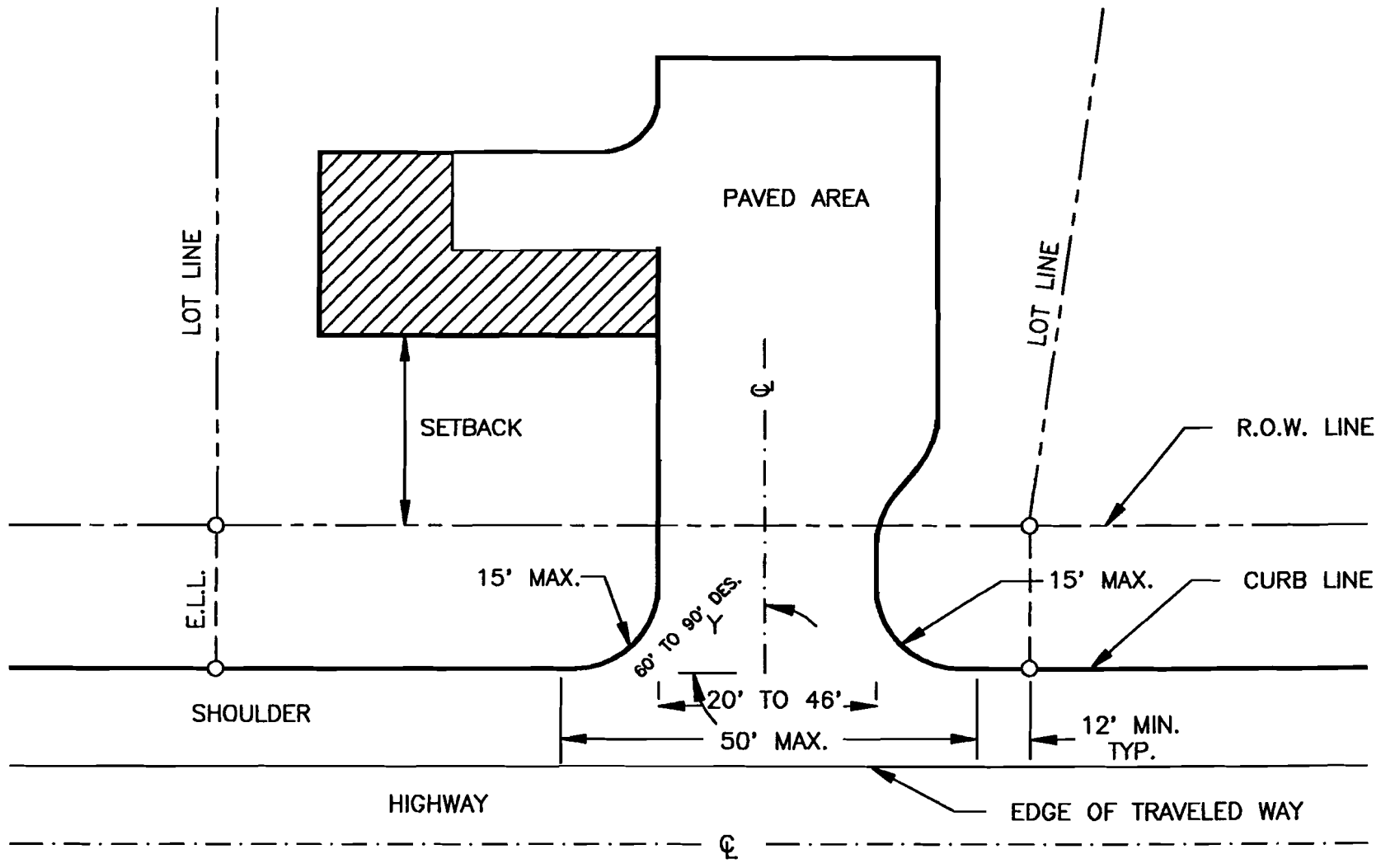
ACCESS LEVEL	DIVIDED OR UNDIVIDED	APPLICABLE SPACING REQUIREMENTS			APPLICABLE DRIVEWAY DESIGN CRITERIA		
		INTERCHANGE	SIGNALIZED	UNSIGNALIZED	SAFETY PER DESIGN MANUAL	CORNER CLEARANCE	EDGE CLEARANCE
1.	DIVIDED	YES	NA	NA	YES	NA	NA
2.	DIVIDED	YES	YES	YES	YES	YES	YES
3.	DIVIDED	YES	YES	YES	YES	YES	YES
4.	EITHER	YES	YES	YES	YES	YES	YES
5.	UNDIVIDED	YES	YES	YES	YES	YES	YES
6.	UNDIVIDED	YES	YES	YES	YES	*[NA]* *YES*	YES

GENERAL NOTES

L = LEFT
R = RIGHT
NA = NOT APPLICABLE
ALL TURNING MOVEMENTS REFER TO BOTH INGRESS AND EGRESS.
A TRAFFIC SIGNAL IS REQUIRED AT ALL JUGHANDLES.
IF A JUGHANDLE IS AT A STREET, THEN PERMISSIBLE MOVEMENTS APPLY TO BOTH.
IF TRAFFIC AT ACCESS POINT MEETS WARRANTS FOR A TRAFFIC SIGNAL, THEN THE SIGNALIZED SPACING STANDARDS MUST BE MET.
THE DEPARTMENT INTENDS TO MINIMIZE MEDIAN OPENINGS ON DIVIDED HIGHWAYS BY ELIMINATING THOSE NOT ASSOCIATED WITH JUGHANDLES AND LEFT TURN LANES.

8924C1

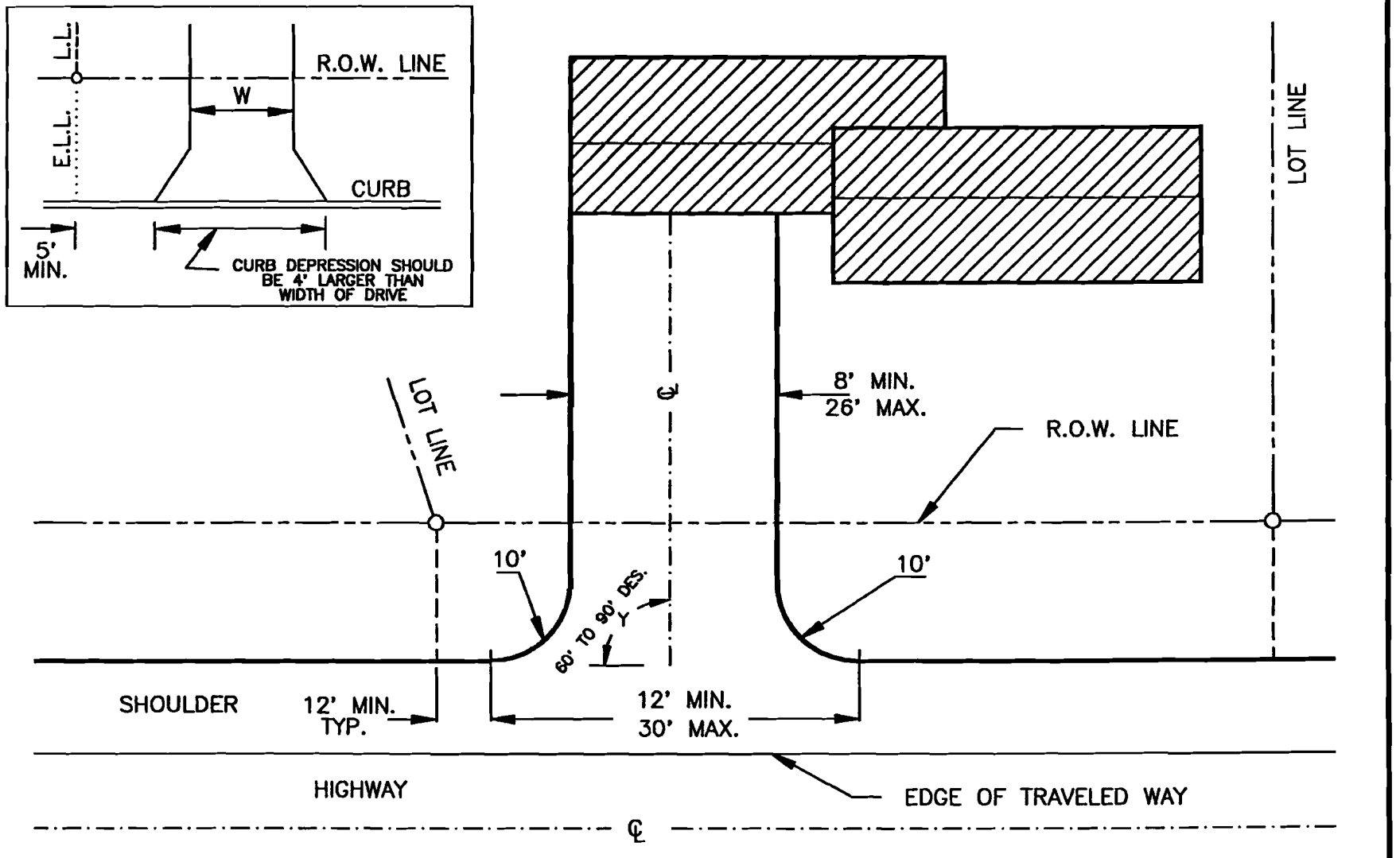
FIGURE C-1



NON–RESIDENTIAL DRIVEWAY ON
DIVIDED OR UNDIVIDED HIGHWAY
(NOT TO SCALE)

8924–16

FIGURE C–2

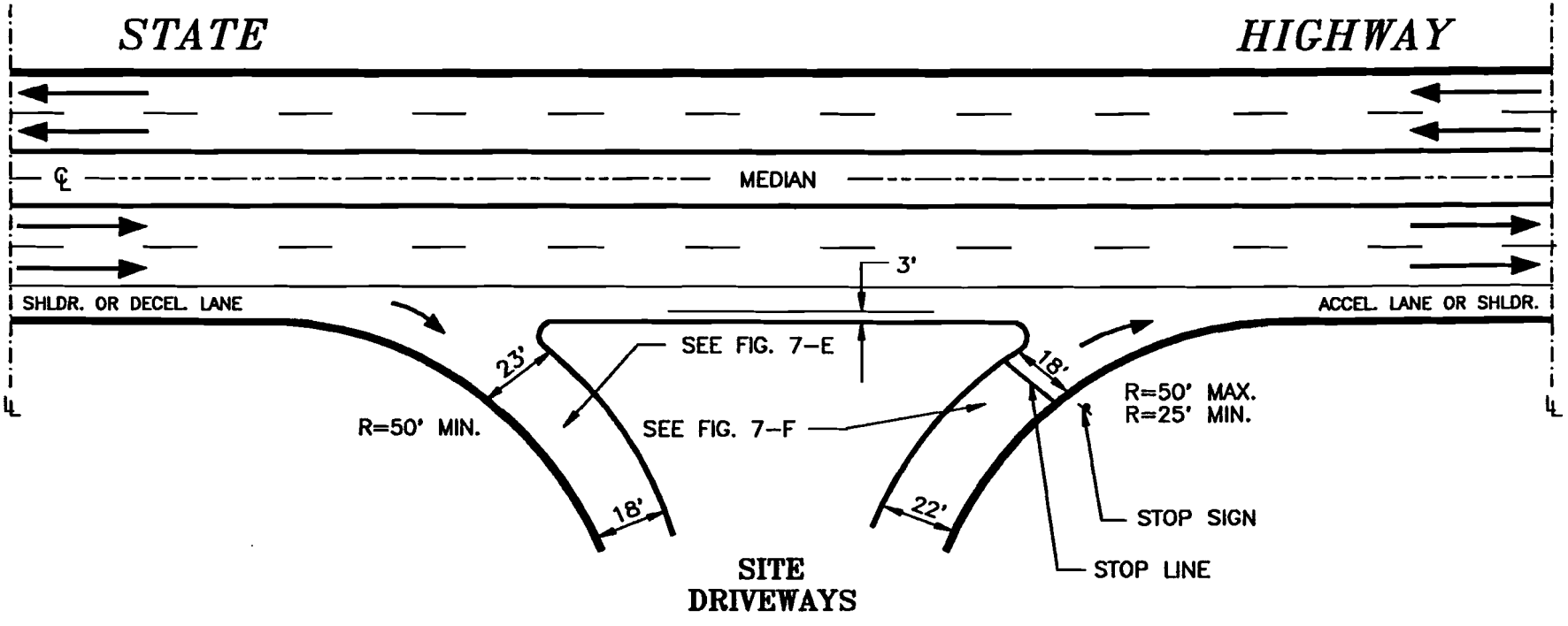


RESIDENTIAL OR RESIDENCE AND BUSINESS DRIVEWAY ON DIVIDED OR UNDIVIDED HIGHWAY

(NOT TO SCALE)

8924-15

FIGURE C-3



DRIVEWAY ON DIVIDED HIGHWAY

(NOT TO SCALE)

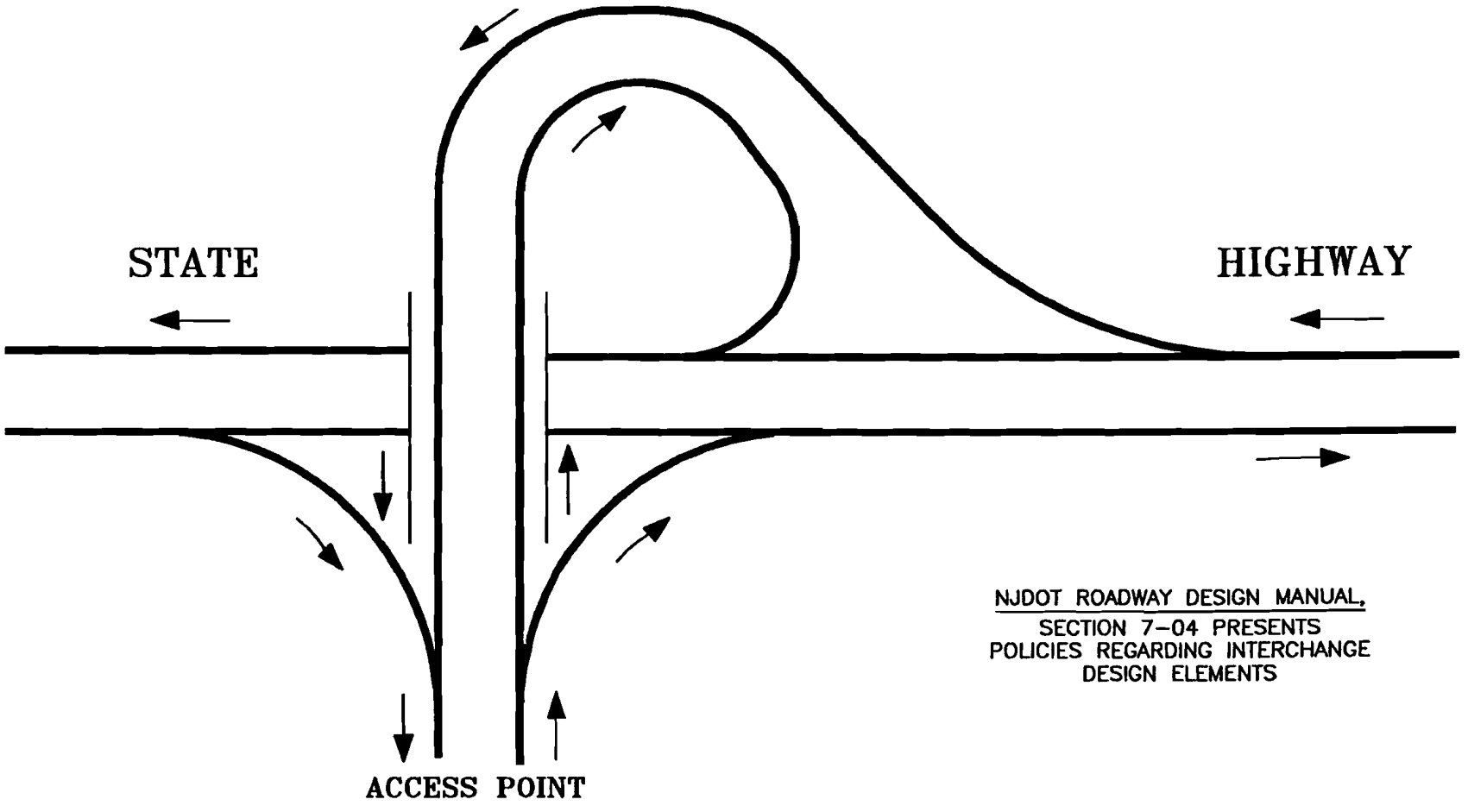
NOTE: DRIVEWAY ISLAND HAS DEPRESSED APPROACH NOSES

SOURCE: NJDOT. CONTROL OF ACCESS DRIVEWAYS

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-17

FIGURE C-4



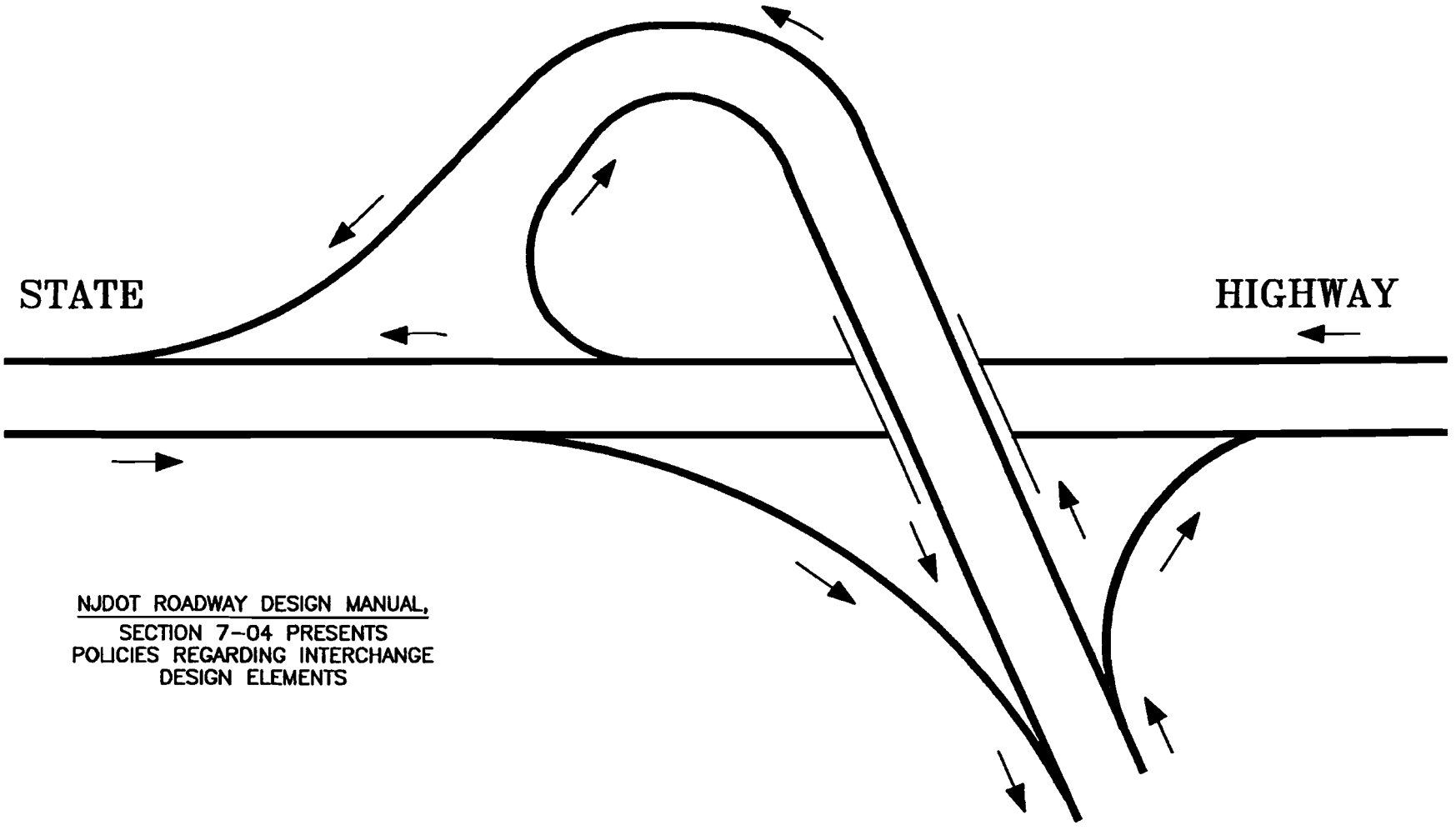
NJDOT ROADWAY DESIGN MANUAL,
SECTION 7-04 PRESENTS
POLICIES REGARDING INTERCHANGE
DESIGN ELEMENTS

ACCESS LEVEL 1
FULLY CONTROLLED ACCESS
ACCESS VIA
GRADE-SEPARATED INTERCHANGE
(OPTION 1)

(NOT TO SCALE)

8924RR

FIGURE C-5

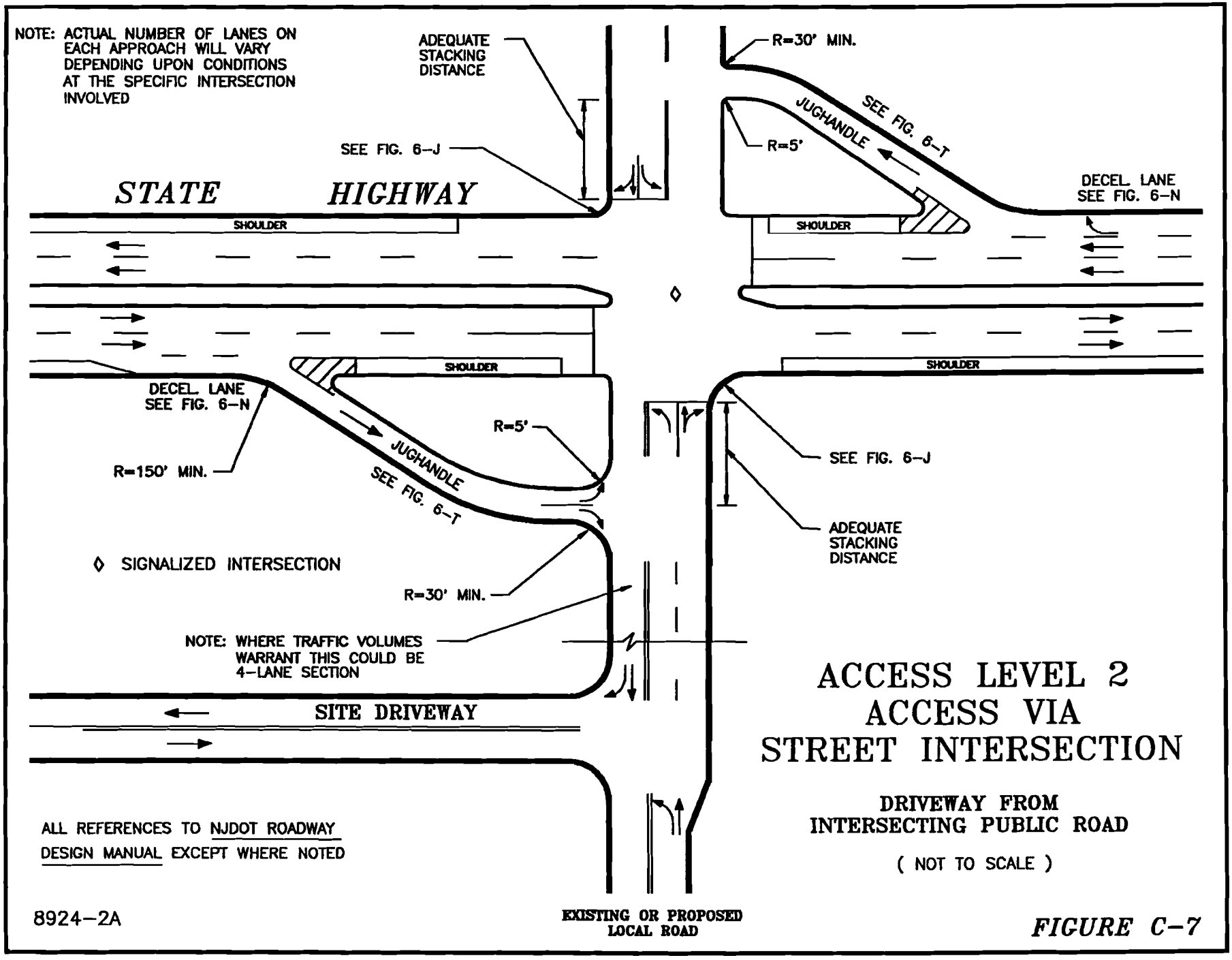


ACCESS LEVEL 1
FULLY CONTROLLED ACCESS

ACCESS VIA
GRADE-SEPARATED INTERCHANGE
(OPTION 2)

8924-4

FIGURE C-6

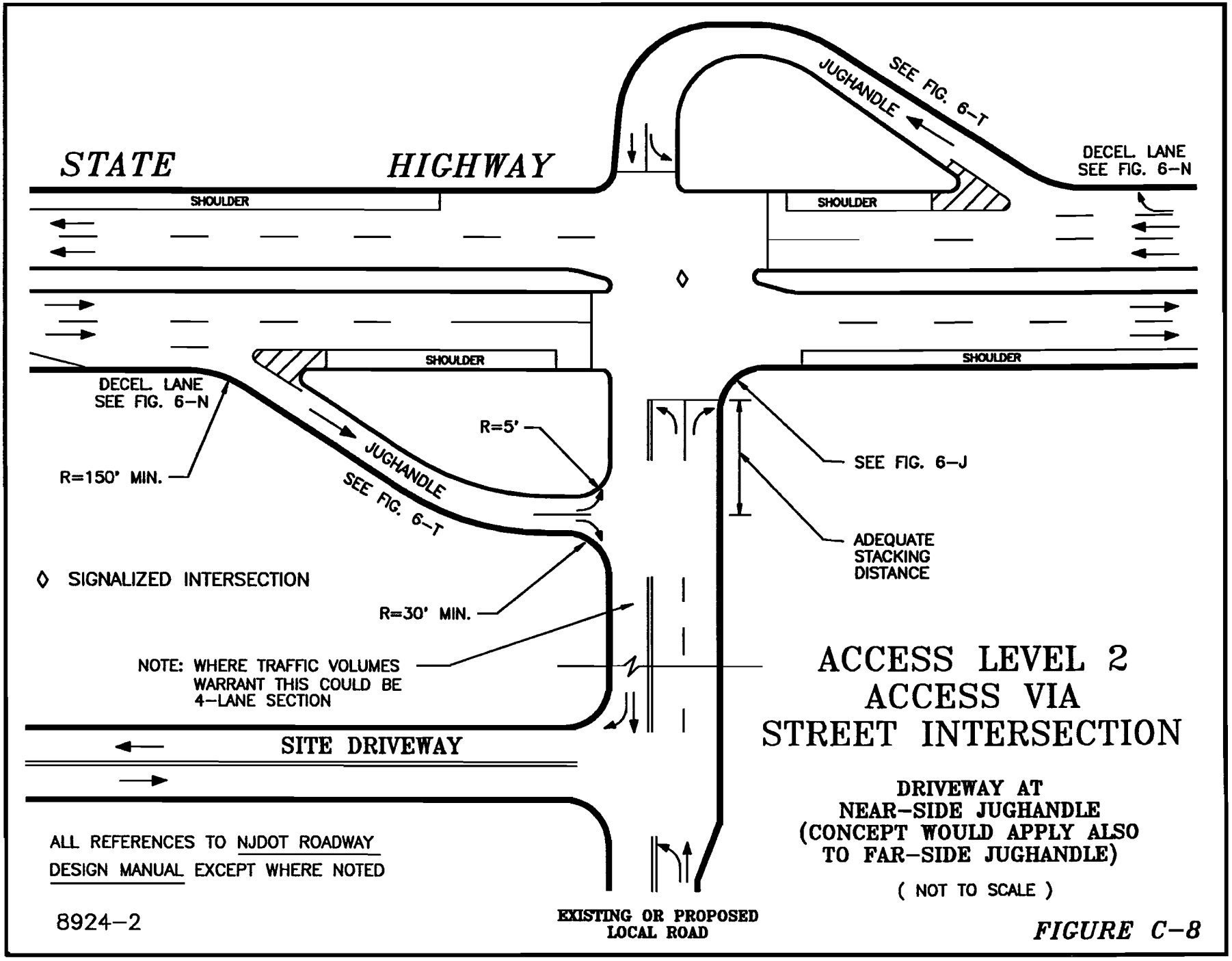


ACCESS LEVEL 2
ACCESS VIA
STREET INTERSECTION

DRIVEWAY FROM INTERSECTING PUBLIC ROAD

(NOT TO SCALE)

FIGURE C-7



ACCESS LEVEL 2
ACCESS VIA
STREET INTERSECTION

**DRIVEWAY AT
NEAR-SIDE JUGHANDLE
(CONCEPT WOULD APPLY ALSO
TO FAR-SIDE JUGHANDLE)**

(NOT TO SCALE)

FIGURE C-8

AGENCY NOTE: Proposed Figures C-9 and C-10 are not adopted, and their deletion is reflected in their not being published herein.

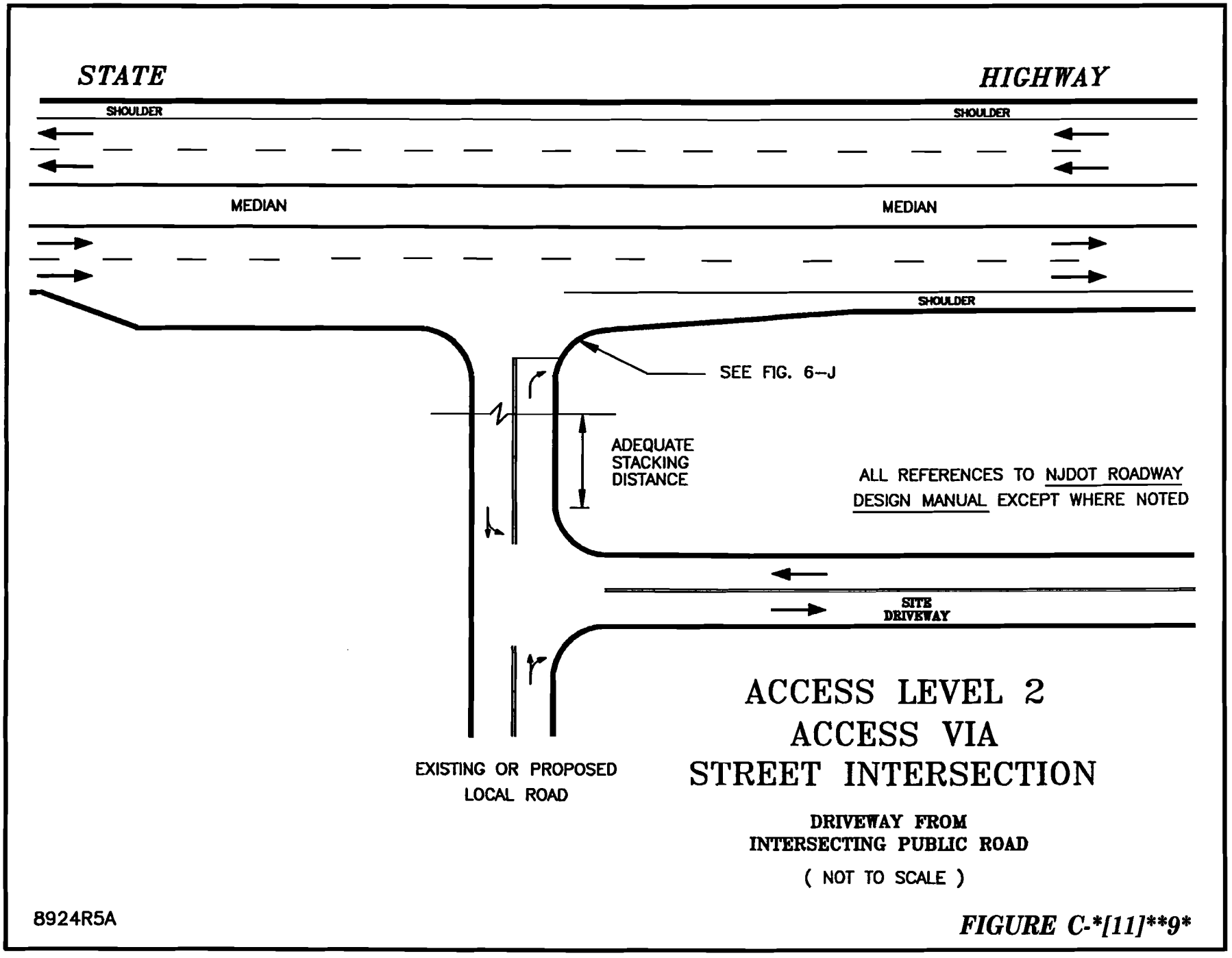
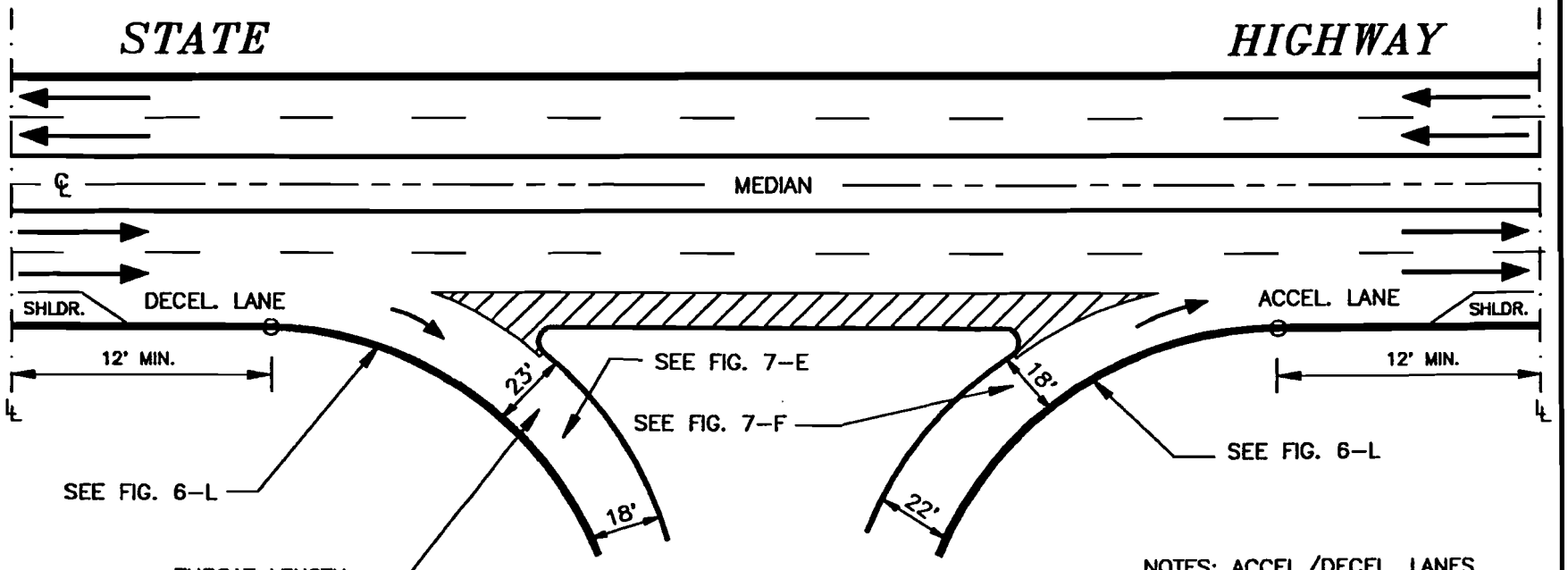


FIGURE C-[11]**9**



NOTES: ACCEL./DECEL. LANES MAY EXTEND BEYOND PROPERTY LINE WITHOUT AFFECTING ADJOINING LAND OWNERS ACCESS

DRIVEWAY ISLAND HAS DEPRESSED APPROACH NOSES

ADEQUATE THROAT LENGTH IS REQUIRED BEFORE AISLE TO PREVENT CONFLICTING TRAFFIC MOVEMENTS

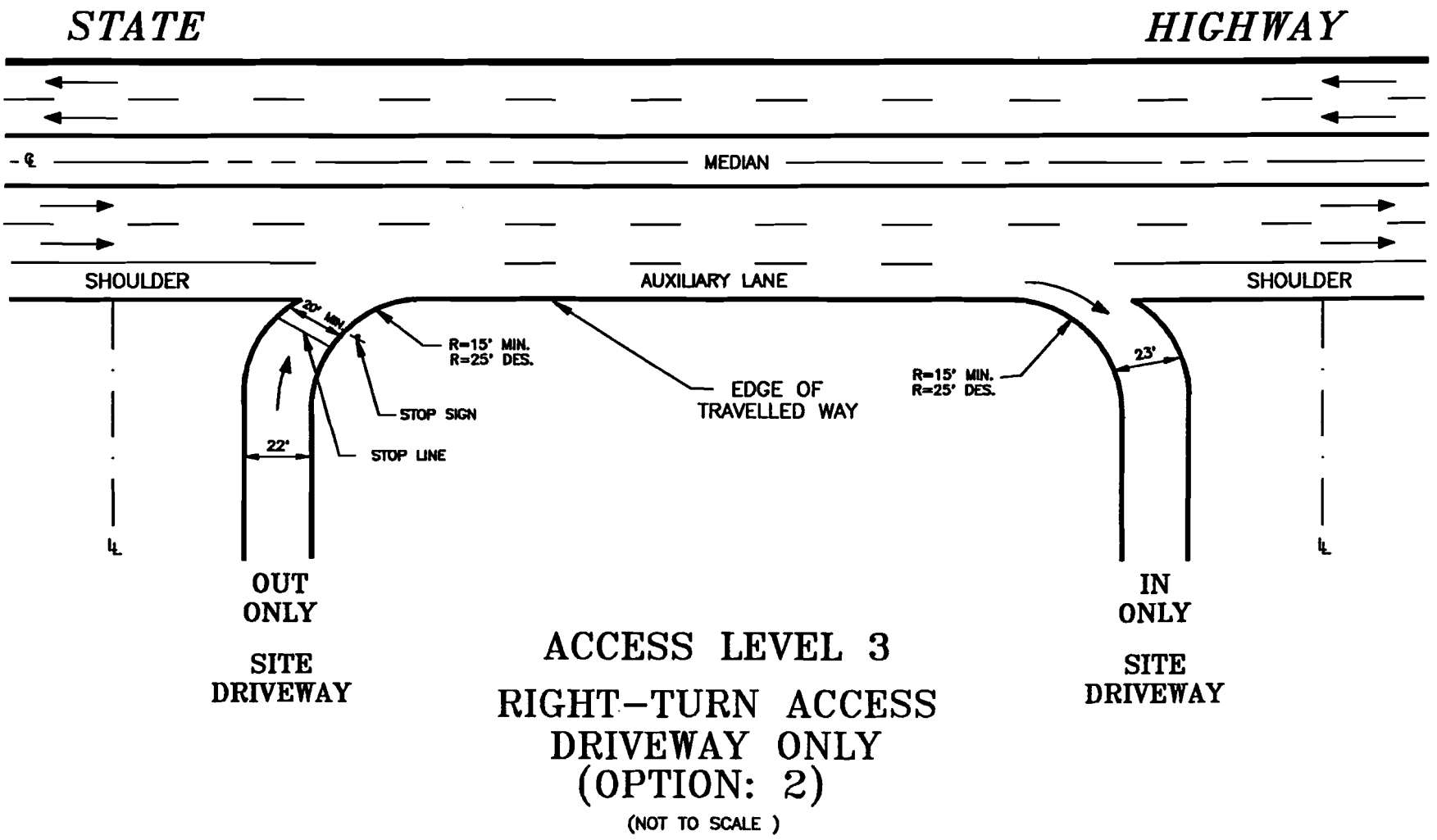
ACCESS LEVEL 3
RIGHT–TURN ACCESS
DRIVEWAY ONLY
(OPTION 1)

(NOT TO SCALE)

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924R

FIGURE C-*[12]**10*



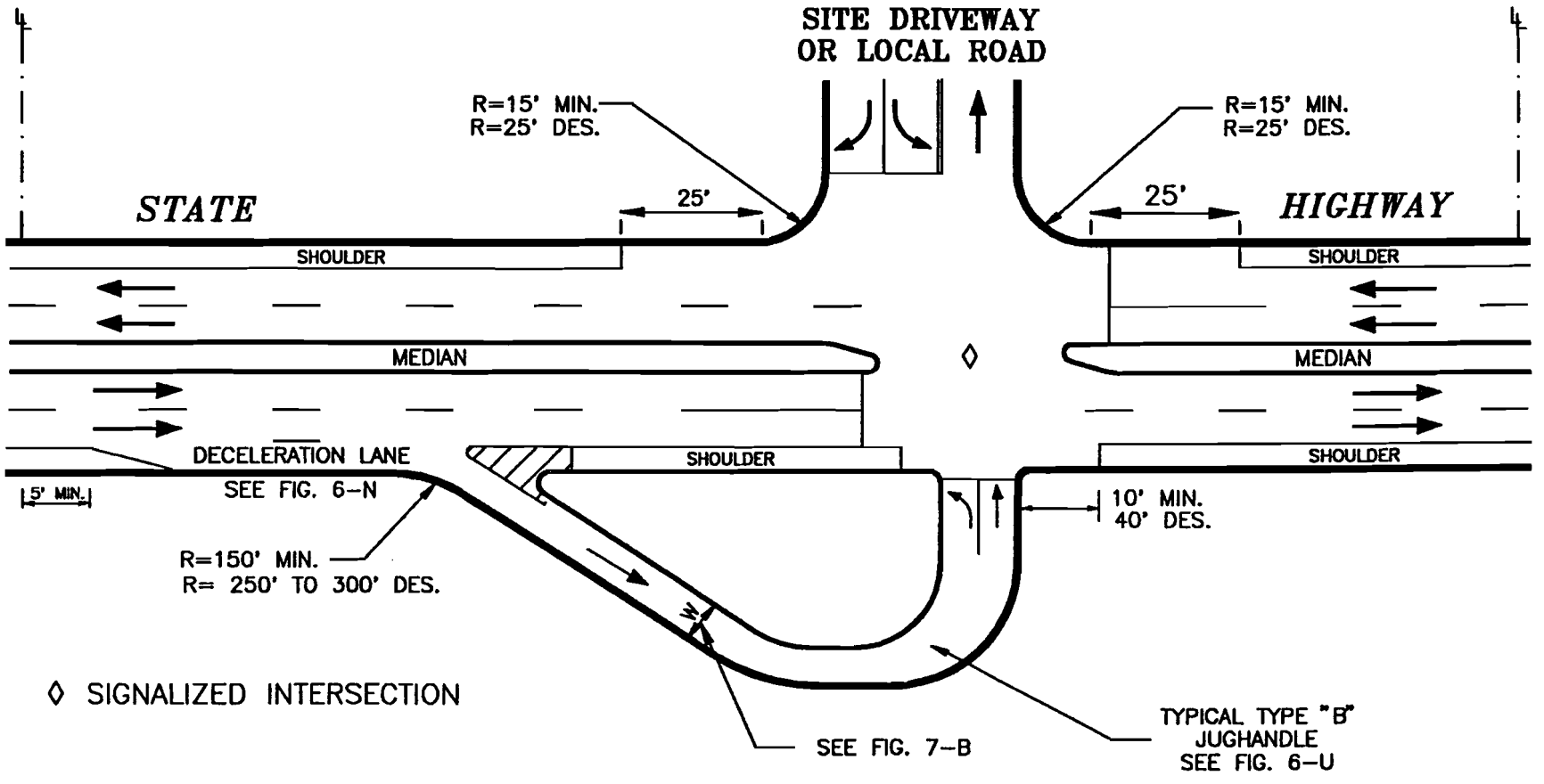
ACCESS LEVEL 3
RIGHT-TURN ACCESS DRIVEWAY ONLY (OPTION: 2)

(NOT TO SCALE)

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-13

FIGURE C-*[13]**11*



ACCESS LEVEL 3
RIGHT-TURN ACCESS WITH LEFT-TURN VIA SIGNALIZED JUGHANDLE

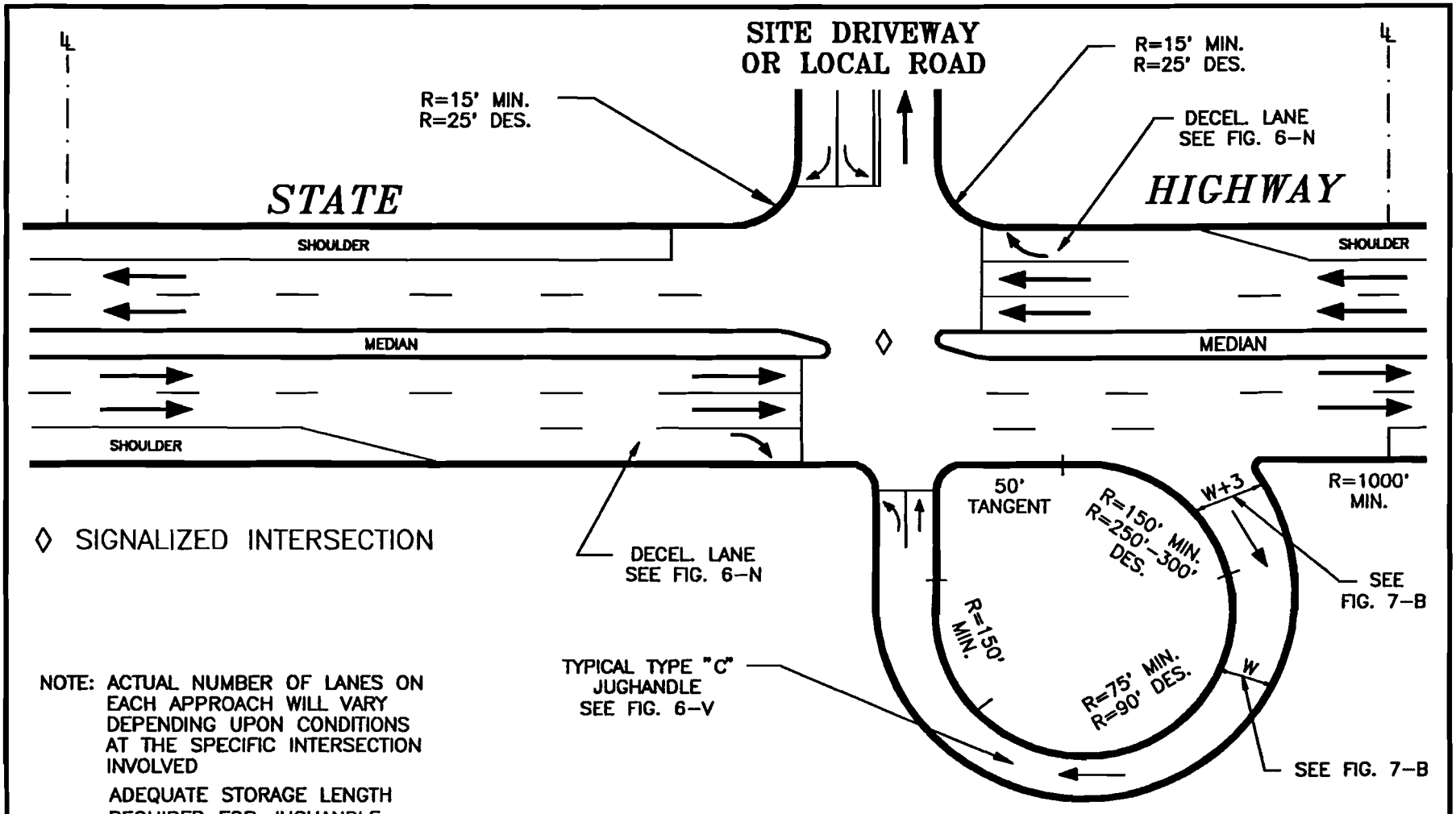
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED MUST MEET SIGNALIZED SPACING REQUIREMENTS

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924 LAY2

FIGURE C-*[14]**12*



NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ADEQUATE STORAGE LENGTH REQUIRED FOR JUGHANDLE

MUST MEET SIGNALIZED SPACING REQUIREMENT

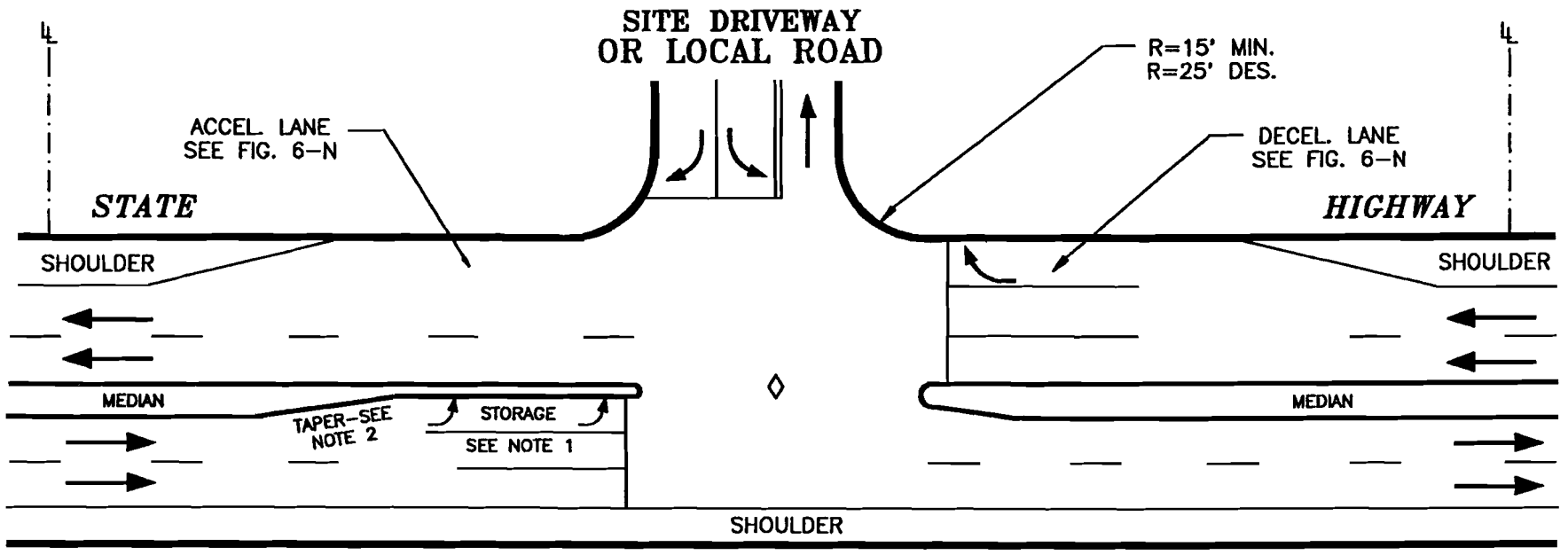
ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

ACCESS LEVEL 3
RIGHT-TURN ACCESS WITH LEFT-TURN VIA SIGNALIZED JUGHANDLE

(NOT TO SCALE)

8924-1

FIGURE C-[15]**13**



◊ SIGNAL

NOTE: 1 STORAGE LENGTH ACCORDING TO ACCESS REGULATIONS
2 BAY TAPER LENGTH
UP TO 30 MPH – 145'
35 TO 50 MPH – 290'

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

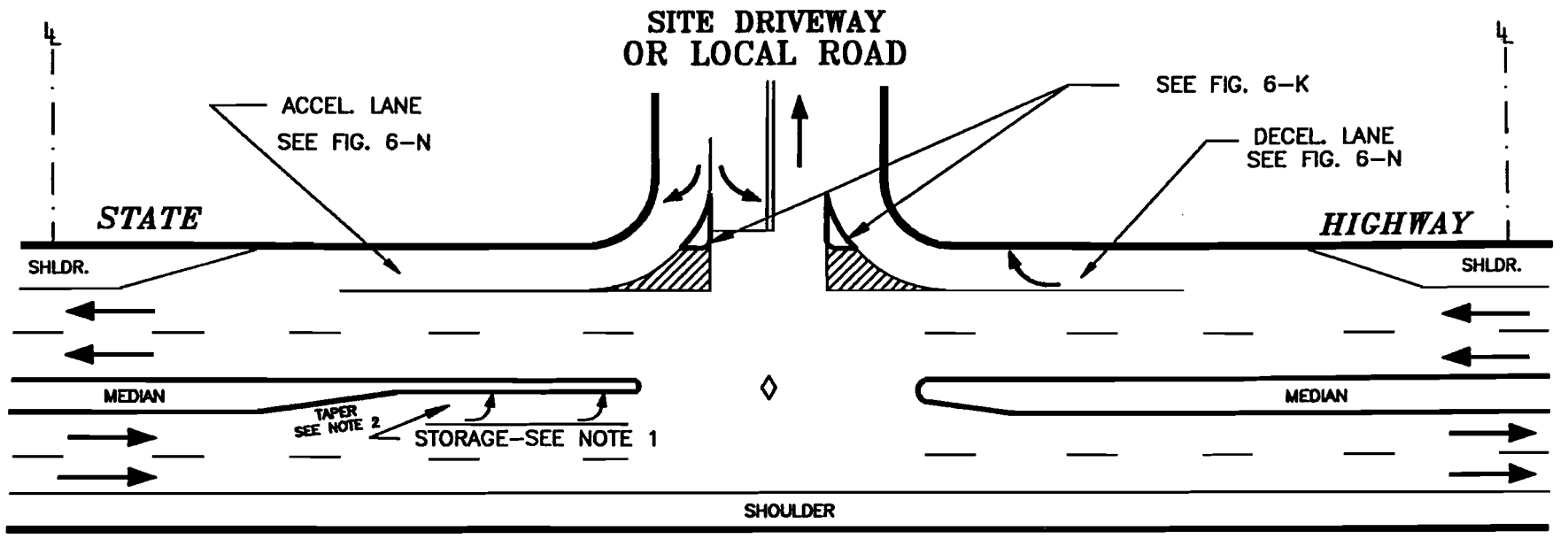
ACCESS LEVEL 4
RIGHT–TURN ACCESS AND LEFT–TURN INGRESS VIA A LEFT–TURN LANE

SIGNALIZED DRIVEWAY OR LOCAL ROAD ON DIVIDED HIGHWAY (OPTION 1)

(NOT TO SCALE)

8924–10

FIGURE C-*[16]**14*



◊ SIGNAL

NOTE: 1 STORAGE LENGTH ACCORDING TO ACCESS REGULATIONS
2 BAY TAPER LENGTH
UP TO 30 MPH – 145'
35 TO 50 MPH – 290'

ACCESS LEVEL 4
RIGHT–TURN ACCESS AND LEFT–TURN INGRESS VIA A LEFT–TURN LANE
SIGNALIZED DRIVEWAY OR LOCAL ROAD ON DIVIDED HIGHWAY
(OPTION 2)

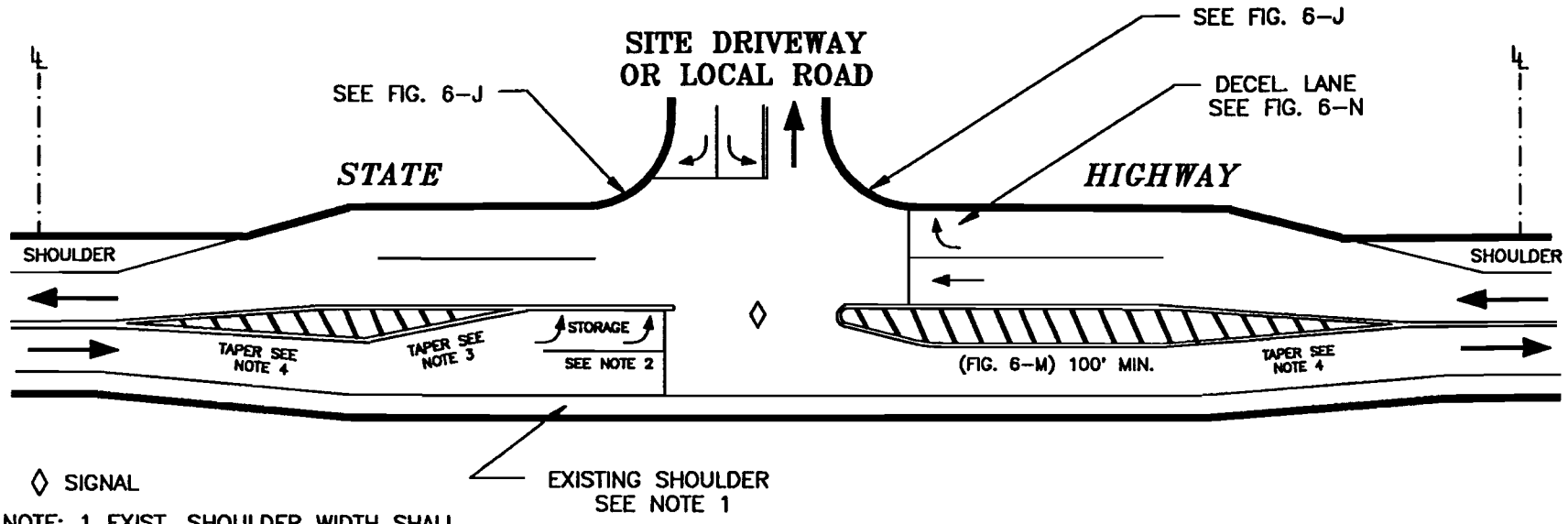
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924 LAY3

FIGURE C-*[17]**15*



NOTE: 1 EXIST. SHOULDER WIDTH SHALL BE MAINTAINED

2 STORAGE LENGTH ACCORDING TO ACCESS REGULATIONS

3 BAY TAPER LENGTH
UP TO 30 MPH – 145'
35 TO 50 MPH – 290'

4 APPROACH TAPER LENGTH (MUTCD SECTION 6C-2a)

UP TO 40 MPH: $L=\frac{WS^2}{60}$

45 MPH OR GREATER: L=SxW

ACCESS LEVEL 4
RIGHT-TURN ACCESS AND LEFT-TURN INGRESS VIA A LEFT-TURN LANE

SIGNALIZED DRIVEWAY OR LOCAL ROAD ON UNDIVIDED HIGHWAY (OPTION 1)

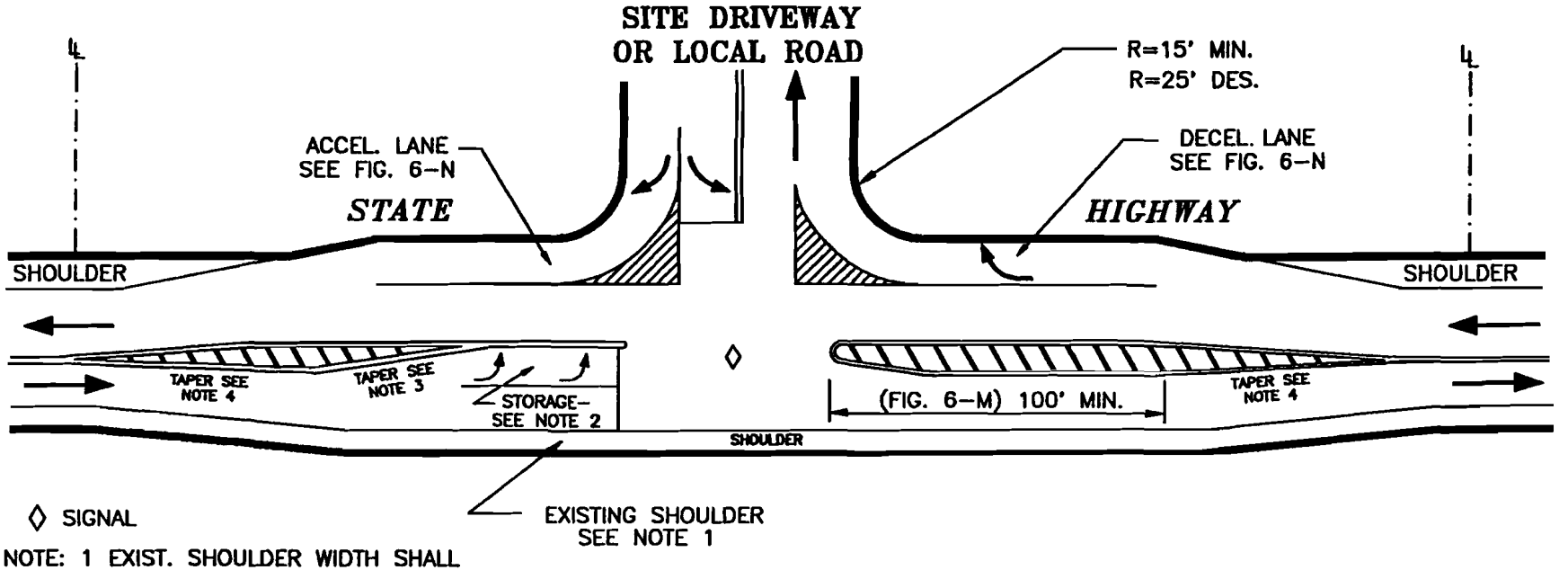
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-11

FIGURE C-*[18]**16*



NOTE: 1 EXIST. SHOULDER WIDTH SHALL BE MAINTAINED

2 STORAGE LENGTH ACCORDING TO ACCESS REGULATIONS

3 BAY TAPER LENGTH
UP TO 30 MPH – 145'
35 TO 50 MPH – 290'

4 APPROACH TAPER LENGTH (MUTCD SECTION 6C–2a)

UP TO 40 MPH: $L=\frac{WS^2}{60}$

45 MPH OR GREATER: L=SxW

ACCESS LEVEL 4
RIGHT–TURN ACCESS AND LEFT–TURN INGRESS VIA A LEFT–TURN LANE
SIGNALIZED DRIVEWAY OR LOCAL ROAD ON UNDIVIDED HIGHWAY (OPTION 2)

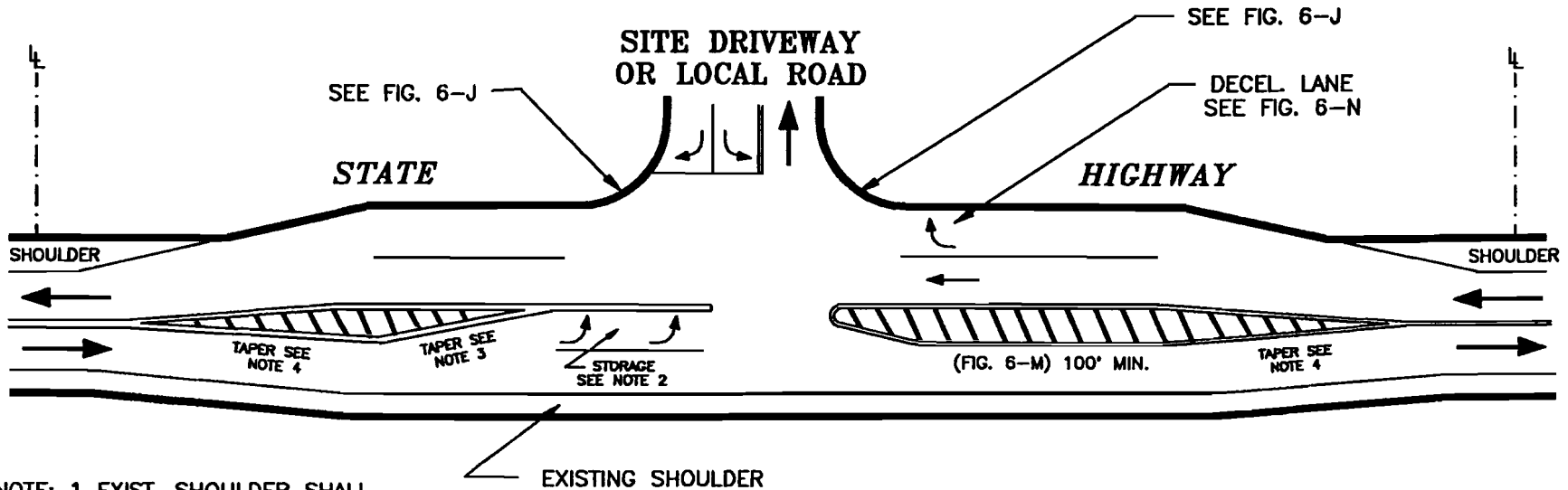
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924–18

FIGURE C-*[19]**17*



NOTE: 1 EXIST. SHOULDER SHALL BE MAINTAINED

2 STORAGE LENGTH ACCORDING TO ACCESS REGULATIONS

3 BAY TAPER LENGTH
UP TO 30 MPH – 145'
35 TO 50 MPH – 290'

4 APPROACH TAPER LENGTH (MUTCD SECTION 6C-2a)

UP TO 40 MPH: $L=\frac{WS^2}{60}$

45 MPH OR GREATER: L=SxW

ACCESS LEVEL 4
RIGHT-TURN ACCESS AND LEFT-TURN INGRESS VIA A LEFT-TURN LANE

UNSIGNALIZED DRIVEWAY OR LOCAL ROAD ON UNDIVIDED HIGHWAY

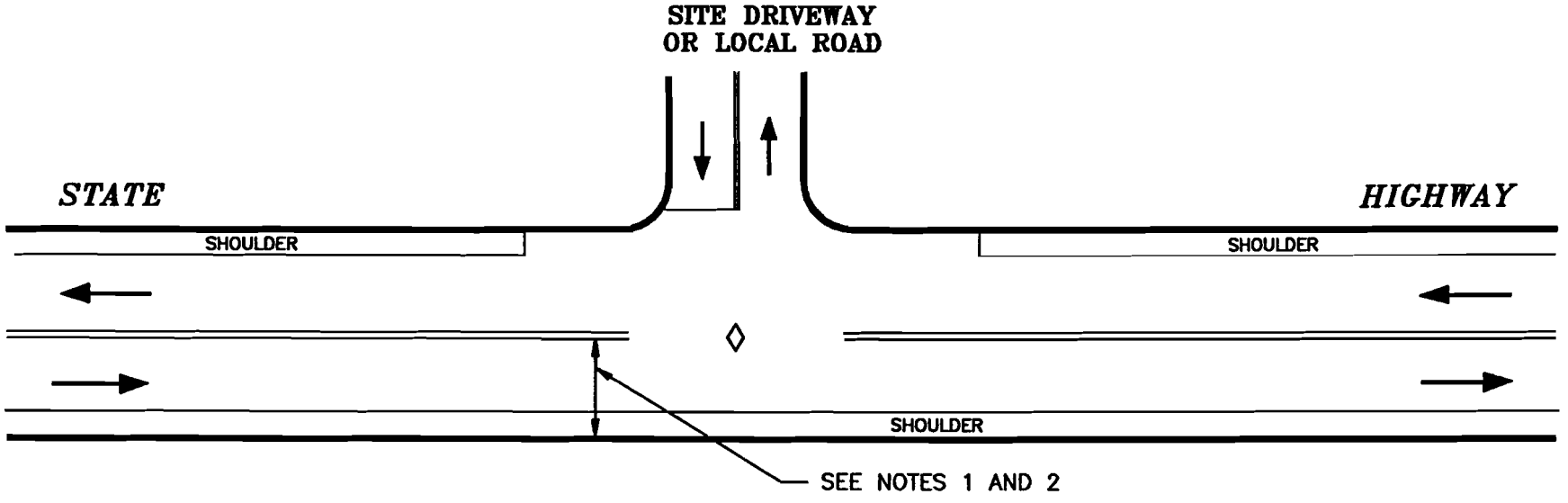
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-19

FIGURE C-*[20]**18*



◊ TRAFFIC SIGNAL NOT ALWAYS NEEDED

NOTE: 1 THE SHOULDER WIDTH SHOULD BE 10' TO ENABLE MOTORISTS TO PASS VEHICLES WAITING TO TURN LEFT

2 A LEFT-TURN LANE MAY BE NEEDED

ACCESS LEVEL 5
ACCESS TO AND FROM THE ACCESS POINT

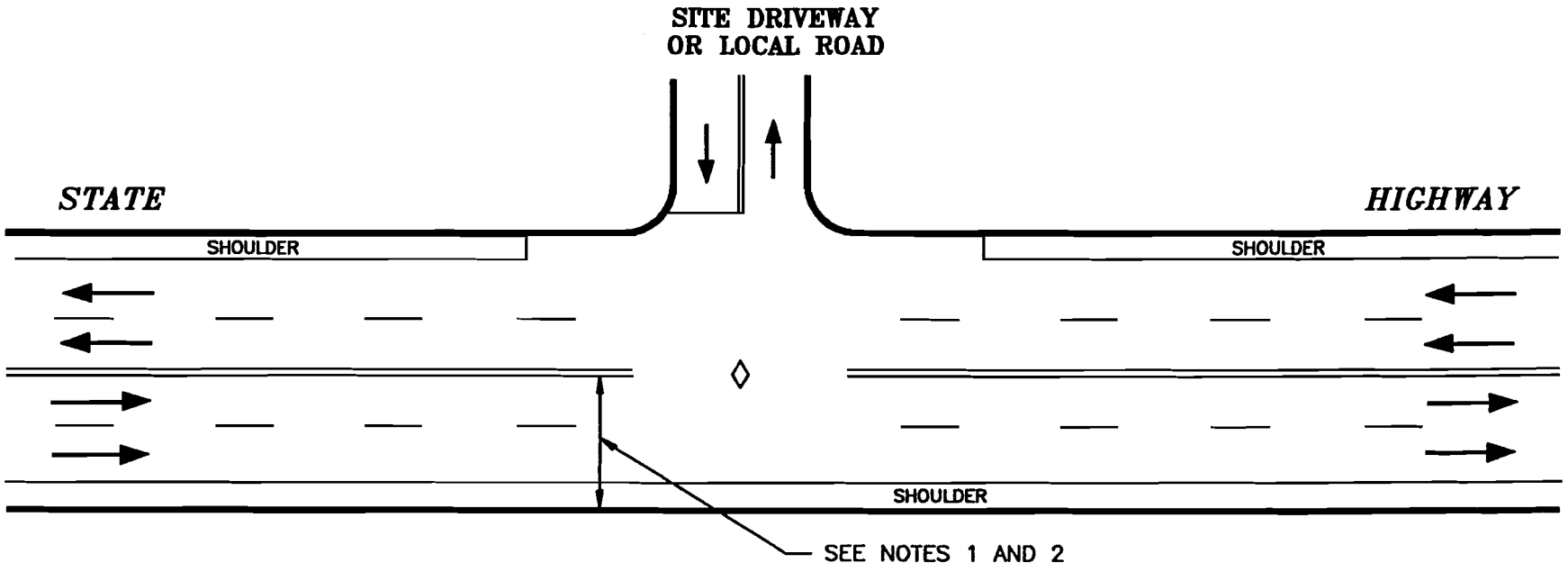
LEFT-TURN INGRESS CONSIDERED WITHOUT LEFT-TURN LANE

(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

8924-20A

FIGURE C-*[21]**19*



◊ TRAFFIC SIGNAL NOT ALWAYS NEEDED

NOTE: 1 ON TWO–LANE HIGHWAYS, THE SHOULDER WIDTH SHOULD BE 10' TO ENABLE MOTORISTS TO BYPASS VEHICLES WAITING TO TURN LEFT

2 A LEFT–TURN LANE MAY BE NEEDED

ACCESS LEVEL 5
ACCESS TO AND FROM THE ACCESS POINT

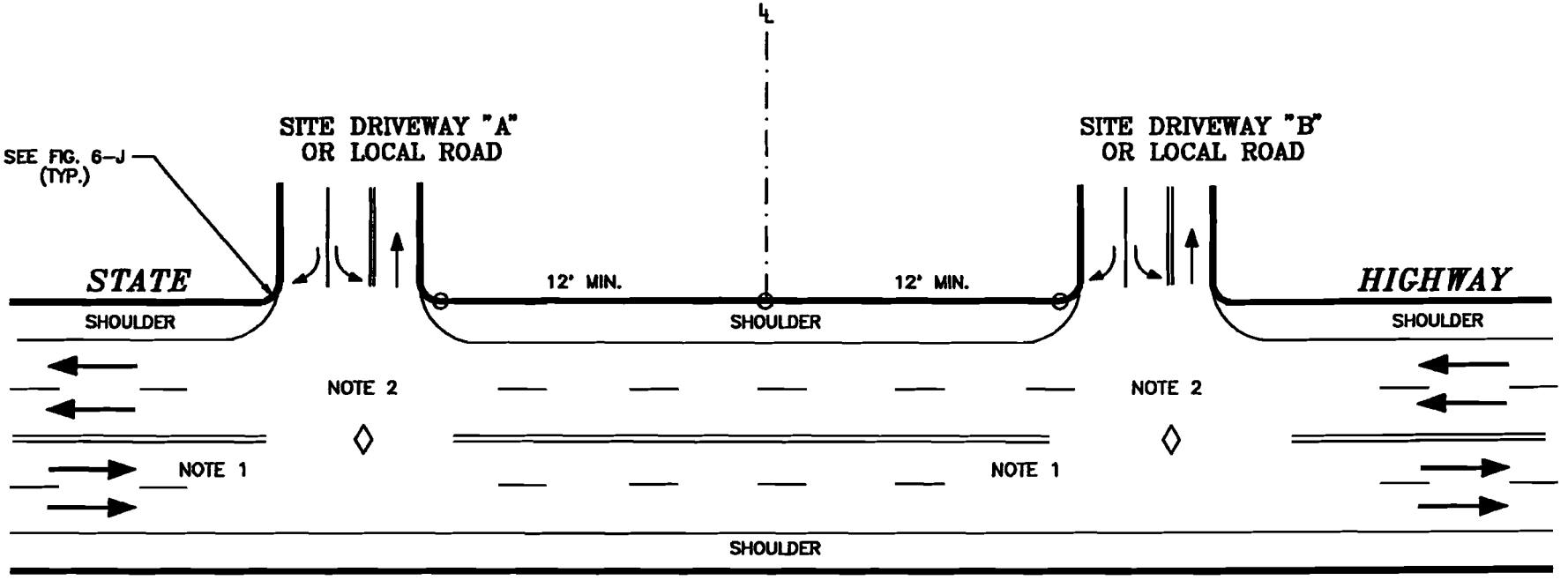
UNSIGNALIZED DRIVEWAY OR LOCAL ROAD WITH LEFT–TURN ACCESS (WITHOUT LEFT TURN LANE)

(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

8924–20

FIGURE C-*[22]**20*



◊ TRAFFIC SIGNAL NOT ALWAYS NEEDED

NOTE: 1 MAY HAVE LEFT-TURN LANE
2 MULTIPLE SIGNALS SHALL MEET SPACING REQUIREMENTS

ACCESS LEVEL 5
ACCESS TO AND FROM THE ACCESS POINT

DRIVEWAY OR LOCAL ROAD WITH PROVISION FOR LEFT-TURN LANE (LIMITED BY SPACING REQUIREMENTS AND SAFETY CONSIDERATIONS) (OPTION 1)

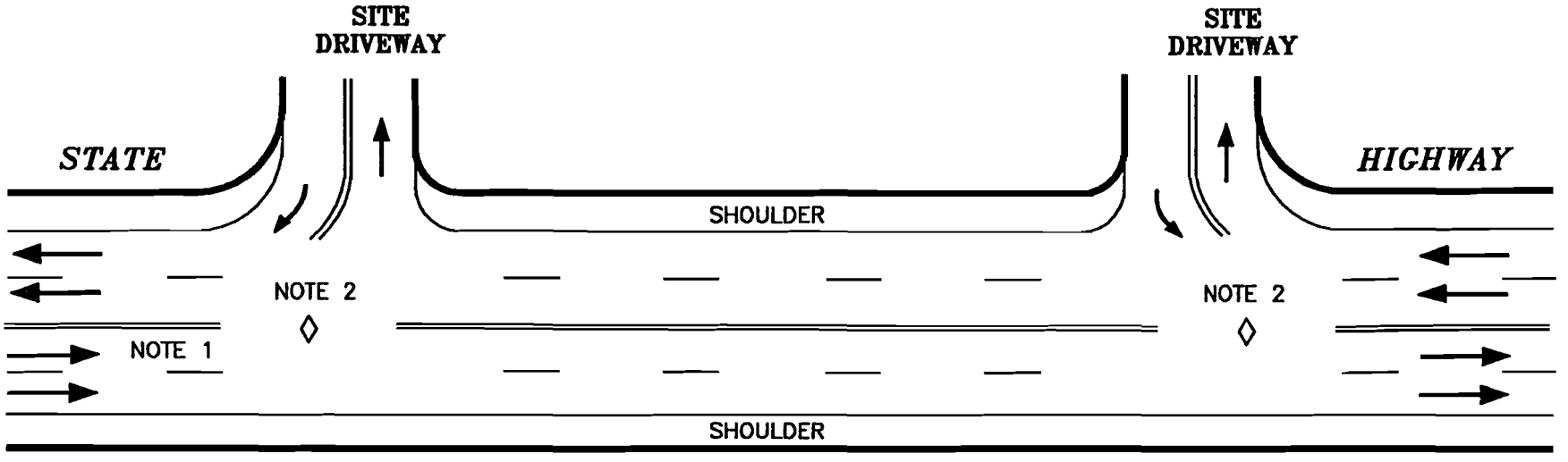
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-3C

FIGURE C-*[23]**21*



◊ TRAFFIC SIGNAL NOT ALWAYS NEEDED

NOTE: 1 MAY HAVE LEFT-TURN LANE
2 MULTIPLE SIGNALS SHALL MEET SPACING REQUIREMENTS

ACCESS LEVEL 5
ACCESS TO AND FROM THE ACCESS POINT

DRIVEWAY WITH RESTRICTED PROVISION FOR LEFT-TURN ACCESS (LIMITED BY SPACING REQUIREMENTS AND SAFETY CONSIDERATIONS) (OPTION 2)

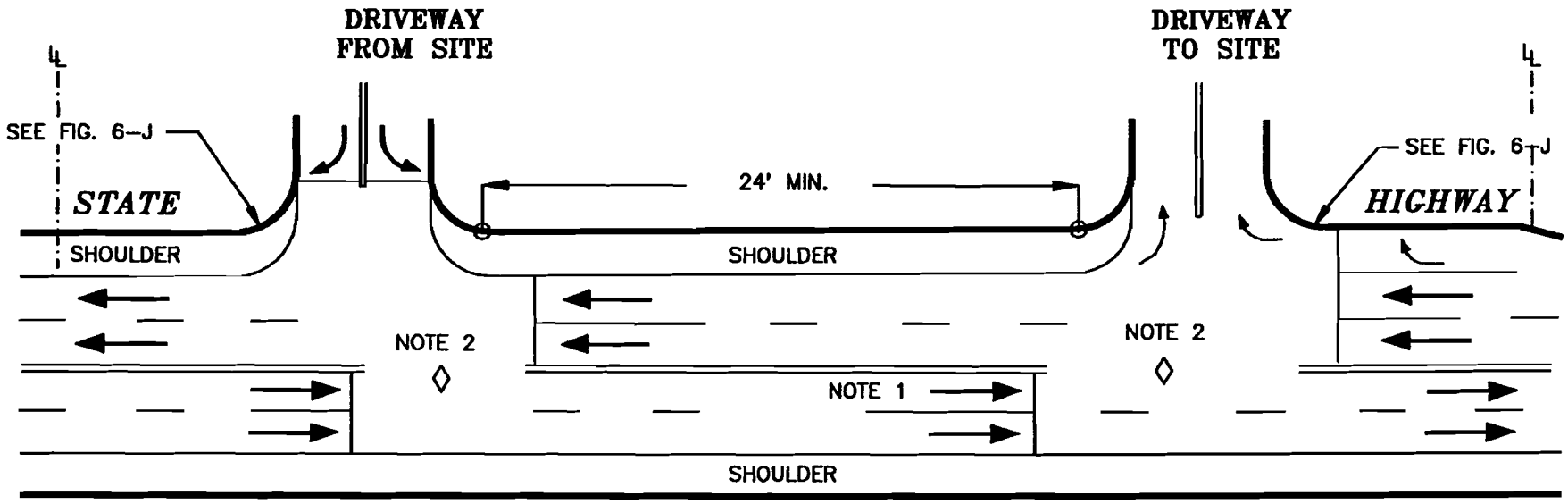
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-3D

FIGURE C-*[24]**22*



◊ TRAFFIC SIGNAL NOT ALWAYS NEEDED

NOTE: 1 MAY HAVE LEFT-TURN LANE
2 MULTIPLE SIGNALS SHALL MEET SPACING REQUIREMENTS

LEVEL OF ACCESS 5
ACCESS TO AND FROM THE ACCESS POINT

DRIVEWAY WITH PROVISION FOR SEPARATE INGRESS AND EGRESS (LIMITED BY SPACING REQUIREMENTS AND SAFETY CONSIDERATIONS) (OPTION 3)

(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-3E

FIGURE C-*[25]**23*

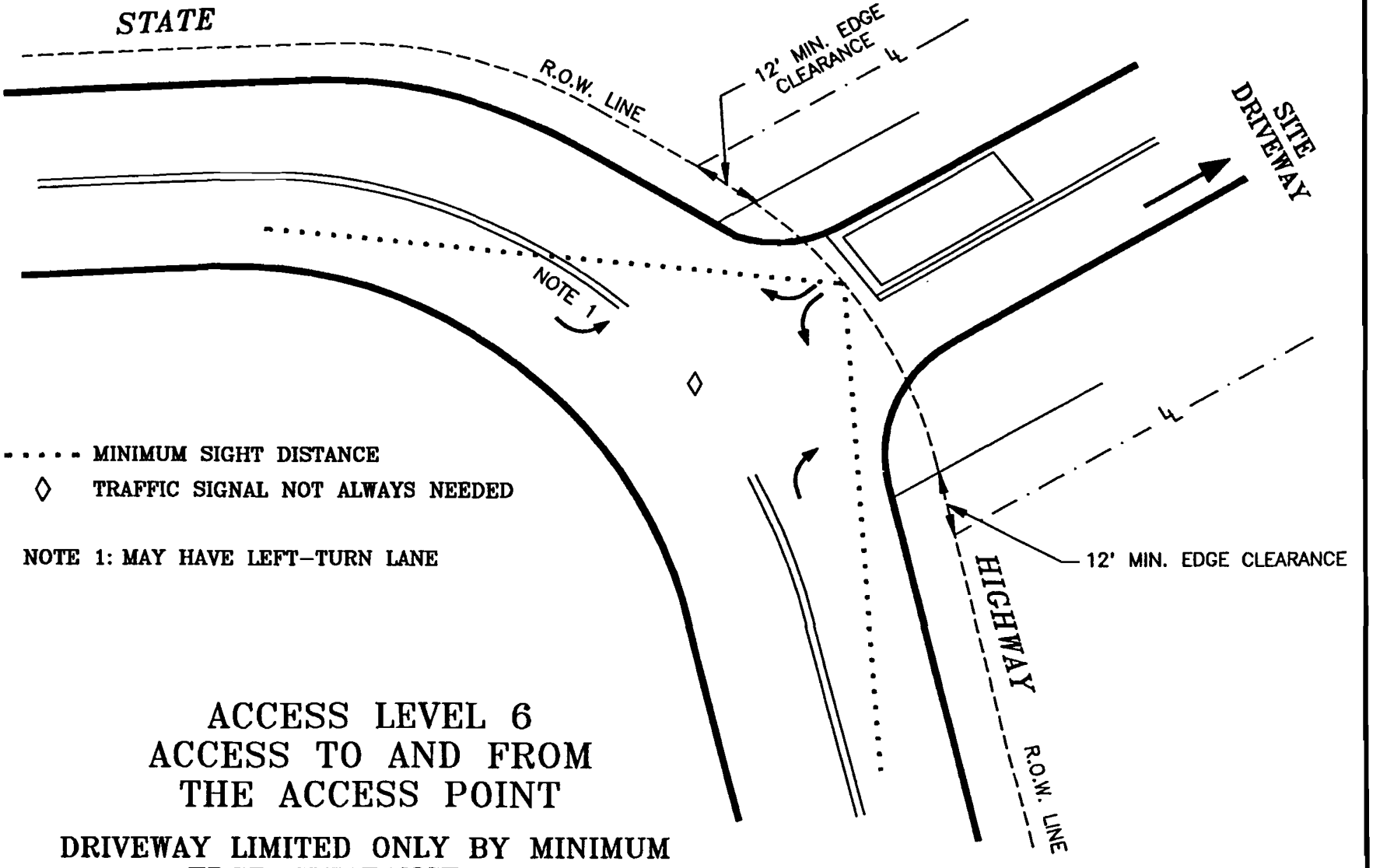


FIGURE C-[26]**24**

APPENDIX D

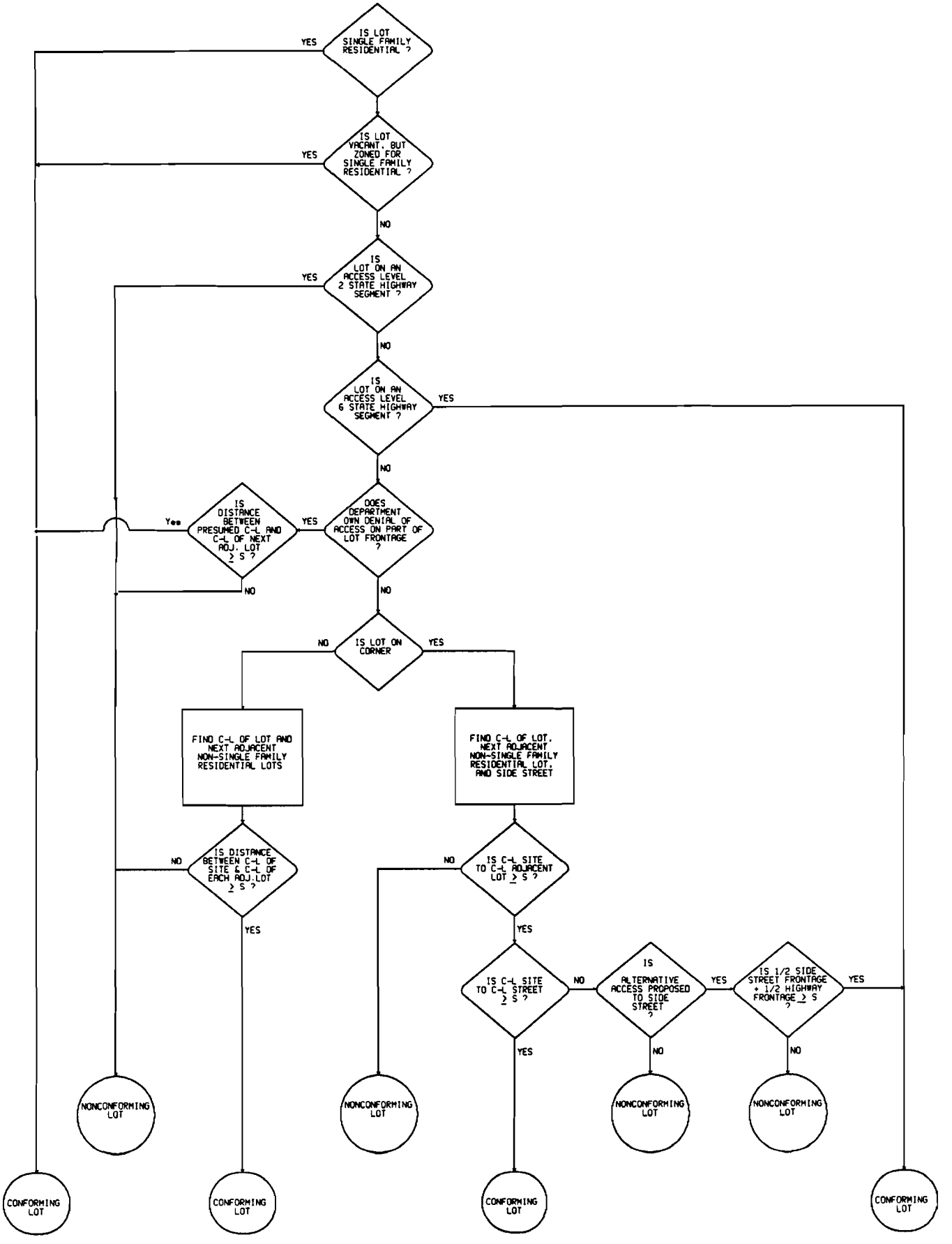
Optimum Spacing of Signalized Intersections for Various Progressive Speeds and Cycle Lengths

Cycle Length (sec.)	Speed (mph) 25	30	35	40	45	50	55
	Distances in Feet						
60	1,100	1,320	1,540	1,760	1,980	2,200	2,430
70	1,280	1,540	1,800	2,050	2,310	2,500	2,640
80	1,470	1,760	2,050	2,350	2,640	2,640	2,640
90	1,630	1,980	2,310	2,640	2,640	2,640	2,640
120	2,200	2,640	2,640	2,640	2,640	2,640	2,640
150†	2,640	2,640	2,640	2,640	2,640	2,640	2,640

†Represents maximum cycle length for actuated signal if all phases are fully used.

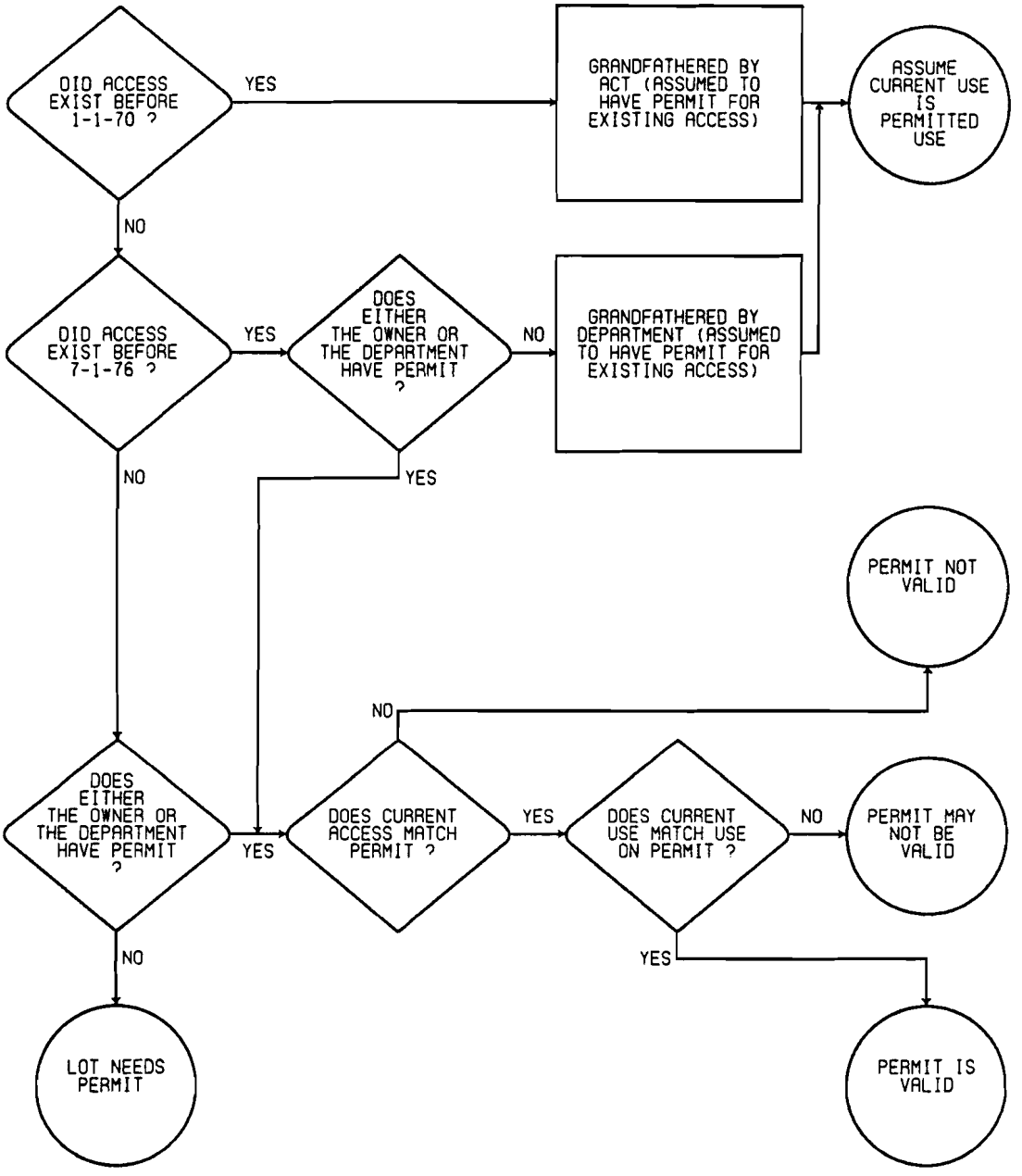
APPENDIX F

FLOWCHART FOR DETERMINING LOT CONFORMANCE



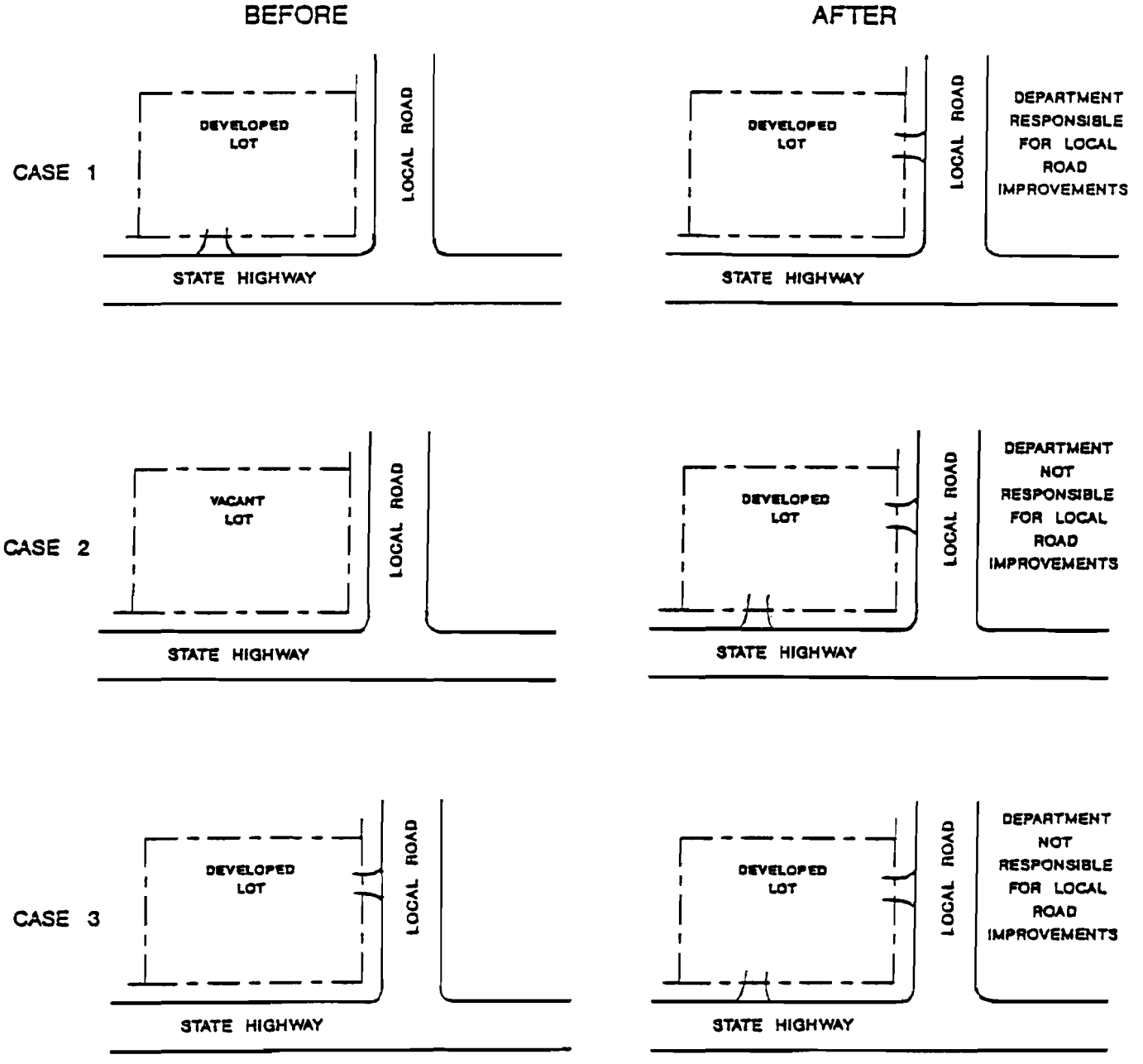
APPENDIX G

GRANDFATHERING ACCESS PERMITS

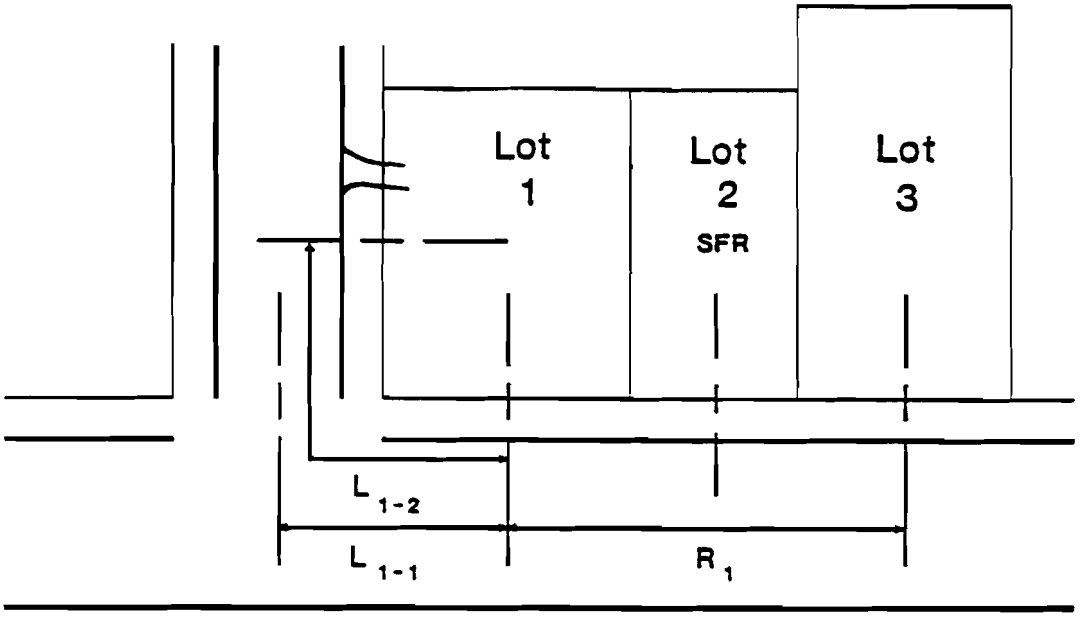


APPENDIX H

LOCAL ROAD IMPROVEMENTS NECESSITATED BY ALTERNATIVE ACCESS



APPENDIX I-1
N.J.A.C. 16:47-3.5(a)4i
MEASURING CORNER LOTS FOR CONFORMANCE



SFR • SINGLE FAMILY RESIDENTIAL LOT

FOR LOT 1

IF R_1 FOR LOT 1 IS LESS THAN THE SPACING DISTANCE,
THEN LOT IS A NONCONFORMING LOT. * $R_1 < S$ *

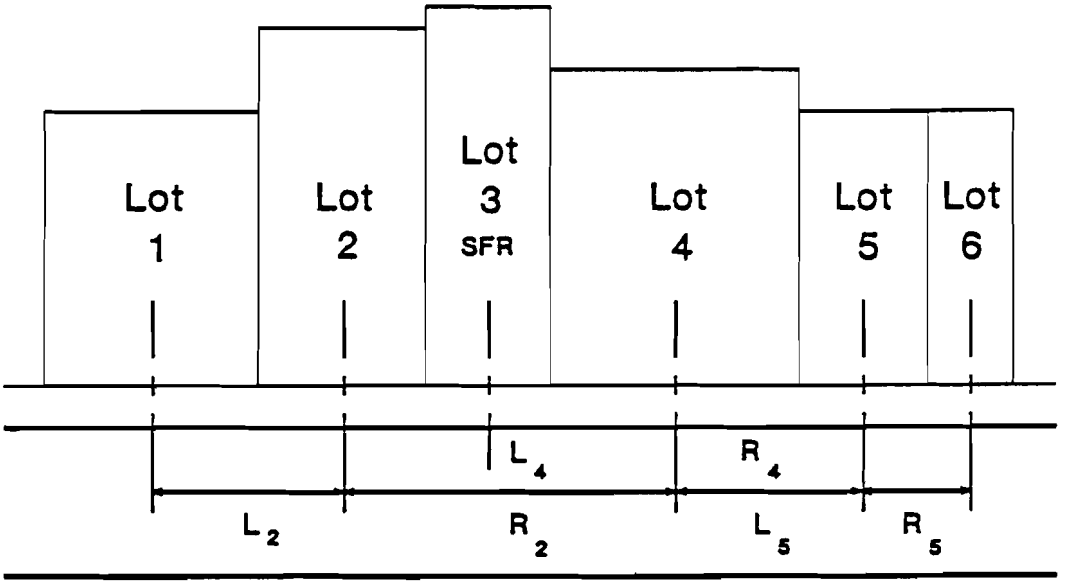
IF R_1 FOR LOT 1 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE AND
IF L_{1-1} FOR LOT 1 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE,
THEN LOT 1 IS A CONFORMING LOT. * $R_1 \geq S$ and $L_{1-1} \geq S$ *

IF R_1 FOR LOT 1 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE AND
IF L_{1-1} FOR LOT 1 IS LESS THAN THE SPACING DISTANCE,
THEN LOT 1 MAY BE A NONCONFORMING LOT. * $R_1 \geq S$ and $L_{1-1} < S$ *

IF R_1 FOR LOT 1 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE AND
IF L_{1-2} FOR LOT 1 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE,
THEN LOT 1 IS A CONFORMING LOT IF IT HAS ALTERNATIVE ACCESS.
* $R_1 \geq S$ and $L_{1-2} \geq S$ *

* S = SPACING DISTANCE *

APPENDIX I-2
N.J.A.C. 16:47-3.5(a)4ii
MEASURING MIDBLOCK LOTS FOR CONFORMANCE



SFR • SINGLE FAMILY RESIDENTIAL LOT

FOR LOT 2

IF L FOR LOT 2 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE AND IF R FOR LOT 2 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE, THEN LOT 2 IS A CONFORMING LOT. * $R_2 \geq S$ and $L_2 \geq S$ *

FOR LOT 4

IF L FOR LOT 4 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE AND IF R FOR LOT 4 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE, THEN LOT 4 IS A CONFORMING LOT. * $R_4 \geq S$ and $L_4 \geq S$ *

FOR LOT 5

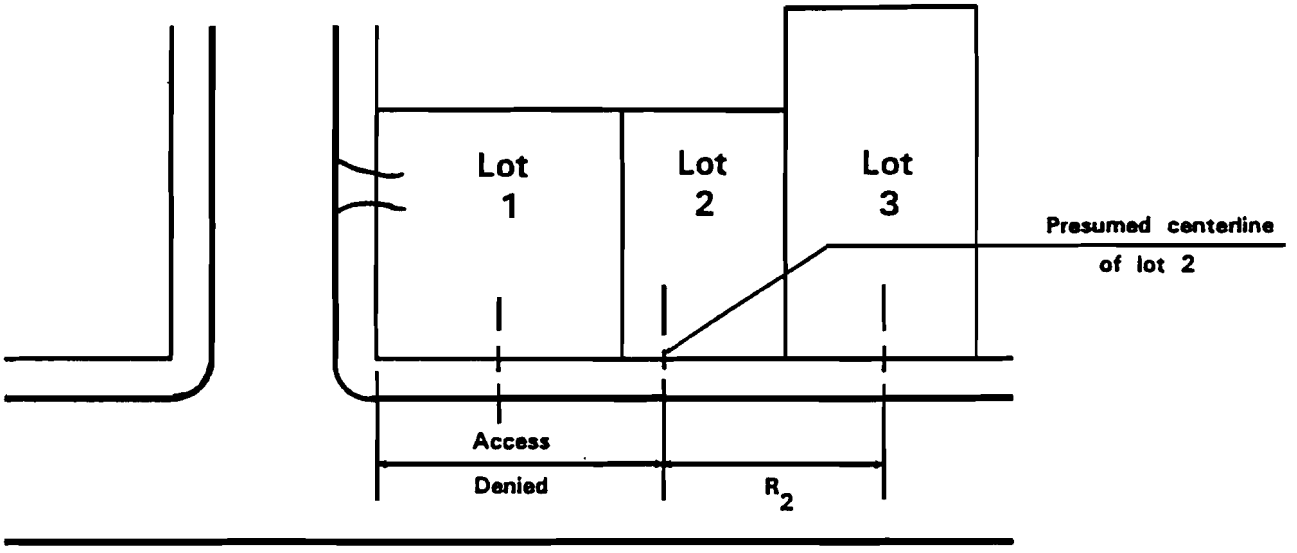
IF L FOR LOT 5 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE AND IF R FOR LOT 5 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE, THEN LOT 5 IS A CONFORMING LOT. * $R_5 \geq S$ and $L_5 \geq S$ *

* S = SPACING DISTANCE *

APPENDIX I-3

N.J.A.C. 16:47-3.5(a)4iii

MEASURING PARTIAL DENIAL OF ACCESS LOTS FOR CONFORMANCE



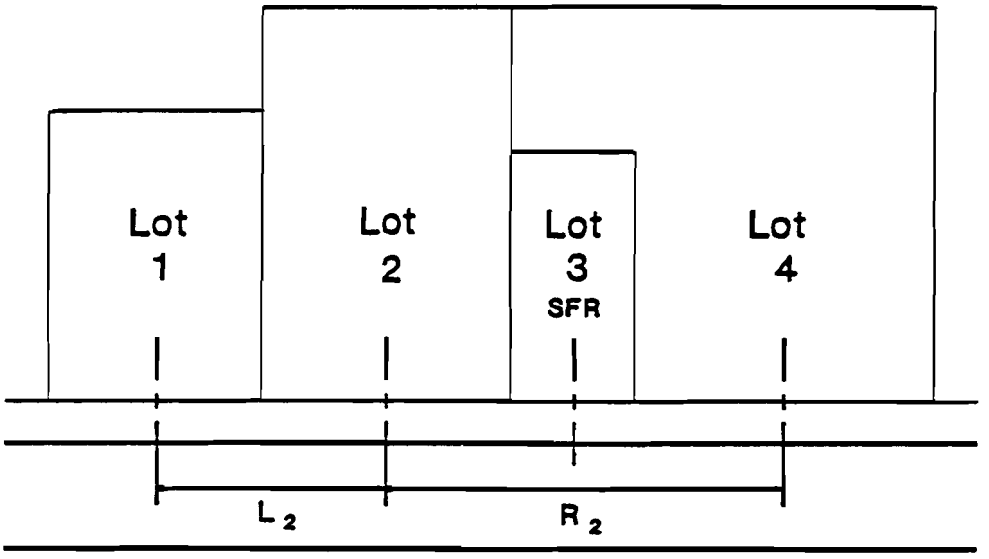
FOR LOT 2

IF R_2 FOR LOT 2 IS LESS THAN THE SPACING DISTANCE, THEN LOT 2 IS A NONCONFORMING LOT. * $R_2 > S$ *

IF R_2 FOR LOT 2 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE, THEN LOT 2 IS A CONFORMING LOT. * $R_2 \geq S$ *

* S = SPACING DISTANCE *

APPENDIX I-4
N.J.A.C. 16:47-3.5(c) 4 AND 5
MEASURING FOR MULTIPLE TWO-WAY DRIVEWAYS



SFR • SINGLE FAMILY RESIDENTIAL LOT

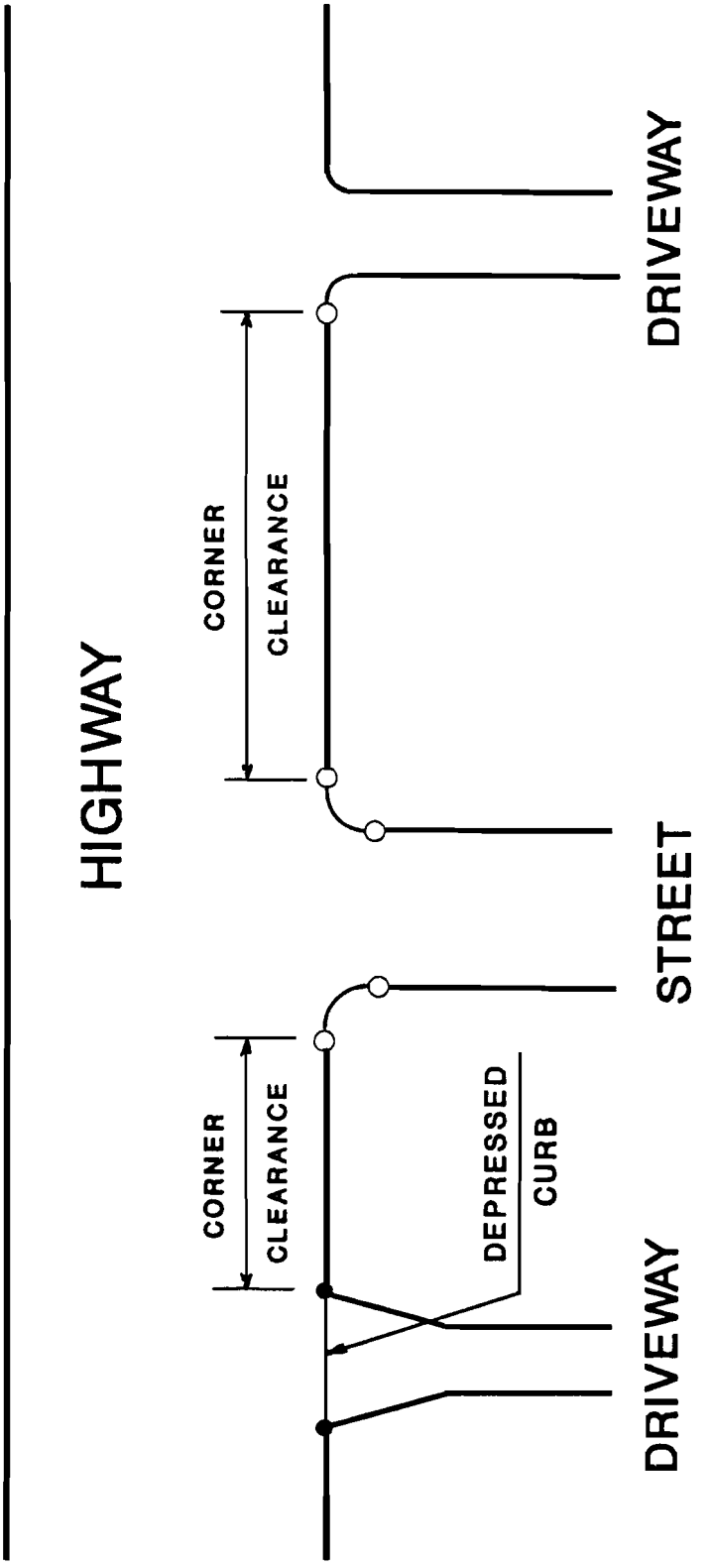
FOR LOT 2

IF LOT 2 IS A CONFORMING, MAJOR TRAFFIC GENERATOR, AND L_2 PLUS R_2 IS GREATER THAN OR EQUAL TO THREE TIMES THE SPACING DISTANCE, THEN LOT 2 MAY HAVE 2 DRIVEWAYS. * $L_2 + R_2 \geq 3 \times S$ *

IF LOT 2 IS A CONFORMING, MAJOR TRAFFIC GENERATOR WITH A PLANNING REVIEW, AND L_2 PLUS R_2 IS GREATER THAN OR EQUAL TO 4 TIMES THE SPACING DISTANCE, THEN LOT 2 MAY HAVE 3 DRIVEWAYS. * $L_2 + R_2$ 4 $\times$ S *

* S = SPACING DISTANCE *

APPENDIX K
MEASURING CORNER CLEARANCE



APPENDIX L
LOS STANDARDS FOR SIGNALIZED INTERSECTIONS

URBAN

Build Conditions	Movement on State-Highway Approach No-Build LOS							Non-State highway Approach	
	A or B	C	D		E	F			
	Delay ≤ 15.0 sec.	Delay ≤ 25.0 sec.	Delay ≤ 32.5 sec.	Delay ≥ 32.5 sec.	Delay ≥ 60.0 sec.	V/C ≤ 1.2	V/C > 1.2	V/C <1.2	V/C ≥1.2
Maximum Delay (seconds)	20.0	NA	NA	40.0	NA	NA	NA	NA	NA
Increase in Delay (seconds)	NA	7.5	7.5	NA	0.0	0.0	NA	NA	NA
Maximum V/C Ratio	NA	NA	NA	NA	NA	1.2	NA	1.2	NA
Increase in V/C Ratio	NA	NA	NA	NA	NA	NA	0.0	NA	0.0

RURAL

Build Conditions	Movement on State-Highway Approach No-Build LOS				Non-State highway Approach	
	A or B	C, D, OR E	F			
	Delay ≤ 15.0 sec.	Delay ≤ 25.0 sec.	V/C ≤ 1.2	V/C > 1.2	V/C < 1.2	V/C ≥ 1.2
Maximum Delay (seconds)	15.0	NA	NA	NA	NA	NA
Increase in Delay (seconds)	NA	0.0	0.0	NA	NA	NA
Maximum V/C Ratio	NA	NA	NA	NA	1.2	NA
Increase in V/C Ratio	NA	NA	NA	0.0	NA	0.0

NA = Not Applicable

V/C = Volume to Capacity Ratio

APPENDIX N-1
SAMPLE CAPACITY ANALYSIS SUMMARY TABLE
INTERSECTION WITH TRAFFIC SIGNAL

		YEAR ____ NO-BUILD, NO IMPROVEMENTS						YEAR ____ BUILD, NO IMPROVEMENTS					CHANGE IN DELAY OR V/C RE: STANDARDS			YEAR ____ BUILD, WITH IMPROVEMENTS						CHANGE IN DELAY OR V/C RE: STANDARDS		
	MOVEMENT	# LANES	VOLUME	GREEN TIME	V/C	DELAY	LOS	VOLUME	GREEN TIME	V/C	DELAY	LOS	ALLOWED	COMPUTED	EXCEEDED	# LANES	VOLUME	GREEN TIME	V/C	DELAY	LOS	ALLOWED	COMPUTED	EXCEEDED
NORTHBOUND	LEFT																							
	THROUGH																							
	RIGHT																							
	OVERALL																							
SOUTHBOUND	LEFT																							
	THROUGH																							
	RIGHT																							
	OVERALL																							
EASTBOUND	LEFT																							
	THROUGH																							
	RIGHT																							
	OVERALL																							
WESTBOUND	LEFT																							
	THROUGH																							
	RIGHT																							
	OVERALL																							

INAPPROPRIATE COLUMNS MAY BE OMITTED. SIMILARLY, THE COLUMNS HEADED "BUILD, NO IMPROVEMENTS" CAN BE OMITTED IF THE APPLICANT PROPOSES THAT THE EXISTING HIGHWAY CONFIGURATION WILL NOT EXIST FOR THE BUILD YEAR OF THE SITE. SCENARIOS SHOWING CONFORMANCE TO LOS STANDARDS SHALL BE SUPPLIED EVEN IF THE APPLICANT DOES NOT SUPPORT THESE SCENARIOS. SCENARIOS WHICH THE APPLICANT DOES SUPPORT SHALL ALSO BE SUMMARIZED.
ROWS FOR MOVEMENTS THAT DO NOT AND WILL NOT EXIST SHALL BE OMITTED.
ADDITIONALLY, TRAFFIC SIGNAL SPACING ANALYSIS PER N.J.A.C. 16:47-4.21 MAY ALSO BE REQUIRED.

APPENDIX N-2
SAMPLE CAPACITY ANALYSIS SUMMARY TABLE
UNSIGNALIZED INTERSECTION

		YEAR ____ NO-BUILD NO IMPROVEMENTS				YEAR ____ BUILD NO IMPROVEMENTS			CHANGE IN RESERVE CAPACITY RE: STANDARDS			YEAR ____ BUILD WITH IMPROVEMENTS				CHANGE IN RESERVE CAPCITY RE: STANDARDS		
	MOVEMENT	# LANES	VOLUME	RESERVE CAPACITY	LOS	VOLUME	RESERVE CAPACITY	LOS	ALLOWED	COMPUTED	EXCEEDED	# LANES	VOLUME	RESERVE CAPACITY	LOS	ALLOWED	COMPUTED	EXCEEDED
NORTHBOUND	LEFT																	
	THROUGH																	
	RIGHT																	
SOUTHBOUND	LEFT																	
	THROUGH																	
	RIGHT																	
EASTBOUND	LEFT																	
	THROUGH																	
	RIGHT																	
WESTBOUND	LEFT																	
	THROUGH																	
	RIGHT																	

INAPPROPRIATE COLUMNS MAY BE OMITTED. SIMILARLY, THE COLUMNS HEADED "BUILD, NO IMPROVEMENTS" CAN BE OMITTED IF THE APPLICANT PROPOSES THAT THE EXISTING HIGHWAY CONFIGURATION WILL NOT EXIST FOR THE BUILD YEAR OF THE SITE. SCENARIOS SHOWING CONFORMANCE TO LOS STANDARDS SHALL BE SUPPLIED EVEN IF THE APPLICANT DOES NOT SUPPORT THESE SCENARIOS. SCENARIOS WHICH THE APPLICANT DOES SUPPORT SHALL ALSO BE SUMMARIZED.
ROWS MAY BE FILLED IN N/A FOR NOT APPLICABLE CONDITIONS.
ROWS FOR MOVEMENTS THAT DO NOT AND WILL NOT EXIST SHALL BE OMITTED.

(a)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING

BUREAU OF ACCESS AND DEVELOPMENT IMPACT ANALYSIS

State Highway Access Management Code

Appendix B: State Highway Access Levels By Route and Milepost

Appendix E: Access Application Thresholds

Appendix E1: Access Application Thresholds Based on NJDOT Data

Appendix J: Significant Increase in Traffic

Adopted New Rules: N.J.A.C. 16:47, Appendices B, E, E1 and J.

Proposed: September 16, 1991 at 23 N.J.R. 2831(b).
Adopted: March 25, 1992 by George Warrington, Deputy Commissioner, New Jersey Department of Transportation.
Filed: March 26, 1992 as R.1992 d.182, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and State Highway Access Management Act, P.L. 1989, c.32 (N.J.S.A. 27:7-89).

Effective Date: April 20, 1992.
Expiration Date: April 20, 1997.

Summary of Public Comments and Agency Responses:

The Department received comments from Ms. Gail M. Yazersky, ACIP, Senior Planner, Monmouth Planning Board, P.O. Box 1255, Freehold, New Jersey 07728-1255, specific to the rule proposal appearing in the New Jersey Register at 23 N.J.R. 2831(b). The Department thanked the commenter for her expressions of concerns.

COMMENT: The incorporation of desirable typical section 1A into DTS categories is welcomed as a significant improvement to the Code. Now that this DTS Code has been proposed, there are several areas in Monmouth County where the Department should change the DTS designation from its existing designation to 1A prior to Code adoption. While others may be changed later, the initial road segments to be reviewed for change to the 1A designation are:

Route 33 (Business) through portions of Freehold Borough
Route 35 through Red Bank
Route 79 through Freehold Borough

RESPONSE: The Department appreciates the support for the desirable typical section 1A designation. The Department will adopt the September 16, 1991 proposal as published. The Department is committed to meet with each county to resolve outstanding issues during 1992 and make revisions to Appendix B. The concerns regarding Route 33B, Route 35, and Route 79 can be discussed at that time. The county or any individual is welcome to follow the process outlined in N.J.A.C. 16:47-6 to request an access classification change prior to the meetings with the counties, if he or she seeks a change sooner.

COMMENT: Regarding the trip generation data (Appendix E1) for gas stations, please explain how expansion of the station (that is, additional gas pumps or additional service bays) will be quantified to determine whether the expanded use will generate additional trips, what units of measurement are used, and whether these trips require a new access permit to be issued. The current verison of the Appendix is unclear.

RESPONSE: The Department obtained data from different types of service stations from all over New Jersey. The data shows that the traffic generation of a service station is not a function of the number of pumps or the number of service bays. Therefore, when a service station changes the number of pumps or service bays, the access permit status of the site is not changed. Service station is the unit of measurement, but, as shown in Appendix E1, it is divided into gas only; gas and service bays; gas and minimart; gas and car wash; and gas, minimart, and car wash.

COMMENT: The 10 percent increase in anticipated daily traffic (Appendix J) should be eliminated. To require this on top of an increase of more than 100 anticipated peak hour trips could well be counterproductive in trying to maintain mobility on our State roads. What is most critical, as in almost every traffic impact or design study/review undertaken by Monmouth County or by its consultants, is the quantification of peak hour trips. This is most critical in planning to meet capacity and mobility needs as peak hour trip generation analysis has become an industry standard and is generally used for the majority of design year projections. The peak hour should be the peak hour of the roadway being analyzed.

RESPONSE: N.J.S.A. 27:7-95 states both the peak hour and daily trip increases need to be exceeded. The rules promulgated by the Department must abide by the law.

COMMENT: The DTS is a regional planning tool and in Monmouth County there are several State highway routes where downscaling of the number of lanes or right-of-way width and more limited access is recommended. Consistency with the Transportation Executive Council's **Policies for the New Decade** should be considered. Route 35 and Route 79 are identified as needing changes.

RESPONSE: As set forth in N.J.A.C. 16:47-8, the Department will meet with each county to discuss these issues. Please refer to the Social Impact Statement of 23 N.J.R. 1559, May 20, 1991.

COMMENT: Will the Department consider constructing future DTS requirements in stages?

RESPONSE: Yes, the Department will accept the construction of the future DTS in stages consistent with protecting the safety and efficiency of the highway.

Full text of the adoption follows.

AGENCY NOTE: Appendix B at 23 N.J.R. 1600 to 1606 has been deleted and replaced by the following Appendix B.

APPENDIX B
STATE HIGHWAY ACCESS LEVELS BY ROUTE AND MILEPOST
ACCESS LEVEL (AL)

1 Fully controlled Access
2 Access along Street or Interchange Only
3 Right-turn Access with Provision for Left-turn Access via Jughandle
4 Driveway with Provision for Left-turn Access via Left-turn lane
5 Driveway with Provision for Left-turn Access (Limited by Spacing Requirements & Safety Considerations)
6 Driveway Access Limited by Edge Clearance and Safety Considerations

DESIRABLE TYPICAL SECTIONS CODES (DTS) & RIGHT OF WAY WIDTHS (R.O.W.) DESCRIPTION[1]

DTS	R.O.W.	DESCRIPTION
1A	EXISTING	SAME LANE, SHOULDER, AND PARKING CONDITIONS AS EXIST[2]
2A	78′	2 LANES, WITH SHOULDERS OR PARKING
2B	92′	2 LANES, WITH SHOULDERS OR PARKING, WITH 14′ TWO-WAY LEFT-TURN LANE
2C	68′	2 LANES, WITHOUT SHOULDERS, WITH 14′ TWO-WAY LEFT-TURN LANE
2D	54′	2 LANES, WITHOUT SHOULDERS (NON-STATE HIGHWAYS ONLY)
4A	114′	4 LANES, DIVIDED, WITH SHOULDERS OR PARKING
4B	90′	4 LANES, DIVIDED, WITHOUT SHOULDERS
4C	102′	4 LANES, UNDIVIDED, WITH SHOULDERS OR PARKING
4D	78′	4 LANES, UNDIVIDED, WITHOUT SHOULDERS
4E	102′	4 LANES, UNDIVIDED, WITH SHOULDERS, OR PARKING (URBAN SITUATION)
4F	116′	4 LANES, UNDIVIDED, WITH SHOULDERS OR PARKING, WITH 14′ TWO-WAY LEFT-TURN LANE
4G	92′	4 LANES, UNDIVIDED, WITHOUT SHOULDERS, WITH 14′ TWO-WAY LEFT-TURN LANE
5A	131′	5 LANES, (2 LANES, 1 DIRECTION + 3 LANES, OPPOSITE DIRECTION). DIVIDED WITH SHOULDERS
6A	148′	6 LANES DIVIDED, WITH SHOULDERS OR PARKING
6B	124′	6 LANES, DIVIDED, WITHOUT SHOULDERS
6C	210′	6 LANES, DIVIDED, WITH CD ROADS
8A	172′	8 LANES, DIVIDED, WITH SHOULDERS OR PARKING
8B	148′	8 LANES, DIVIDED, WITHOUT SHOULDERS
8C	234′	8 LANES, DIVIDED, WITH CD ROADS

FOR CELL NUMBER, SEE APPENDIX A

[1]These show the maximum acceptable expanded width of a State highway segment. The widths of lanes, shoulders, parking, sidewalk areas and rights-of-way shown are those derived from the standards for desirable geometric design elements. The right-of-way width needed for the construction of the highway improvement may be less than the dimensions shown when less than desirable widths are used.

[2]This designation means that social, environmental, or economic constraints may limit the desirability of State highway segment expansion. If compelling safety needs dictate, the Department will construct, or require a permittee to construct, highway improvements consistent with the design standards.

ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
1	0.60	5.46	1	6A	0
1	5.46	5.94	3	6A	1
1	5.94	7.20	3	6C	1
1	7.20	10.79	3	6A	1
1	10.79	11.29	3	6B	1
1	11.29	22.40	3	6A	1
1	22.40	35.97	3	8A	1
1&9	35.97	38.34	3	8A	1
1&9	38.34	40.45	3	6A	1
1&9	40.45	41.80	3	6A	4
1&9	41.80	43.20	3	6A	1
1&9	43.20	45.45	3	6A	4
1&9	45.45	48.68	1	8C	0
1&9	48.68	51.09	1	6C	0
1&9	51.09	54.65	1	4B	0
1&9	54.65	62.00	3	6A	4
1&9	62.00	62.13	3	4A	10
1&9	62.13	62.80	4	4A	10
1&9	62.80	62.93	3	4A	4
1&9	62.93	63.20	3	6C	1
1&9	63.20	64.90	3	5A	1
1 B	0.00	2.73	3	4A	1
1&9 T	0.00	2.29	3	6A	1
1&9 T	2.29	4.11	3	6A	4
3	0.00	6.00	3	8A	1
3	6.00	10.40	1	6C	0
3	10.40	10.84	3	4A	1
4	0.00	0.23	3	4B	4
4	0.23	2.20	3	4A	4
4	2.20	10.89	3	6A	1
5	0.00	0.39	5	2A	12
5	0.39	0.97	4	2B	12
5	0.97	1.80	5	2A	12
5	1.80	2.16	4	4E	11
5	2.16	3.15	6	2A	18
7	0.00	0.53	4	4D	5
7	0.53	1.60	3	4A	1
7	1.60	3.57	4	4C	2
7	3.57	4.16	4	4C	5
7	4.16	5.29	4	4D	11
7	5.99	9.17	4	4D	11
7	9.36	10.10	4	4D	11
9	3.02	6.50	4	4C	32
9	6.50	9.63	4	4C	35
9	9.63	11.00	4	4C	32
9	11.00	13.00	6	2A	42
9	13.00	15.08	6	2A	39
9	15.08	23.50	4	4C	32
9	23.50	24.00	4	4C	35

9	24.00	28.30	4	4C	32	21	0.00	0.91	2	6B	1
9	28.30	28.73	4	4C	35	21	0.91	4.00	4	6B	4
9	28.73	29.20	4	4C	5	21	4.00	4.10	3	6A	1
9	29.20	29.80	4	4C	2	21	4.10	12.45	1	6A	0
9	29.80	30.35	4	4C	32	22	0.30	0.62	1	6B	0
9	30.35	30.65	4	4C	35	22	0.62	1.47	3	6B	4
9	31.90	32.63	4	4C	2	22	1.47	2.00	3	6B	1
9	32.63	33.22	4	4C	5	22	2.00	4.45	3	4A	1
9	33.22	36.00	4	4C	2	22	4.45	5.12	1	6A	0
9	36.00	41.40	4	4C	5	22	19.22	28.60	2	4A	31
9	41.40	42.80	4	4C	2	22	28.60	31.50	3	4A	1
9	42.80	43.80	4	4C	5	22	31.50	37.10	3	6A	1
9	43.80	45.30	4	4C	2	22	37.10	41.59	3	4A	1
9	45.30	52.36	4	4C	32	22	41.59	60.53	3	6A	1
9	54.83	55.23	4	4C	32	22 A	2.38	3.47	4	4D	5
9	55.23	57.30	4	4C	35	22 A	3.47	4.05	4	4D	2
9	57.30	61.60	4	4C	32	23	0.00	2.06	4	4D	5
9	61.60	62.50	4	4C	35	23	2.06	3.99	4	4D	2
9	62.50	63.30	4	4A	34	23	3.99	5.05	4	4D	5
9	63.30	64.60	2	4A	31	23	5.05	6.30	1	6A	0
9	64.60	68.28	3	4A	34	23	6.30	17.00	3	6A	1
9	68.28	70.20	4	4F	34	23	17.00	27.20	2	6A	25
9	70.20	70.50	3	4B	34	23	27.20	28.78	4	4C	26
9	70.50	71.05	3	4A	34	23	28.78	35.71	4	4C	29
9	71.05	74.40	2	4A	31	23	35.71	37.18	4	4C	26
9	74.40	80.70	3	4A	34	23	37.18	41.15	4	4C	29
9	80.70	81.90	4	4D	35	23	41.15	45.20	4	4C	26
9	81.90	86.56	3	4A	34	23	45.20	45.80	4	4C	29
9	86.56	88.75	3	4A	1	23	45.80	46.65	4	4C	26
9	88.75	89.60	3	4A	4	23	46.65	52.53	4	4C	29
9	89.60	89.95	3	4A	4	24	0.00	0.40	5	4E	5
9	89.95	90.93	3	4A	1	24	0.40	1.50	5	4D	5
9	94.40	100.20	3	4A	1	24	1.50	2.80	4	4D	11
9	100.20	102.96	3	4A	4	24	2.80	4.50	5	2A	12
9	102.96	123.09	3	6A	1	24	4.50	5.90	5	2A	6
9	123.09	136.23	3	8A	1	24	5.90	7.45	4	4D	5
9 W	0.00	0.35	3	4B	4	24	7.45	7.63	1	4B	0
9 W	0.35	0.76	3	4A	4	24	7.63	10.86	1	6A	0
9 W	0.76	1.45	4	4E	5	26	0.00	0.70	4	4E	8
9 W	1.45	11.00	3	4A	1	26	0.70	2.10	4	4E	11
9 W	11.00	11.15	4	2A	3	27	0.00	1.45	5	1A	6
10	0.00	10.63	3	4A	1	27	1.45	4.00	5	1A	3
10	10.63	19.70	3	6A	1	27	4.00	6.80	4	2B	3
10	19.70	23.47	3	4A	1	27	6.80	9.50	4	4F	2
12	0.95	10.58	2	4A	31	27	9.50	10.20	4	4F	5
12	10.58	11.70	4	4A	34	27	10.20	13.85	4	4F	2
13	0.00	0.43	4	4D	11	27	13.85	15.37	4	4E	5
13	0.43	0.58	4	4B	10	27	16.55	18.23	4	4D	5
15	0.00	2.05	4	4C	5	27	18.23	23.85	4	4F	5
15	2.05	2.29	3	6A	1	27	23.85	27.18	4	4F	2
15	2.29	2.46	3	8B	1	27	27.18	35.79	4	4E	2
15	2.46	3.66	3	6A	1	28	0.00	2.22	4	4D	2
15	3.66	5.42	2	6A	31	28	2.22	3.00	4	4D	5
15	5.42	6.35	2	6A	31	28	3.00	3.70	4	2B	5
15	6.35	6.75	3	6A	1	28	3.70	5.08	4	4D	5
15	6.75	14.13	1	6A	0	28	5.08	6.80	4	4D	2
15	14.13	16.70	5	4E	38	28	6.80	12.47	4	4D	5
15	16.70	18.29	5	4E	41	28	17.15	23.00	5	1A	6
15	18.29	19.52	4	4E	32	28	23.00	26.63	4	4A	4
17	0.00	3.35	4	4E	5	29	3.20	6.20	1	4A	0
17	3.35	3.50	4	4E	2	29	6.20	6.70	3	4A	4
17	3.50	26.62	3	6A	1	29	6.70	9.55	1	4A	0
18	5.14	30.85	1	4A	0	29	9.55	13.80	5	2A	9
18	30.85	34.25	3	4A	1	29	13.80	16.72	5	2A	36
18	34.25	36.94	3	6A	1	29	16.72	18.10	6	2A	42
18	36.94	41.75	3	8A	1	29	18.10	18.60	6	4C	41
18	41.75	42.00	3	6A	1	29	18.60	19.60	6	2A	42
18	42.00	43.71	1	6A	1	29	19.60	20.30	6	4C	41
19	0.00	0.70	1	4A	0	29	20.30	23.36	6	2A	42
19	0.70	2.91	1	6A	0	29	23.36	34.26	6	2A	39
20	0.00	0.70	2	6A	4	30	0.96	1.20	3	6A	4
20	0.70	3.98	3	6A	4	30	1.20	3.15	3	8B	1

30	3.15	3.32	3	8B	4	34	21.20	22.56	4	4C	5
30	3.32	4.26	3	8A	1	34	22.56	26.79	4	4C	2
30	4.26	6.40	4	4E	2	35	0.00	0.26	4	4B	10
30	6.40	7.95	3	6A	4	35	0.26	0.58	5	2A	12
30	7.95	8.25	3	4A	1	35	0.58	1.44	4	4A	10
30	8.25	12.70	3	4A	1	35	1.44	2.07	4	6A	10
30	12.70	16.30	3	4A	7	35	2.07	2.32	4	6B	7
30	16.30	18.00	3	4B	34	35	2.32	2.48	4	8B	7
30	18.00	21.60	3	4A	7	35	2.48	3.51	1	6A	0
30	21.60	27.97	2	4A	31	35	3.51	3.65	3	6B	1
30	27.97	32.60	4	4G	2	35	3.65	3.77	3	4B	1
30	32.60	35.10	4	4G	32	35	3.77	7.29	3	4A	4
30	35.10	40.35	3	4A	32	35	7.29	9.12	4	4A	4
30	40.35	42.10	4	4A	34	35	9.12	13.00	4	4E	5
30	42.10	46.00	4	4G	32	35	13.00	14.55	4	4A	4
30	46.00	52.42	4	4G	2	35	14.55	16.04	3	4A	4
30	52.42	54.39	3	4A	1	35	16.04	20.10	4	4F	2
30	54.39	55.42	3	6B	1	35	20.10	20.56	3	4A	1
30	55.42	56.75	3	8B	1	35	20.56	21.11	3	4A	4
30	56.75	57.47	3	8B	4	35	21.11	22.30	3	6A	4
30	57.47	58.23	3	6C	4	35	22.30	24.61	4	4C	5
31	1.15	3.82	4	4C	5	35	24.61	24.94	3	4A	1
31	3.82	4.30	4	4C	2	35	24.94	29.50	3	6A	1
31	4.30	4.70	4	4F	2	35	29.50	31.20	4	4F	5
31	4.70	6.90	3	4A	1	35	31.20	33.15	4	4C	5
31	6.90	7.19	3	4A	1	35	33.15	34.37	4	4E	5
31	7.19	8.60	4	4C	2	35	34.37	35.80	3	4A	1
31	8.60	12.37	4	4C	26	35	35.80	43.91	3	6A	1
31	12.37	16.36	2	4A	25	35	43.91	44.62	3	6B	1
31	21.95	22.10	2	4A	25	35	44.62	49.52	3	6A	1
31	22.10	24.40	3	4A	28	35	50.79	51.00	1	6A	0
31	24.40	42.12	2	4A	25	35	51.00	52.32	4	4E	5
31	42.12	42.28	3	4A	28	35	52.32	53.35	4	4F	5
31	42.28	42.34	3	4A	1	35	53.35	54.87	4	4C	2
31	42.34	43.19	3	4A	4	35	54.87	58.18	4	4C	5
31	43.19	43.56	3	4A	1	36	0.00	4.00	3	6A	1
31	43.56	46.12	2	4A	25	36	4.00	5.78	4	4D	5
31	46.12	49.00	3	4A	28	36	5.78	8.31	4	4C	2
32	0.00	1.18	2	4A	31	36	8.31	9.40	4	4C	5
33	0.00	0.20	4	4D	5	36	9.40	11.60	4	4C	2
33	1.46	2.30	4	4D	5	36	11.60	11.80	4	4D	2
33	2.30	5.50	4	4C	5	36	11.80	13.00	3	5A	1
33	5.50	7.86	4	4C	2	36	13.00	19.52	3	4A	1
33	12.39	12.70	3	6A	1	36	19.52	24.18	3	6A	1
33	12.70	13.38	4	2B	1	36	24.18	24.40	3	4A	1
33	13.38	13.68	4	4C	2	37	0.00	1.53	2	4A	31
33	13.68	14.70	4	2C	6	37	1.53	2.90	3	4A	1
33	14.70	14.77	4	4D	2	37	2.90	6.02	3	6A	1
33	14.77	15.01	3	6B	1	37	6.02	6.50	3	4A	1
33	15.01	16.42	3	6A	1	37	6.50	6.75	3	8A	1
33	16.42	24.32	2	6A	25	37	6.75	11.45	3	6A	1
33	24.32	29.30	1	4A	0	37	11.45	12.39	1	6A	0
33	29.35	29.91	4	4E	2	37	12.39	13.42	3	6A	1
33	29.91	33.04	4	4C	32	38	0.00	12.00	3	6A	1
33	33.04	36.65	2	4A	25	38	12.00	15.40	3	4A	1
33	36.65	38.30	3	4A	1	38	15.40	16.80	3	4A	4
33	38.30	40.28	4	4C	2	38	16.80	18.31	4	4A	1
33	40.28	40.63	1	6A	0	38	18.31	19.23	4	4C	32
33	40.63	41.82	4	4C	5	40	1.85	5.60	2	4A	31
33	41.82	42.46	4	4C	11	40	5.60	8.04	4	4C	32
33 BW	0.00	0.60	5	2A	8	40	8.04	10.00	4	4C	35
33 BE	0.00	0.60	1	2D	7	40	10.00	11.02	4	4D	35
33 B	0.60	2.24	4	4C	8	40	11.02	11.25	4	4D	35
33 B	2.24	2.57	3	6A	4	40	11.25	19.50	4	4C	32
33 B	2.57	3.36	5	4D	17	40	19.50	20.33	4	4C	35
33 B	3.36	3.86	4	4E	11	40	20.33	25.73	4	4C	32
33 B	3.86	4.35	5	4C	14	40	25.73	26.48	4	4C	2
33 B	4.35	5.03	5	4C	17	40	26.48	27.30	4	4C	5
34	0.00	0.33	3	4A	1	40	27.30	29.27	4	4C	2
34	0.33	12.60	2	4A	31	40	29.27	32.55	4	4C	32
34	12.60	20.44	4	4C	32	40	32.55	35.23	3	4A	1
34	20.44	21.20	4	4C	2	40	35.23	46.27	2	4A	31

40	46.27	47.47	4	4C	35	46	43.18	43.82	3	6A	1
40	47.47	53.10	2	4A	31	46	43.82	56.70	3	6A	1
40	53.10	53.85	2	6A	31	46	56.70	60.10	3	6A	1
40	53.85	56.79	3	6A	1	46	60.10	61.60	3	6A	1
40	56.79	59.00	3	4A	1	46	61.60	62.26	3	6A	4
40	59.00	59.72	3	4A	4	46	62.26	66.07	3	6A	1
40	59.72	59.98	4	4F	5	46	66.07	66.52	3	6A	1
40	59.98	60.39	3	4A	4	46	66.52	68.28	3	6A	1
40	60.39	61.65	4	4F	2	46	68.28	69.00	3	8A	1
40	61.65	63.57	3	4A	1	46	69.00	69.18	3	6A	1
40	63.57	63.97	4	4F	5	46	69.18	69.38	4	4F	2
40	63.97	64.07	4	4C	5	46	69.38	70.08	4	4F	5
41	0.00	2.32	4	4D	8	46	70.08	70.40	1	4D	0
41	2.32	3.00	4	4C	8	46	70.40	70.73	3	6A	4
41	3.00	3.91	4	4F	8	46	70.73	71.55	3	8B	1
41	3.91	4.94	4	4C	5	46	71.55	72.15	3	6B	1
41	10.68	11.95	4	4F	5	47	0.67	1.16	4	4A	40
41	11.95	13.02	4	4F	2	47	1.16	3.18	4	4A	37
41	13.02	13.98	3	5A	1	47	3.18	3.73	5	4D	41
42	0.00	6.40	3	6A	1	47	3.73	3.90	4	4D	35
42	6.40	14.28	1	8A	0	47	3.90	4.32	4	4C	35
44	0.00	1.28	6	2A	51	47	4.32	6.10	4	4C	32
44	1.28	2.80	6	2A	39	47	6.10	7.00	4	4C	35
44	2.80	2.98	5	2A	9	47	7.00	17.43	4	4C	32
44	2.98	4.10	5	2A	12	47	17.43	17.63	2	4B	31
44	4.10	5.20	5	2A	9	47	17.63	25.60	4	4C	32
44	5.20	6.28	5	2A	12	47	25.60	26.62	4	4C	35
44	6.28	8.40	5	2A	9	47	26.62	33.12	4	4C	32
44	8.40	9.10	5	2A	12	47	33.12	34.12	4	4C	35
44	9.10	9.60	5	2A	9	47	34.12	34.80	4	4C	32
45	0.00	0.42	4	4E	5	47	34.80	36.08	6	2A	39
45	0.42	2.32	4	4E	35	47	36.08	38.50	5	2A	9
45	2.32	8.79	4	4E	32	47	38.50	40.80	4	2C	12
45	9.43	10.14	4	4D	35	47	40.80	42.20	4	2C	9
45	10.14	17.21	4	4E	32	47	42.20	45.88	4	4D	8
45	17.21	17.32	4	4E	35	47	45.88	46.75	4	4D	11
45	17.32	17.77	4	4D	35	47	46.75	47.60	4	4D	8
45	18.16	18.24	4	4E	35	47	47.60	52.03	4	4C	8
45	18.24	20.24	4	4E	32	47	52.03	52.36	4	4C	11
45	20.24	22.40	4	4E	2	47	52.82	56.00	4	4C	8
45	22.40	22.53	4	4E	5	47	56.00	56.78	4	4C	11
45	22.53	22.60	3	4A	4	47	56.78	58.17	4	4C	8
45	22.60	24.80	3	4A	1	47	58.17	58.29	4	4C	2
45	24.80	24.90	3	4A	4	47	58.29	59.80	4	4C	5
45	24.90	26.90	5	4D	5	47	59.80	61.96	4	4C	2
45	26.90	28.51	4	4D	2	47	61.96	62.29	4	4C	5
46	0.00	0.85	1	4A	0	47	62.66	63.15	4	4D	5
46	0.85	6.86	4	2A	27	47	63.15	64.12	4	4C	2
46	6.86	7.45	4	4A	25	47	64.12	74.00	4	4C	8
46	7.45	9.63	4	4C	26	47	74.00	74.98	4	4C	11
46	9.63	10.05	4	4C	29	48	0.00	0.61	4	4C	11
46	10.05	10.12	4	4C	35	48	0.61	1.58	4	4C	8
46	10.12	15.82	4	4C	32	48	1.58	2.10	4	4C	32
46	15.82	20.63	4	4C	35	48	2.10	4.26	6	2A	39
46	20.63	20.73	4	4D	2	49	0.00	0.70	4	4C	2
46	20.73	21.82	4	4D	5	49	0.70	3.00	4	4C	5
46	21.82	22.40	4	4B	34	49	3.00	6.29	4	4C	2
46	22.40	24.58	4	4A	34	49	6.29	8.30	4	4C	32
46	24.58	25.50	2	4A	31	49	8.30	10.10	4	4C	5
46	25.50	29.60	3	4A	1	49	10.10	11.00	4	4C	35
46	29.60	30.43	3	4A	4	49	11.00	12.30	4	4C	32
46	30.43	33.45	3	4A	1	49	12.30	12.88	4	4C	35
46	33.45	34.25	4	4C	2	49	12.88	20.94	4	4C	32
46	34.25	35.10	4	4C	5	49	20.94	21.10	4	4D	32
46	35.10	35.38	4	4C	2	49	21.10	21.62	4	4D	35
46	35.38	36.05	3	4A	1	49	21.62	22.10	4	4D	32
46	36.05	36.58	3	4A	4	49	22.10	23.13	4	4C	32
46	36.58	37.22	3	4A	1	49	23.13	24.50	4	4C	2
46	37.22	42.00	3	4A	4	49	24.50	26.25	4	4C	5
46	42.00	42.38	3	4A	4	49	26.25	26.50	3	4B	4
46	42.38	42.50	3	6B	4	49	26.50	26.60	4	4C	5
46	42.50	43.18	3	6A	4	49	26.60	27.20	4	4C	2

49	27.20	28.50	4	4C	32	70	14.83	20.10	2	4A	31
49	28.50	29.00	4	4C	35	70	20.10	26.10	4	4C	32
49	29.00	30.80	4	4C	32	70	26.10	26.50	2	4C	31
49	30.80	35.03	4	4C	2	70	26.50	43.25	4	4C	32
49	35.03	36.10	4	4C	5	70	43.25	43.45	4	4C	35
49	36.10	37.37	4	4D	5	70	43.45	44.82	3	4A	34
49	37.37	38.10	4	4D	2	70	44.82	48.58	2	4A	31
49	38.10	40.80	4	4C	2	70	48.58	59.84	3	4A	1
49	40.80	53.78	4	4C	32	71	0.00	0.61	6	2A	18
50	0.00	0.24	3	4B	34	71	0.61	5.09	5	4D	17
50	0.24	6.18	4	4C	32	71	5.41	7.40	5	4D	17
50	6.18	7.03	4	4C	35	71	7.40	9.40	5	4E	17
50	7.03	18.55	4	4C	32	71	9.40	10.48	5	4D	17
50	19.18	19.67	4	4C	35	71	10.48	11.64	4	4A	16
50	19.67	20.91	4	4C	32	71	11.64	12.53	4	2B	17
50	20.91	21.20	1	4A	0	71	12.53	13.77	4	2C	17
50	21.20	23.50	4	4C	32	71	13.77	15.71	4	4D	11
50	23.50	24.20	2	4A	31	71	15.71	16.76	4	4C	11
50	24.20	25.53	4	4C	32	72	0.00	5.96	4	4E	32
50	25.53	26.08	4	4C	35	72	5.96	11.47	4	4C	32
52	0.00	2.74	4	4E	5	72	11.47	13.70	4	4E	32
53	0.00	1.55	4	2B	8	72	13.70	27.18	2	4A	31
53	1.55	2.35	4	4C	8	72	27.18	27.40	2	5A	31
53	2.35	3.32	4	4C	11	72	27.40	27.55	2	6A	31
53	3.32	4.65	4	4E	11	72	27.55	28.18	2	4A	31
54	0.00	1.11	4	4C	2	72	28.18	28.72	3	5A	34
54	1.11	8.20	4	4C	32	73	6.00	10.89	2	6A	31
54	8.20	8.46	4	4C	2	73	10.89	12.70	3	6A	1
54	8.46	9.12	3	4A	1	73	12.70	14.46	2	6A	31
54	9.12	9.98	4	4C	2	73	14.46	19.58	3	6A	1
54	9.98	11.88	4	4C	5	73	19.58	21.35	3	6A	1
55 F	20.00	20.80	3	4A	25	73	21.35	32.00	3	6A	1
55 F	20.80	60.52	1	4A	0	73	32.00	32.35	3	8A	1
56	0.00	0.17	4	4D	8	73	32.35	34.10	3	6A	1
56	0.17	2.00	5	4D	38	76	0.00	1.85	1	1A	0
56	2.00	7.50	6	2A	39	77	0.00	2.19	4	4D	5
56	7.50	7.84	3	4B	7	77	2.19	2.70	4	4D	2
56	7.84	9.23	4	4D	11	77	2.70	3.90	4	2A	3
57	0.00	0.55	4	4C	2	77	3.90	7.18	5	2A	33
57	0.55	2.20	4	4C	32	77	7.18	8.05	5	2A	36
57	2.20	2.80	4	4C	35	77	8.05	22.18	5	2A	33
57	2.80	4.38	4	4C	32	77	22.18	22.55	5	2A	36
57	4.38	5.28	4	4C	35	78	4.16	17.85	1	6A	0
57	5.28	6.40	4	4C	32	78	17.85	19.22	1	8A	0
57	6.40	7.00	4	4C	35	78	19.22	29.85	1	6A	0
57	7.00	9.10	4	4C	32	78	29.85	33.13	1	8A	0
57	9.10	9.78	4	2B	33	78	33.13	48.54	1	6A	0
57	9.78	11.60	4	2B	6	78	48.54	58.50	1	1A	0
57	11.60	11.80	4	2B	36	79	0.00	0.35	4	4F	11
57	11.80	11.90	4	2B	33	79	0.35	0.57	4	2B	12
57	11.90	14.44	4	4C	32	79	0.57	1.75	4	2C	18
57	14.44	15.23	4	2B	33	79	1.75	2.40	5	4D	17
57	15.23	18.93	4	4C	32	79	2.40	3.90	5	4D	38
57	18.93	19.55	4	4C	35	79	3.90	4.81	5	4C	38
57	19.55	20.00	4	4C	32	79	4.81	5.08	3	4A	37
57	20.00	20.45	4	4C	32	79	5.08	5.38	3	4A	7
57	20.45	20.53	4	4C	2	79	5.38	5.80	4	4C	11
57	20.53	21.10	4	4D	2	79	5.80	6.80	4	4C	8
59	0.00	0.15	4	4B	22	79	6.80	9.60	5	4C	38
63	0.00	0.06	3	4A	4	79	9.60	10.00	5	4C	41
63	0.06	3.00	4	2B	6	79	10.00	10.25	5	4C	38
63	3.00	3.11	3	4A	4	79	10.25	10.95	4	4C	8
64	0.00	0.33	3	4B	4	79	10.95	11.38	4	4C	11
66	0.00	0.40	3	4A	10	79	11.38	12.13	4	4D	11
66	0.40	3.67	3	4A	7	80	0.50	42.10	1	8A	0
67	0.00	1.32	4	4E	11	80	42.10	42.90	1	8C	0
67	1.43	1.98	4	4E	11	80	42.90	43.90	1	8A	0
68	0.00	0.60	2	4A	1	80	43.90	46.13	1	1A	0
68	0.60	1.07	3	4A	1	80	46.13	62.50	1	8A	0
68	1.07	8.02	2	4A	31	80	62.50	68.30	1	1A	0
70	0.00	8.50	3	6A	1	81	0.51	1.16	3	5A	1
70	8.50	14.83	3	4A	1	82	0.00	2.65	4	4E	5

82	2.65	3.35	4	4E	2	147	0.80	1.63	3	4D	32
82	3.35	4.25	4	4E	5	147	1.63	3.30	4	4D	35
82	4.25	4.93	4	4E	2	147	3.30	4.20	5	4D	41
83	0.00	0.24	2	4B	31	152	0.00	0.17	4	4D	5
83	0.24	3.84	2	4A	31	152	0.17	1.58	4	4D	2
87	0.00	0.57	3	8A	7	152	1.58	1.72	4	4D	5
87	0.57	0.80	3	6A	7	152	1.72	3.17	4	4D	2
87	0.80	1.72	3	4A	7	154	0.00	0.30	4	4C	11
88	0.00	0.30	4	2B	12	154	0.30	1.70	4	4C	8
88	0.30	3.57	4	2C	12	156	0.00	1.21	5	2A	12
88	3.57	5.21	4	2C	12	157	0.00	0.43	5	2A	6
88	5.21	7.42	4	2C	6	157	0.43	0.91	4	2A	3
88	7.42	8.60	4	2C	6	159	0.00	0.45	3	4A	1
88	8.60	8.96	5	4D	5	159	0.45	0.56	3	4A	4
88	8.96	9.64	4	2C	6	159	0.56	1.35	4	4E	11
88	9.64	9.84	3	4B	4	161	0.00	1.10	4	2B	12
90	2.00	3.20	3	8A	1	162	0.00	0.73	6	2A	39
91	0.00	1.30	4	4C	8	163	0.00	0.33	6	2A	51
91	1.30	2.31	4	4C	11	165	0.00	0.10	4	4A	40
93	0.00	3.41	5	2A	12	165	0.10	0.28	5	4D	41
94	0.20	0.72	4	4D	35	166	0.00	1.86	4	2C	6
94	0.72	2.63	4	4C	32	166	1.86	1.98	4	4D	5
94	2.63	3.33	4	4C	35	166	1.98	2.23	4	2C	6
94	3.33	8.75	4	4C	32	166	2.23	3.75	4	2C	3
94	8.75	9.33	4	4C	35	167	0.00	2.86	6	2A	51
94	9.33	11.82	4	4C	32	168	0.00	0.78	3	4A	1
94	11.82	12.60	4	4D	35	168	0.78	1.20	4	4C	2
94	12.60	14.80	4	4C	35	168	1.20	2.65	4	2C	6
94	14.80	21.35	4	4C	32	168	2.65	4.73	4	2C	3
94	21.35	21.55	4	4D	2	168	4.73	7.38	4	2C	6
94	21.55	22.50	4	4D	5	168	7.38	8.72	4	4C	5
94	24.88	27.63	4	4C	35	168	8.72	9.79	3	4A	1
94	27.90	32.90	4	4C	35	168	9.79	9.92	3	4B	4
94	32.90	35.15	4	4C	32	168	9.92	10.57	4	4C	5
94	35.15	45.71	4	4C	35	169	0.98	3.31	3	4A	4
95	0.12	4.42	1	6A	0	169	3.31	4.00	3	4A	1
95	72.48	76.78	1	1A	0	169	4.00	5.73	3	4A	4
109	1.37	1.95	4	4C	35	171	0.00	0.08	3	4A	10
109	1.95	2.50	4	4A	34	171	0.08	1.00	4	4F	23
109	2.50	3.06	4	4C	35	172	0.00	0.35	6	4E	23
120	0.00	0.95	3	6A	1	172	0.35	0.81	3	4A	10
120	0.95	2.65	3	6A	4	173	0.00	0.25	5	2A	9
124	7.32	9.00	4	4A	19	173	0.25	0.35	4	2B	9
124	9.00	9.40	6	4A	22	173	0.35	3.19	4	2B	39
124	9.40	10.03	3	4A	4	173	3.19	4.20	4	2B	45
124	10.03	11.70	4	4E	5	173	4.20	4.50	4	2B	48
124	11.70	12.58	3	4A	4	173	4.50	12.07	4	2B	45
124	12.58	14.84	4	4E	5	173	12.43	12.80	4	2B	45
130	0.00	0.65	4	4D	11	173	12.80	13.50	4	2B	48
130	0.65	2.25	4	4D	8	173	13.50	14.62	4	2B	54
130	2.25	4.15	4	4D	11	175	0.27	1.58	6	2A	21
130	4.15	5.28	4	4D	8	175	1.58	2.15	6	2A	24
130	5.28	8.90	6	2A	39	175	2.15	2.73	6	2A	21
130	8.90	11.70	4	4A	37	175	2.73	2.95	4	4A	19
130	11.70	14.29	1	4A	0	179	0.10	0.38	6	2A	42
130	23.53	25.43	3	4A	1	179	0.38	0.71	5	4D	41
130	25.43	29.46	3	6B	1	179	0.71	1.45	5	4D	38
130	30.45	37.10	3	6B	1	179	1.45	6.40	6	2A	39
130	37.10	45.90	3	6A	1	179	6.40	7.46	6	2A	42
130	45.90	46.65	4	8B	4	181	0.00	1.41	4	4C	11
130	46.65	55.43	3	6A	1	181	1.41	1.65	4	4C	8
130	55.43	55.77	3	6A	4	181	1.65	4.39	5	4C	41
130	55.77	56.43	3	8B	4	181	4.39	5.81	4	4C	11
130	56.43	70.04	3	4A	1	181	5.81	7.43	5	4C	38
130	70.04	80.38	2	4A	31	182	0.00	0.98	4	4D	5
130	80.38	83.37	3	4A	1	183	0.00	0.20	2	4B	31
138	0.00	3.52	3	4A	1	183	0.20	0.43	3	4A	1
139	0.00	1.49	3	8B	1	183	0.43	0.58	3	4A	4
140	0.00	0.48	6	2A	18	183	0.58	2.12	4	2B	6
140	0.48	0.95	5	2A	12	184	0.00	0.32	3	6A	10
143	0.25	2.35	6	2A	45	184	0.32	1.37	3	4A	10
147	0.00	0.80	4	4D	35	185	0.00	1.42	3	4A	4

187	0.00	0.47	4	4E	8	206	89.49	95.61	3	4A	1
195	0.00	34.17	1	4A	0	206	97.01	97.51	3	4A	1
202	0.37	19.04	2	4A	25	206	97.51	97.80	2	4A	31
202	19.04	26.25	3	4A	1	206	97.80	99.23	3	4A	1
202	26.25	29.00	4	4F	2	206	99.23	102.72	2	4A	31
202	29.00	29.55	3	4A	1	206	102.72	103.35	4	4A	34
202	29.55	29.69	3	4A	4	206	103.35	104.50	4	2C	35
202	29.69	30.02	3	4B	4	206	104.50	107.18	2	4A	31
202	30.02	31.50	3	4A	1	206	107.18	107.48	3	4A	34
202	31.50	31.80	3	4A	4	206	107.48	108.18	3	4A	1
202	31.80	32.56	4	2C	11	206	108.18	109.93	4	2B	6
202	32.56	32.77	5	2A	12	206	109.93	111.10	4	4C	35
202	32.77	32.95	6	2A	42	206	111.10	114.10	2	4A	31
202	32.95	34.10	6	2A	39	206	114.10	116.28	3	4A	34
202	34.10	36.20	5	2A	9	206	116.28	128.20	2	4A	31
202	36.20	36.40	5	2A	12	206	128.20	129.22	3	4A	34
202	36.40	37.85	4	2B	12	208	0.00	3.55	3	6A	1
202	37.85	39.06	4	4C	8	208	3.55	5.12	2	6A	1
202	39.06	39.30	5	2A	9	208	5.12	11.02	3	6A	1
202	39.30	42.31	6	2A	39	278	0.00	0.90	1	6A	0
202	42.31	42.62	5	2A	9	280	0.00	7.66	1	6A	0
202	42.62	43.90	5	2A	12	280	7.66	12.50	1	8A	0
202	43.90	45.30	5	4E	11	280	12.50	13.28	1	1A	0
202	45.30	45.70	5	4C	11	280	13.28	16.80	1	6A	0
202	45.70	46.31	4	4E	11	284	0.00	0.63	5	2A	36
202	46.31	47.00	4	4D	11	284	0.63	7.03	5	2A	33
202	50.03	50.70	3	4B	1	287	0.00	0.73	1	1A	0
202	51.43	51.87	4	4C	5	287	0.73	17.82	1	8A	0
202	62.99	65.32	3	6A	1	287	17.82	21.20	1	1A	0
202	65.32	65.58	5	2A	6	287	21.20	42.10	1	8A	0
202	72.44	72.66	4	4D	5	287	42.10	47.30	1	6A	0
206	0.00	0.10	3	4A	1	287	47.30	60.00	1	6A	0
206	0.10	2.33	4	4F	2	287	60.00	67.54	1	4A	0
206	2.33	6.27	4	4C	2	295	0.95	26.40	1	6A	0
206	6.27	9.00	4	4C	26	295	26.40	27.00	1	8A	0
206	9.00	23.30	4	4C	32	295	27.00	42.90	1	6A	0
206	23.30	23.70	4	4F	32	295	42.90	44.78	1	8A	0
206	23.70	30.36	4	4C	32	295	44.78	72.00	1	6A	0
206	30.36	31.28	2	4A	31	322	2.24	6.30	2	4A	31
206	31.28	33.40	4	4C	32	322	6.30	10.85	4	4D	39
206	33.40	34.00	2	4A	31	322	11.24	11.53	4	4D	35
206	34.00	35.50	3	4A	1	322	11.53	14.58	4	4C	32
206	35.50	35.61	3	4A	4	322	14.58	16.10	4	4C	35
206	36.27	38.49	3	4A	1	322	16.10	16.78	4	4D	2
206	38.49	38.90	3	6A	1	322	16.78	18.55	4	4D	5
206	38.90	39.00	3	6A	4	322	18.55	19.50	4	4D	2
206	39.00	40.73	3	4A	4	322	19.50	23.05	4	4C	35
206	44.50	45.00	6	4A	23	322	23.05	24.10	4	4C	2
206	45.00	47.90	4	4C	2	322	24.10	24.50	4	4C	5
206	47.90	48.50	1	2A	0	322	24.50	26.85	4	4C	2
206	48.50	49.80	5	1A	3	322	26.85	32.90	4	4C	32
206	49.80	52.90	4	2C	2	322	32.90	48.70	2	4A	31
206	52.90	54.50	4	1A	3	322	48.70	50.10	2	6A	31
206	54.50	55.80	4	2C	2	324	0.00	1.51	6	2A	51
206	55.80	57.20	4	2C	35	439	0.00	3.94	4	4E	5
206	57.20	57.90	4	2B	35	440	0.00	3.10	1	6A	0
206	57.90	64.45	2	4A	25	440	3.10	3.98	1	6C	0
206	64.45	68.90	3	4A	1	440	20.56	23.28	3	6A	1
206	68.90	71.25	3	6A	1	495	0.80	1.97	1	6A	0
206	78.32	79.25	3	4A	1	524	0.45	0.90	4	4B	13
206	79.25	89.49	2	4A	31	676	0.00	3.79	1	6A	0

AGENCY NOTE: Appendix E at 23 N.J.R. 1634 to 1635 has been deleted and replaced by the following Appendix E.

APPENDIX E
ACCESS APPLICATION THRESHOLDS

CATEGORY	LAND USE CODE	USE	UNITS	THRESHOLD For Major† 500 Trips per day	THRESHOLD For Major with Planning 200 Peak Hour Trips
Residential	210	Single Fam. Det. Housing	unit	46	196
	220	Apartments	unit	82	290
	222	High Rise Apt. 3 Levels	unit	110	513
	230	Condo/Townhouses	unit	74	364
	240	Mobile Home Park	unit	93	345
	250	Retirement Community	unit	182	597
	252	Congregate Care Facility	unit	233	953
	260	Recreational Homes	unit	158	274
	270	Residential Planned Unit	unit	50	246
	310	Hotel	room	64	264
	320	Motel	room	49	271
	330	Resort Hotel	room	45	244
Business	150	Warehousing	1,000 sf	102.5	270.3
	151	Mini Warehouse	1,000 sf	195.6	362.3
	110	General Light Industry	1,000 sf	71.8	185.2
	120	General Heavy Industrial	1,000 sf	333.3	333.3
	140	Manufacturing	1,000 sf	132.2	262.6
	130	Industrial Park	1,000 sf	71.8	219.8
		Flexspace (use LUC 770)	1,000 sf	33.2	127.2
		Distribution Centers	1,000 sf	50.7	222.0
			acre	6.1	25.8
Office	710	General Office	1,000 sf	25.6	106.1
	750	Office Park	1,000 sf	43.8	110.3
	760	Research Center	1,000 sf	41.5	156.2
	770	Business Park	1,000 sf	33.2	127.2
	714	Corporate Headquarters	1,000 sf	63.7	133.4
	720	Medical Office Bldg.	1,000 sf	18.5	44.8
Medical	630	Clinic	1,000 sf	21.0	40.2
	610	Hospital	1,000 sf	5.5	91.4
			bed	12	140
	620	Nursing home	bed	193	488
Schools	520	Elementary school	student	551	714
	530	High school	student	243	488
	540	Jr. or Community College	student	323	1250
	550	University	student	199	833
Shopping Center	815	Discount stores	1,000 sf	16.2	30.0
	820	Shopping Center	1,000 sf	1.0	9.6
	812	Building Materials/Lumber	1,000 sf	15.9	44.4
	850	Supermarket	1,000 sf	2.8	13.1
	851	Convenience Market	1,000 sf	0.6	3.1
	860	Wholesale Market	1,000 sf	74.3	344.8
	911	New Car Dealerships	1,000 sf	10.5	76.3
	841	Banks walk-in	1,000 sf	3.6	7.0
	912	Banks Drive-in	windows	2	4
		Wholesale Clubs #			
Entertainment	443	Movie Theater w/o Matinee	seat	223	625
			screens	2	4
	444	Movie Theater w/Matinee	screens	1	2
	420	Marina	berths	156	741
	430	Golf Course	acre	66.3	312.5
	740	Civic Center	1,000 sf	20.0	70.0

Gasoline/Fuel Stations #					
Food	831	Quality Restaurant	1,000 sf	5.2	17.5
	832	High Turnover Restaurant	1,000 sf	2.4	6.3
	833	Fast Food Restaurant w/o	1,000 sf	0.6	1.9
	834	w/drive through	1,000 sf	0.7	3.3

† Any use that generates less than 500 trips per day will require a minor application.
# See Appendix E1 for thresholds and trip rates.

AGENCY NOTE: Appendix E1 at 23 N.J.R. 1635 has been deleted and replaced by the following Appendix E1.

APPENDIX E1
ACCESS APPLICATION THRESHOLDS
BASED UPON NJDOT DATA

CATEGORY	LUC	USE	UNITS	THRESHOLD For Major† 500 Trips per day	THRESHOLD For Major with Planning 200 Peak Hour Trips
Gasoline/Fuel Stations	NJDOT DATA	Service Stations with/			
		gas only:	station	1	NA
		gas and service bays:	station	1	NA
		gas and minimart:	station	1	NA
		gas and car wash:	station	1	NA
		gas, minimart and car wash:	station	1	NA
Wholesale Club	NJDOT DATA	Wholesale Club	building	1	1

† Any use that generates less than 500 trips per day will require a minor application.

TRIP GENERATION DATA TO BE USED FOR ANALYSES

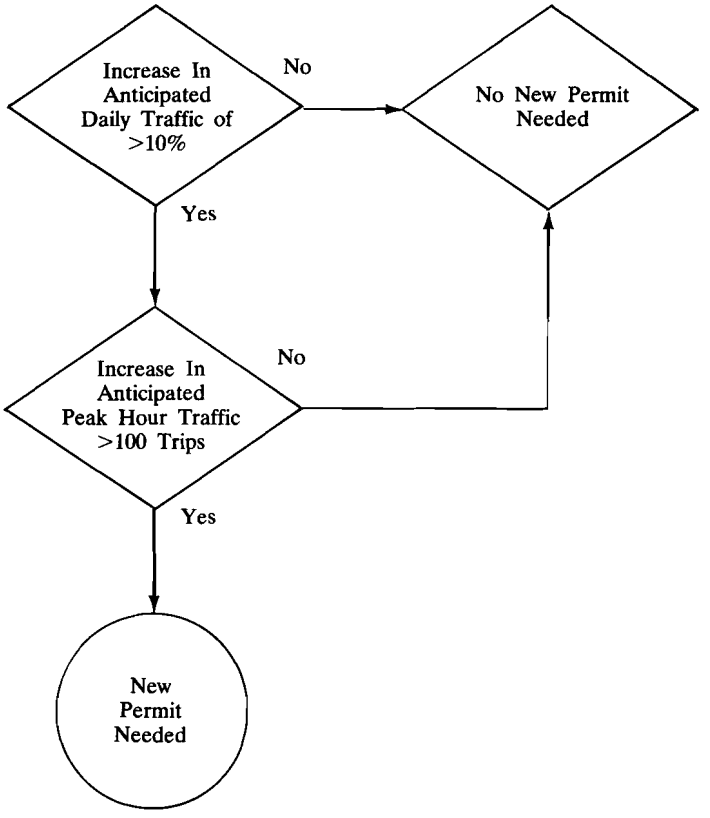
		Sample Size	Avg. Daily Trips	Peak Hour Trips AM Peak†	Peak Hour Trips PM Peak†
Trip Rates from NJDOT data:	Gas only:	26	1012	71	92
	Gas and service bays:	30	781	81	86
	Gas and minimart:	16	1224	128	129
	Gas and car wash:	2	1174	108	94
	Gas, minimart and car wash:	5	1288	110	151

		Sample Size	Avg. Daily Trips	Weekday Peak†	Saturday Peak #
	Wholesale Club:	8	—	550	—
		5	—	—	700

† Use a 50-50 distribution for entering/exiting volumes
# Use a 53-47 distribution for entering/exiting volumes

AGENCY NOTE: Appendix J at 23 N.J.R. 1643 has been deleted and replaced by the following Appendix J.

APPENDIX J
DETERMINING A SIGNIFICANT INCREASE IN TRAFFIC



PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session May 20, 1992

Take notice the following agenda item is scheduled for Notice of Proposal in the May 4, 1992 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, May 20, 1992 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, May 15, 1992.

Rule Proposal: N.J.A.C. 6:26, Establishment of Pupil Assistance Committees (new rule).

Please Note: Publication of the above item is subject to change depending upon the actions taken by the State Board of Education at the April 1, 1992 monthly public meeting.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

NATURAL AND HISTORIC RESOURCES

Notice of Action on Petition for Rulemaking Amendment to Delineated Floodway, Pohatcong Township, Warren County N.J.A.C. 7:13-7.1

Petitioner: Jack Kocsis, Jr.

Authority: N.J.S.A. 58:16A-50 et seq., particularly 58:16A-52; N.J.S.A. 58:10A-1 et seq., and 13:1D-1 et seq.

Take notice that on November 21, 1991, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking by Jack Kocsis, Jr., requesting that the Department amend the delineated floodway depicted in the map entitled "Delineation of Floodway and Flood Hazard Area, Delaware River, Mile 178.59 to Mile 180.24" prepared by Michael Baker, Jr., Inc., dated 1978, as referenced in N.J.A.C. 7:13-7.1. The petitioner is the owner of a dwelling located in the delineated floodway, and was denied a Stream Encroachment Permit for the construction of an addition to the dwelling. The petitioner asserts that the delineation of the floodway is inaccurate. The petitioner further asserts that in the course of applying for the Stream Encroachment Permit, the petitioner produced information indicating that the existing delineation is inaccurate.

The Department published a notice of action on the petition in the New Jersey Register on January 21, 1992 at 24 N.J.R. 303(c), stating that the Department was deferring the petition for further deliberation. Based upon that deliberation, the Department has determined that the delineation of the floodway should be amended.

The Department's preliminary hydraulic analyses indicate that the floodway can be optimized, and that the boundary of the floodway can be located closer to the Delaware River. The Department has requested additional mapping information from the Army Corps of Engineers in the vicinity of the petitioner's dwelling. Based upon that additional information and upon the hydraulic analyses, the Department expects to file a proposed amendment to N.J.A.C. 7:13-7.1 with the Office of Administrative Law by May 1, 1992.

(c)

ENFORCEMENT POLICY

Notice of Receipt of Petition For Rulemaking Penalties for Air Pollution in Violation of N.J.A.C. 7:27-5.1 et seq.

Petitioners: Middlesex County Utilities Authority
Bayshore Regional Sewerage Authority
Cape May County Municipal Utilities Authority
Cumberland County Utilities Authority
Ewing-Lawrence Sewerage Authority
Linden Roselle Sewerage Authority
North East Monmouth County Regional Sewerage Authority
Randolph Township Municipal Utilities Authority
Secaucus Municipal Utilities Authority
South Monmouth Regional Sewerage Authority
Two Bridges Sewerages Authority
Warren/Pequest River Municipal Utilities Authority
Western Monmouth Utilities Authority
New Jersey League of Municipalities
Association of Environmental Authorities
New Jersey Alliance for Action

Take notice that on March 17, 1992, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the Department's regulations governing the assessment and payment of civil administrative penalties for causing, suffering, allowing or permitting air pollution, as defined in and prohibited by N.J.A.C. 7:27-5.1 et seq. Petitioners own and/or operate sewerage treatment plants and other waste disposal facilities and recycling facilities. The amendments which petitioners request concern violations by public entities of N.J.A.C. 7:27-5.1 et seq., by reason of an odor (a "public entity odor violation"). Specifically, petitioners request that the Department undertake the following rulemaking:

1. Add to N.J.A.C. 7:27A-3.10(e)5 a definition of the term "public entity," to include any municipality, county, municipal or county utilities authority organized under N.J.S.A. 40:14B, sewerage authority organized under N.J.S.A. 40:14A, the Passaic Valley Sewerage Commissioners, the Joint Meeting of Union and Essex Counties, and any department, agency, commission or board thereof.

2. Add to N.J.A.C. 7:27A-3.3 a provision requiring the Department to immediately notify by telephone a public entity suspected of a public entity odor violation; provide the public entity with an opportunity to have a representative accompany inspectors during an investigation of the odor complaint; and provide the public entity with the findings and conclusions based upon the investigation, immediately upon the completion of the investigation.

3. Add to N.J.A.C. 7:27A-3.10(e)5 a provision requiring suspected public entity odor violations to be classified on a five-level scale ranging from non-detectable odors to very strong, overpowering odors which are intolerable for any length of time.

4. Add to N.J.A.C. 7:27A-3.10(e)5 a provision stating that a public entity will not be found to have violated N.J.A.C. 7:27-5.2(a) based upon a non-detectable, very light or light odor.

5. Reduce penalties for public entity odor violations, if the odor is generated by or from a waste collection, conveyance, treatment, processing or disposal facility, or a recycling facility. The reduction would be based upon the duration and level of the odor, and the foreseeability of the violation.

6. Provide for a public entity to pay into escrow a civil administrative penalty assessed for a public entity odor violation. The escrowed penalty monies would be refunded to the public entity if the Department determined that the public entity has implemented or installed reasonable corrective action or odor control measures or equipment to remedy the violation; if the public entity failed to do so in a reasonable period of time, the escrowed penalty monies would be released to the Department.

Petitioners assert that because the types of facilities they own and/or operate will unavoidably generate odors despite all reasonable control

measures, some level of odor from those facilities must be accepted. Petitioners also assert that while those facilities were originally sited in relatively desolate locations, development has now occurred in such locations; therefore, petitioners assert that to some extent, the public must be seen as having accepted the inherent odor problems. Petitioners also point out that the mere presence of an odor is not an indicator of significant adverse public health or environmental impacts.

For these reasons, petitioners state that the Department's existing penalty structure poses a serious deterrent to public entities to commence or continue operation of the facilities they own and/or operate. The penalty, combined with the cost of corrective action, imposes a severe economic burden upon petitioners, which they cannot recover from profits.

(a)

GREEN ACRES PROGRAM

Notice of Public Hearing Proposed Sale of Land Comprising Part of the Pequest Wildlife Management Area

Take notice that the State of New Jersey, Department of Environmental Protection and Energy, Green Acres Program, will hold **a public hearing** to seek comments on the proposed sale of the following State-owned land:

All of that certain land located at the Pequest Wildlife Management Area identified as a portion of Block 300, Lot 1 on the current tax map of the Township of Liberty, County of Warren, comprising 1,386 square feet (0.032± acres).

The value of this property has been appraised at $500.00.

The sale of this property is proposed to allow Warren County to reconstruct an outdated, substandard bridge.

Conveyance of this property will not interfere with or affect the use and enjoyment of State-owned lands.

The public hearing will be held on:

Tuesday, May 26, 1992 at 11:00 A.M.
Pequest Hatchery Meeting Room
Oxford, New Jersey

Persons wishing to make oral presentation are asked to limit their comments to a five-minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department.

Interested persons may submit written comments until May 26, 1992 to:

Thomas Wells, Administrator
Green Acres Program
Department of Environmental Protection and Energy
CN 412
Trenton, NJ 08625

(b)

GREEN ACRES PROGRAM

Notice of Public Hearing Cancellation Proposed Easement on Lands Comprising Part of Allaire State Park

Take notice that the public hearing scheduled for:

Friday, May 8, 1992 at 10:00 A.M. at the
Allaire State Park Office
Route 524
Farmingdale, New Jersey

has been cancelled. Notice of this hearing was published in the April 6, 1992 New Jersey Register at 24 N.J.R. 1402(a).

The purpose of the hearing was to seek comments on a proposed 30 foot x 30 foot easement on a portion of Block 48, Lot 4 in Howell Township, Monmouth County.

The applicant has found a site more suited to its needs and decided not to pursue purchase of an easement on State-owned land.

(c)

WATER SUPPLY ELEMENT

Notice of Availability of Loans Water Supply Rehabilitation and Interconnection Loan Programs

Take notice that the Department of Environmental Protection and Energy (Department) announces the availability of the following State loan funds:

A. Name of Program: Water Supply Rehabilitation and Interconnection Loan Programs. Authority: Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended, and the Water Supply Bond Loan Programs Rules, N.J.A.C. 7:1A.

B. Purpose: The purpose of the Water Supply Rehabilitation and Interconnection Loan Programs is to provide financial assistance in the form of low-interest loans to local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply facilities, and for the interconnection of unconnected or inadequately connected water supply systems.

C. Amount of money in the program: The Legislature has appropriated to the Department $25 million in bond funds from the Water Supply Fund to fund water supply rehabilitation and interconnection loan projects. Loan funds will be first applied to projects for which the Department received applications during the 1990 and 1991 application periods. The Department estimates a balance of approximately $4 million to be used towards the 1992 loan applications. Any loans issued by the Department under these programs are subject to this appropriation and the availability of funds.

D. Individuals or organizations who may apply for funding under this program: Any political subdivision of the State or agency thereof may apply for a loan under these programs.

E. Qualifications needed by an applicant to be considered for the program: Loans awarded under the Water Supply Rehabilitation and Interconnection Loan Programs are governed by the Water Supply Bond Loan Programs Rules at N.J.A.C. 7:1A. These rules define eligible projects and prescribe procedures, minimum standards of conduct for borrowers, and standards for obtaining loans from these programs.

F. Procedures for potential applicants: Applications for water supply rehabilitation and interconnection loans may be requested from:

Philip Royer
Water Supply Element
Bureau of Safe Drinking Water
401 East State Street
CN 029
Trenton, New Jersey 08625
(609) 292-5550

Pursuant to N.J.A.C. 7:1A-2.3(a), applicants must schedule an informal pre-application conference with the Water Supply Element prior to submitting a formal application for a water supply rehabilitation and/or interconnection loan.

G. Deadline by which applicants must be submitted: Applications for funding during calendar year 1992 must be submitted by June 30, 1992.

H. Date by which applicant shall be notified of preliminary approval or disapproval: Within one month of submission, the Department will send applicants for water supply rehabilitation and interconnection loans a status letter regarding their application.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Northeast Water Quality Management (WQM) Plan. This amendment proposal was submitted by the Pequannock, Lincoln Park and Fairfield Sewerage Authority. The Pequannock, Lincoln Park and Fairfield Sewerage Authority Wastewater Management Plan (WMP) is proposed to be amended to expand the sewer service area of the Pequannock, Lincoln Park and Fairfield Sewerage Authority sewage treatment plant to include the Rowit site, Lot 2, Block 1600 in West

Caldwell Township. This additional service area includes one proposed 9,600 square foot office building.

This notice is being given to inform the public that a plan amendment has been proposed for the Northeast WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. Robert Bongiovanni, Executive Director, Pequannock, Lincoln Park and Fairfield Sewerage Authority, P.O. Box 188, Lincoln Park, N.J. 07035. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Sussex County Water Quality Management (WQM) Plan. The amendment proposal, which was submitted by the Sussex County Department of Planning and Development, would amend the Montague Township Wastewater Management Plan to change the proposed discharge of the High Point Country Club sewage treatment plant from surface water (Delaware River) to ground water. The projected wastewater flow from this proposed development will remain at 720,000 gallons per day and the service area will remain the same.

This notice is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, P.O. Box 709, Newton, New Jersey 07860; and the NJDEPE, Office of Regulatory Policy, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Office of Regulatory Policy at (609) 633-7021 or the Sussex County Department of Planning and Development at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold **a public meeting** on the proposed Sussex County WQM Plan amendment at which time all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on Wednesday, June 17, 1992 at 6:10 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. Interested persons may submit written comments on the amendment to Ms. Lyn Halliday, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEPE during its review. Sussex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Raritan Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking comment on a proposed amendment to the Upper Raritan Water Quality Management (WQM) Plan. This amendment, proposed by the Township of Bedminster, would allow for conversion of the Bedminster Village Wastewater Treatment Plant to a pumping station with all wastewater flows being conveyed to the Environmental Disposal Corporation (EDC) sewage treatment plant. The amendment also proposes a reduction of flows to be received by EDC from the Township of Bernards. The amendment would modify the Bedminster Township, Borough of Far Hills, and Township of Bernards Sewerage Authority Wastewater Management Plans.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Raritan WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. John J. Flood, CFM Environmental Services, 3434 Route 22 West, Somerville, New Jersey 08876. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Cape May County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Cape May County Water Quality Management (WQM) Plan. This proposal is for a Wastewater Management Plan (WMP) for Lower Township, Cape May County which has been submitted by the Cape May County Planning Department. The WMP allows for the expansion, as delineated, of service area to the Lower Township Municipal Utilities Authority sewage treatment plant (STP). The WMP also allows for a new on-site groundwater disposal system to serve the Cape May National Golf Club. The projected wastewater flow to this facility is 23,725 gallons per day (gpd). The WMP delineates the service areas for on-site groundwater disposal systems with design capacities of less than 20,000 gpd and the sewer service area of the Wildwood/Lower STP.

This notice is being given to inform the public that a plan amendment has been developed for the Cape May County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at Cape May County Planning Department, DN 309, Central Mail Room, 4 Moore Road, Cape May Court House, New Jersey 08210, and the NJDEPE, Environmental Regulation, Office of Regulatory

Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Cape May County Planning Department at (609) 465-1083 or the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the amendment to Mr. Grover Webber, Cape May County Planning Department at the address cited above. A copy of the comments should be sent to Mr. Edward Frankel of the Office of Regulatory Policy, at the NJDEPE address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall also be considered by NJDEPE with respect to the amendment request.

Any interested persons may request in writing that the Cape May Planning Board hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Webber at the Cape May County Planning Department address cited above with a copy sent to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the close of the public hearing.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Receipt of Petition for Rulemaking Elimination of Discounts Between Hospitals and Payors

Petitioner: Louis P. Scibetta, President and CEO, New Jersey Hospital Association.

Take notice that on March 24, 1992, the Department of Health received a petition from Louis P. Scibetta, President and CEO, New Jersey Hospital Association, requesting that the Department ban negotiated discounts between hospitals and third-party payors of health care. He suggests that the Department hold public hearings on this matter and requests that the Department of Health promulgate an amendment to the existing rate setting rules to accomplish the ban.

HUMAN SERVICES

(b)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Rate in Residential Health Care Facilities

Public Notice

Take notice that, in accordance with N.J.A.C. 10:85-3.3(f)4i, the Department of Human Services announces that the rate to be paid for General Assistance recipients in Residential Health Care Facilities has been increased from $557.05 to $572.05 monthly. This change is effective January 1, 1992 and is the same in both the amount and effective date as the change in the rate for the same services paid to recipients under the Federal program of Supplemental Security Income.

(c)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Availability of Grant Funds Title of Grant: Family Development Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, acting under the authority of Public Law 1991, Chapter 523, hereby announces the availability of the following grant program funds.

A. Name of program: General Assistance Family Development Program.

B. Purpose: To establish a work/training program that offers intensified and coordinated services to address the educational, vocational and other employment-related needs of those employable clients served by the General Assistance program in the counties of Camden, Essex and Hudson.

C. Amount of available funding for the program: 100 percent funding will be provided for the reasonable costs associated with the administration of the program and for core program services.

D. Organizations which may apply for funding under this program: Public or private for profit or not-for-profit agencies that can provide trained personnel to accomplish the various service components of the General Assistance Family Development Program in Camden, Essex or Hudson county. Agencies may submit proposals to serve all or a portion of the county's GA population. The service components of the program include but are not limited to:

1. Case management.
2. Individual client assessments.
3. Employability plans.
4. Referral services:
   - training;
   - education;
   - community work experience;
   - job search;
   - social or rehabilitative services, as appropriate;
   - other employment oriented activities.
5. Linkage with other community programs to secure and coordinate resources in community.

E. Procedure for eligible organizations to apply: Request for Proposal (RFP) packages will be available on April 20, 1992. Interested applicants may request an RFP, in writing, from:

Department of Human Services
Division of Economic Assistance
Office of the Director
CN 716
Trenton, New Jersey 08625
Or, by telephone: (609) 588-2401

Additional information and technical assistance will be provided to interested applicants at a Bidders Conference to be held at the Division of Economic Assistance, Quakerbridge Plaza, Building #10, Trenton, New Jersey, on April 27, 1992 at 10:00 A.M.

Request for Proposal packages will be available, upon request, at the Bidders Conference.

F. Address to which applications must be submitted: Applicants should submit one signed original and seven copies of the completed Request for Proposal document and all support materials to:

Department of Human Services
Division of Economic Assistance
Office of the Director
CN 716
Trenton, New Jersey 08625

G. Deadline by which applications must be submitted: The completed RFP document and all required supporting material must be received by the Office of the Director, at the above address, by 12:00 noon on June 1, 1992.

H. Date the applicant is to be notified of acceptance or rejection: July 1, 1992.

(a)

OFFICE OF LEGAL AND REGULATORY LIAISON

Notice of Opportunity for Public Comment Self-Evaluation Plan and Transition Plan under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., 28 CFR 35.105 and 35.150

Take notice that the New Jersey Department of Human Services is seeking public comment from interested persons, including individuals with disabilities, to participate in this Department's development of its self-evaluation plan and transition plan under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq., 28 CFR 35.105, 35.150.

The Department, as a public entity under the ADA, shall by January 26, 1993, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of the ADA and Federal implementing regulations, and, to the extent modification of any such services, policies, and practices is required, shall proceed to make the necessary modifications, 28 CFR 35.105(a). In the event that structural changes to facilities will be undertaken to achieve program accessibility, this Department shall by July 26, 1992, develop a transition plan setting forth the steps necessary to complete such changes, 28 CFR 35.150(d). Under the ADA, the State must provide interested persons an opportunity to participate in the development of its self-evaluation plan and transition plan by submitting comments, 28 CFR 35.105(b), 35.150(d).

Interested persons should submit written comments by May 20, 1992 to:

Barbara G. Allen, Esq.
Director, Office of Legal and Regulatory Liaison
Department of Human Services
CN 700
Trenton, New Jersey 08625

All comments timely submitted by interested persons in response to this notice shall be considered by the department with respect to its self-evaluation plan and transition plan.

TRANSPORTATION

(b)

DIVISION OF PROCUREMENT BUREAU OF PROFESSIONAL SERVICES

Notice of Request for Expression of Interest from Engineering Consultants Interested in Providing Services

Take notice that the Department of Transportation is seeking Expressions of Interest from Engineering Consultants interested in providing services for the following projects:

Job I: Design for the Replacement of County Route 551 Spur-Mickleton-Gibbstown Bridge over Nehonsey Brook, Greenwich Township, Gloucester County.

Replacement of existing reinforced concrete "T" beam structure 24 feet in length carrying 2-12 foot lanes and shoulders and reconstruction and widening of approaches. Right of Way work required.

Job II: Reinspection, Evaluation and Rating of 33 On-System Bridges **Statewide.**

Submission Requirements

Qualified firms or joint ventures interested in being considered for one or both projects must submit three copies of (A) Letter of Interest not exceeding four single side, letter size pages (8½ x 11), summarizing the firm's understanding of the project, qualifications of the firm, prior relevant experience, firm organization, and key personnel, and (B) completed NJDOT Form SA87 registration package for the prime consultant and each designated subconsultant or for each member of a joint venture team. Forms may be obtained upon written request from the Bureau of Professional Services. The responses must be submitted and received by May 4, 1992, and addressed as follows:

James J. Dixon, Manager
New Jersey Department of Transportation
Division of Procurement, Bureau of Professional Services
Finance and Administration Building, Station 1226A
CN 605
Trenton, New Jersey 08625-0605
(609) 530-2452

Evaluation Criteria

Respondents will be evaluated on the basis of: (1) New Jersey licensing and professional registration of key individuals, (2) Current SA87 (years experience in specific discipline should be disclosed), (3) Insurance, (4) Staff Size, (5) Past Performance Evaluations with New Jersey Department of Transportation, (6) Special Equipment, (7) Financial Status, (8) Ethical and Moral Integrity, and (9) Professional Reputation.

NJDOT, in accordance with Title VI Civil Rights Act of 1964, 78 Stat. 252.42 U.S.C. and 49 C.F.R., Part 21 issued pursuant to such Act, affords minority/women business enterprises full opportunity to submit an expression of interest in response to this invitation and will not discriminate against any interested firm on the grounds of race, creed, color, sex, age, or national origin in a contract award.

Please note that the New Jersey Department of Transportation has a mandated DBE goal of 10 percent, yet is seeking a 20 percent DBE participation rate, for Federally-aided projects and a 15 percent target for State funded projects.

Interested firms will be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and all other applicable Equal Employment Opportunity Laws and Regulations.

Following a review of submitted Expressions of Interest, NJDOT will request technical and sealed price proposals from the most technically qualified firms/joint ventures. Proposals will not be solicited from firms or teams that have not responded to the request for Expression of Interest. The short listing process is expected to take approximately two to six weeks from the receipt of the responses. All respondents will be notified at the completion of the process regarding their status.

All interested consultants are hereby advised that no contract will be awarded to a consultant firm that is not Cost Basis Approved by the New Jersey Department of Transportation.

Inquiries should be directed to:

Bureau of Professional Services at 609-530-2452

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the March 2, 1992 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1992 d.1 means the first rule adopted in 1992.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT FEBRUARY 18, 1992

NEXT UPDATE: SUPPLEMENT MARCH 16, 1992

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
23 N.J.R. 1049 and 1226	April 15, 1991
23 N.J.R. 1227 and 1482	May 6, 1991
23 N.J.R. 1483 and 1722	May 20, 1991
23 N.J.R. 1723 and 1854	June 3, 1991
23 N.J.R. 1855 and 1980	June 17, 1991
23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 2079 and 2204	July 15, 1991
23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 3549 and 3678	December 2, 1991
23 N.J.R. 3679 and 3840	December 16, 1991
24 N.J.R. 1 and 164	January 6, 1992
24 N.J.R. 165 and 318	January 21, 1992
24 N.J.R. 319 and 508	February 3, 1992
24 N.J.R. 509 and 672	February 18, 1992
24 N.J.R. 673 and 888	March 2, 1992
24 N.J.R. 889 and 1138	March 16, 1992
24 N.J.R. 1139 and 1416	April 6, 1992
24 N.J.R. 1417 and 1658	April 20, 1992

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1	Uniform administrative procedure	24 N.J.R. 321(a)		
1:1-10.6	Discovery in conference hearings	24 N.J.R. 675(a)		
1:6, 1:7, 1:10, 1:10A, 1:11, 1:13, 1:20, 1:21	Special hearing rules	24 N.J.R. 321(a)		
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 3682(a)		
1:31	Organization of OAL	24 N.J.R. 321(a)		
Most recent update to Title 1: TRANSMITTAL 1992-2 (supplement February 18, 1992)				
AGRICULTURE—TITLE 2				
2:24-4	Volunteer Inspector Program: noncommercial apiaries and bees	24 N.J.R. 1140(a)		
2:32	Sire Stakes Program	24 N.J.R. 1142(a)		
2:50	Milk producers	24 N.J.R. 893(a)		
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing nonagricultural uses of enrolled lands	24 N.J.R. 893(b)		
2:76-6.15	Farmland Preservation Program: pre-existing nonagricultural uses on lands permanently deed restricted	24 N.J.R. 896(a)		
Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)				
BANKING—TITLE 3				
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)	R.1992 d.149	24 N.J.R. 1380(a)
3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)		
3:1-19	Consumer checking accounts	23 N.J.R. 3682(b)		
3:3-1.1	Organization of Department	Exempt	R.1992 d.112	24 N.J.R. 934(a)
3:12-1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1–5.5, 5.7	Qualified corporations as fiscal or transfer agents	24 N.J.R. 675(b)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period	23 N.J.R. 3686(c)		
Most recent update to Title 3: TRANSMITTAL 1992-2 (supplement February 18, 1992)				
CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)				
PERSONNEL—TITLE 4A				
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)				

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COMMUNITY AFFAIRS—TITLE 5				
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)	R.1992 d.144	24 N.J.R. 1385(a)
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-1.1, 1.5, 2.4A, 2.6, 2.9, 4.1, 4.7, 4.11, 4.17	Uniform Fire Code: compliance and enforcement	23 N.J.R. 3552(a)	R.1992 d.104	24 N.J.R. 739(a)
5:18-1.5, 4.7	Uniform Fire Code: eating and drinking establishments; exemption from fire suppression system equipment	24 N.J.R. 677(a)		
5:18-2.4A	Uniform Fire Code: administrative correction concerning Type Ac life hazard uses	———	———	24 N.J.R. 1475(a)
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-3	State Fire Prevention Code	23 N.J.R. 3554(a)	R.1992 d.105	24 N.J.R. 740(a)
5:18A-2.6	Fire Code enforcement: collection of fees	23 N.J.R. 3552(a)	R.1992 d.104	24 N.J.R. 739(a)
5:18A-2.9, 4.6	Fire Code enforcement: conflict of interest	24 N.J.R. 678(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
5:19-2.12, 9.3	Continuing care retirement communities: civil penalties for violations of Financial Disclosure Act	24 N.J.R. 3(b)	R.1992 d.114	24 N.J.R. 934(b)
5:23-1.1, 3.4, 3.11, 3.20, 3.20A	Uniform Construction Code: indoor air quality	24 N.J.R. 167(a)	R.1992 d.183	24 N.J.R. 1475(b)
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.15, 2.18, 2.20, 3.14	Uniform Construction Code: special inspections	24 N.J.R. 1147(a)		
5:23-2.23, 3.4, 3.11, 4.24, 12.4, 12.5, 12.6	Elevator Safety Subcode: exempt structures	24 N.J.R. 170(a)	R.1992 d.147	24 N.J.R. 1397(a)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-3.21	Uniform Construction Code: one and two-family dwellings in flood zones	24 N.J.R. 680(a)		
5:23-4.3	Elevator Safety Subcode: enforcement	24 N.J.R. 1148(a)		
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)		
5:23-4.5, 4.11, 4.14	UCC enforcement: conflict of interest	24 N.J.R. 678(a)		
5:23-4.17	Municipal construction officials: annual budget report	24 N.J.R. 169(a)	R.1992 d.148	24 N.J.R. 1399(a)
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)	R.1992 d.188	24 N.J.R. 1476(a)
5:25-2.5, 5.2, 5.4, 5.5	New home warranty and builders' registration: violations and penalties; claim eligibility	24 N.J.R. 1149(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(a)	R.1992 d.188	24 N.J.R. 1476(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:70	Congregate Housing Services Program	24 N.J.R. 513(a)		
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)		
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	Most recent update to Title 5A: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
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6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 898(a)		
6:28	Special education	24 N.J.R. 1150(a)		
6:46	Private vocational schools	24 N.J.R. 514(a)		
6:53	Vocational education safety and health standards	24 N.J.R. 516(a)		
6:79-1	Child nutrition programs (recodify to 6:20-9)	24 N.J.R. 324(a)		
	Most recent update to Title 6: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
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7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1A	Water supply loan programs	24 N.J.R. 707(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)	R.1992 d.186	24 N.J.R. 1484(a)
7:1F	Industrial Survey Project	24 N.J.R. 717(a)		
7:1H	County environmental health standards: request for public input	23 N.J.R. 2237(a)		

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7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 178(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)	R.1992 d.117	24 N.J.R. 975(b)
7:7A	Freshwater Wetlands Protection Act rules: waiver of sunset provision of Executive Order No. 66(1978)	24 N.J.R. 912(a)		
7:7A1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-9.2	Freshwater wetlands protection: public hearing and request for public comment on Statewide general permits	24 N.J.R. 975(a)		
7:7A-17.3	Freshwater wetlands protection: administrative correction regarding civil administrative penalties	_____	_____	24 N.J.R. 1333(a)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
7:9A-3.2, 3.16	Individual subsurface sewage disposal systems	24 N.J.R. 202(a)	R.1992 d.187	24 N.J.R. 1491(a)
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System: change of public hearing and extension of comment period	24 N.J.R. 344(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)	R.1992 d.146	24 N.J.R. 1333(b)
7:13-7.1	Redelineation of East Ditch in Pequannock Township, Morris County	24 N.J.R. 203(a)	R.1992 d.173	24 N.J.R. 1493(a)
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)	R.1992 d.145	24 N.J.R. 1334(a)
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)	R.1992 d.145	24 N.J.R. 1334(a)
7:14A-2.5	NJPDES program: administrative correction regarding permit conditions	_____	_____	24 N.J.R. 1493(b)
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)	R.1992 d.99	24 N.J.R. 787(a)
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.1, 18.5, 18.12	Weakfish management program	24 N.J.R. 4(c)	R.1992 d.143	24 N.J.R. 1113(a)
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		
7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)	R.1992 d.100	24 N.J.R. 788(a)
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions	23 N.J.R. 2458(a)		
7:26-4.3	Fee schedule for solid waste facilities: administrative correction	_____	_____	24 N.J.R. 1121(a)
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26B	Environmental Cleanup Responsibility Act rules: extension of comment period	24 N.J.R. 1281(a)		

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7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)	R.1992 d.102	24 N.J.R. 792(a)
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)	R.1992 d.102	24 N.J.R. 792(a)
7:27B-3.1, 3.2, 3.4–3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic compounds: sampling and analytical procedures	23 N.J.R. 1858(b)	R.1992 d.102	24 N.J.R. 792(a)
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-14.4	Therapeutic x-ray and accelerator installations: administrative correction	————	————	24 N.J.R. 1494(a)
7:50-2.11, 4.61–4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)	R.1992 d.91	24 N.J.R. 832(a)
7:60-1	Low-level radioactive waste disposal facility: assessment of generators for cost of siting and developing	23 N.J.R. 3410(b)	R.1992 d.109	24 N.J.R. 840(a)
	Most recent update to Title 7: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
HEALTH—TITLE 8				
8:20-1.2	Birth Defects Registry: reporting requirements	24 N.J.R. 171(a)	R.1992 d.184	24 N.J.R. 1494(b)
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:24-1.3, 2.5, 3.3, 13.2	Retail food establishments: "community residence"; eggs and egg dishes	24 N.J.R. 915(a)		
8:31A-7.4, 7.5	SHARE Hospital system: rebasing and Minimum Base Period Challenge	24 N.J.R. 734(b)		
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)	R.1992 d.185	24 N.J.R. 1495(a)
8:33-5.1	Certificate of Need moratorium: exceptions	24 N.J.R. 173(a)	R.1992 d.172	24 N.J.R. 1496(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:39-4.1, 9.1, 9.5, 11.2, 13.4, 35.2	Long-term care facilities: patient advance directives	23 N.J.R. 3611(a)	R.1992 d.128	24 N.J.R. 935(a)
8:39-9.2	Long-term care facilities: mandatory administration policies and procedures	23 N.J.R. 3613(a)	R.1992 d.129	24 N.J.R. 937(a)
8:40-3.3, 5.2, 6.14	Licensure of invalid coach and ambulance services	————	————	24 N.J.R. 1498(a)
8:41-8	Mobile intensive care units: administration of medications	23 N.J.R. 3734(a)	R.1992 d.113	24 N.J.R. 938(a)
8:42-1.1, 6.1, 6.2, 11.2	Home health agency standards: patient advance directives	23 N.J.R. 3254(b)	R.1992 d.130	24 N.J.R. 938(b)
8:43-4.7, 4.15, 4.16, 7.2	Residential health care facilities: patient advance directives	23 N.J.R. 3616(a)	R.1992 d.131	24 N.J.R. 940(a)
8:43G-5.1, 5.2, 5.9, 15.2	Hospital licensing standards: patient advance directives	23 N.J.R. 3256(a)	R.1992 d.132	24 N.J.R. 942(a)
8:43H-3.4, 5.3, 5.4, 17.2, 19.3, 19.5	Rehabilitation hospitals: patient advance directives	23 N.J.R. 3614(a)	R.1992 d.133	24 N.J.R. 945(a)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)		
8:57-2.1, 2.2, 2.3	AIDS prevention and control: clarification of proposal summary regarding reporting of HIV infection	24 N.J.R. 59(a)		
8:65-2.5	Controlled Dangerous Substances: physical security controls	24 N.J.R. 174(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)		

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8:65-10.5	Controlled dangerous substances: delisting of propylhexedrine	_____	_____	24 N.J.R. 947(a)
8:71	Interchangeable drug products (see 23 N.J.R. 3336(a))	23 N.J.R. 1509(a)	R.1992 d.26	24 N.J.R. 145(a)
8:71	Interchangeable drug products (see 23 N.J.R. 3334(b); 24 N.J.R. 144(b))	23 N.J.R. 2610(a)	R.1992 d.135	24 N.J.R. 948(a)
8:71	Interchangeable drug products (see 24 N.J.R. 145(b))	23 N.J.R. 3258(a)	R.1992 d.136	24 N.J.R. 948(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)	R.1992 d.137	24 N.J.R. 949(a)
8:71	Interchangeable drug products	24 N.J.R. 61(a)	R.1992 d.134	24 N.J.R. 947(b)
8:71	Interchangeable drug products	24 N.J.R. 735(a)		
8:80	HealthStart Plus: eligibility criteria	24 N.J.R. 62(a)	R.1992 d.160	24 N.J.R. 1338(a)
8:100	State Health Plan	24 N.J.R. 1164(a)		
	Most recent update to Title 8: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
HIGHER EDUCATION—TITLE 9				
9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)	R.1992 d.163	24 N.J.R. 1340(a)
9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-9.1, 9.2, 9.4, 9.8	Paul Douglas Teacher Scholarship Program	24 N.J.R. 8(a)	R.1992 d.164	24 N.J.R. 1341(a)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		
9:16-1	Primary Care Physician and Dentist Loan Redemption Program	24 N.J.R. 1192(a)		
	Most recent update to Title 9: TRANSMITTAL 1991-7 (supplement December 16, 1991)			
HUMAN SERVICES—TITLE 10				
10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:35	County psychiatric facilities	24 N.J.R. 208(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:49-10	Prepaid health care services for Medicaid eligibles	24 N.J.R. 64(a)	R.1992 d.167	24 N.J.R. 1342(a)
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:52-1.6	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:53-1.5	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only eligibility computation amounts and income standards	24 N.J.R. 651(a)	R.1992 d.191	24 N.J.R. 1498(b)
10:72-4.1	New Jersey Care income eligibility limits: administrative correction	_____	_____	24 N.J.R. 851(a)
10:81-11.7	Child support and paternity: administrative correction	_____	_____	24 N.J.R. 1499(a)
10:82-1.2, 1.6, 1.7, 1.10, 1.11, 2.1, 2.2, 2.3, 2.6–2.9, 2.11–2.14, 2.19, 2.20, 3.13, 3.14, 4.4, 4.5, 4.15, 5.10, 5.11	Assistance Standards Handbook: AFDC program revisions regarding Standard of Need, prospective budgeting, and AFDC-N equalization	24 N.J.R. 1194(a)		
10:82-2.14	Established monthly earnings: administrative correction	_____	_____	24 N.J.R. 851(b)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 3420(a)	R.1992 d.106	24 N.J.R. 852(a)
10:82-5.3	Assistance Standards Handbook: child care rates	24 N.J.R. 213(a)	R.1992 d.175	24 N.J.R. 1500(a)
10:82-5.11	AFDC supplemental payments: administrative correction	_____	_____	24 N.J.R. 1499(a)
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:83-1.11	Supplemental Security Income payment levels	24 N.J.R. 300(a)	R.1992 d.124	24 N.J.R. 952(a)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-3.1, 3.3, 4.1	General Assistance allowance determination: household size concept	24 N.J.R. 926(a)		
10:89-2.3, 3.3, 3.5, 3.6, 4.1	Home Energy Assistance Program	24 N.J.R. 300(b)	R.1992 d.125	24 N.J.R. 952(b)

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10:89-3.4	Emergency energy assistance: administrative change	_____	_____	24 N.J.R. 1502(a)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122-2.1, 2.8	Child care centers: licensing fees	24 N.J.R. 71(a)	R.1992 d.176	24 N.J.R. 1502(b)
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
10:123-3.4	Personal needs allowance for SSI and General Assistance recipients in residential health care facilities and boarding houses	24 N.J.R. 330(a)	R.1992 d.177	24 N.J.R. 1503(a)
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)		
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)		

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10A:18	Inmate mail, visits, and telephone use	24 N.J.R. 1204(b)		
10A:20-4	Residential Community Release Agreement Programs: administrative correction to adoption notice	_____	_____	24 N.J.R. 953(a)
10A:34	Municipal and county correctional facilities	24 N.J.R. 683(a)		

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11:1-31	Surplus lines insurer eligibility	24 N.J.R. 9(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)		
11:3-2	Personal automobile insurance plan	24 N.J.R. 331(a)		
11:3-3	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:3-15.6, 15.7, 15.9	Automobile insurance Buyer's Guide and Coverage Selection Form	24 N.J.R. 523(a)		
11:3-16.5, 16.8, 16.10, 16.11, App.	Private passenger automobile insurance: rate filing requirements	23 N.J.R. 3199(a)	R.1992 d.189	24 N.J.R. 1504(a)
11:3-20.5, App.	Automobile insurance: Excess Profits Report	24 N.J.R. 529(a)		
11:3-29.2, 29.4, 29.6	Automobile PIP coverage: medical fee schedules	23 N.J.R. 3203(a)	R.1992 d.170	24 N.J.R. 1347(a)
11:3-33	Appeals from denial of automobile insurance	24 N.J.R. 546(a)	R.1992 d.192	24 N.J.R. 1510(a)
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)	R.1992 d.142	24 N.J.R. 953(b)
11:3-40	Insurers required to provide automobile coverage to eligible persons	24 N.J.R. 336(a)		
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.13	Real Estate Commission: preservation of brokers' files	23 N.J.R. 3428(a)	R.1992 d.107	24 N.J.R. 852(b)
11:5-1.13	Real Estate Commission: extension of comment period regarding preservation of brokers' files	23 N.J.R. 3739(a)		
11:5-1.38–1.42	Real Estate Commission: dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3424(b)		
11:5-1.38–1.42	Real Estate Commission: extension of comment period regarding dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3739(b)		
11:16-4	Automobile insurance: fraud and theft prevention/ detection plans	23 N.J.R. 3236(a)	R.1992 d.190	24 N.J.R. 1505(a)
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	24 N.J.R. 546(a)	R.1992 d.192	24 N.J.R. 1510(a)

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12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		
	Most recent update to Title 12: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
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	Most recent update to Title 12A: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
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13:20-42	Purple Heart emblems on license plates	24 N.J.R. 219(a)	R.1992 d.168	24 N.J.R. 1365(a)
13:21-23	Commercial driver licensing	24 N.J.R. 219(b)	R.1992 d.138	24 N.J.R. 960(a)
13:30-8.4	Announcement of practice in special area of dentistry	23 N.J.R. 3429(a)	R.1992 d.165	24 N.J.R. 1365(b)
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:33-1.20, 1.21, 1.22, 1.23, 1.41	Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians: fees	23 N.J.R. 3631(a)	R.1992 d.103	24 N.J.R. 852(c)
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)	R.1992 d.169	24 N.J.R. 1367(a)
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-3.9	Pharmaceutical practice: reciprocal registration	24 N.J.R. 553(a)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)	R.1992 d.166	24 N.J.R. 1371(a)
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40-6.1	Board of Professional Engineers and Land Surveyors: fee schedule	24 N.J.R. 1231(a)		
13:41-3.2	Board of Professional Planners: fee schedule	24 N.J.R. 554(b)		
13:43-3.1, 4.1	Board of Shorthand Reporting: fee schedule	24 N.J.R. 1232(a)		
13:44D-1.1, 2.1, 4.6	Public movers and warehousemen: moving vehicle requirement	24 N.J.R. 341(a)		
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late license renewal fee	23 N.J.R. 3638(a)	R.1992 d.127	24 N.J.R. 968(a)
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)		
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)		
13:45A-25.2, 25.4	Sellers of health club services: registration fees	23 N.J.R. 3637(a)	R.1992 d.101	24 N.J.R. 853(a)
13:45A-26.1, 26.2, 26.4, 26.14	Automotive dispute resolution: motor vehicles purchased or leased in State	24 N.J.R. 53(a)		
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47	Legalized games of chance	23 N.J.R. 3638(b)	R.1992 d.96	24 N.J.R. 854(a)
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:51-1.1	Chemical breath testing: administrative correction	_____	_____	24 N.J.R. 857(a)
13:70-13A.8	Thoroughbred racing: stay pending appeal of officials' decision	24 N.J.R. 555(a)		
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:71-3.3	Harness racing: stewards appeal hearings	24 N.J.R. 555(b)		
13:71-3.8	Harness racing: stay pending appeal of officials' decision	24 N.J.R. 556(a)		
13:71-20.6	Harness racing: passing lane in homestretch	24 N.J.R. 686(a)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	24 N.J.R. 54(a)	R.1992 d.155	24 N.J.R. 1373(a)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	24 N.J.R. 54(b)	R.1992 d.156	24 N.J.R. 1373(b)
13:75-1.29	Violent Crimes Compensation Board: petitions for rulemaking	24 N.J.R. 55(a)	R.1992 d.157	24 N.J.R. 1374(a)
13:75-1.30	Violent Crimes Compensation Board: burden of proof	24 N.J.R. 55(b)	R.1992 d.158	24 N.J.R. 1374(b)
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14:0	Open Network Architecture (ONA): preproposal and public hearing regarding Board regulation of enhanced telecommunications services	23 N.J.R. 3239(a)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)		
14:3-7.5	Interest rate on customer deposits	24 N.J.R. 686(b)		
14:5A	Nuclear generating plant decommissioning: periodic cost review and trust funding reporting	23 N.J.R. 3239(b)		
14:10-7	Telephone access to adult-oriented information	24 N.J.R. 1238(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:38-1.2, 2.1–2.3, 3.1–3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1–8.4, 9.1, 9.2	Home Energy Savings Program	23 N.J.R. 1069(b)		
	Most recent update to Title 14: TRANSMITTAL 1991-11 (supplement December 16, 1991)			
ENERGY—TITLE 14A				
14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		
	Most recent update to Title 14A: TRANSMITTAL 1991-5 (supplement December 16, 1991)			
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15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		
15:5	Division of the State Museum	24 N.J.R. 1239(a)		
15:10-1.5, 7	Distribution of voter registration forms through public agencies	24 N.J.R. 736(a)		
	Most recent update to Title 15: TRANSMITTAL 1991-2 (supplement August 19, 1991)			
PUBLIC ADVOCATE—TITLE 15A				
	Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)			
TRANSPORTATION—TITLE 16				
16:25-1.1, 1.7, 2.1, 7A.1, 7A.3, 7A.4, 11.3	Utility accommodation	23 N.J.R. 3739(c)		
16:28-1.6, 1.56	Speed limit zones along U.S. 40 in Salem, Gloucester, and Atlantic counties; and along U.S. 40 and 322 in Atlantic County	24 N.J.R. 687(a)		
16:28-1.41	Speed limit zone along U.S. 9 and parts of Route 444 in Bass River Township	24 N.J.R. 342(a)	R.1992 d.171	24 N.J.R. 1518(a)
16:28-1.44, 1.72	Speed limit zones along Route 27 in Princeton, Franklin Township, and South Brunswick, and U.S. 206 in Trenton and Lawrence Township	24 N.J.R. 342(b)	R.1992 d.159	24 N.J.R. 1374(c)
16:28-1.113	Speed limits along Route 139 in Jersey City	24 N.J.R. 928(a)		
16:28A-1.7	Restricted parking and stopping along U.S. 9 in Middle Township, Cape May County	24 N.J.R. 77(a)	R.1992 d.111	24 N.J.R. 858(a)
16:28A-1.7, 1.19, 1.20, 1.46, 1.57, 1.100	Restricted parking and stopping along U.S. 9 in Cape May, Route 28 in Elizabeth, Route 29 in West Amwell, U.S. 130 in South Brunswick, U.S. 206 in Mercer County, and Route 50 in Atlantic and Cape May counties	24 N.J.R. 689(a)		
16:28A-1.15, 1.54	No stopping or standing zones along Route 23 in Hardyston Township and Route 181 in Jefferson Township	24 N.J.R. 1240(a)		
16:28A-1.18	Bus stop zone along Route 27 in Rahway	24 N.J.R. 692(a)		
16:28A-1.36, 1.55, 1.64, 1.73, 1.97	Restricted parking and stopping along Route 57 in Warren County, U.S. 202 in Bernardsville, Route 41 in Cherry Hill, Route 32 in South Brunswick, and U.S. 1 Business in Lawrence Township	24 N.J.R. 693(a)		
16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	23 N.J.R. 3742(a)	R.1992 d.108	24 N.J.R. 858(b)
16:28A-1.57	No stopping or standing zone along U.S. 206 in Lawrence Township	24 N.J.R. 929(a)		
16:31-1.1	Left turn prohibition along U.S. 206 in Lawrence Township	24 N.J.R. 78(a)	R.1992 d.115	24 N.J.R. 968(b)
16:32-1	Designated routes for double-trailer trucks	24 N.J.R. 929(b)		
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)	R.1992 d.181	24 N.J.R. 1518(b)
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:41-8	Repeal (see 16:41C)	24 N.J.R. 695(a)		
16:41A	Repeal (see 16:41C)	24 N.J.R. 695(a)		
16:41C	Roadside sign control and outdoor advertising	24 N.J.R. 695(a)		
16:44-1.8	Renewal of contractor classification rating	24 N.J.R. 703(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)	R.1992 d.181	24 N.J.R. 1518(b)

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16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47-App. B, E, E1, J	State Highway Access Management Code	23 N.J.R. 2831(b)	R.1992 d.182	24 N.J.R. 1631(a)
16:51	Practices and procedures before the Office of Regulatory Affairs	24 N.J.R. 78(b)	R.1992 d.116	24 N.J.R. 968(c)
16:54	Licensing of aeronautical and aerospace facilities: preproposed new rules	24 N.J.R. 80(a)		
16:73	NJ TRANSIT: Reduced Fare Transportation Program for Elderly and Handicapped	24 N.J.R. 556(b)		
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17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:26	Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J)	24 N.J.R. 1255(a)		
17:30	Urban Enterprise Zone Authority	24 N.J.R. 343(a)	R.1992 d.161	24 N.J.R. 1375(a)
17:32-6, 7, 8	State Planning Rules: letters of clarification; consistency review of plans; Resource Planning and Management Map	24 N.J.R. 1241(a)		
	Most recent update to Title 17: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
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18:3-2.1	Tax rates on alcoholic beverages	23 N.J.R. 3433(a)	R.1992 d.162	24 N.J.R. 1375(b)
18:7-4.5, 5.2	Corporation Business Tax: indebtedness and entire net worth	24 N.J.R. 175(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)		
18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)		
18:24-1.4	Sales tax: manufacturers' coupons	23 N.J.R. 3433(b)	R.1992 d.139	24 N.J.R. 969(a)
18:24-2.16	Sales tax: registration of amusement event promoters	23 N.J.R. 3275(b)	R.1992 d.140	24 N.J.R. 969(b)
18:35-1.9	Gross Income Tax: exempt interest income	24 N.J.R. 177(a)	R.1992 d.141	24 N.J.R. 970(a)
18:35-1.14, 1.25	Gross Income Tax: partnerships	23 N.J.R. 950(b)	Expired	
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TITLE 19—OTHER AGENCIES				
19:8-1.1, 2.11	Garden State Arts Center: admission and activity restrictions	24 N.J.R. 557(a)	R.1992 d.178	24 N.J.R. 1515(a)
19:8-2.12	Emergency services charges on Garden State Parkway	24 N.J.R. 557(b)	R.1992 d.179	24 N.J.R. 1516(a)
19:9-1.9	Turnpike Authority: 53-foot semitrailers	24 N.J.R. 931(a)		
19:16	PERS: labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:16	Compulsory interest arbitration of labor disputes in public fire and police departments: summary of public comments and agency responses to preproposal	24 N.J.R. 704(a)		
19:25-11.12	ELEC: fundraising through use of 900 line telephone service	23 N.J.R. 956(a)	Expired	
19:25-20.8, 20.19	ELEC: legislative agent annual registration and filing fee	24 N.J.R. 1245(a)		
19:31-3.1	EDA: Direct Loan Program: minimum interest rate	24 N.J.R. 177(b)	R.1992 d.126	24 N.J.R. 970(b)
19:61	Rules of Executive Commission on Ethical Standards	23 N.J.R. 3436(b)	R.1992 d.97	24 N.J.R. 864(a)
19:61-2.2	Executive Commission on Ethical Standards: agency codes of ethics	23 N.J.R. 3436(b)	R.1992 d.180	24 N.J.R. 1517(b)
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- **Adoptions** ..... **April 27**

June 1 issue:
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July 6 issue:
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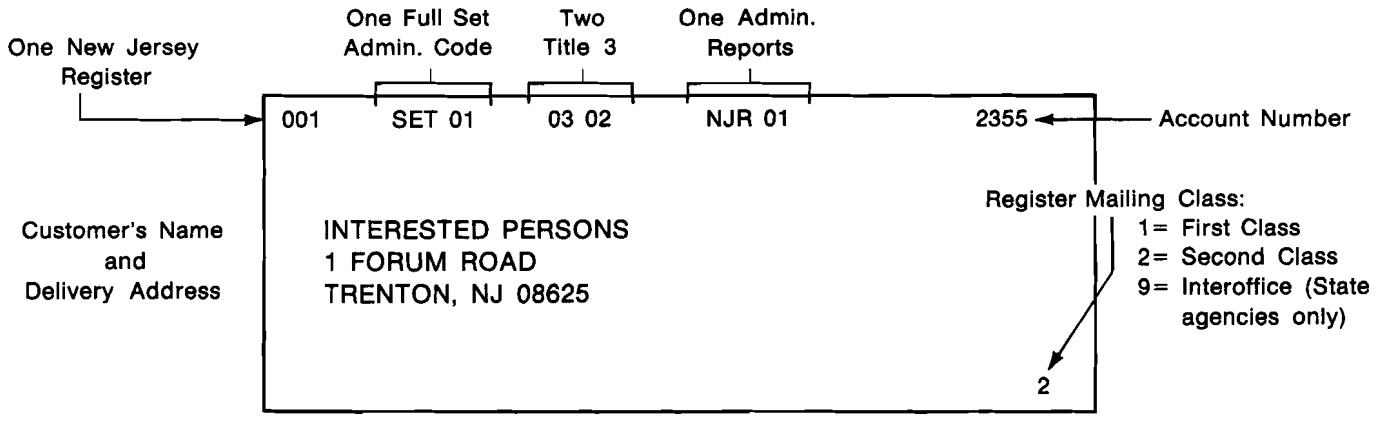

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