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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 18, 1991
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT APRIL 15, 1991

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **June 19, 1991.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response 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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NEW JERSEY REGISTER

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH
Indemnification
Avian Influenza
Proposed Readoption: N.J.A.C. 2:9

Authorized By: Arthur R. Brown, Jr., Secretary; and the State Board of Agriculture.
Authority: N.J.S.A. 4:5-1 and 4:5-10.
Proposal Number: PRN 1991-274.

Submit written comments by June 19, 1991 to:
Dr. Ernest Zirkle
Division of Animal Health
New Jersey Department of Agriculture
CN 332
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules at N.J.A.C. 2:9, Avian Influenza, are due to expire on July 7, 1991. The Department of Agriculture has reviewed the rules and determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated.

An outbreak of Avian Influenza (AI) in Pennsylvania and the subsequent potential for the spread of the contagious disease to poultry in New Jersey prompted the original promulgation of these rules. The rules were originally promulgated and became effective July 7, 1986. Subsequently, there was an outbreak of AI in the State and the Department of Agriculture did have to move to depopulate flocks of infected poultry. The rules served appropriately in governing the manner in which those dealing with poultry could receive compensation for the loss of and disposal of infected poultry.

The Department of Agriculture, pursuant to the statutory authority at N.J.S.A. 4:5-10, proposes to readopt these rules dealing with the indemnification and disposal of infected birds.

Social Impact

Owners and buyers of chicken products will experience temporary interruptions in normal trade and activities as infected birds are destroyed. Owners of infected birds will benefit from these rules because they will be compensated for their losses. A greater level of protection to the unaffected poultry industry will be accomplished as a result of the continuation of the existing rules.

Economic Impact

Should depopulation become necessary, indemnification of losses will help stem the economic losses suffered by owners and help insure eradication of transmittal points in the disease.

The Department of Agriculture has maintained a reasonable standard of compensation by establishing a limit of $20.00 per bird.

It should be noted that at this time the Department of Agriculture has no monies in indemnification accounts for the purpose of this program. If indemnification were necessary the monies would have to be obtained through an act of the State Legislature.

Regulatory Flexibility Analysis

The vast majority of businesses effected by these rules are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The types of small businesses to which these rules apply range from small backyard flocks, poultry dealers, and livestock auctions to live poultry markets, and laying hen complexes. All species of poultry are included. Because the effectiveness of the indemnification program depends on adherence to the requirements of the rules, no exemptions from compliance with rules concerning indemnities and disposal costs can be provided to these businesses. This is because Avian influenza (AI) is such a serious contagious disease, and is so debilitating to the poultry market.

Special professional services will be required to assist in complying with these rules. A bird population census taken by Division of Animal Health or cooperating official personnel is required before it can be determined if indemnity is to be granted. No special recordkeeping is required of the majority of these small businesses; however, it is recommended that invoices or receipts be saved by live poultry markets, livestock auctions, or dealers in order to assist in accurate tracebacks of sources or elimination of the disease. Hence, the initial costs for compliance are minimal, but can vary depending on differing types and sizes of operations. The costs may vary substantially, such as disposal costs for a large laying flock, or replacement of non-sterilizable equipment, such as wooden crates.

Depending on the amount of monies available for indemnification at the time of an outbreak of AI, these rules, in accordance with the directions of the Division of Animal Health, will attempt to minimize as much as possible any adverse economic impact on small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:9.

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS
Audit Requirements
Reproposed Amendments: N.J.A.C. 3:29-1.1, 1.2, 1.3, 1.4, 1.6, 1.7 and 1.8

Authorized By: Jeff Connor, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:1-8.1 and N.J.S.A. 17:12B-176.
Proposal Number: PRN 1991-269.

Submit comments by June 19, 1991 to:
Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

On July 2, 1990, the Department of Banking proposed amendments to the rules concerning the audit requirements of savings and loan associations (see: 22 N.J.R. 1968(a)). Based on comments to that proposal and further review by the Department, the proposal at 22 N.J.R. 1968(a) is hereby not adopted and the following proposed amendments supersede the former proposal.

N.J.S.A. 17:12B-176 requires that an audit be performed by a competent accountant. Pursuant to these proposed amendments, a competent accountant is defined as a certified public accountant or an accounting firm licensed and/or registered in New Jersey or approved by the Commissioner. The proposed amendments also redefine the statements required in the audit report, as certain statements are no longer useful. The amendments clarify that the statements are to be provided in audits of wholly owned subsidiaries as well as State chartered associations.

Current provisions at N.J.A.C. 3:29-1.4 require that audits of uninsured associations include a verification of at least 20 percent of accounts. Based upon the prohibition against uninsured associations, N.J.S.A. 17:12B-286, this provision is deleted as unnecessary.

In addition, the amendments remove the provisions specifically applicable to verifications of savings and loan associations, and instead reference the rules applicable to banks and savings banks, N.J.A.C. 3:7-3.3 through 3.6. These rules set forth the requirements for confirmations, allow for exclusions from the confirmation process for certain specified accounts, permit the Commissioner to approve confirmation by an internal auditor and allow for random sampling.

The proposed amendments also limit the areas an auditor is required to comment on pursuant to N.J.A.C. 3:29-1.6 to the following: (1) investment on which no income is received; (2) summary of changes in other real estate; and (3) insufficient surety bond coverage and other insurance.

Current rules require the audit report to be certified by the person making such audit. The certification must include a statement that the audit was made in accordance with N.J.S.A. 17:12B-176, and a statement that the audit was made in accordance with the recommendations of the Committee on Savings and Loan Auditing of the American Institution of Certified Public Accountants. The amendments permit these statements to be submitted in a separate report or made a part of the report upon review of the association's internal accounting control, so long as the statements are submitted within 14 calendar days after submission of the report.

Current rules also require a statement that the report was prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. It is proposed that this phrase at N.J.A.C. 3:29-1.8(a)3 be deleted as unnecessary, since such a statement is already required pursuant to a Statement of Auditing Standards.

Social Impact

The proposed amendments apply to all State chartered associations. They impose reasonable requirements on associations to ensure that audits are performed in a meaningful way. These audits allow the Department to identify troubled institutions, to monitor compliance and to make recommendations or suggestions for improvements in internal control. Soundness of all State chartered associations and the safety of depositor funds within those institutions is the goal of these practices.

Economic Impact

The proposed amendments to the audit requirements for the most part reflect current practice. Audits of this kind are required by statute and all associations currently have such audits performed. With the exception of the definition of "competent accountant," the new provisions are administrative in nature, requiring the inclusion of certain types or amounts of information in an audit. This should result in little if any increase in administrative costs to the individual association. In the rare instance in which an association has not used a certified public accountant or an accounting firm licensed or registered in New Jersey, and the accountant is not approved by the Commissioner, some expense may be incurred in the hiring of such professionals.

The economic benefit that accrues to the public is the continued soundness of the institutions being audited and the safeguard of depositors' monies.

Regulatory Flexibility Analysis

The proposed amendments place reporting, recordkeeping and compliance requirements on savings and loan associations, approximately 50 percent of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The reporting and recordkeeping requirements established in N.J.A.C. 3:29-1.3, 1.4 and 1.8 will result in very little, if any, administrative costs. The proposed changes reflect current practice and serve to codify documentation which is currently part of an audit.

The definition of "competent accountant" as a certified public accountant or a firm licensed or registered in New Jersey or approved by the Commissioner, may or may not result in increased compliance costs in a very limited number of cases. In the unlikely event that an association does not currently employ such professionals to perform audits, the association could incur some expense related to now having to hire such individuals or firms.

The proposed requirements are intended to further standards which ensure the soundness of State chartered associations and protect the funds of the individual depositors. It is for these reasons and because there are minimal costs associated with the proposed amendments that no differentiation in compliance, based on busines size, is provided.

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

3:29-1.1 Qualifications of auditor

[Since Section 176 of the Savings and Loan Act (1963) requires an audit by a "competent accountant," it should therefore be made by a person specializing in savings and loan and building and loan work, or by a person engaged in public accounting work, preferably with a knowledge of savings and loan and building and loan practice and procedure.] **An audit of an associationn shall be performed by a competent accountant who is not an officer, director or employee of the association. For purposes of this section, a competent accountant is a certified public accountant, or an accounting firm licensed and/or registered in New Jersey or approved by the Commissioner.** Choice of a competent auditor is the responsibility of the board of directors. If the board [shall fail] **fails** to provide for the making of a proper audit or if the required audit is not properly made, prepared or filed, the Commissioner is charged with the duty of making such audit or causing the same to be made.

3:29-1.2 Scope of audit

The auditor [should] **shall** set forth the scope of his work in the audit report. In general, audit procedure will be acceptable if based on the audit program prepared for audit of savings and loan associations by the American Institute of **Certified Public** Accountants. A copy of this program can be obtained from the American Institute of Certified Public Accountants, Inc., [666 Fifth Avenue] **1211 Avenue of the Americas,** New York, New York **10036**.

3:29-1.3 Statements in audit report

(a) The following statements are required to be part of the audit report **provided by all State chartered associations including associations which are wholly owned subsidiaries**:

1. **Comparative** [Statement] **statements** of condition;
2. **Comparative** [State] **statements** of operations;
3. Reconciliation of [undivided profits] **retained earnings**;
4. [Statement of reserves] **Reconciliation of equity capital; and**

[5. Reconciliation of cash;

6. Schedule of investment securities;

7. Schedule of insurance policies and surety bond;

8. Schedule of loans two or more months delinquent.]

5. Statements of cash flows.

3:29-1.4 Minimum verification; mail communications

[Audits of uninsured associations shall include a verification of at least 20 percent in number and in dollar volume of all classes of members' accounts, by direct mail communication.] Audits of insured associations shall include verifications to the extent required [by the Federal Savings and Loan Insurance Corporation. Returns should not be made to the association's address. Statistics relative to the verifications should be included in the report, and detail of exceptions not clarified to the satisfaction of members should also be set out.] **of banks and savings banks pursuant to N.J.A.C. 3:7-3.3 through 3.6.**

3:29-1.6 Comments

(a) The auditor [should] **shall** comment on pertinent matters affecting the association, **either in a separate report or as part of the report upon review of the association's internal accounting control**. As a guide, the following are suggested as appropriate subjects for comment:

1. Investment on which no income is received;

[2. Volume of delinquent mortgage loans or real estate contracts;

3. New mortgage loans not in conformity with statutory requirements;

4. Other noncompliance with statute;

5. Missing documents and exceptions to mortgage papers, real estate contract files, and to supporting insurance policies;]

[6.]**2.** Summary of changes in other real estate; **and**

[7. Recommendations or suggestions for improvements in internal control;]

[8.]**3.** Insufficient surety bond coverage and other insurance.

3:29-1.7 Time of audit

[Since the Savings and Loan Act and the Insurance Corporation's regulations provide that at] **At** least one such audit shall be made in each calendar year, **and** it is not necessary that the audit coincide with a fiscal year. The audit [should] **may** be made on a "surprise" basis so that [no officer, director or employee of the association shall have advance information as to the date the audit is to be made] **preliminary or interim work, such as branch audits, may be accomplished at any time**. The auditor [should] **shall** cover the period from the previous audit to the date the present audit is started.

3:29-1.8 Audit report must be certified

(a) The audit report must be ["]certified to or sworn to by the person making such audit.["] Such [certificate] **certification** shall include:

1. [*Audit made in accordance with Commissioner's Regulations.* That] **A statement that** the audit was made in accordance with the provisions of [Article XI, Section 176, Chapter 144, P.L. 1963] **N.J.S.A. 17:12B-176** and the [regulations] **rules** of the Commissioner of Banking of this State of New Jersey[.];

2. [*Recommended audit procedure.* That] **A statement that** the audit was made in accordance with the recommendations of the Committee on Savings and Loan Auditing of the American Institute of Certified Public Accountants[.]; **and**

3. [*Opinion.* That] **A statement that** the **financial** statements contained in the audit report present fairly the financial position of the [associations] **association** at the audit date and [the results of] its operations for the periods reported upon [and are in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year].

(b) The statements required by (a)1 and 2 above may be submitted in a separate report or made a part of the report upon review of the association's internal accounting control, so long as the statements are submitted within 14 calendar days after submission of the report.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING & DEVELOPMENT

Uniform Construction Code Subcodes; Radon Hazard Subcode

Proposed Amendments: N.J.A.C. 5:23-3.14, 3.18, 3.20 and 10.3

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1991-256.

Submit comments by June 19, 1991, to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 5 of the State Uniform Construction Code Act, N.J.S.A. 52:27D-123, provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." However, it is necessary, when revisions or amendments are made to model codes, for the Department to amend the appropriate sections of N.J.A.C. 5:23 so that cross references will be correct. Accordingly, the Department proposes these rule amendments in order to enable code enforcement officials, builders, and property owners to use the 1991 Supplement to the BOCA National Building and BOCA National Mechanical Codes.

The 1990 BOCA National Building Code and the 1990 BOCA National Mechanical Code have been adopted by reference as the building and mechanical subcodes of the State Uniform Construction Code. The Building Officials and Code Administrators International, which sponsors these national codes, engages in a public code change process and issues supplements between succeeding editions of the code. This enables the code to respond to rapidly changing building construction technology. Modifications made to the supplements by the proposed amendments relate to the administration and enforcement procedures of the State Uniform Construction Code and do not alter the technical, substantive provisions of the national model code.

In addition, amendments to the Energy and Radon Hazard subcodes have been included. The amendments to the Radon Hazard Subcode redefine the inspection responsibilities of the various subcode officials. The amendments to the Energy Subcode eliminate provisions that go beyond the Model Code requirements.

Other modifications have been made to conform the Radon Hazard Subcode to previously adopted subcodes, such as the Barrier-Free and Fire Protection Subcodes.

Social Impact

Adoption of the appropriate references to the building and mechanical subcode supplements will allow users of the State Uniform Construction Code to avoid confusion about what code provisions are in effect and to benefit from the most recent technical innovations upon which they are based.

Economic Impact

These changes that have become effective by operation of law may decrease construction costs in some instances and increase them in others. Correct cross-referencing, to the extent that it results in diminished uncertainty as to what is required, may be expected to reduce the likelihood of work being done in reliance upon obsolete provisions that would then have to be corrected at greater expense. The revision of inspection responsibilities will have no net effect on the municipalities, although minor changes may occur, depending upon the use of subcontractors to provide inspection services.

Regulatory Flexibility Statement

Because these proposed amendments, made to ensure that the State Uniform Construction Code remains consistent, merely reflects changes at the national level supplementing the BOCA National Building and Mechanical Codes, there is no identifiable differential impact on small businesses. All businesses, regardless of size, are subject to the plumbing subcode and must remain so in order to maintain uniform construction standards throughout the State.

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

5:23-3.14 Building subcode

(a) Rules concerning the building subcode adopted are as follows:
1.-2. (No change.)

3. The 1991 Supplement to the BOCA National Building Code/1990 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.

(b) (No change.)

(c) These articles or sections of the 1991 Supplement to the building subcode are modified as follows:

1. Article 1 of the Building subcode, entitled "Administration and Enforcement":

i. Section 119.0 is deleted.

2. Article 2 of the Building subcode, entitled "Definitions":

i. Article 2 is amended to delete these terms and definitions:

(1) Heated slab;

(2) Infiltration;

(3) Opaque areas;

(4) Overall thermal transfer value (OTTV); and

(5) Shading coefficient.

3. Article 8 of the building subcode, entitled "Means of Egress":

i. Section 813.3, line 4, is amended to replace the phrase "Section 512.0" with "the Barrier-free Subcode";

ii. Subsection 813.4.1.2 item 5 is amended to replace the phrase "15-pounds (73N)" with "8-pounds (39N)"; and

iii. Subsection 816.3 is amended to replace the phrases "Section 512.0—otherwise" with "the Barrier-free Subcode".

4. Article 9 of the building subcode, entitled "Fireresistive Construction":

i. Subsection 929.2.5 is amended to replace the phrase "UL 910 listed in Appendix A" with "NFiPA-262-1985(ANSI)".

5. Article 28 of the building subcode, entitled "Plumbing Systems":

i. Section 2804.0 is deleted.

6. Appendix A of the building subcode, entitled "Referenced Standards":

i. Delete the subheading "ASHRAE" and all titles under the subheading.

ii. Under the subheading "BOCA", delete these titles:

(1) BOCA National Property Maintenance Code;

(2) BOCA National Plumbing Code; and

(3) BOCA National Private Sewage Disposal Code.

iii. Under the subheading CABO, delete this title:

(1) Model Energy Code.

5:23-3.18 Energy Subcode

(a) (No change.)

(b) These [the following] chapters or articles of the Energy Subcode are amended as follows:

1.-4. (No change.)

5. The following amendments are made to Article 5 of the Energy Subcode, entitled "Plumbing Systems":

[i. Add Section E-504.0 SWIMMING POOLS as follows:

(1) E-504.1 Pool Heaters

(A) E-504.1.1 All pool heaters shall be equipped with an ON-OFF Switch mounted for easy access to allow shutting of the operation of the heating without adjusting the thermostat setting and to allow restarting without relighting the pilot light.

(B) E-504.1.2 All gas and oil fired pool heaters shall have a thermal efficiency of 75 percent when tested in accordance with ANSI Z21.56-1975.

(C) E-504.1.3 Active solar heating systems shall be used to supply a portion of the pool heating requirements when conditions permit their cost-effective installation.

(2) E-504.2 Pool Covers. Heated swimming pools shall be equipped by the builder with a pool cover.

(A) Exception: Outdoor pools deriving over 20 percent of the energy for heating from non-depletable sources (computed over an operating season) shall not be required to be equipped by the builder with a pool cover.]

i. Section E-502.4 is amended to add the words "other than dwelling units served by individual water heaters" after the words "Individual showers in all buildings"; to add the words "unless the water heater outlet temperature is limited to 110°F" after "Appendix A"; and to delete the sentence: "Water temperature control valves shall be equipped with high limit stops and adjusted to a maximum hot water setting of 110°F (43°C)."

6.-8. (No change.)

(c) (No change.)

5:23-3.20 Mechanical Subcode

(a) Rules concerning subcode adopted are as follows:

1.-2. (No change.)

3. The 1991 supplement to the BOCA National Mechanical Code/1990 is adopted by reference with modifications cited in (c) below as part of the mechanical subcode for New Jersey.

(b) (No change.)

(c) The following section of the 1991 supplement to the Mechanical Subcode is modified as follows:

1. Appendix A of the Mechanical Subcode:

i. Under the subheading "ASHRAE", delete these titles:

(1) Thermal Environmental Conditions for Human Occupancy;

(2) Energy Conservation in New Building Design—with Addendum 90A-a-1987; and

(3) Handbook of Fundamentals.

ii. Under the subheading "BOCA", delete these titles:

(1) BOCA National Building Code; and

(2) BOCA National Plumbing Code.

iii. Under the subheading "NFiPA", delete this title:

(1) National Electric Code.

5:23-10.3 Enforcement

(a) (No change.)

(b) Enforcement responsibility shall be divided among subcode officials in the following manner:

1.-.2 (No change.)

3. Plan review with regard to compliance with N.J.A.C. 5:23-10.4(b)6[,] **and** 9 [and 12] shall be the joint responsibility of the building and fire protection subcode officials; [and]

4. Inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)6[,] **and** 9 [and 12] shall be the responsibility of the building subcode official[.];

5. Plan review with regard to compliance with N.J.A.C. 5:23-10.4(b)12 shall be the joint responsibility of the building, fire protection and plumbing subcode officials; and

6. Inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)3 through 5, 7, 8 and 12 shall be the responsibility of the plumbing subcode official.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Proposed Amendments: N.J.A.C. 5:92-1.3, 6.1 and 14.4

Proposed New Rules: N.J.A.C. 5:92-6.2 and 6.3

Authorized by: New Jersey Council on Affordable Housing, Charles Griffiths, Chairman.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1991-257.

Submit comments by June 19, 1991 to:
Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
CN 813
Trenton, NJ 08625-0813

The agency proposal follows:

Summary

The Fair Housing Act provides that the "municipal fair share shall be determined after crediting on a one to one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households." (N.J.S.A. 52:27D-307c.)

The Council's rules pursuant to this section of the Fair Housing Act provided for credit for newly constructed units built prior to the Council's rules if: (1) the unit was built after April 1, 1980 (the date of the U.S. census); (2) the unit was in sound condition; (3) the unit was occupied by a low or moderate income household; and (4) the unit was legally restricted to low or moderate income households.

These rules were challenged in court and Superior Court of New Jersey, Appellate Division, in *Township of Bernards Municipal Corporation v. State of New Jersey, Department of Community Affairs and New Jersey Council on Affordable Housing*, Dkt. Nos. A446-86T6, A672-86T6, ruled, on April 5, 1989, that the Council on Affordable Housing had exceeded its authority in requiring the legal restriction. The court said that "under the statute, it is only the actual income of the occupants, not the legal restriction on the housing, that is critical."

This rule proposal eliminates the legal restriction as a condition for credits on units produced prior to the adoption of the Council's rules (December 15, 1986). Therefore, between April 1, 1980 and December 15, 1986, municipalities may receive a one to one credit for sound units constructed and currently occupied by low and moderate income households. The Council will require proof establishing the date the unit was constructed or occupied, a certification from the municipal building inspector that the unit is in sound condition and documentation (such as, but not necessarily, a tax return) that indicates the current occupant is a low or moderate income household.

Many municipalities received substantive certification prior to this rule proposal. These municipalities may apply for credits for housing units lacking a legal restriction based on the criteria adopted by the Council. These credits shall be applied to the next allocation of housing need. The Council believes that applying these credits in the future will be less disruptive to plans that are already being implemented.

Given the need to amend its rule on credits, the Council has decided to incorporate other existing rules and policies associated with credits into this subchapter. Specifically, the rule recognizes various points of time during which the criteria for credit has changed. For example, as of July 5, 1988, the threshold for rehabilitation credit was amended from a $4,500 minimum to an $8,000 average. These dollar figures refer to actual capital expenditures, excluding administration costs. Also, as of December 15, 1986, the requirements of N.J.A.C. 5:92-14, Inclusionary Developments, became effective. Therefore, to earn a credit, housing units that received preliminary approval after December 15, 1986 must conform to these rules.

The Council is also proposing language that clarifies the interpretation of N.J.A.C. 5:92-6 and 14.4(a) pertaining to credits and rental housing.

N.J.A.C. 5:92-6 is being amended to clarify that rehabilitation credits shall not exceed the rehabilitation component. N.J.A.C. 5:92-14.4(a) is being amended to clarify that a rental housing component is required if a municipality's fair share is 125 or more after utilizing the following formula:

Precredited Need–Adjustments–Credits–Rehabilitation Component) = Municipal Fair Share Obligation

In N.J.A.C. 5:92-6 and 14.4(a), the term "rehabilitation component" is replacing, "indigenous need." "Rehabilitation component" is defined as the result of subtracting spontaneous rehabilitation from indigenous need.

Social Impact

The rule proposal may have a positive impact for those communities that practiced inclusionary zoning practices but had not required legal restrictions on affordable units. These municipalities may be required to accept less growth as a result of this proposal. Amendments to N.J.A.C. 5:92-14.4 will have no social impact.

Economic Impact

The proposed amendments and new rules will allow a municipal fair share to be reduced by credits for existing units without legal controls ensuring affordability. This may result in less new low and moderate income housing actually being produced. Thus, this rulemaking may have a negative impact for low and moderate households and those that benefit from the production of low and moderate income housing. As indicated in the Summary statement, the rule proposal is necessitated by an Appellate Division decision. The amendments to N.J.A.C. 5:92-14.1 and 14.4 will have no economic impact.

Regulatory Flexibility Statement

The proposed amendments and new rules do not impose reporting, recordkeeping or other requirements on small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments and new rules govern the determination of a municipality's fair share of low and/or moderate income housing. Therefore, a regulatory flexibility analysis is not required.

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

5:92-1.3 Definitions

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

...

"Rehabilitation component" means the [number of units that are to be rehabilitated as part of a municipality's fair share obligation. The rehabilitation component is the] result of subtracting spontaneous rehabilitation from indigenous need.

...

5:92-6.1 Credits

[(a) Municipal present and prospective fair share shall be determined after crediting, on a one to one basis, those housing units created or habilitated after April 1, 1980. Credits for rehabilitation shall not exceed indigenous need and shall only be credited against indigenous need. The council establishes $4,500 as the minimum actual capital costs expended for a rehabilitated unit to be eligible for crediting. Credits are applicable when a unit's occupancy is restricted to low or moderate income households and when the municipality has implemented adequate assurances for continued affordability consistent with Subchapter 12, Controls on Affordability, subject to the following exceptions:

1. A housing unit created and occupied after April 1, 1980 is also eligible for crediting when it has been developed under the auspices of a government-funded, financed or otherwise-assisted housing program designed specifically for households whose incomes do not exceed 80 percent of median income where the unit is governed by controls on affordability that are substantially the same as those set forth in Subchapter 12, Controls on Affordability.

2. For rehabilitation, a unit shall be eligible for crediting if:

i. It was below applicable code standard and was rehabilitated up to applicable code standard between April 1, 1980 and January 1, 1987, provided it was occupied at the time of rehabilitation by an eligible low or moderate income household as defined in N.J.A.C. 5:92-1.3; and

ii. It is currently occupied by the occupants who resided within the unit at the time of rehabilitation, or by another eligible low or moderate income household as defined in N.J.A.C. 5:92-1.3.]

(a) Municipal present and prospective fair share shall be determined after crediting, on a one to one basis, those housing units created or rehabilitated after April 1, 1980 that meet the criteria in N.J.A.C. 5:92-6.2 and 6.3.

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

5:92-6.2 Rehabilitation

(a) Credits for rehabilitation shall not exceed the rehabilitation component and shall only be credited against the rehabilitation component.

(b) Units shall be eligible for crediting if rehabilitated up to applicable code standard between April 1, 1980 and the publication date of the petition for substantive certification, provided that:

1. Between April 1, 1980 and July 5, 1988, at least $4,500 in capital costs was expended on a rehabilitated housing unit;

2. After July 5, 1988, an average of at least $8,000 in capital costs was expended on a rehabilitated housing unit; and

3. The unit is currently occupied by the occupants who resided within the units at the time of rehabilitation, or by another eligible low or moderate income household as defined in N.J.A.C. 5:92-1.3.

5:92-6.3 New construction

(a) A housing unit created and occupied between April 1, 1980 and December 15, 1986 shall receive a credit if it is in sound condition and currently occupied by a low or moderate income household. In general, municipalities shall:

1. Document the date of construction with a certificate of occupancy date;

2. Verify the condition of the unit by an exterior inspection performed by a licensed building inspector; and

3. Document household income with the most recent Federal tax return.

(b) Municipalities that have received substantive certification prior to the effective date of this rule may apply and receive credit for housing units satisfying the criteria outlined above. These credits shall be applied to the municipality's next low and moderate income housing obligation.

(c) After December 15, 1986, a housing unit shall be eligible for a credit when a unit's occupancy is restricted to low or moderate income households and when the municipality has implemented adequate assurances for continued affordability consistent with N.J.A.C. 5:92-12, Controls on Affordability. All housing units that received preliminary approval after December 15, 1986 shall also conform to the requirements of N.J.A.C. 5:92-14 in order to receive a credit.

(d) A housing unit created and occupied after April 1, 1980 is also eligible for a credit when it has been developed under the auspices of a government-funded financed or otherwise assisted housing program designed specifically for households whose income does not exceed 80 percent of median income where the units if governed by controls on affordability that are substantially the same as those set forth in N.J.A.C. 5:92-12, Controls on Affordability.

5:92-14.4 Rental housing

(a) [After crediting, after adjustments and after subtracting indigenous need, if a municipality's fair share obligation is 125 or more, that municipality's housing element shall contain a rental housing component.] **A municipality's housing element shall contain a rental housing component if the municipal fair share obligation, as calculated in the following formula, is 125 or more:**

Precredited Need–Adjustment–Credits–(Rehabilitation Component) = Municipal Fair Share Obligation

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

(d) All municipalities, including those not required to develop a rental housing component, shall receive a one and a third unit credit, for each rental unit constructed and occupied in their municipality, until such time that the constructed rental housing units are in excess of 20 percent of the municipal fair share calculated after crediting, after adjustments and after [indigenous need] **subtracting the rehabilitation component.** The Council may grant municipalities the one and a third unit credit when it determines that the municipality has provided or received a firm commitment for the construction of low and moderate income rental units that includes a construction timetable coinciding with the period of substantive certification.

(e) No municipality shall be required to construct rental housing that is in excess of 20 percent of its fair share, after crediting, after adjustments and after [providing for indigenous need] **subtracting the rehabilitation component**.

(f) (No change.)

MILITARY AND VETERANS' AFFAIRS

(a)

THE ADJUTANT GENERAL

Military Service Medals

Proposed New Rules: N.J.A.C. 5A:3

Authorized By: Brigadier General Preston M. Taylor, Jr., The Deputy Adjutant General, Department of Military and Veterans' Affairs.

Authority: N.J.S.A. 38A:15-2 and 15-3; Executive Order No. 29, dated March 20, 1991.

Proposal Number: PRN 1991-258.

Submit written comments by June 19, 1991 to:
LTC William C. Lowe
Director of Administration
New Jersey Department of Military and Veterans' Affairs
CN 340
Trenton, NJ 08625-0340

The agency proposal follows:

Summary

Pursuant to the provisions of N.J.S.A. 38A:15-2, the New Jersey Distinguished Service Medal may be awarded to any resident of the State of New Jersey who while serving in the organized militia or in Federal military service on active duty in time of war or emergency, shall distinguish himself by especially meritorious service and who has been or may be cited in orders for distinguished service by the Governor or by appropriate Federal authority.

The rules outlined herein define the terms "especially meritorious" service and provide the mechanism for a resident of the State to apply for and receive a New Jersey Distinguished Service Medal.

N.J.S.A. 38A:15-3 authorizes the procurement and issuance of service medals for New Jersey residents ordered to active duty during time of war. Executive Order No. 29 signed by Governor James Florio on March 20, 1991 directed the Department of Military and Veterans' Affairs to establish, prepare and issue a New Jersey Desert Storm Service Medal. The rules detailed herein define the New Jersey Desert Storm Service Medal and establish criteria and procedures to be followed by nonmembers of the New Jersey National Guard when applying for its awarding.

The awarding of these medals to members of the New Jersey National Guard will be made in accordance with appropriate New Jersey Army and Air National Guard regulations.

Social Impact

These proposed rules allow the State of New Jersey to recognize the military service of its sons and daughters.

With regard to the New Jersey Desert Storm Service Medal, it is understood by the Department that there was no medal issued recognizing New Jersey citizen military service in World War II, The Korean War, nor The Viet Nam War. It is the intent of the Department to seek such legal authority as required and then to establish the procedures and medals necessary to recognize such service.

Economic Impact

The proposed rules have a twofold economic impact: the cost of production of the medals and the cost of processing requests for the issuance of the individual medals. These costs will be borne by the Department through its operating budget.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules establish standards for the awarding of military service medals to New Jersey residents. Therefore, a regulatory flexibility analysis is not required.

Full text of proposed new rules follows:

CHAPTER 3
MILITARY SERVICE MEDALS

SUBCHAPTER 1. GENERAL PROVISIONS

5A:3-1.1 Scope

This chapter is applicable to all residents of the State who served in any capacity on active duty with the Armed Forces of the United States of America in time of war or emergency and were honorably discharged from such service.

5A:3-1.2 Purpose

The purpose of the service medals outlined in this chapter is to recognize military service in defense of both State and Nation of individual residents of the State of New Jersey and to commemorate such service.

SUBCHAPTER 2. NEW JERSEY DISTINGUISHED SERVICE MEDAL

5A:3-2.1 Policy

The purpose of the New Jersey Distinguished Service Medal is to recognize any resident of the State of New Jersey, who, while serving in Federal military service on active duty in time of war or emergency, shall distinguish himself or herself by especially meritorious service and who has been cited in orders for distinguished service by appropriate Federal authority.

5A:3-2.2 Criteria for award

(a) In order to be eligible for the New Jersey Distinguished Service Medal, a resident of New Jersey shall have:

1. Seen active military service in the Armed Forces of the United States of America during time of war or emergency as attested to by the awarding of an Honorable Discharge (DD 214) by the respective Armed Force;

i. The quality of such service must have been especially meritorious as attested to through the awarding of no less than the Meritorious Service Medal or the Bronze Star Medal by appropriate Federal Authority; and

2. Been a resident of the State of New Jersey at the time of entry onto active military service.

5A:3-2.3 Procedures for requesting award

(a) To request the awarding of the Medal, a person shall submit a certified copy of DD Form 214 (Armed Forces Discharge Certificate) indicating dates of service, character of service and awards presented which conform to N.J.A.C. 5A:3-2.2 with a proof of New Jersey residency at time of entry on to active duty, in a written request for awarding of the New Jersey Distinguished Service Medal to:

The Adjutant General
New Jersey Department of Military and Veterans' Affairs
Attn: Director of Administration
CN 340
Trenton, New Jersey 08625-0340

(b) In lieu of evidence of awards of the caliber designated in N.J.A.C. 5A:3-2.2(a)1i being reflected on a DD Form 214, an applicant may submit other certified documents reflecting the awarding in the name of the President of the United States of America a medal of at least the rank of the Meritorious Service Medal or the Bronze Star Medal.

(c) Upon verification of New Jersey residency, as well as the quality and character of service as described in N.J.A.C. 5A:3-2.2, the Department of Military and Veterans' Affairs will issue to the requestor the New Jersey Distinguished Service Medal with appropriate certificate in the name of the Governor of the State of New Jersey at no cost.

(d) One medal will be issued to each requestor with appropriate lapel ribbon. In the event of service in more than one war or emergency, additional certificates will be prepared and awarded upon receipt of appropriate documentation.

SUBCHAPTER 3. NEW JERSEY DESERT STORM SERVICE MEDAL

5A:3-3.1 Policy

The purpose of the New Jersey Desert Storm Service Medal is to recognize and commemorate the honorable service of the citizens of the State of New Jersey who participated on active duty with the Armed Forces of the United States during Operation Desert Shield/Storm.

5A:3-3.2 Criteria for award

The New Jersey Desert Storm Service Medal shall be awarded to those State residents who were in the regular United States Armed Forces, volunteered for the armed services, were part of the New Jersey National Guard or the Reserve Forces of the Armed Forces of the United States called to active duty for Operation Desert Shield/Storm from the period August 1, 1990 thru the period of redeployment and de-mobilization of the last United States military unit and whose character of service was honorable.

5A:3-3.3 Procedures for requesting award

(a) Except as specified in (c) below, a person shall apply for issuance of the New Jersey Desert Storm Service Medal by submitting proof of service and New Jersey residency in a written request to:

The Adjutant General
New Jersey Department of Military and Veterans' Affairs
Attn: Director of Administration
CN 340
Trenton, New Jersey 08625-0340

(b) Upon verification of honorable service in accordance with N.J.A.C. 5A:3-3.2 and residency at the time of service, the Department will issue one Medal with lapel ribbon and certificate in the name of the Governor of the State of New Jersey to the service member.

(c) Procedures for requesting an award for the members of the New Jersey Army or Air National Guard are outlined in appropriate New Jersey Army and Air National Guard regulations as issued by the Adjutant General, New Jersey Department of Military and Veterans' Affairs.

(a)

THE ADJUTANT GENERAL

Brigadier General William C. Doyle Veterans' Memorial Cemetery Interment Eligibility; Operating Rules; Funeral Directors' Responsibilities

Proposed New Rules: N.J.A.C. 5A:4

Authorized By: Brigadier General Preston M. Taylor, Jr., The Deputy Adjutant General, Department of Military and Veterans' Affairs.

Authority: P.L. 1985, c. 149; N.J.S.A. 38A:3-2.2; 38A:3-6(o) and (u).

Proposal Number: PRN 1991-290.

Submit written comments by June 19, 1991 to:

LTC William C. Lowe
Director of Administration
New Jersey Department of Military and Veterans' Affairs
CN 340
Trenton, NJ 08625-0340

The agency proposal follows:

Summary

These proposed new rules identify and establish the eligibility for interment in the New Jersey Brigadier General William C. Doyle Veterans' Memorial Cemetery. In addition, they set forth general operating rules for the Cemetery and define the procedures and rules established to ensure the proper relationships between private funeral directors and the Veterans' Memorial Cemetery in order to ensure that interments proceed without delay, avoiding unnecessary stress to the bereaved family and the utmost respect to New Jersey's veterans.

Social Impact

The provisions of these rules impact upon the veteran population of the State and upon the families of veterans. They do not apply to the general public. The impact of these proposed new rules are positive since they provide for the interment of New Jersey's veterans in a place of honor, provide for the efficient operation of the Cemetery and establish requirements to be followed by funeral directors.

Economic Impact

These proposed new rules have no economic impact in general. The Veterans' Memorial Cemetery is a public facility operated by the State of New Jersey through appropriated funds with some United States Department of Veterans' Affairs participation. Interments of eligible New Jersey veterans and qualified family members are at no cost to the veteran.

While N.J.A.C. 5A:4-5 does impose requirements on funeral directors, no direct economic impact on such persons is anticipated.

Regulatory Flexibility Analysis

The proposed new rules do not impose any reporting or recordkeeping requirements.

The proposed new rules impose compliance requirements on funeral directors for interments in the Veterans' Memorial Cemetery. The Department believes that most, if not all, funeral directors affected would be classified as small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. N.J.A.C. 5A:4-5 sets forth requirements to confirm interment appointments and to present specified documentation on arrival of the cortege at the Cemetery; prescribe funeral directors' responsibilities regarding interments at the Cemetery; and set forth rules for committal services and floral arrangements. The Department does not anticipate that these requirements will cause funeral directors to incur capital costs or require professional services in order to comply. Therefore, no lesser requirements are provided based upon business size.

Full text of the proposed new rules follows:

CHAPTER 4
BRIGADIER GENERAL WILLIAM C. DOYLE VETERANS' MEMORIAL CEMETERY

SUBCHAPTER 1. GENERAL PROVISIONS

5A:4-1.1 Scope

(a) This chapter is applicable to all residents of the State who served in any capacity on active duty with the Armed Forces of the United States of America and who have been separated or discharged from such active duty under conditions other than undesirable or dishonorable.

(b) In addition to eligible New Jersey veterans, this chapter applies to all private funeral directors who provide assistance in the interment of a veteran or a veteran's immediate family in the Veterans' Memorial Cemetery.

5A:4-1.2 Purpose

The purpose of this chapter is to identify and establish the eligibility rules for interment in the Brigadier General William C. Doyle Veterans' Memorial Cemetery located in Arneytown, New Jersey.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

5A:4-2.1 Veterans' interment eligibility

(a) Eligibility for interment in the Brigadier General William C. Doyle Veterans' Memorial Cemetery is based on 38 U.S.C. 901 through 908; 38 C.F.R. 3.1600 through 3.1612; P.L. 1985, c.149 and N.J.S.A. 38A:3-2.2, 3-6(o) and (u).

(b) The following eligibility criteria are outlined in order to delineate and clarify the provisions of (a) above:

1. The veteran to be interred must be a legal resident of the State of New Jersey prior to death or have lived at least 50 percent of his or her life within the State.

2. Proof of eligibility for interment is a valid discharge from the Armed Forces of the United States of America indicating that the character of service was other than dishonorable or undesirable.

3. Proof of New Jersey residency is considered to be one of the following:

i. A New Jersey Driver's License;

ii. A New Jersey Voter's Registration Card;

iii. A paid New Jersey real estate tax bill;

iv. A deed to New Jersey property;

v. Utility bills with the veteran's name and New Jersey address appearing thereon; or

vi. Other similar documentation indicating New Jersey residency.

4. In the absence of an acceptable discharge document or proof of residency, a tentative date for interment may be established; however, the scheduled interment may be subject to delay in order to permit a determination of eligibility.

5. In cases where the character of a discharge requires adjudication by the United States Department of Veterans' Affairs Regional Office, the chief executive office of the Cemetery (CEO) will not permit interment pending final decision. The CEO will advise the funeral director that interment cannot proceed until the character of discharge is determined.

6. If a funeral cortege arrives at the Veterans' Memorial Cemetery and eligibility has not been established, a committal service may be permitted. However, interment will not take place and the remains will be removed by the funeral director from the cemetery until eligibility has been verified.

5A:4-2.2 Veteran family interment eligibility

In order for a spouse or dependent child to be eligible for interment, the veteran sponsor must be interred or agree to be interred in the Veterans' Memorial Cemetery.

5A:4-2.3 New Jersey National Guard interment eligibility

A member of the New Jersey National Guard, who while on State Active Duty by the Order of the Governor of the State of New Jersey and who dies or is killed in the line of duty, is eligible for interment in the Veterans' Memorial Cemetery. The family of such a National Guard member is eligible for interment in accordance with the provisions of these rules as they apply to the family of a deceased veteran.

5A:4-2.4 Right of appeal

A veteran, a veteran's legal representative, or next of kin may appeal a decision regarding eligibility for interment within 30 days of notification of the decision. The appeal will be in writing and be filed with the CEO who will forward the request for reconsideration with all documentation to the Department of Military and Veterans' Affairs for final determination. The Department will respond to the appeal with a final decision within 48 hours.

5A:4-2.5 Pre-registration

(a) A veteran resident of New Jersey may apply in advance for interment in the Veterans' Memorial Cemetery.

(b) Applications are made at any New Jersey Department of Military and Veterans' Affairs Veterans' Services Office. At the time of filing, the application will be processed and determination of eligibility made. When eligibility is verified the veteran will be notified of the fact.

(c) Pre-registration constitutes verification of eligibility and not the reservation of a specific space or plot in the Veterans' Memorial Cemetery.

SUBCHAPTER 3. GENERAL OPERATING RULES FOR BRIGADIER GENERAL WILLIAM C. DOYLE VETERANS' MEMORIAL CEMETERY

5A:4-3.1 Policy

The Brigadier General William C. Doyle Veterans' Memorial Cemetery is New Jersey's public owned and operated veterans' cemetery. As such, it is a memorial to the sacrifices and contributions made by New Jersey's veteran population to the freedoms shared by all of New Jersey's residents.

5A:4-3.2 General operations

(a) Flat, bronze grave markers, as prescribed and provided by the Department of Memorial Affairs, United States Department of Veterans' Affairs, are the only markers permitted at the Veterans' Memorial Cemetery.

(b) No graveside services are permitted. The funeral director and the immediate family of the deceased may witness the actual burial upon request, in which case accommodations will be made for a curbside view of the interment.

(c) Depending upon the availability of resources, the Veterans' Memorial Cemetery will normally be open for visitation seven days a week during the hours of 8:30 A.M. to dusk. The Administrative Office will be open Monday through Friday, during the hours of 8:30 A.M. to 4:30 P.M., except for State holidays.

(d) The use of Cemetery grounds for public gatherings of a partisan nature is not permitted.

(e) Boisterous demeaning activity or conduct on any Cemetery grounds is not permitted.

(f) Littering is not permitted.

(g) Only fresh cut flowers, artificial flowers and plants which can be inserted into cones will be allowed. Only two floral cones will be permitted at the top edge of the grave marker. Cones approved are those provided without charge by the Cemetery. Those obtained by the family or obtained privately will conform to those supplied by the Cemetery.

(h) No plantings of any type are permitted on Cemetery grounds or on grave sites. No potted plants, wreaths, flags, emblems, or other forms of decorative articles are permitted on grave sites.

(i) Flowers of any kind which become unsightly, faded or wilted will be removed by Cemetery personnel.

(j) Evergreen blankets and wreaths will be permitted on graves beginning December 15 and will be removed by cemetery personnel no earlier than January 15.

(k) Wreaths are permitted during holidays and will be removed by cemetery personnel one week after the holiday. Holidays include: Easter, Mother's Day, Father's Day and Veterans' Day.

(l) Flags will be placed on each grave by cemetery personnel only during "Memorial Day" observance.

(m) The cutting, breaking or injury to the trees, shrubs, grass or other plantings is not permitted.

(n) Recreational activity such as picnicking, ball playing, bicycling, skate boarding, and jogging will not be permitted anywhere on Cemetery grounds. Consumption of any alcoholic beverages is strictly forbidden on Cemetery grounds.

(o) Pets are not permitted on or near any grave site area.

(p) Permission for any type of commercial photography must be received from the CEO prior to the planned event.

SUBCHAPTER 4. GENERAL OPERATING RULES FOR FUNERAL DIRECTORS WHEN DEALING WITH THE BRIGADIER GENERAL WILLIAM C. DOYLE VETERANS' MEMORIAL CEMETERY

5A:4-4.1 General requirements

(a) In an effort to avoid unnecessary stress to the bereaved family and to ensure that the scheduling of interments proceed without delay, funeral directors shall:

1. Confirm appointments for interments with the Interment Scheduling Office of the Cemetery before making any commitments to the family regarding date and time of burial; and

2. Present the following documentation to the CEO at the time of arrival of the cortege at the Cemetery:

i. The Burial Permit (required for all interments);

ii. The Military Discharge (DD Form 214) (If the Veteran has preregistered with the Cemetery this form will not be required);

iii. The Certified Death Certificate; and

iv. The proof of New Jersey residency.

(b) The bronze memorial marker each Veteran is entitled to will not be ordered until all of (a) above is complied with.

5A:4-4.2 Funeral directors' responsibilities

(a) For interments in the Veterans' Memorial Cemetery, funeral directors are responsible for the following:

1. All funeral arrangements in compliance with applicable State Laws and Regulations;
2. Supervision of the cortege;
3. Directions to the Cemetery;
4. Appropriate Honor Guards to render proper Honors and present The Flag of the United States if called for;
5. Clergy if requested for the committal service;
6. Notifying the Cemetery of any qualified children in accordance with U.S.C. Title 38; and
7. Notifying the Cemetery when an oversized or private vault is required.

5A:4-4.3 Chapel

A chapel is available for committal services; additionally, the chapel has a patio for outside services.

5A:4-4.4 Special section

Provisions have been made within a special section of the Veterans' Memorial Cemetery to accommodate veterans of the Jewish faith who individually elect such consideration.

5A:4-4.5 Floral arrangements

(a) Due to the restrictive size of the Veterans' Memorial Cemetery Chapel, only six floral pieces will be brought to the chapel for committal services.

(b) Only six floral pieces will be placed at the grave site. Excess floral pieces may be utilized as the family wishes or disposed of by Cemetery personnel as compost.

(c) The next of kin or representative will sign a flower release form prior to the time of the committal service.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Water Pollution Control

Minimum Treatment Requirements

Proposed Amendment: N.J.A.C. 7:9-5.8

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.

DEP Docket Number: 021-91-04.

Proposal Number: PRN 1991-291.

Submit comments, identified by the DEP docket number above, by June 19, 1991 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Policy and Planning
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection has received a Petition for Rulemaking (Petition) (see 23 N.J.R. 222(a)) and other comments in objection to the readoption of N.J.A.C. 7:9-5 without amendments. One of the comments which has been received by the Department most commonly and which has been included in the Petition concerns the requirement that the BOD_5 effluent concentration and percent removal limitations contained in N.J.A.C. 7:9-5.8 be met during any four hour period of a day, including periods when the strength of the wastes to be treated might be expected to or actually exceeds average conditions. The comment on this issue which was included in the Petition stated that the Department's "rationale for maintaining the 4-hour requirement is to serve as an enforcement tool against municipalities." The petitioner goes on to say that "if fully implemented, the 4-hour requirement would dramatically increase the cost of pollutant reduction within the State of New Jersey without commensurate environmental improvement. Utilizing a 4-hour time frame instead of the 30-day average period would easily result in tripling or quadrupling the size of a facility in order to improve its efficiency and reliability. Moreover, a 4-hour limitation period is inconsistent with monitoring schedules. Because the state does not properly enforce or implement this requirement, engineers do not effectively design for this requirement and the requirement appears to serve no useful purpose other than a punitive function. Thus, the requirement should be deleted." Based on these comments and numerous other requests which have been received, the Department is proposing to amend N.J.A.C. 7:9-5.8 to remove the four-hour requirement. Also, changing the four-hour requirement for the 40 mg/L concentration requirements without any other change would establish a minimum treatment requirement that would have been less stringent than the Federal minimum treatment requirements. Allowing for the establishment of a minimum treatment requirement which is less stringent than the Federal secondary treatment requirements at 40 CFR 133 is not permissible. Therefore, the Department has changed the BOD_5 minimum treatment requirements for the concentrations of 40 mg/L to 30 mg/L in order to make the State minimum treatment requirements consistent with the Federal requirements. The proposed amendment will require that the minimum treatment requirements be met as monthly averages.

Comments that were received by the Department regarding other issues in N.J.A.C. 7:9-5 will be addressed in other proposed regulatory amendments in the near future.

Social Impact

The proposed amendment will assure the continuation of a positive social impact by providing protection for the public health, safety, and environment. This will be assured by the establishment of minimum effluent limitations for dischargers to surface waters of the State.

Economic Impact

The proposed amendment should not increase the cost of regulatory compliance for any permittee. The cost of regulatory compliance for those permittees who were sampling in accordance with the four-hour requirement may decrease by allowing those permittees to conduct less frequent and less intensive influent and effluent monitoring. The proposed amendment should also have a positive economic impact on all permittees by reducing the risk of the assessment of penalties for violations of the minimum treatment requirements since the time period for monitoring compliance is being expanded.

Environmental Impact

The proposed amendment should not have a positive or a negative environmental impact on the surface water quality.

N.J.A.C. 7:9-5.8 will continue to provide a positive environmental impact through the protection and enhancement of the quality and the designated uses of the waters of the State into which effluents are discharged.

Regulatory Flexibility Analysis

The proposed amendment to N.J.A.C. 7:9-5.8 applies to all businesses which discharge wastewater into the surface waters of the State. Of the estimated 1,500 dischargers, approximately 250 are "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:15B-16 et seq. The proposed amendment to this rule should not increase the annual cost of regulatory compliance for any permittee, and may decrease the cost for those permittees who were sampling in accordance with the four-hour requirement by allowing those permittees to conduct less frequent and less intensive influent and effluent monitoring. The Department has balanced the need to protect the environment against the economic impact upon small businesses and has determined not to provide exemptions for small businesses, since minimizing this impact would endanger the environment and public health and safety. Neither water quality standards nor wastewater discharge requirements are raised or lowered due to the size of the owning entity.

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

7:9-5.8 Minimum Treatment Requirements

These minimum treatment requirements apply to all discharges where effluent limitations based upon water quality studies [acceptance] **acceptable** to the Department have not been developed and are required by N.J.A.C. 7:9-4.5(e)4 or 4.6(a). **In the case where a water quality study has been accepted and approved by the Department, and water quality based effluent limitations have been established by the Department based upon the study, then the minimum treatment requirements shall no longer apply, unless required by another regulatory agency. Requests to modify existing NJPDES permits containing minimum treatment requirements shall be submitted to the Department in writing in accordance with N.J.A.C. 7:14A-2.12.**

Watershed	Classifications	% BOD_5 Removal[1]	BOD_5 Maximum (mg/L)[2]	Discharge Type
Atlantic Coastal Plain	FW2, SE1	95	15	All
	SC	85	[40] **30**	Domestic or Domestic in combination with Industrial
	SC	85	—	Industrial
Delaware River Basin	FW2, SE1, SE2	90	25	All
	Main Stem—All Zones	As set forth in Water Quality Standards for the Delaware River Basin; Resolution 67-7 of the DRBC; April 26, 1967 and subsequent revisions.		All
Hackensack River Basin	FW2, SE1	90	25	All
	SE2, SE3	85	[40] **30**	All
Passaic River Basin (including Newark Bay)	FW2	90	25	All
	SE2, SE3	85	[40] **30**	All
Raritan River Basin (including Raritan Bay and Sandy Hook Bay)	FW2	90	—	All
	SE1	85	—	All
Wallkill River Basin	FW2	95	15	All
Hudson River, Kill Van Kull, and Arthur Kill Basins	FW2, SE2, SE3	85	—	All

[1]Minimum percent reduction [of BOD_5 at all times including any four-hour period of a day when the strength of the wastes to be treated might be expected to or actually exceeds average conditions] **as a 30-day average**.

[2][Average over any four-hour period of a day, including periods when the strength of the wastes to be treated might be expected to or actually exceeds average conditions.] **Maximum 30-day average.**

(a)

DIVISION OF FISH, GAME AND WILDLIFE
Fish and Game Council
1991-92 Game Code
Proposed Amendments: N.J.A.C. 7:25-5

Authorized By: Fish and Game Council, Cole Gibbs, Chairman.
Authority: N.J.S.A. 13:1B-29 et seq.
DEP Docket Number: 020-91-04.
Proposal Number: PRN 1991-276.

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

June 11, 1991 at 8:00 P.M.
Mercer County Community College
West Windsor Campus
1200 Old Trenton Road
Communications, Room 110
West Windsor, New Jersey

Submit written comments by June 19, 1991 to:

Robert McDowell, Director
Division of Fish, Game and Wildlife
Department of Environmental Protection
CN 400
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed 1991-92 Game Code, N.J.A.C. 7:25-5, states when, under what circumstances, in what location, by what means, and in what amounts and numbers, birds, game animals and fur-bearing animals may be pursued, taken, killed or possessed.

Since the turn of the century, the Game Code has provided a system for the protection, propagation, increase, control and conservation of game birds, game animals, and fur-bearing animals in this State and for their use and development for public recreation and food supply. Yearly revisions based on scientific investigation and research ensure the greatest likelihood of success in reaching these goals.

The proposed amendments include the following revisions:

1. Most hunting season dates are adjusted to correspond with the 1991-92 calendar which takes into account both anticipated differences in hunting activity according to the day of the week, and the effects of the regulatory activities of neighboring states. Small game seasons have been adjusted to correspond to changes in the deer hunting seasons, generally with no change in the overall length of the small game season.

2. The use of bait for turkey hunting is prohibited (N.J.A.C. 7:25-5.7).

3. A portion of Gloucester and Salem Counties previously unzoned for turkey hunting, now has an established and huntable turkey population and has been incorporated into Areas 15 and 20. The addition of this area will increase permit availability by 25 in Area 15 (five per segment) and 25 in Area 20 (five per segment). Area 15 and 20 boundary descriptions have subsequently been redefined (N.J.A.C. 7:25-5.7).

4. Beaver and otter permits are valid only in the zones and sites designated and are not transferable from person to person (N.J.A.C. 7:25-5.9, 5.10).

5. Special site specific beaver permits with a three beaver limit have been provided for use in directing trapping efforts to complaint colonies during the regular beaver trapping season. The use of additional traps by holders of site specific permits is provided for (N.J.A.C. 7:25-5.9).

6. Special beaver trapping permits are adjusted by zone to yield a net decrease. However, the combined total of special trapping permits and

special site specific permits provides an increase in available permits in order to achieve harvest objectives including an increase in the harvest of beaver from complaint colonies (N.J.A.C. 7:25-5.9).

7. Permit allocations for otter are adjusted to yield a net decrease in order to reduce the harvest in three zones (N.J.A.C. 7:25-5.10).

8. References to the use of lead shot larger than No. 2 shot for waterfowl hunting have been deleted since all lead shot is now prohibited for hunting waterfowl (N.J.A.C. 7:25-5.13, 5.23).

9. The use of a lead shot is prohibited for hunting rail, gallinule and snipe after the regular season for waterfowl commences. Therefore, lead shot is permitted for hunting these species after the sea duck season commences and before the regular waterfowl season opens (N.J.A.C. 7:25-5.14).

10. In order to comply with recent changes in Federal regulations, to streamline reporting requirements and to further ensure the welfare and protection of the raptor species, changes are made to the falconry regulations. Changes included are as follows: (1) general permittees must have at least two seasons of field flying experience with a raptor; (2) apprentice falconers may only take or attempt to take raptors while in the accompaniment of a general or master falconer; (3) all traps or nets used must have a tag or label attached providing the name and address, permit number and class of the permittee; (4) all banded raptors captured by a falconer must be released immediately and a report of the capture submitted to the Division; (5) wild-caught raptors must be tagged with the falconers name and phone number on the jesses or bells and captive bred raptors must haved a seamless federal marker affixed to one leg; and (6) whenever a raptor is acquired, transferred, released or lost, a copy of Federal Form 3-186A must be submitted to the Division of Fish, Game and Wildlife within 10 days. An annual report will no longer be required (N.J.A.C. 7:25-5.16).

11. Muzzleloader rifles and shotguns are considered unloaded when, in the case of a percussion cap rifle or shotgun, the percussion cap has been removed from the nipple; in the case of a flintlock, when the powder is removed from the pan and a boot or cover of a non-metallic material is placed over the frizzen. Whenever a firearm is in a motor vehicle it must be unloaded and enclosed in a securely fastened case (N.J.A.C. 7:25-5.23).

12. The bag limit for the fall bow season in Zone 1 is changed from deer with antler at least three inches long during the first three weeks of the season to deer of either-sex and any age, for the purpose of providing a more equitable distribution of the antlerless deer harvest among all either-sex deer seasons (N.J.A.C. 7:25-5.25).

13. The permit muzzleloader season length is increased from seven to eight days in Zones 1 and 4 for the purpose of increasing recreational opportunity for muzzleloader deer hunters (N.J.A.C. 7:25-5.28).

14. Permit muzzleloader, permit shotgun and permit bow season quotas, bag limits and season lengths are adjusted according to harvest objectives to yield to a statewide net decrease in the anticipated antlerless deer harvest (N.J.A.C. 7:25-5.28, 5.29, 5.30).

15. The permit muzzleloader deer season length is reduced from 15 to 13 days due to the traditional scheduling of the six-day firearm season (N.J.A.C. 7:25-5.28).

16. The Zone 55 designation (number) was reassigned because the Federal Aviation Technical Center located near Pomona no longer has an active deer management program. New Zone 55 was created from 6.2 square miles of the western portion of Zone 25 for the purpose of establishing a separate deer management zone program which will include the Glassboro Wildlife Management Area (N.J.A.C. 7:25-5.28, 5.29, 5.30).

17. Zone 65 was created from 18 square miles of the northeastern portion of Zone 25 for the purpose of establishing a separate deer management zone program which will include the Winslow Wildlife Management Area (N.J.A.C. 7:25-5.28, 5.29, 5.30).

18. The Zone 35 boundary was expanded eastward to include 2.2 square miles of the western portion of Zone 25 which was isolated due to the creation of Zone 55. This change will clarify the boundaries between Zones 25, 35 and 55 and will ensure season objectives are met (N.J.A.C. 7:25-5.28, 5.29, 5.30).

19. The Zone 25 boundaries were modified to exclude newly created zones: 55, 18.0 square miles, and 65, 6.2 square miles; and 2.2 square miles of the western portion of Zone 25 was incorporated into existing Zone 35. Zone 35 was further modified to include 22.1 square miles of the southern portion of Zones 23 and 10.6 square miles of the northwestern portion of Zone 26. These changes were made for the purpose of achieving antlerless deer harvest objectives (N.J.A.C. 7:25-5.28, 5.29, 5.30).

20. Portions of the deer management Zone 27 and 28 boundary descriptions have been modified for clarification (N.J.A.C. 7:25-5.29).

21. The permit shotgun season length was increased from one to three days in Zones 30 and 44 and from three to six days in Zones 15, 25, 47, 57 and 58, for the purpose of achieving antlerless deer harvest objectives in these Zones (N.J.A.C. 7:25-5.29).

22. The permit shotgun season length was decreased from six days to three days in Zones 6, 19 and 29 for the purpose of achieving antlerless deer harvest objectives in these Zones (N.J.A.C. 7:25-5.29).

23. The permit bow season was reinstated in Zone 3 and opened for the first time in Zone 32 for the purpose of increasing recreational opportunity for bow hunters and achieving antlerless deer harvest objectives (N.J.A.C. 7:25-5.30).

24. The permit bow season was lengthened from 19 days to 25 days for the purpose of increasing recreational opportunity for bow hunters, achieving antlerless deer harvest objectives and due to the traditional scheduling of the fall bow and six-day firearm seasons which provides four weeks between these seasons in specific years (N.J.A.C. 7:25-5.30).

25. The permit shotgun season length was reduced from six to five days in Zone 38 (Great Swamp National Wildlife Refuge) and the bag limit was increased from one to two deer per permit per day and six to 10 deer for the permit shotgun season for the purpose of achieving the antlerless deer harvest objective (N.J.A.C. 7:25-5.29, 5.31).

The remaining changes have been made for clarification and correction of typographical errors.

Social Impact

Adjustments in the dates of small game seasons in order to account for 1991 calendar changes are minor with no social impact anticipated.

The relatively limited changes proposed for hunting seasons, permit quotas, and hunting areas should have a minimal adverse social impact, in that hunting activity will be further curtailed in some areas and at some times, from what has been permitted under prior codes.

However, the additional hunting areas and times which have been established, including those for deer and turkey hunting, should have a significant positive impact on increasing hunting opportunity. Adjustments that have been made to deer hunting quotas, season lengths, and bag limits, should benefit all segments of the public in providing for healthier deer populations, long-term enhanced recreational hunting opportunities, and deer population levels compatible with other land uses.

The positive social impact anticipated includes the conservation, management, and the enhancement of the wildlife resource for continued recreational opportunities.

Economic Impact

There may be a small, short-term adverse economic impact on local retailers serving the hunting population as a result of changes in hunting seasons, permit quotas, and special permit seasons.

However, these amendments to the Game Code should further the conservation and enhancement of the wildlife resource upon which a significant recreation and commercial industry is dependent and, therefore, occasion a long-term economic boon.

Environmental Impact

The proposed amendments should have a positive environmental impact in continuing the conservation, management and enhancement of the State's wildlife resources based on their current population, distribution and habitat status.

Regulatory Flexibility Analysis

The proposed 1991-92 Game Code imposes reporting and compliance requirements on sportsmen engaged in recreational hunting. These requirements are not, therefore, imposed upon small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the Game Code also regulates the activity of trappers, who may engage in such activity for their economic benefit. Such trappers may be considered small businesses. The proposed amendments to trapping rules N.J.A.C. 7:25-5.8 through 5.11 impose no additional reporting, recordkeeping or compliance requirements. Dates for the 1990-91 season are revised for the 1991-92 season, and the permit limits are revised, where appropriate. These revisions should result in no increased capital cost to trappers, and cause no need for professional services to be engaged, in order to comply.

As there is no increased regulatory burden on trappers due to the proposed amendments, and given the Council's objective to both protect game resources and foster recreational opportunities related to game, no differentiation in requirements to exemptions related to business size are provided.

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

SUBCHAPTER 5. [1990-91] **1991-92** GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supercede the provisions of [1989-90] **1990-91** Game Code.

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

7:25-5.2 Pheasant—Chinese ringneck (Phasianus colchicus torguatus), English or blackneck (P. c. colchicus), Mongolian (P. mongolicus), Japanese green (Phasianus versicolor); including mutants and crosses of above

(a) The duration for the male pheasant season is November [10] **9**, to December [1, 1990] **7, 1991**, inclusive, and December [10, 1990] **16, 1991** through January [5, 1991] **4, 1992**, excluding December [12, 13, and 14, 1990] **18, 19 and 20, 1991** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December [1, 1990] **7, 1991**, inclusive and December [10, 1990] **16, 1991** through March 31, [1991] **1992**, excluding November [9] **8** and December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those management zones in which a shotgun deer permit season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May and on all wildlife management areas is November [10] **9** to December [1, 1990] **7, 1991**, inclusive, and December [10, 1990] **16, 1991** through February [18, 1991] **17, 1992**, excluding December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(e) The hours for hunting pheasants on November [10, 1990] **9, 1991** are 8:00 A.M. to ½ hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to ½ hour after sunset.

(f) (No change.)

(g) The opening of the season on semi-wild preserves coincides with the listed statewide opening of November [10, 1990] **9, 1991**.

(h) (No change.)

7:25-5.3 Cottontail rabbit (Sylvilagus floridanus), black-tailed jack rabbit (Lepus californicus), white-tailed jack rabbit (Lepus townsendii), European hare (Lepus europeus), chukar partridge (Alectoris graeca), and quail (Colinus virginianus)

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November [10] **9** through December [1, 1990] **7, 1991**, inclusive, and December [10, 1990] **16, 1991** to February [18, 1991] **17, 1992**, excluding December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December [1, 1990] **7, 1991**, inclusive, and December [10, 1990] **16, 1991** through March 31, [1991] **1992**, excluding November [9] **8** and December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November [10, 1990] **9, 1991**, 8:00 A.M. to ½ hour after sunset. On all other days for which hunting for these animals is legal, the hours are sunrise to ½ hour after sunset.

(e) (No change.)

7:25-5.4 Ruffed grouse (Bonasa umbellus)

(a) The duration of the season for the hunting of grouse is October [13] **12** through December [1, 1990] **7, 1991**, inclusive, and December [10, 1990] **16, 1991** to February [18, 1991] **17, 1992**, excluding December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a shotgun permit deer season is authorized and excluding any extra deer permit season day(s) that is declared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse are sunrise to ½ hour after sunset, with the exception of November [10, 1990] **9, 1991** when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.5 Eastern gray squirrel (Sciurus carolinensis)

(a) The duration of the season for the hunting of squirrels is October [13] **12** through December [1, 1990] **7, 1991**, inclusive, and December [10, 1990] **16, 1991** to February [18, 1991] **17, 1992**, excluding December [12, 13 and 14, 1990] **18, 29 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit season day(s) if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December [1, 1990] **7, 1991**, inclusive, and December [10, 1990] **16, 1991** through March 31, [1991] **1992**, excluding December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise to ½ hour after sunset, with the exception of November [10, 1990] **9, 1991** when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(e) (No change.)

7:25-5.7 Wild turkey (Meleagris gallapavo)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or 10 days each. The hunting periods for all hunting areas shall be:

1. Monday, April [22, 1991] **20, 1992**—Friday, April [26, 1991] **24, 1992**;

2. Monday, April [29, 1991] **27, 1992**—Friday, May [3, 1991] **1, 1992**;

3. Monday, May [6, 1991] **4, 1992**—Friday, May [10, 1991] **8, 1992**;

4. Monday, May [13, 1991] **11, 1992**—Friday, May [17, 1991] **15, 1992** and Monday, May [20, 1991] **18, 1992**—Friday, May [24, 1991] **22, 1992**;

5. Saturday, April [27, 1991] **25, 1992**; Saturday, May [4, 1991] **2, 1992**; Saturday, May [11, 1991] **9, 1992** and Saturday, May [18, 1991] **16, 1992**

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

(e) Hunting methods shall be restricted to calling or stand-hunting. No person shall stalk or attempt to approach a wild turkey for the purpose of taking or attempting to take the bird. All persons must have a turkey calling device in their possession while turkey hunting. No person shall use an electronic calling device at any time during the open season. Persons may not drive or chase wild turkeys for the purpose of putting them in range of hunters. The use of dogs is prohibited. No, decoys, live or artificial, may be used. Fluorescent hunter's orange is not required on outer clothing for turkey hunting.

No shot size larger than number four fine shot or smaller than number seven and one-half fine shot may be used for turkey hunting. No shotgun larger than 10 gauge or smaller than 20 gauge may be used for turkey hunting. **A person shall not have in possession or control, a firearm or other weapon within 300 feet of a baited area. A baited area is defined as the collection, deposit, concentration or unnatural gathering of feed including, but not limited to, corn, wheat, oats or other substance that may constitute a lure or enticement to turkeys.**

(f)-(g) (No change.)

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, address, [1991] **1992** firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-15, [1991] **1992**, inclusive. Applications received after February 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for [1991] **1992**, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-15, [1991] **1992**. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. (No change.)

(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1991] **1992** Spring Turkey Hunting Season Permit Quotas are as follows:

[1991] **1992** SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	100	500	Sussex
2	120	600	Sussex, Warren
3	80	400	Sussex, Warren
4	100	500	Sussex, Warren, Morris
5	100	500	Sussex
6	150	750	Sussex, Passaic, Bergen
7	150	750	Sussex, Morris, Passaic
8	60	300	Warren, Hunterdon
9	60	300	Warren, Hunterdon, Morris
10	25	125	Essex, Middlesex, Morris, Somerset, Union
11	40	200	Middlesex, Mercer, Hunterdon, Somerset
13	10	50	Burlington, Ocean
14	50	250	Burlington, Ocean, Mercer, Monmouth
15	[50] **55**	[250] **275**	Burlington, Camden, Atlantic
16	60	300	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	[60] **65**	[300] **325**	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	[1,265] **1,275**	[6,325] **6,375**	

*Applied to each of the five hunting periods (A,B,C,D,E) in all areas:

A. Monday, April [2, 1991] **22, 1992**—Friday, April [26, 1991] **24, 1992**

B. Monday, April [29, 1991] **27, 1992**—Friday, May [3, 1991] **1, 1992**

C. Monday, May [6, 1991] **4, 1992**—Friday, May [10, 1991] **8, 1992**

D. Monday, May [13, 1991] **11, 1992**—Friday, May [17, 1991] **15, 1992** and Monday, May [20, 1991] **18, 1992**—Friday, May [24, 1991] **22, 1992**

E. Saturday, April [27, 1991] **25, 1992**; Saturday, May [4, 1991] **2, 1992**; Saturday, May [11, 1991] **9, 1992** and Saturday, May [18, 1991] **16, 1992**

(l) (No change.)

(m) Turkey Hunting Areas are as follows:

1. (No change.)

2. Turkey Hunting Area No. 2: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Rt. 94 and the Blairstown-Millbrook Road at Blairstown; then northwest along the Blairstown-Millbrook Road to Millbrook Village; then northwest along the Millbrook-Flatbrookville Road to its intersection with the Flatbrook at Flatbrookville; then south along the west bank of the Flatbrook to its confluence with the Delaware River; then north along the east bank of, the Delaware River to the intersection with Rt. [521] **560** at Dingman's Ferry; then east along Rt. [521] **560** to its intersection with Rt. 206; then southeast along Rt. 206 to its intersection with Rt. 519 at Branchville; then south along Rt. 519 to its intersection with Rt. 94 at Newton; then southwest along Rt. 94 to the point of beginning at Blairstown.

3.-13. (No change.)

14. Turkey Hunting Area No. 15: That portion of Atlantic, Burlington, Camden and Gloucester Counties lying within a continuous line beginning at the intersection of Routes 70 and 206 at Red Lion; then south along Route 206 to Hammonton; then south along Route 54 from Hammonton to its intersection with Route 40 at Buena; then west along Route 40 to its intersection with Route [47;] **77 at Upper Pittsgrove; then north on Route 77 to its intersection with Route 45 at Mullica Hill;** then north [and west] along Route [47] **45** to its intersection with Route 322, then west along Route 322 to its intersection with the Delaware River; then north along the east bank of the Delaware River to its intersection with Route 30 at Camden; then east along Route 30 to its intersection with Route 38; then east along

Route 38 to its intersection with Route 70; then east along Route 70 to the point of beginning.

15. (No change.)

16. Turkey Hunting Area No. 20: That portion of Cumberland and Salem Counties beginning at the intersection of east bank of the Delaware River and [the New Jersey Turnpike; then east along the New Jersey Turnpike] **Route 322 near Bridgeport; then southeast on Route 322 to its intersection with Route 45 near Mullica Hill; then south on Route 45 to its intersection with Route 77; then south on Route 77** to its intersection with Route 40; then east along Route 40 to its intersection with Route 553; then south along Route 553 to its intersection with Route 49; then west along Route 49 to Bridgeton and its intersection with the Cohansey River; then south along the west bank of the Cohansey River to its confluence with the Delaware River; then north along the east bank of the Delaware River to the point of beginning.

17.-18. (No change.)

7:25-5.8 Mink (Mustela vison) and muskrat (Ondatra zibethicus) and nutria (Myocaster coypus) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, [1990] **1991** through March 15, [1991] **1992**, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, [1990] **1991** through March 15, [1991] **1992**, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, [1991] **1992**, inclusive.

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

7:25-5.9 Beaver (Castor canadensis) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February 28, [1991] **1992**, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Applications shall be received in the Trenton office during the period December 1, [1990] **1991**—December 26, [1990] **1991**. Applicants may apply for only one beaver trapping permit and shall provide their [1990] **1991** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—[11] **9**, Zone 2—[9] **8**, Zone 3—[3] **2**, Zone 4—[5] **4**, Zone 5—3, Zone 6—[18] **16**, Zone 7—3, Zone 8—1, Zone 9—3, Zone 10—5, Zone 11—3, Zone 12—[2] **3**, Zone 13—0, Zone 14—1, Zone 15—0, Zone 16—3, Zone 17—[1] **3**, Zone 18—2. Total [73] **69**. Successful applicants must trap with a valid, current trapping license.

(d) [The season limit for beaver trapping is three beaver.] **Special Site Specific Permit: During the initial application period, applicants may also apply for one special site specific beaver permit. The total number of permits available shall not exceed 31. Site specific permits will be issued for specific locations or properties where the Division has determined that beaver damage or nuisance problems exist. A random drawing will be held to determine permit holders; however, applicants unsuccessful in obtaining the special permit as set forth at (c) above will be given first opportunity. Permits will be valid only during the beaver trapping season.**

(e) The season limit for beaver trapping is three beaver per permit.

[(e)]**(f)** A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than March 2, [1991] **1992**.

[(f)]**(g)** Each beaver trapper shall be restricted to a maximum of five traps. **However holders of both a Special Permit and a Special Site Specific Permit may use five additional traps per Special Site Specific Permit provided they are used only on the property or site specified in the Special Site Specific Permit.** [and each] **Each** trap shall be tagged pursuant to N.J.A.C. 7:25-5.12 with the tag clearly visible above the level of the water or ice. The Division, in its discretion, may designate and suitably post certain beaver colonies and prohibit all trapping within their dams, or within 500 feet thereof, during the beaver trapping season as indicated in this section.

(h) Special Beaver Permit and Special Site Specific Permits are valid only in the zone or site designated and are not transferable from person to person.

[(g)]**(i)** (No change.)

7:25-5.10 River otter (Lutra canandensis) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be February 1 through February 28, [1991] **1992**, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period December 1, [1990] **1991**—December 26, [1990] **1991**. Only [1] **one** application per person may be submitted for trapping otter and applicants shall provide their [1990] **1991** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—8, Zone 2—8, Zone 3—[3]**2**, Zone 4—[5]**4**, Zone 5—[4]**3**, Zone 6—9, Zone 7—3, Zone 8—6, Zone 9—3, Zone 10—4, Zone 11—5, Zone 12—2, Zone 13—14, Zone 14—7, Zone 15—12, Zone 16—4, Zone 17—2, Zone 18—5. Total [104] **101**. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than March 2, [1991] **1992**, where a pelt tag will be affixed and the carcass surrendered.

(f)-(i) (No change.)

7:25-5.11 Raccoon (Procyon lotor), red fox (Vulpes vulpes), gray fox (Urocyon cinereoargenteus), Virginia opossum (Didelphis virginiana), striped skunk (Mephitis mephitis), long-tailed weasel (Mustela frenata), short-tailed weasel (Mustela erminea), and coyote (Canis latrans) trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, [1990] **1991** to March 15, [1991] **1992**, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, [1991] **1992** to March 15, [1991] **1992**, inclusive.

(d)-(h) (No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November [10, 1990] **9, 1991**, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to take, hunt for or have in possession, any migratory game birds including waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the [1990-91] **1991-92** hunting season. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the [1990-91] **1991-92** hunting season.

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

(h) Hunting hours for waterfowl shall be those hours that are prescribed by the Department of the Interior, United States Fish and Wildlife Service, for the [1990-91] **1991-92** hunting season.

(i)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November [10, 1990] **9, 1991**. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the [1990-91] **1991-92** Game Code.

15. With shotgun shells loaded with pellets larger than No. 4 fine shot except those persons engaged in hunting waterfowl may use nothing larger than [No. 2 lead fine shot or] T (.200 inch) steel shot.

16.-19. (No change.)

(n) Seasons and bag limits are as follows:

1. Morning dove (Zenaida macroura) are protected. There will be no open season on these birds during [1990-91] **1991-92**.

2. Rail and gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (Rallus limicola), sora rail (Porzana carolina) and common gallinule or moorhen (Gallinula chloropus) is September 1 through November 9, [1990] **1991**, inclusive.

ii. (No change.)

(o) Woodcock zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for Woodcock are sunrise to sunset except on November [10] **9**, when the hunting hours are 8:00 A.M. to sunset.

(p)-(r) (No change.)

7:25-5.14 Special regulation limiting use of shotguns and shotgun shells containing lead pellets

(a) No person shall have in possession or use in hunting waterfowl and coot or any snipe, rail or gallinules after the **regular** season for hunting waterfowl commences any shotgun shell containing lead shot or lead pellets or have in possession or use any shotgun containing lead shot in New Jersey, including all territorial waters.

1. (No change.)

(b) A person found [in the designated steel shot area,] in possession of any of the following items at (b)1 to 3 below while hunting for, pursuing, taking or attempting to take waterfowl, coot or any snipe, rail or gallinule after the **regular** waterfowl season commences is in violation of this section. Each violation shall constitute an additional, separate and distinct offense subjecting the person to a penalty of $20.00 for each offense.

1.-3. (No change.)

(c) (No change.)

7:25-5.15 Crow (Corvus brachyrhynchos)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August [13, 1990] **12, 1991** through March [23, 1991] **21, 1992**, inclusive, excluding December [3-8] **9-14** and December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a shotgun permit deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to ½ hour after sunset, except on November [10, 1990] **9, 1991** when the hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.16 General falconry rules

(a) The following rules govern the taking, possession, training, transfer, marking and housing facilities of raptors, the classification of permittees and the use of raptors for falconry to take, kill, or pursue wild birds or wild animals.

1. (No change.)

2. Classes of permits are as follows:

i. (No change.)

ii. General: Permittee shall be at least 18 years of age.

(1) Permittee shall have been licensed at least two years as an apprentice falconer and have had a raptor in possession for at least 12 months [of that time]. **Permittee shall have had two seasons of active field flying experience with a raptor.** Sponsor for apprentice must certify in writing that the apprentice is now qualified to become a general falconer.

(2)-(4) (No change.)

iii. (No change.)

3.-4. (No change.)

5. Restrictions on taking raptors are as follows:

i. No person shall take, possess, transport or obtain a raptor unless they are in possession of a current falconry permit, ongame permit as described in N.J.A.C. 7:25-4.2(a) or endangered species permit as described in N.J.A.C. 7:25-4.10(b). **Apprentice falconers may only take or attempt to take a raptor while in the accompaniment of a general or master falconer.**

ii.-vi. (No change.)

vii. Bal-Chatri type live traps, other live traps and nets may be used for taking raptors providing they are used in such a manner which would minimize any danger of injuring the raptor. **All traps or nets used must have attached thereto a tag or label clearly showing the name and address, permit number and class of the permittee.**

viii. Owners of escaped raptors marked in accordance with these regulations may recapture these marked raptors at any time. **However, all other banded raptors trapped while attempting to capture a raptor for falconry shall immediately be released unharmed and a report containing the date, time, band number, location and species shall be submitted to the Division within 10 days of capture.**

6. Marking of raptors shall be as follows:

i. (No change.)

ii. [No raptors may be acquired for falconry purposes unless the person acquiring the raptor first obtains a numbered, non-reusable marker supplied by the U.S. Fish and Wildlife Service to the N.J. Division of Fish, Game and Wildlife. The marker may be obtained by direct written request to the Trenton office. This marker must be attached to the raptor immediately upon capture. Markers are not transferable.] **Wild-caught birds must be tagged with the falconer's name and phone number on the jesses or bells. Captive bred birds must have a seamless Federal marker affixed to one leg.**

iii. (No change.)

iv. It shall be unlawful for any person to alter or deface a marker. [except that a permittee may remove the rear tab on marker and] **However, the falconer** may smooth any imperfect surface provided the integrity of the marker and numbering is not affected. It shall be unlawful to use or possess a counterfeit marker.

v. (No change.)

7.-9. (No change.)

10. [Annual Report] **Reporting shall be as follows**: An annual report shall be submitted on forms supplied by the division and approved by the U.S. Fish and Wildlife Service by July 30 of each year whether or not renwal is requested.]

i. Whenever a raptor is acquired, transferred, released or lost, due to escape or death, a copy of Federal Form 3-186A must be submitted to the division within 10 days of the transaction or occurrence.

[i.]**ii.** A [similar] report is **also** required upon termination of the permit for any reason.

Recodify existing ii. as **iii.** (No change in text.)

11.-12. (No change.)

7:25-5.17 Raccoon (Procyon lotor) and Virginia opossum (Didelphis virginiana) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, [1990] **1991** to one hour before sunrise on March 1, [1991] **1992**. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December [3-8] **9-14** and on December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones or which a shotgun permit deer season is authorized and including any extra permit deer seasons day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, [1990] **1991** and from March 1 to May, [1991] **1992**. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (Marmota monax) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March [9] **14** through September [21, 1991] **19, 1991.** Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (Vulpes vulpes) and gray fox (Urocyon cinereoargenteus) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Bow and Arrow Only—September [29] **28** through November [9, 1990] **8, 1991**.

2. Firearm or Bow and Arrow—November [10, 1990] **9, 1991** through February [23, 1991] **22, 1992**, excluding December [3-8, 12, 13 and 14, 1990] **9-14, 18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of September [29] **28**—November [9, 1990] **8, 1991**. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during the firearm deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he **or she** must cease all hunting immediately.

(c) The hours for hunting fox are 8:00 A.M. to ½ hour after sunset on November [10, 1990] **9, 1991** and on other days from sunrise to ½ hour after sunset.

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

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November [9, 1990] **8, 1991**

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

7:25-5.23 Firearms and missiles, etc.

(a) Except when legally engaged in deer hunting during the prescribed firearm deer seasons no person shall have in his **or her** possession in the woods, fields, marshlands or on the water any shell or cartridge with missiles of any kind larger than No. 4 fine shot. This shall not preclude a properly licensed person from hunting woodchuck with a rifle during the woodchuck season. Also excepted is the use of a muzzleloading rifle, .36 caliber or smaller, loaded with a single projectile during the late squirrel season in designated areas. Waterfowl hunters may possess and use shotgun shells loaded with T (.200 inch) steel fine shot [or No. 2] or smaller [lead fine shot] and properly licensed persons hunting for raccoon or opossum with hounds or engaged in trapping for furbearing animals may possess and use a .22 caliber rifle and raccoon, or opossum or legally trapped furbearing animals other than muskrat.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon-Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then North along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their [1991] **1992** firearm hunting license may hunt for squirrels between January [28] **27** and February [18, 1991] **17, 1992** using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December [3-8, 1990] **9-14, 1991** inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow based slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than [No. 2 lead fine shot or] T (.200 inch) steel shot). A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his **or her** trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the [1990] **1991** six day firearm deer season and the permit muzzleloader rifle deer season.

2.-3. (No change.)

4. A muzzleloader is considered unloaded when, in the case of a percussion cap rifle or shotgun, the percussion cap has been removed from the nipple; in the case of a flintlock, when the powder is removed from the pan and a boot or cover made of a nonmetallic material is placed over the frizzen.

5. Whenever a firearm is in a motor vehicle, in addition to the requirements found in N.J.A.C. 7:25-5.23(f)4 (unloaded), it shall be enclosed in a securely fastened case.

(g)-(p) (No change.)

7:25-5.24 Bow and arrow, general provisions

(a) A bow means longbow, recurved bow or compound bow that is hand held and hand drawn and that has no mechanical devices built into or attached to, that will enable the archer to lock the bow at full or partial draw. Except as provided in N.J.A.C. 7:25-5.24(e), all draw locking and draw holding devices are prohibited and all crossbows or variations thereof are prohibited. Hand-held releasing devices are permitted.

(b) No person shall use a bow and arrow for hunting, on December [12, 13 and 14, 1990] **18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in those deer management zones in which a permit shotgun deer season is authorized, on any additional Permit Deer Season Day(s) if declared open, during the 6-Day Firearm Deer Season, or between ½ hour after sunset and sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

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

7:25-5.25 White-tailed deer (Odocoileus virginianus) fall bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September [29] **28**-November [9, 1990] **8, 1991**, inclusive; except in [Zones 1 and] **Zone 4** where the season shall run concurrent; however, only deer with antlers at least three inches long may be taken from September [29-] **28 to** October [19] **18**. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

7:25-5.26 White-tailed deer winter bow seasons (either-sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from ½ hour before sunrise on January [2] **6** to ½ hour after sunset on January [25, 1991] **29, 1992** inclusive, excluding January [18 and 19, 1991] **17, 18 and 25, 1992** in those management zones in which a shotgun permit season is authorized. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

7:25-5.27 White-tailed deer six day firearm season

(a) Duration for this season will be December [3-8, 1990] **9-14, 1991** inclusive with shotgun or muzzleloader rifle, exclusively.

(b) Bag Limit: Two deer, with antler at least three inches long, except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either-sex. Only one deer may be taken in a given day per person on a regular firearm hunting license. Persons awarded Zone 9 or Zone 13 shotgun permits may also take one deer of either sex and any age, per permit, on December [3 and 8, 1990] **9 and 14, 1991**, and persons possessing Zone 5, 7, 8, 10, 11, 12, 41 or 63 shotgun permits may also take one deer of either sex and any age per permit on December [3, 1990] **9, 1991** subject to the provisions of N.J.A.C. 7:25-5.29. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

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

(e) Hunting Hours: December [3-8, 1990] **9-14, 1991**, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T., with shotgun or muzzleloader rifle.

(f)-(g) (No change.)

7:25-5.28 White-tailed deer muzzleloader rifle permit season (either sex)

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

(d) Duration of the muzzleloader rifle permit season is December [10, 11, 15, 17-22, 24, 25-29, 31, 1990] **16, 17, 21, 23, 24, 26, 27, 28, 30 and 31, 1991 and January 2, 3 and 4, 1992** in zones 2, 3, 5-36, 40-51, 55, 57, 58, 61, [and] 63 **and 65**; November [10-17, 1990] **9-16, 1991** (first segment) and December [10-28, 1990] **16-27, 30 and 31, 1991 and January 2, 3 and 4, 1992** (second segment) in zones 37 and 52; December [10-31, 1990] **16-31, 1991 and January 1, 2, 3 and 4, 1992** in zones 39 [, 54] and 62; November [24] **30**-December [1, 1990] **7, 1991** (first segment) and December [10-31, 1990] **16-31, 1991** (second segment) in zone 53; December [15-22, 1990] **16, 17, 21, 23, 24, 26, 27 and 28, 1991** in zones 1 and 4; **December 16-31, 1991 in Zone 54** or any other time as determined by the Director. Legal hunting hours shall be sunrise to ½ hour after sunset E.S.T.

(e)-(g) (No change.)

(h) Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10, [1990] **1991** inclusive. Applications postmarked after the September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-7. (No change.)

(i) Farmer Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, [1990] **1991**. There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4.-5. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1990] **1991** Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

[1990] **1991** MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1990] **1991**	Permit Quota [1990] **1991**	Portions of Counties Involved
1	[5]**1**	[104]**58**	[667]**405**	Sussex
2	[1]**2**	[148]**100**	[480]**535**	Sussex
3	[1]**2**	[130]**107**	[689]**750**	Sussex, Passaic, Bergen
4	[5]**1**	[80]**76**	[506]**288**	Sussex, Warren
5	[1]**2**	[512]**357**	[1400]**1540**	Sussex, Warren
6	[1]**2**	[188]**124**	[700]**650**	Sussex, Morris, Passaic, Essex
7	[1]**2**	[254]**151**	[750]**650**	Warren, Hunterdon
8	[1]**2**	[473]**326**	[1500]**1735**	Warren, Hunterdon, Morris, Somerset
9	[1]**2**	[116]**99**	400	Morris, Somerset
10	[1]**2**	[270]**239**	[900]**850**	Warren, Hunterdon
11	[1]**2**	[150]**121**	[550]**500**	Hunterdon
12	[1]**2**	[327]**285**	[1075]**1050**	Mercer, Hunterdon, Somerset
13	[1]**2**	[41]**37**	225	Morris, Somerset
14	[1]**2**	[134]**150**	[600]**700**	Mercer, Somerset, Middlesex, Burlington
15	[1]**2**	[111]**115**	**400**	Mercer, Monmouth, Middlesex
16	[1]**2**	[120]**108**	[380]**450**	Ocean, Monmouth
17	[1]**2**	[68]**73**	[200]**250**	Ocean, Monmouth, Burlington
18	[1]**2**	[57]**48**	[221]**265**	Ocean
19	[1]**2**	[87]**64**	[325]**350**	Camden, Burlington
20	[1]**2**	[84]**98**	[250]**350**	Burlington
21	[1]**2**	[142]**179**	[450]**550**	Burlington, Ocean
22	[1]**2**	[30]**31**	[110]**150**	Burlington, Ocean
23	[1]**2**	[221]**219**	[675]**800**	Burlington, Camden, Atlantic
24	[1]**2**	[176]**299**	[502]**650**	Burlington, Ocean
25	[1]**2**	[128]**133**	[475]**600**	Gloucester, Camden, Atlantic, Salem
26	[1]**2**	[267]**304**	[630]**800**	Atlantic
27	[1]**2**	[197]**196**	[513]**600**	Salem, Cumberland
28	[1]**2**	[147]**152**	[380]**475**	Salem, Cumberland, Gloucester
29	[1]**2**	[154]**114**	[362]**400**	Salem, Cumberland
30	[1]**2**	[36]**42**	[114]**140**	Cumberland
31	[1]**2**	15	[50]**65**	Cumberland
32	[1]**2**	[6]**14**	[18]**50**	Cumberland
33	[1]**2**	[41]**63**	[145]**250**	Cape May, Atlantic
34	[1]**2**	[165]**194**	[430]**550**	Cape May, Cumberland
35	[1]**2**	[132]**135**	[450]**500**	Gloucester, Salem
36	[1]**2**	14	[140]**60**	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	[2]**3**	[85]**82**	[223]**225**	Burlington, (Fort Dix Military Reservation)
38				Morris (Great Swamp National Wildlife Refuge)
39	[3]**4**	[14]**17**	[23]**25**	Monmouth (Earle Naval Weapons Station)
40	[1]**2**	[9]**16**	80	Warren (Allmuchy State Park)
41	[1]**2**	[124]**119**	[360]**400**	Mercer, Hunterdon
42	[1]**2**	[20]**17**	[50]**55**	Atlantic
43	[1]**2**	[48]**92**	[107]**230**	Cumberland
44	[1]**2**	[20]**29**	[50]**75**	Cumberland
45	[1]**2**	[56]**81**	[200]**275**	Cumberland, Atlantic, Cape May
46	[1]**2**	[38]**73**	[125]**188**	Atlantic
47	[1]**2**	[20]**26**	[80]**100**	Atlantic, Cumberland, Gloucester
48	[1]**2**	[45]**52**	[200]**250**	Burlington
49	[1]**2**	4	[20]**15**	Burlington, Camden, Gloucester
50	[1]**2**	[29]**44**	[175]**250**	Middlesex, Monmouth
51	[1]**2**	[38]**40**	[100]**125**	Monmouth, Ocean
52	[2]**3**	[35]**18**	[63]**70**	Ocean (Fort Dix Military Reservation)
53	[4]**5**	[4]**27**	[20]**40**	Ocean (Lakehurst Naval Engineering Center)
54	[3]**6**	1	6	Morris (Picatinny Arsenal-ARRAD Com)
55	[1]**2**	[10]**15**	[40]**70**	[Atlantic (Federal Aviation Administration Technical Center)] **Gloucester**
56			0	Atlantic (Forsythe National Wildlife Refuge)
57	[1]**2**	[20]**13**	40	Atlantic (Forsythe National Wildlife Refuge)
58	[1]**2**	[12]**11**	[60]**50**	Burlington, Ocean (Forsythe National Wildlife Refuge)
59			0	Salem (Supawna National Wildlife Refuge)
60				Hunterdon (Round Valley Recreation Area)

61	[1]**2**	24	105	Atlantic (Atlantic County Parks)
62	[3]**4**	[3]**13**	[5]**20**	Monmouth (Fort Monmouth)
63	[1]**2**	[85]**66**	200	Salem
64			**0**	**Monmouth (Monmouth Battleground State Park)**
65	**2**	**21**	**95**	**Gloucester**
Total		[6,069]**5,741**	[19,994]**21,972**	

(l) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be December [10, 11, 15, 17, 22, 24, 26, 29 and 31, 1990] **16, 17, 21, 23, 24, 26, 27 and 28, 1991**.

2. Indicates the season dates will be [November 10-17, 1990 (first segment) and December 10-28, 1990 (second segment)] **December 16, 17, 21, 23, 24, 26, 27, 28, 30, and 31, 1991 and January 2, 3, and 4, 1992.**

3. Indicates the season dates will be [December 10-31, 1990] **November 9-16, 1991 (first segment); and, December 16-27, 30 and 31, 1991 and January 2, 3 and 4, 1992 (second segment).**

4. Indicates the season dates will be [November 24-December 1, 1990 (first segment) and December 10-31, 1990 (second segment)] **December 16-31, 1991 and January 1-4, 1992.**

5. Indicates the season dates will be [December 15-22, 1990] **November 30-December 7, 1991 (first segment) and December 16-31, 1991 (second segment).**

6. Indicates the season dates will be December 16-31, 1991.

(m) Permit quotas in zones 37, 38, 39, 40, [52-59] **52-54, 57-59,** 61 and 62 are contingent upon approval by appropriate land management agencies for those zones.

(n) Muzzleloader, rifle permit season permits not applied for by September 10, [1990] **1991** will be reallocated to shotgun and bow permit season applicants.

7:25-5.29 White-tailed deer shotgun permit season, (either sex)

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

(c) The season bag limit per permit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 20, 21, 23, 24, 26, 30, **31,** 32, 34, 37, [39] 40, [43-46, 52-55, 62 and 64] **43, 45, 46, 52, 53, 55, 61, 64 and 65**; two deer of either sex and any age with a shotgun permit season permit in Zones 2, 5-17, 19, 22, 25, [27-29] **27-30,** 33 [41, 42, 47-51 and 63] **35, 36, 39, 41, 42, 44, 47-51, 54, 62 and 63**; three deer of either-sex and any age with a shotgun permit season permit in zones: [55-61] **56, 59, 60**; [and,] six deer of either sex and any age in Zone [38] **57 and 58; and 10 deer of either sex and any age in Zone 38.** Only one deer may be taken in a given day per permit **except in Zone 38 where the limit is two deer in a given day per permit.** Persons awarded Zone 9 and 13 shotgun permits may also take a deer with antler at least three inches long on December [3 or 8, 1990] **9 or 14, 1991** with regular a firearm license, and persons awarded Zone 5, 7, 8, 10-12, 41 or 63 shotgun permits may also take a deer with antler at least three inches long on December [3, 1990] **9, 1991** subject to the provisions of N.J.A.C. 7:25-5.27. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the permit shotgun deer season is from sunrise to ½ hour after sunset E.S.T. on the following dates:

1. December [12, 1990] **18, 1991** in Zones 1, 3, 4, 18, 20, 21, 23, 24, 26, [30-32, 34, 43-46] **31, 32, 34, 40, 43, 45, 46, 55 and 65**;

2. December [12, 13 and 14, 1990] **18, 19 and 20, 1991** in Zones [15, 16, 22, 25, 28, 33, 42, 47, 56-58, and 61] **2, 14, 15, 17, 25, 27, 35, 36, 47, 48, 49, 50 and 51**;

3. December [12, 13 and 14, 1990] **9, 18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in Zones [2, 6, 14, 17, 19, 27, 29, 35, 36, 48-51] **5, 7, 8, 10, 11, 12, 41 and 63**;

4. December [3, 12, 13, 14, 1990 and January 18, 19 and 26, 1991] **18, 19 and 20, 1991** in Zones [5, 7, 8, 10, 11, 12, 41 and 63] **6, 16, 19, 22, 28, 29, 30, 33, 42, 44, 56, 60 and 61**;

5. December [3, 8, 12, 13, 14, 1990] **9, 14, 18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992** in Zones 9 and 13;

6. December [29, 1990] **28, 1991** in Zones 37 and 52;

7. December [6, 7, 8, 1990 and January 10, 11 and 12] **5, 6, 18, 19 and 20, 1991** in Zone 38;

8. December [15, 1990] **21, 1991 and January 18 and 25, 1992** in Zones 39[, 54] and 62;

9. January [5, 1991] **4, 1992** in Zone 53;

10. December [3, 4, 5, 12, 13, 14, 1990 and January 18, 19 and 26] **9, 10, 11, 18, 19 and 20, 1991** in [Zone 59] **Zones 57 and 58**;

11. December [12, 13 and 14, 1990 in Zone 60] **9, 10 and 11, 1991 (first segment), December 18, 19 and 20, 1991 (second segment), January 17, 18 and 25, 1992 (third segment) in Zone 59**;

12. January [18] **17, 1992** (first segment), January [19] **18, 1992** (second segment), January [26] **25, 1992** (third segment), [1991] in Zone 64; [or]

13. December 20 and 21, 1991 in Zone 54; or

[13.]**14.** (No change in text.)

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

(g) Permits for shotgun permit season consist of back display which includes a "deer transportation tag" or proper and valid second tag. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license in the case of a shotgun permit season permit, and without the license in the case of the farmer shotgun permit season permit. The "deer transportation tag" portion of the permit must be completely filled out, and affixed to the deer immediately upon killing. This completely filled in "deer transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. E.S.T. on date killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 P.M. E.S.T. on the date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possesson tag."[.] If the season has been concluded said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession."[.] For deer management zones where the shotgun permit season is more than one day and the bag limit is two deer, a second valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued upon registration of the first deer. This permit will allow this person to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open the following day(s) or on any additional days that shotgun permit season hunting is authorized. For deer management zones where the shotgun permit season is three days or more and the bag limit is three deer, a third "New Jersey Permit and Transportation Tag" will be issued upon registration of the second deer. This permit will allow this hunter to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open or on any additional days that shotgun permit season hunting is authorized. For Deer Management Zone 38 (Great Swamp National Wildlife Refuge) where the shotgun permit season is [six] **five** days and the bag limit is [six] **10** deer, an additional valid and proper "New Jersey Permit and Transportation Tag" will be issued [upon registration of first, second, third, fourth or fifth deer. This permit will allow this hunter to continue hunting on the following designated season date. The second, third, fourth or fifth permit is not valid on the day of issuance, and will only be available from check stations designated to be open for the extended shotgun permit deer season.] **which will allow the permittee to take**

two deer per day per permit. The additional valid and proper "New Jersey Permit and Transportation Tag" will only be available from the Great Swamp National Wildlife Refuge Check Station. Permittees will be able to continue hunting on the remaining designated season dates after registration of deer and issuance of appropriate tags.

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season [1990] **1991**,"[,] signing as provided on the back, and sending the stub, together with the permit applied for and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10, [1990] **1991**. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

4.-6. (No change.)

(i) Farmer, Shotgun Permit Season Permits shall be applied or as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, [1990] **1991**. There is no fee required, and all qualified applicants will receive a farmer, shotgun permit season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map on file at the Office of Administrative Law and is available from that agency or the Division. The [1990] **1991** Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

[1990] **1991** SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1990] **1991**	Permit Quota [1990] **1991**	Portions of Counties Involved
1	1	[249]**124**	[1245]**651**	Sussex
2	[3]**2**	[603]**652**	[1376]**1461**	Sussex
3	1	[51]**56**	[462]**476**	Sussex, Passaic, Bergen
4	1	[40]**35**	[267]**304**	Sussex, Warren
5	[4]**3**	[2152]**2131**	[4195]**4083**	Sussex, Warren
6	[3]**4**	[433]**325**	[1203]**1225**	Sussex, Morris, Passaic, Essex
7	[4]**3**	[1216]**935**	[1962]**1704**	Warren, Hunterdon
8	[4]**3**	[2694]**2399**	[4345]**4579**	Warren, Hunterdon, Morris, Somerset
9	[5]**5**	[569]**604**	[1262]**1276**	Morris, Somerset
10	[4]**3**	[1650]**1348**	[2662]**2587**	Warren, Hunterdon
11	[4]**3**	[891]**632**	[1437]**1347**	Hunterdon
12	[4]**3**	[1560]**1523**	[2736]**2653**	Mercer, Hunterdon, Somerset
13	[5]**5**	[354]**316**	[1000]**778**	Morris, Somerset
14	[3]**2**	[926]**908**	[1954]**2078**	Mercer, Somerset, Middlesex, Burlington
15	2	[239]**379**	[723]**736**	Mercer, Monmouth, Middlesex
16	[2]**4**	[114]**121**	[479]**512**	Ocean, Monmouth
17	[3]**2**	[295]**389**	[469]**618**	Ocean, Monmouth, Burlington
18	1	[14]**13**	[136]**108**	Ocean
19	[3]**4**	[276]**172**	[552]**448**	Camden, Burlington
20	1	[36]**20**	[199]**221**	Burlington
21	1	[29]**23**	[234]**202**	Burlington, Ocean
22	[2]**4**	[59]**50**	[215]**200**	Burlington, Ocean
23	1	[28]**36**	[210]**217**	Burlington, Camden, Atlantic
24	1	[26]**34**	[192]**197**	Burlington, Ocean
25	2	[103]**322**	[518]**596**	Gloucester, Camden, Atlantic, Salem
26	1	[47]**55**	[204]**230**	Atlantic
27	[3]**2**	[368]**307**	[681]**759**	Salem, Cumberland
28	[2]**4**	[134]**45**	[328]**153**	Salem, Cumberland, Gloucester
29	[3]**4**	[427]**297**	[822]**645**	Salem, Cumberland
30	[1]**4**	[35]**48**	[105]**103**	Cumberland
31	1	0	0	Cumberland
32	1	0	0	Cumberland
33	[2]**4**	[25]**47**	[140]**136**	Cape May, Atlantic
34	1	[39]**20**	[232]**142**	Cape May, Cumberland
35	[3]**2**	[385]**282**	[740]**656**	Gloucester, Salem
36	[3]**2**	[39]**25**	[140]**95**	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	6	[38]**21**	[179]**65**	Burlington (Fort Dix Military Reservation)
38	7	[190]**200**	600	Morris (Great Swamp National Wildlife Refuge)
39	8	[32]**13**	[64]**53**	Monmouth (Earle Naval Weapons Station)
40	1	[7]**15**	[80]**83**	Warren (Allamuchy State Park)
41	[4]**3**	[623]**622**	[1005]**1070**	Mercer, Hunterdon
42	[2]**4**	[22]**21**	[49]**56**	Atlantic

43	1	0	0	Cumberland
44	[1]**4**	[12]**14**	[50]**30**	Cumberland
45	1	0	0	Cumberland, Atlantic, Cape May
46	1	[15]**19**	90	Atlantic
47	2	[27]**34**	80	Atlantic, Cumberland, Gloucester
48	[3]**2**	[288]**281**	[596]**616**	Burlington
49	[3]**2**	[32]**26**	[64]**42**	Burlington, Camden, Gloucester
50	[3]**2**	[135]**141**	[438]**426**	Middlesex, Monmouth
51	[3]**2**	[56]**102**	[217]**300**	Monmouth, Ocean
52	6	[26]**18**	[51]**45**	Ocean (Fort Dix Military Reservation)
53	9	[26]**14**	[47]**48**	Ocean (Lakehurst Naval Engineering Center)
54	[8]**13**	[13]**7**	[31]**30**	Morris (Picatinny Arsenal-ARRAD Com)
55	[9]**1**	[15]**6**	[40]**30**	[Atlantic (Federal Aviation Administration Technical Center)] **Gloucester**
56	[2]**4**	[28]**26**	20	Atlantic (Forsythe National Wildlife Refuge)
57	[2]**10**	[20]**21**	40	Atlantic (Forsythe National Wildlife Refuge)
58	[2]**10**	[20]**26**	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59	[10]**11**	[60]**67**	[60]**75**	Salem (Supawna National Wildlife Refuge)
60	[11]**4**	50	120	Hunterdon (Round Valley Recreation Area)
61	[2]**4**	21	105	Atlantic (Atlantic County Parks)
62	8	[10]**12**	20	Monmouth (Fort Monmouth)
63	[4]**3**	[117]**174**	[225]**285**	Salem
64	12	90	135	Monmouth (Monmouth Battleground State Park)
65	**1**	**10**	**50**	**Gloucester, Camden**
Total		[18,079]**16,735**	[37,861]**36,740**	

(l) Shotgun permit season permit not applied for by September 10, [1990] **1991** may be reallocated to muzzleloader rifle, permit season applicants.

(m) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates one-day shotgun permit season—December [12, 1990] **18, 1991.**

2. Indicates [three-day] **six-day** shotgun permit season—December [12, 13 and 14, 1990] **18, 19 and 20, 1991 and January 17, 18 and 25, 1992.**

3. Indicates [six-day] **seven-day** shotgun permit season—December [12, 13 and 14, 1990] **9, 18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992.**

4. Indicates [seven-day] **three-day** shotgun permit season December [3, 12, 13, 14, 1990 and January 18, 19 and 26, 1991] **18, 19 and 20, 1991.**

5. Indicates an eight-day shotgun permit season December [3, 8, 12, 13, 14, 1990] **9, 14, 18, 19 and 20, 1991** and January [18, 19 and 26, 1991] **17, 18 and 25, 1992.**

6. Indicates a one-day shotgun permit season December [29, 1990] **28, 1991.**

7. Indicates a [six-day] **five-day** shotgun permit season December [6, 7, 8, 1990 and January 10, 11 and 12, 1991] **5, 6, 18, 19 and 20, 1991.**

8. Indicates a [one-day] **three-day** shotgun permit season—December [15, 1990] **21, 1991 and January 18 and 25, 1992.**

9. Indicates a one-day shotgun permit season January [5, 1991] **4, 1992.**

10. Indicates [three three-day] **a six-day** shotgun permit season [segments—December 3, 4 and 5, 1990 (first segment); December 12, 13 and 14, 1990 (second segment); and January 18, 19 and 26, 1991 (third segment)] **December 9, 10, 11, 18, 19 and 20, 1991.**

11. Indicates [a three-day shotgun permit season December 12, 13 and 14, 1990] **three, three-day shotgun permit season segments—December 9, 10 and 11, 1991 (first segment); December 18, 19 and 20, 1991 (second segment); and January 17, 18 and 25, 1992 (third segment).**

12. Indicates three one-day shotgun **permit** season segments—January [18] **17** (first segment), January [19] **18** (second segment), and January [26] **25** (third segment), [1991] **1992.**

13. Indicates a two-day shotgun permit season December 20 and 21, 1991.

(n) (No change.)

(o) Permit quotas for Zones 37, 38, 39, 40, [52-62] **52-54, 56-62** and 64 are contingent upon approval by appropriate land management agencies for those zones.

(p) Deer Management zones are located as follows:

1.-3. (No change.)

4. Zone No. 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Route 560 (Tuttles Corner-Dingman's Road) and the Delaware River at Dingman's Ferry; then southeast along Route 560 to its intersection with Route 206; then southeast along Route 206 to its intersection with the base of the Kittatinny Ridge at Culvers Inlet; then southwest along the base of the Kittatinny Ridge to the Delaware River at the Delaware Water Gap north **and west** of Quarry Road; then north along the east bank of the Delaware to the point of beginning at Dingman's Ferry. Depew, Tocks, Poxono and Labar Islands in the Delaware River are included in this zone.

5. Zone No. 5: That portion of Warren and Sussex Counties lying within a continuous line beginning at the intersection of the base of the Kittatiny Ridge and Rt. 206 at Culvers Inlet; then southeast along Rt. 206 to its intersection with Rt. 519 at Branchville; then south along Rt. 519 to its intersection with Rt. 206 at Newton; then south along Rt. 206 to its intersection with Rt. 517 at Andover; then south along Rt. 517 to its intersection with Rt. 46 at Hackettstown; then west along Rt. 46 to its intersection with the Zone 4 boundary at the Delaware Water Gap north **and west** of Quarry Road; then northeast along the base of the Kittatinny Ridge to its intersection with Rt. 206, the point of beginning.

6.-22. (No change.)

23. Zone No. 23: That portion of Burlington, Atlantic and Camden Counties lying with a continuous line beginning at the intersection of Rts. 542 and 563 at Green Bank; then west along Rt. 542 to its intersection with [Rt. 30 near Hammonton;] **Nescochague Creek at Pleasant Mills; then northwest along Nescochague Creek to Great Swamp Branch; then westward along Great Swamp Branch to its intersection with Rt. 206 (just south of the intersection of Rt. 206 and Middle Road); then north along Rt. 206 to its intersection with Albertson Brook (about four miles north of Hammonton); then westward along Albertson Brook until it becomes Blue Anchor Brook; then westward along Blue Anchor Brook to its intersection with Rt. 30, near Cedar Ave., south of Ancora;** then northwest along Rt. 30 to its intersection with Rt. 73; then north on Rt. 73 to its intersection with Rt. 534, Jackson Road; then east along Rt. 534 to its intersection with Atsion Road; then southeast on Atsion Road to its intersection

with Willow Grove Road; then northeast on Willow Grove Road to its intersection with Rt. 541, Stokes Road; then southeast along Rt. 541 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with Forked Neck Road; then east along Forked Neck Road which becomes Dingletown Road, curving to the northeast; then northeast along Dingletown Road to its intersection with Bozartown Road; then northeast along Bozartown Road to its intersection with Buttersworth Bogs Road; then east and north along Buttersworth Bogs Road to its intersection with Rt. 532, Chatsworth Road; then east along Rt. 532 to its intersection with Rt. 563 at Chatsworth; then south along Rt. 563 to Rt. 542 the point of beginning at Green Bank.

24. (No change.)

25. Zone No. 25: That portion of Gloucester, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of [Rts. 30 and 54 near Hammonton; then south on Rt.] **Rt.** 54 **and** [to its intersection with] Rt. 40 near Buena; then west on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to its intersection with **Rt. 610 (Aura Road); then southeast on Rt. 610 to its intersection with Rt. 655 (Fries Mill County Rt. 536); then west on Rt. 322 to its intersection with** Rt. 47 at Glassboro; then north on Rt. 47 to its intersection with County Road 635 (Hurfville-Grenloch Road); then eastward on County Road 635 to its intersection with County Road **Rt. 707** [705 or] (Woodbury-Turnersville Rd.); then southeast along **Gloucester** County Road **Rt. 707 (which becomes Camden County Road Rt.** 705) to its intersection with County Road 688 (Turner[s]ville-Hickstown Road); then eastward along County Road 688 to its intersection with County Road 689 (Berlin-Crosskeys Road); then northeast along County Road 689 to its intersection with Rt. 73 at Berlin; then south on Rt. 73 to its intersection with Rt. 30; then southeast along Rt. 30 to its intersection with [Rt. 54 near Hammonton] **Blue Anchor Brook, just past Cedar Avenue, south of Ancora; then eastward along Blue Anchor Brook until it becomes Albertson Brook at Fleming Pike; then eastward along Albertson Brook to its intersection with Rt. 206 (about four miles north of Hammonton); then south on Rt. 206 to its intersection with Great Swamp Branch (just past the intersection of Rt. 206 and Middle Road); then eastward along Great Swamp Branch to its intersection with Nescochague Creek; then eastward along Nescochague Creek to Nescochague Lake, at Pleasant Plains; then westward along the north and western shore of Nescochague Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then southeast on Rt. 30 to its intersection with Rt. 559 (Weymouth Road); then southward on Rt. 559 to its intersection with the Atlantic City Expressway; then west along the Atlantic City Expressway to its intersection with Eighth Street; then south along Eighth Street to its intersection with Rt. 322; then westward on Rt. 322 to its intersection with Rt. 54; then southward on Rt. 54 to its intersection with Rt. 40 near Buena,** the point of beginning. **Zone 65 is excluded from Zone 25.**

26. Zone No. 26: That portion of Atlantic **and Burlington** [County] **Counties** lying within a continuous line beginning at the intersection of Rts. 40 and 54 near Buena; then southeast on Rt. 40 (40-322) to its intersection with the Garden State Parkway; then northeast on the Garden State Parkway to its intersection with the Mullica River; then northwest along the south bank on the Mullica River to its intersection with Rt. 563 at Green Bank; then north on Rt. 563 to its intersection with Rt. 542[,]; then west on Rt. 542 to its intersection with **Nescochague Creek at Pleasant Mills; then northwest along Nescochague Creek to Great Swamp Branch; then westward along Great Swamp Branch to its intersection with Rt. 206 (just south of the intersection of Rt. 206 and Middle Road); then north along Rt. 206 to its intersection with Albertson Brook (about four miles north of Hammonton); then westward along Albertson Brook until it becomes Blue Anchor Brook; then westward along Blue Anchor Brook to its intersection with Rt. 30 near Cedar Avenue, south of Ancora; then northwest on Rt. 30 to its intersection with Rt. 54; then southwest along** Rt. 54 to its intersection with Rt. 40 at Buena, the point of beginning.

27. Zone No. 27: That portion of Cumberland and Salem Counties lying within a continuous line beginning at the intersection of Rts. 77 and 40 at Pole Tavern; then northwest on Rt. 40 to its intersection with Rt. 48; then west on Rt. 48 through Penns Grove to the Delaware River; then south along the east bank of the Delaware River to its intersection with the Salem Canal at Deepwater; then eastward along the south bank of the Salem Canal to its intersection with the Salem River; then southward along the west bank of the Salem River to its intersection with Rt. 49 at Salem; then southeast on Rt. 49 to its intersection with **Salem County Rt. 667 (Pecks Corner-Cohansey Road) at Pecks Corner; then eastward along Rt. 667 to its intersection with** Rt. 540 [at Pecks Corner]; then east along Rt. 540 to its intersection with Rt. 77; then north on Rt. 77 to its intersection with Rt. 40 at Pole Tavern, the point of beginning.

28. Zone No. 28: That portion of Gloucester, Cumberland and Salem Counties lying within a continuous line beginning at the intersection of Rts. 77 and 40 at Pole Tavern; then east on Rt. 40 to its intersection of Rt. 47 at Malaga; then south on Rt. 47 to its intersection of Rt. 49 in Millville; then west on Rt. 49 to its intersection with Salem County Rt. [32] **667 (Pecks Corner-Cohansey Road)** at Pecks Corner; [then east on Salem County Rt. 32] **then eastward along Rt. 667** to its intersection with Rt. 540; then east on Rt. 540 to its intersection with Rt. 77; then north on Rt. 77 to Pole Tavern, the point of beginning.

29.-34. (No change.)

35. Zone No. 35: That portion of Salem and Gloucester Counties lying within a continuous line beginning at the east bank of the Delaware River at Penns Grove; then southeast on Rt. 48 to its intersection with Rt. 40; then southeast on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to the intersection with **Rt. 610 (Aura Road); then southeast on Rt. 610 to its intersection with** Rt. 47 at [Glassboro] **Clayton**; then north on Rt. 47 to its intersection **with County Rt. 635 (Lambs Road) at Glassboro; then west on Rt. 635 to its intersection** with Mantua Creek **at Glassboro**; then northwest along the Mantua Creek to the Delaware River; then southwest along the east bank of the Delaware River, to Penns Grove, the point of beginning. Chester and Mond's Islands lying in the Delaware River are in this zone.

36.-54. (No change.)

55. Zone No. 55: [That portion of the Federal Aviation Administration Technical Center (FAATC), U.S. Dept. of Transportation, designated as open for deer hunting, lying with Atlantic County.] **That portion of Gloucester County lying within a continuous line beginning at the intersection of Rts. 47 and 322 at Glassboro; then east along Rt. 322 (County Rt. 536) to its intersection with Rt. 655 (Fries Mill Road); then south on Rt. 655 to its intersection with Rt. 610 (Academy Avenue); then west on Rt. 610 to its intersection with Rt. 47 (Delsea Drive) at Clayton; then north along Rt. 47 to its intersection with Rt. 322 at Glassboro, the point of beginning.**

56.-64. (No change.)

65. Zone No. 65: That portion of Camden and Gloucester Counties lying within a continuous line beginning at the intersection of Rt. 322 and County Road Rt. 659 (Malaga-New Brooklyn Road) in Monroe Township, Gloucester County; then northeast along Rt. 659 to its intersection with County Road Rt. 536 at New Brooklyn; then northward along Rt. 536 to its intersection with County Road Rt. 720 (Brooklyn-Blue Anchor Road); then southeast on Rt. 720 to its intersection with Rt. 73 near Blue Anchor; then southward along Rt. 73 to its intersection with Piney Hollow Road; then southwest along Piney Hollow Road to its intersection with Rt. 322; then west along Rt. 322 to its intersection with County Road Rt. 659, the point of beginning.

7:25-5.30 White-tailed deer bow permit season, either sex

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

(d) Duration of the bow permit season is from November [10] **9** —December [1, 1990] **7, 1991** in Zones **2**, 3, [5-31, 33-36] **5-37**, [39-51, 53-55] **39-55**, 58, 59, 61-63, **65**: [November 19—December 1, 1990 in zones 37 and 52] or any other time as determined by the Director. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(e)-(g) (No change.)

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting

license the stub marked special deer season [1990] **1991**, signing as provided on the back, and sending the stub together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-8. (No change.)

(i)-(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1990] **1991** Bow Permit Season Quotas (Either Sex) are as follows:

[1990] **1991** BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1990] **1991**	Permit Quota [1990] **1991**	Portions of Counties Involved
1	1	0	0	Sussex
2	1	[116]**135**	[835]**1035**	Sussex
3	1	[0]**75**	[0]**800**	Sussex, Passaic, Bergen
4	1	0	0	Sussex, Warren
5	1	[326]**327**	[2400]**2640**	Sussex, Warren
6	1	[65]**97**	[900]**1045**	Sussex, Morris, Passaic, Essex
7	1	189	1300	Warren, Hunterdon
8	1	[336]**369**	[2750]**3025**	Warren, Hunterdon, Morris, Somerset
9	1	[113]**163**	1000	Morris, Somerset
10	1	[217]**260**	[1400]**1680**	Warren, Hunterdon
11	1	[118]**148**	[940]**1000**	Hunterdon
12	1	[284]**272**	[1985]**1900**	Mercer, Hunterdon, Somerset
13	1	[72]**88**	675	Morris, Somerset
14	1	[102]**130**	[1200]**1300**	Mercer, Somerset, Middlesex, Burlington
15	1	[81]**85**	[725]**800**	Mercer, Monmouth, Middlesex
16	1	[61]**80**	[600]**750**	Ocean, Monmouth
17	1	[33]**58**	[320]**450**	Ocean, Monmouth, Burlington
18	1	[14]**20**	[221]**260**	Ocean
19	1	[34]**41**	[325]**400**	Camden, Burlington
20	1	[19]**42**	[225]**350**	Burlington
21	1	[23]**72**	[235]**425**	Burlington, Ocean
22	1	[21]**24**	[190]**210**	Burlington, Ocean
23	1	[49]**61**	[450]**600**	Burlington, Camden, Atlantic
24	1	[30]**46**	[275]**400**	Burlington, Ocean
25	1	[40]**71**	[550]**650**	Gloucester, Camden, Atlantic, Salem
26	1	[35]**76**	[315]**400**	Atlantic
27	1	[68]**102**	[546]**700**	Salem, Cumberland
28	1	[43]**46**	[250]**400**	Salem, Cumberland, Gloucester
29	1	[55]**64**	[440]**425**	Salem, Cumberland
30	1	[8]**18**	[99]**150**	Cumberland
31	1	6	[50]**60**	Cumberland
32	1	[0]**4**	[0]**40**	Cumberland
33	1	[16]**27**	[135]**175**	Cape May, Atlantic
34	1	[49]**40**	[300]**375**	Cape May, Cumberland
35	1	[69]**107**	[650]**700**	Gloucester, Salem
36	1	[11]**13**	[140]**200**	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	[2]**1**	[6]**11**	[103]**100**	Burlington (Fort Dix Military Reservation)
38		0	0	Morris (Great Swamp National Wildlife Refuge)
39	1	9	[34]**50**	Monmouth (Earle Naval Weapons Station)
40	1	[4]**3**	80	Warren (Allamuchy State Park)
41	1	[85]**103**	[650]**750**	Mercer, Hunterdon
42	1	[5]**8**	[60]**65**	Atlantic
43	1	[18]**28**	[150]**200**	Cumberland
44	1	[9]**5**	[50]**40**	Cumberland
45	1	[15]**26**	[150]**250**	Cumberland, Atlantic, Cape May
46	1	[14]**18**	[75]**100**	Atlantic
47	1	[15]**16**	[80]**90**	Atlantic, Cumberland, Gloucester
48	1	[45]**56**	[400]**500**	Burlington
49	1	[4]**3**	[40]**30**	Burlington, Camden, Gloucester
50	1	[35]**58**	[375]**450**	Middlesex, Monmouth
51	1	[33]**44**	[260]**350**	Monmouth, Ocean
52	[2]**1**	2	[25]**30**	Ocean (Fort Dix Military Reservation)
53	1	[3]**6**	[30]**45**	Ocean (Lakehurst Naval Engineering Center)
54	1	[8]**11**	30	Morris (Picatinny Arsenal-ARRAD Com)
55	1	[5]**9**	[40]**80**	[Atlantic (Federal Aviation Administration Technical Center)]**Gloucester**
56		0	0	Atlantic (Forsythe National Wildlife Refuge)

57		0	0	Atlantic (Forsythe National Wildlife Refuge)
58	1	[5]**6**	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59	1	[14]**13**	[30]**35**	Salem (Supawna National Wildlife Refuge)
60	1	[4]**0**	[15]**0**	Hunterdon (Round Valley Recreation Area)
61	1	14	135	Atlantic (Atlantic County Parks)
62	1	[4]**12**	[15]**20**	Monmouth (Fort Monmouth)
63	1	[28]**37**	[225]**275**	Salem
64				Monmouth (Monmouth Battleground State Park)
65	**1**	**11**	**100**	**Gloucester, Camden**
Total		[3,083]**3,865**	[25,513]**30,175**	

(l) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be November [10] **9**—December [1, 1990] **7, 1991**.

[2. Indicates the season dates will be November 19 through December 1, 1990.]

(m) Permit quotas for Zones 37, 39, 40, [52-55] **52-54**, 58, 59, 61 and 62 are contingent upon approval by the appropriate land management agencies for these zones.

(n) (No change.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38)

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

(c) Duration of the Great Swamp Permit Shotgun Season Permit shall be from sunrise to ½ hour after sunset on the following dates: December [6, 7 and 8, 1990 and January 10, 11 and 12, 1990] **5, 6, 12, 13 and 14, 1991** or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d) Bag Limit: [Six] **Ten** deer of either sex and any age, may be taken with a Great Swamp Permit Shotgun Season Permit. [Only one] **Two** deer may be taken in a given day per permit.

(f) Method: The taking of [six] **10** deer of either sex and any age with a Great Swamp (Zone 38)[,] permit shotgun season permit will be permitted in designated areas of the Great Swamp National Wildlife Refuge. Total of 600 Great Swamp shotgun permit season permits will be issued. Daily hunter quotas, hunt procedures and hunting methods in this area shall be provided by the U.S. Fish and Wildlife Service.

(g) Procedures for applying for a Great Swamp permit shotgun season permit will be the same as outlined for the permit shotgun season permit. (see N.J.A.C. 7:25-5.25 (h))[, with the exception that applicants]. **Applicants** for the Great Swamp Permit Shotgun Season Permit must indicate Zone 38 on the application in the space reserved for deer Management zone number.

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

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the [1990-91] **1991-92** season. However, hunting with firearms shall be prohibited on November [9, 1990] **8, 1991** on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

HEALTH

(a)

PUBLIC HEALTH COUNCIL

Human Bodies

Proposed Repeals: N.J.A.C. 8:9-1.2, 1.4 and 1.5

Authorized By: New Jersey Public Health Council, Louise Chut, Ph.D., M.P.H., Chairperson.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1991-278.

A **public hearing** concerning this proposal will be held on June 10, 1991, at 1:00 P.M., at the following address:

New Jersey Department of Health
First Floor Auditorium
Health-Agriculture Building
Trenton, New Jersey 08625-0360

Submit written comments by June 19, 1991 to:

Thomas T. Culkin, PharmD, MPH
Acting Director, Vital Records
Department of Health
Health-Agriculture Building
Room 501, CN 360
Trenton, New Jersey 08625-0360
(609) 292-4029

The agency proposal follows:

Summary

N.J.A.C. 8:9, Chapter V of the State Sanitary Code, provides for the proper preparation, handling, transportation, burial and disinterment of human bodies. Medical personnel, health officials, transportation officials, and funeral directors are directed how to handle the remains of humans, including those which may harbor communicable diseases. It is the intent of these rules to prevent the spread of communicable diseases and to provide for proper handling of dead bodies.

The Public Health Council (hereafter, the Council) proposes to repeal parts of the chapter to reflect public comments received when the chapter was recently proposed for readoption. Those public comments requested the repeal of three sections of the chapter (N.J.A.C. 8:9-1.2, 1.4, and 1.5). The Council has reviewed the public's comments and has determined that they are appropriate.

N.J.A.C. 8:9-1.2 provides for the disposition of bodies dead of certain communicable diseases. However, the section was found to be inconsistent with N.J.A.C. 8:9-1.4 and also with N.J.A.C. 8:57. In addition, N.J.A.C. 8:9-1.2 differed from a Federal list of diseases requiring "isolation."

N.J.A.C. 8:9-1.4 provides for notification of local health authorities by a funeral director if a body has had certain communicable diseases. Funeral directors argued that this section was unnecessary, not only because it was not being done, but because physicians and hospitals have the primary responsibility to notify State authorities, not funeral directors. Further, funeral directors are not medical professionals and do not know what infectious diseases a body has had, if any.

N.J.A.C. 8:9-1.5 provides that certain public funerals require a permit. Funeral directors commented that no public health purpose exists for this section, and that local public health officials have no standards to use in granting or denying such a special permit.

As a result of the funeral directors' comments, the Public Health Council proposes to repeal N.J.A.C. 8:9-1.2, 1.4 and 1.5.

Social Impact

Despite the proposed repeals, the Council believes that this proposal will continue the positive social impact which these rules have had in the past: communicable diseases which could be spread by the remains of humans will be properly handled by all concerned.

The proposed repeals will impact primarily on all New Jersey funeral directors and their personnel who handle dead bodies. Such persons will no longer have to refer to lists of infectious diseases, but rather will rely on "universal" precautions for all dead bodies, as published by the Centers for Disease Control, Atlanta, Georgia 30333. They will also not have to notify health officials about suspected infectious diseases, nor apply for special permits for funerals of persons who have died from selected diseases. It is expected that funeral directors and their personnel will welcome these changes.

Economic Impact

The economic impact of the proposed repeals, if any, falls largely on funeral directors and their personnel who handle dead bodies. However, no economic penalty is expected because the proposal deletes reporting requirements. Funding sources for funeral directors will remain unaffected. There will not be any economic impact on the public at large nor on any administrative agency. This proposal will not have any extra economic impact on those affected than was present in the past.

Regulatory Flexibility Analysis

The proposed repeals primarily affect funeral directors, numbering approximately 1,000, most of whom employ fewer than 100 employees. These small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are not exempt because the rules are specific to them and because public health, through the spread of communicable diseases, would be compromised were these small businesses to be exempted. Although the proposal deletes certain reporting requirements, those requirements were not in reality met in the past. The rule minimizes impact on small businesses because no additional paperwork will be necessitated.

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

8:9-1.2 [Disposition of body dead of certain communicable diseases] **(Reserved)**

[(a) The person or persons responsible for the burial or cremation of a human body dead of cholera, plague, smallpox, typhus fever, or yellow fever shall not allow the same to remain without burial or other lawful disposition for a period longer than 24 hours after death unless said body is thoroughly embalmed and disinfected. If said body is to be buried or lawfully disposed of within 24 hours after death without embalming, said body, before removal from the place of death, shall be placed in a tight covered casket which shall not thereafter be opened.

(b) If a body dead of any of the diseases set forth in this regulation remains unburied for more than 24 hours after death or is not otherwise lawfully disposed of within 24 hours after death, said body, after being thoroughly embalmed and disinfected, shall be placed in a tight casket which shall be kept tightly covered and unopened; provided, however, that this shall not be construed to prevent the encasement of such body in a casket so constructed that the decedent may be viewed through glass or other transparent material; and provided, further, that the body after embalming is not touched or handled by anyone other than a funeral director, his employee, or a person acting under official authority.]

8:9-1.4 [Notification to be given health officer by funeral director] **(Reserved)**

[It shall be the duty of the funeral director in charge of a human body dead from diphtheria, meningococcal meningitis, poliomyelitis, streptococcic sore throat including scarlet fever or any of the diseases listed in Regulation 2 of this Chapter to notify promptly the local health officer or local board of health of the municipality or district in which the funeral is to be held. Such notice shall include the name of the deceased person, the cause or death and the time and place at which it is proposed to hold the funeral.]

8:9-1.5 [Permit requirements for certain public funerals] **(Reserved)**

[No public funeral shall be held of any person who has died of any disease referred to in Regulation 4 of this Chapter unless a permit therefor shall first have been secured from the health officer or the local board of health of the municipality or district in which such funeral is to be held.]

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

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

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

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1991-279.

A **public hearing** concerning these proposed amendments will be held on June 11, 1991, at 2:00 P.M. at the following address:

Department of Health
Health-Agriculture Bldg.
Room 804, 8th Floor
Trenton, New Jersey 08625-0360

Submit written comments by June 19, 1991 to:

Thomas T. Culkin, PharmD, MPH
Drug Utilization Review Council, Room 501
New Jersey Department of Health
CN 360
Trenton, N.J. 08625-0360
609-984-1304

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed desoximetasone cream could then be used as a less expensive substitute for Topicort, a branded prescription medicine. Similarly, the proposed Stuartnatal 1+1 substitute could be substituted for the more costly branded product, Stuartnatal 1+1.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by these amendments because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

Albuterol tabs 2, 4 mg	Danbury
Amiloride/HCTZ tbs 5/50	Danbury
Baclofen tbs 10, 20 mg	Danbury
Belladonna alk w/phenobarbital tab	Rexar
Berocca tabs substitute	Copley
Betamethasone valerate lotion 0.1%	Clay-Park
Chlorzoxazone tabs 250 mg	Amide
Chlorzoxazone tabs 500 mg	Danbury
Clorazepate tabs 3.75, 7.5, 15 mg	Danbury
Cyclandelate caps 200, 400 mg	Amide
Cyclopentolate ophth soln 1%	Steris
Desoximetasone cream 0.05, 0.25%	Taro
Dipyridamole tabs 25, 50, 75 mg	Lederle
Duofilm substitute	C&M
Entex LA tabs substitute	Sidmak
Erythromycin topical soln 2%	Clay-Park
Fenoprofen tabs 200 mg, caps 300, 600 mg	W-C
Granulex spray substitute	ARI
Hydrocortisone acetate suppos. 25 mg	Upsher-Smith
Hydrocortisone cream 1%, 2.5%	C&M
Hydrocortisone oint 1%	C&M
Iberet-folic 500 substitute	Amide
Indomethacin caps 25, 50 mg	Danbury
Iodinated glycerol soln 50 mg/5 ml	Cenci
Iodinated glycerol tabs 30 mg	Copley
Leucovorin tabs 25 mg	W-C
Loperamide caps 2 mg	W-C
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Metaproterenol tabs 10, 20 mg	Danbury
Midrin caps substitute	Amide
Minocycline caps 100 mg	Danbury
Natalins RX tabs substitute	Amide
Nucofed expect. substitute	Barre-Nat'l
Nucofed ped. expect. substitute	Barre-Nat'l
Poly-Vi-Flor/Iron 1 mg substitute	Amide
Propranolol/HCTZ tabs 40/25, 80/25	Danbury
Rondec DM drops substitute	Hi-Tech
Rondec DM syrup substitute	Hi-Tech
Rynatan Ped. susp substitute	Hi-Tech
Rynatuss Ped. susp substitute	Hi-Tech
Salsalate tabs 500, 750 mg	Amide
Salsalate tabs 500, 750 mg	PharmBasics
Stuartnatal 1+1 tabs substitute	Amide
Sulfanilamide vag. cream 15%	Clay-Park
Sulindac tabs 150, 200 mg	W-C
Temazepam caps 15, 30 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	W-C
Tolmetin sodium caps 400 mg	Novopharm
Tolmetin tabs 200 mg, caps 400 mg	W-C
Triamterene/HCTZ caps 50/25	Cord
Trilisate substitutes 500, 750, 1000 mg	Able
Tropicamide ophth soln 0.5%, 1%	Steris

CORRECTIONS

(a)

THE COMMISSIONER
Fiscal Management
Reporting Loss of Funds
Proposed New Rules: N.J.A.C. 10A:2-5

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

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

Proposal Number: PRN 1991-259.

Submit comments by June 19, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules, N.J.A.C. 10A:2-5, Reporting Loss of Funds, specify the persons or units within and outside of the Department of Corrections which should be contacted to report the loss of funds. The Department of Corrections proposes these new rules in order to outline the appropriate procedure to be followed when a correctional facility is reporting the discovery of the loss of funds by theft or mysterious disappearance.

Social Impact

The proposed new rules will encourage the reporting and investigation of incidents involving the loss of funds and thereby contribute to a reduction in the frequency of such occurrences.

Economic Impact

The costs of reporting and investigating the loss of funds are absorbed within the budget of the Department of Corrections. Additional financial resources will not be required to implement or maintain these rules. However, if the prompt reporting and investigation of such incidents result in a diminished frequency of losses, this could result in a related saving in the amount of funds expended to cover losses.

Regulatory Flexibility Statement

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

Full text of the proposal follows:

SUBCHAPTER 5. REPORTING LOSS OF FUNDS

10A:2-5.1 Definition

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

"Loss of funds" means funds received by a correctional facility or an administrative unit, from any source, which are unaccounted for as a result of theft, larceny, embezzlement or mysterious disappearance.

10A:2-5.2 Reporting loss of funds

(a) Loss of funds shall immediately be reported to the Superintendent or administrative unit head.

(b) The Superintendent or administrative unit head or his or her designee shall contact the Internal Affairs Unit immediately to investigate the loss.

(c) Pursuant to N.J.A.C. 10A:21-5.4, the Internal Affairs Unit, at the direction of the Superintendent, shall serve as the liaison to all outside law enforcement agencies.

10A:2-5.3 Reporting the loss of funds to Office of Institutional Support Services (O.I.S.S.)

(a) Within 48 hours after the loss is discovered, a written report of the loss shall be submitted to the Director, Office of Institutional Support Services (O.I.S.S.), with a copy to the Office of the Commissioner.

(b) The Office of Institutional Support Services (O.I.S.S.) shall prepare and submit a request to the Bureau of Risk Management, Department of Treasury, for appropriate reimbursement.

10A:2-5.4 Referral of loss to Assistant Commissioner, Division of Administration

If the loss is not covered by the Bureau of Risk Management, Department of Treasury, the loss shall be referred to the Assistant Commissioner, Division of Administration, who will determine the appropriate source of funds to dispose of the loss claim.

(a)

THE COMMISSIONER

Fiscal Management
Financial Aid Upon Release from Correctional Facilities

Proposed New Rules: N.J.A.C. 10A:2-8

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

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

Proposal Number: PRN 1991-260.

Submit comments by June 19, 1991 to:
Elaine W. Ballai, Esq.
Supervisor, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules specify the types of inmates or former inmates that are eligible to be considered for financial aid, the factors to be considered when determining whether to approve financial aid, the persons responsible for determining whether to approve financial aid and the amount of financial aid which may be approved. The proposed new rules establish the procedures whereby the State of New Jersey may be reimbursed for financial aid and the requirements for the maintenance of accounts and records, and the preparation and submission of monthly reports. The Department of Corrections is proposing these new rules in order to establish policies and procedures whereby the Bureau of Parole may disburse a limited amount of financial aid to persons meeting certain criteria who are released upon expiration of sentence, to parole supervision or to preparole status in the Electronically Monitored Home Confinement Program.

Social Impact

The proposed new rules will permit the Bureau of Parole, New Jersey Department of Corrections, to provide a limited amount of financial aid to inmates on preparole status, former State sentenced inmates and parolees, county sentenced inmates while under parole supervision and inmates released from out-of-State correctional facilities while under parole supervision in New Jersey who are in need of financial resources to sustain themselves during the period between the time that they are released and the time they become self-sustaining by way of employment or meeting eligibility criteria for other established community assistance programs. The provision of financial aid between release and employment should reduce the number of incidents in which persons return to criminal activities in order to sustain themselves immediately following their release. The Department of Corrections does not anticipate any adverse reaction to the proposed new rules.

Economic Impact

Financial aid to inmates who are being released or paroled is funded through the overall budget process of the Department of Corrections' Bureau of Parole. For fiscal year 1990, $229,548 was expended in grants to needy parolees or persons released at the expiration of their sentences. For fiscal year 1991, $246,000 has been appropriated for use for providing grants to the types of persons described above.

It is noted that emphasis on expenditure of these funds is placed on persons who remain under Bureau of Parole supervision. Inmates released upon expiration of their maximum sentences are limited to a single grant not to exceed $100.00.

Regulatory Flexibility Statement

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

Full text of the proposal follows:

SUBCHAPTER 8. FINANCIAL AID UPON RELEASE FROM CORRECTIONAL FACILITIES

10A:2-8.1 Provision of financial aid

(a) A limited amount of financial aid may be provided, upon request, to persons released:

1. To parole supervision;
2. To preparole status in the Electronically Monitored Home Confinement Program; or
3. Upon expiration of a sentence.

(b) Financial aid may be provided to the types of persons listed in (a) above if they can satisfy the criteria of eligibility and if there is a demonstrated need.

10A:2-8.2 Eligibility for financial aid

(a) Inmates released at expiration of their maximum sentences or paroled from the following correctional facilities or programs are eligible for consideration for financial aid:

1. Juvenile facilities, Department of Corrections;
2. Adult facilities, Department of Corrections;
3. State sentenced inmates released from or paroled from county facilities;
4. State sentenced inmates released from or paroled from Community Residential Centers;
5. Inmates sentenced in other states who have been paroled to New Jersey during the period these persons are under parole supervision;
6. State sentenced inmates released or paroled to bench warrants or commitment detainers, if released to the community, after or while awaiting disposition of charges; and
7. County sentenced inmates released to parole supervision, during the period these persons are under parole supervision.

(b) State sentenced inmates placed in the community prior to parole and subject to the Electronically Monitored Home Confinement Program are eligible for consideration for financial aid.

10A:2-8.3 Criteria for grant of financial aid

(a) Persons with the circumstances listed below who may be considered when determining grant eligibility and the amount of the grant include, but are not limited to:

1. Persons who initially have no alternate funds available;
2. Persons without family or friends;
3. Persons from families with marginal incomes; or
4. Persons with other circumstances deemed sufficient to justify a grant.

(b) In reaching a decision to grant financial aid, the District Parole Supervisor or the Institutional Parole Officer (I.P.O.) shall consider the following factors:

1. The urgency and amount of the request;
2. The circumstances or facts which support the legitimacy of the request;
3. The availability of funds from any alternative source, such as:
i. Family members;
ii. Employers; or
iii. Other state or local agencies; and
4. Whether sufficient budgeted funds are available.

10A:2-8.4 Responsibility for determination of financial aid grant

(a) The District Parole Supervisor shall determine financial aid for the following:

1. Persons paroled from juvenile and adult facilities of the New Jersey Department of Corrections;

2. Persons paroled from county correctional facilities on State or county sentences;

3. Persons placed on preparole status in the Electronically Monitored Home Confinement Program;

4. State sentenced persons released at expiration of sentence from county correctional facilities;

5. Persons released at expiration of sentence from juvenile and adult facilities of the New Jersey Department of Corrections; and

6. Persons, sentenced in other states, who have been paroled to New Jersey and are under the active supervision of the Bureau of Parole, Department of Corrections.

(b) The Institutional Parole Officer (I.P.O.) shall be responsible for assessing the financial needs of:

1. Persons to be released at expiration of sentence from juvenile and adult facilities of the New Jersey Department of Corrections, including satellite units; and

2. Persons paroled from juvenile and adult facilities of the Department of Corrections to out-of-State plans.

10A:2-8.5 Amount of financial aid; periods of availability

(a) State sentenced inmates who are released from correctional facilities upon expiration of their maximum sentences are eligible for consideration to receive a single grant of up to $100.00 in financial aid, limited to the six month period following release.

(b) During the 12 month period following release to parole or home confinement, a maximum of $300.00 may be provided to applicants who remain under parole supervision (see N.J.A.C. 10A:2-8.4(a)). The installments may be as follows:

1. An initial grant of up to $100.00 upon release from the correctional facility;

2. An additional grant up to $100.00 within the first 30 days following release; and

3. An additional grant(s) up to $100.00 within 12 months following release.

(c) The Chief or Assistant Chief, Bureau of Parole, may give written approval for financial aid in excess of the $100.00 initial grant or of the $300.00 within the 12 month period in exceptional circumstances or hardship, as for example:

1. Persons who have a good probability of obtaining steady employment;

2. Juveniles without families;

3. Juveniles from families with marginal incomes; or

4. Other circumstances deemed sufficient to justify an additional grant of financial aid.

(d) An additional grant(s) up to $300.00 may be provided in any 12 month period following the first 12 months of release if an urgent need and the lack of an alternate source(s) of funds can be demonstrated.

10A:2-8.6 Maintenance of accounts and records

(a) Complete records shall be maintained on every transaction, and these records shall include, but not be limited to:

1. An ongoing account balance;
2. The numbered check stubs;
3. A photocopy of every check issued;
4. A signed receipt for each check issued;
5. The voided checks;
6. A monthly reconciled bank statement;
7. The cancelled checks; and
8. Form 814.07 REQUEST FOR REPLENISHMENT OF FUNDS.

10A:2-8.7 Reimbursement

(a) Persons receiving financial aid may reimburse the State of New Jersey for all or part of any financial aid.

(b) Reimbursements are voluntary and shall be noted in the record of the person who received financial aid grant.

(c) If the person receiving financial aid is under active parole supervision, an entry of both the grant and any reimbursement shall be made in the chronological parole supervision report.

(d) Reimbursements by check or money order should be made out to "Treasurer, State of New Jersey." An explanatory memo along with the check or money order shall be forwarded by the Bureau of Parole Unit receiving the reimbursement to the New Jersey Department of Corrections, Central Office Business Office, with a copy to the Assistant Chief of Administration, Bureau of Parole.

(e) Reimbursments of cash shall be receipted and deposited within 24 hours of receipt into a local bank which maintains an account established and specifically approved by the Department of the Treasury as a depository for these funds. The deposit slip, together with an explanatory memo shall be forwarded to the New Jersey Department of Corrections, Central Office Business Office, with a copy to the Assistant Chief of Administration, Bureau of Parole. The Bureau of Parole shall be responsible for implementing and maintaining adequate controls to safeguard the reimbursements of cash from theft or misuse, and providing an appropriate accounting for all funds received.

10A:2-8.8 Monthly report

(a) No later than the fifth working day of each month, the District Parole Supervisor or his or her designee in each District Office, the Institutional Parole Officer (I.P.O.), and the Central Office Designee shall prepare and forward a report to the Assistant Chief of Administration, Bureau of Parole.

(b) The monthly report shall include, but not be limited to:

1. The total amount of funds disbursed during the preceding month; and

2. The number of grants issued.

(b) Within 15 days following the end of each month, the District Parole Supervisors, Institutional Parole Officers, and the Central Office Designee shall prepare and submit a report to the New Jersey Department of Corrections, Central Office Business Office, on Form 814.08 FINANCIAL AID ACCOUNT.

10A:2-8.9 Forms

(a) The following forms related to Financial Aid Upon Release From Correctional Facilities shall be obtained from the Bureau of Parole, New Jersey Department of Corrections:

1. 814.06 FINANCIAL AID PROGRAM RECEIPT;
2. 814.07 REQUEST FOR REPLENISHMENT OF FUNDS; and
3. 814.08 FINANCIAL AID ACCOUNT.

(a)

THE COMMISSIONER

Records

Availability of Information to Correctional Facility Personnel

Proposed Amendment: N.J.A.C. 10A:22-2.5

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

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

Proposal Number: PRN 1991-261.

Submit comments by June 19, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:22-2.5 to more clearly specify the limitation on the availability of information from inmate and parolee records to correctional facility personnel. The proposed amendment limits the availability of information from inmate and parolee records to correctional facility staff persons who need the information that is relevant for use in connection with their work responsibility. The proposed amendment limits the availability of medical and psychological information available to other staff members to the information that is necessary to make a decision regarding the inmate. The proposed amendment authorizes the Superintendent to determine the appropriateness of disclosing medical or psychiatric/psychological information to staff persons when a question arises as to whether such information should be disclosed.

Social Impact

The proposed amendment will increase the limitations on the availability of information from inmate and parolee records to correctional facility staff members and thereby ensure greater confidentiality of information contained in these records. The Department of Corrections does not anticipate any negative reaction to the proposed amendment.

Economic Impact

The proposed amendment will have no economic impact because additional financial resources are not required to implement or maintain the rule as amended. Maintenance of inmate records and internal handling of those records are simply part of the administrative costs of operation and as such are regularly budgeted items.

Regulatory Flexibility Statement

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

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

10A:22-2.5 Availability of information to correctional facility personnel

(a) Information from inmate and parolee records shall be provided to correctional facility personnel on a limited basis[, in accordance with written policies and procedures established by the facility].

(b) Non-confidential information may be provided to correctional facility staff persons who need the relevant information for use in connection with their work responsibilities.

(c) Medical and psychiatric/psychological records or information shall be provided as limited below:

1. The complete file shall be available to medical or psychological treatment staff, involved in treating the inmate and/or drafting reports concerning his or her condition; and

2. Medical or psychiatric/psychological information may be made available to those staff persons, to whom the information is relevant in connection with the staff person's need to make a decision concerning the inmate (for example, job placement, discipline, parole etc.). Only that amount of information that is necessary to permit proper exercise of discretion shall be provided.

(d) In the event a question arises as to the disclosure of medical or psychiatric/psychological information to correctional facility staff persons, the question shall be referred to the Superintendent for review and the decision of the Superintendent shall be final.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF TRAVEL AND TOURISM

Tourism Matching Grant Program

Proposed Repeal and New Rules: N.J.A.C. 12A:12-3

Authorized By: George R. Zoffinger, Commissioner, Department of Commerce, Energy and Economic Development.

Authority: N.J.S.A. 52:27H-6.

Proposal Number: PRN 1991-273.

Submit comments by June 19, 1991 to:

Lynn Nowak
Legislative Liaison
Department of Commerce and Economic Development
CN 825
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department is repealing the current rules and proposing new rules to implement the Tourism Matching Grant Program which is under the auspices of the Divisiion of Travel and Tourism. Generally, these proposed rules aim to expedite, simplify and unify the matching grant process. This will result in a program which uses State funds more efficiently and promotes tourism more effectively.

The proposed rules intend to reduce the high administrative costs involved with running the Program by eliminating unnecessary red tape whenever possible.

At the same time, the proposed rules aim to reduce administrative costs by requiring more detailed fiscal and organizational information from applicants as part of their application. These stricter eligibility standards will allow Division staff to concentrate on reviewing quality applications from entities with the necessary financial soundness and support.

The proposed rules also aim to increase the promotional and cost-effectiveness of the program by setting specific promotional parameters for project consideration. In addition, the proposed rules detail both the expenditures which are eligible for matching grant funding and those which are not.

Social Impact

The proposed rules enable the Matching Grant Program to continue its purpose: giving financial support to local governments and other tourism organizations for promotional events and projects. At the same time, the proposed rules will help to ensure that these activities complement Statewide promotional efforts, resulting in greater benefits for Program participants and New Jersey tourism in general.

Economic Impact

Under the current rules, the Matching Grant Program has proved to be an overwhelmingly complicated and unwieldy undertaking for the Division, demanding an inordinate amount of staff time. The Program has been plagued by disorganization and inordinately high administrative costs.

The proposed rules will streamline the Matching Grant Program considerably, allowing for more manageable coordination. Ultimately, they will result in a more efficient use of State funds as more of the money goes toward the actual grants and less toward Program administration.

Although Program applicants and participants will incur administrative costs, as they have in the past, the greater economic impact will be positive through the provision of the grant funds with less administrative costs at the State level.

Regulatory Flexibility Analysis

The proposed new rules impose compliance requirements on regional tourism councils, counties, municipalities and tourism promotional organizations appying for funds under the Program. Reporting requirements may be imposed as part of a grant award. Some of the tourism promotional organizations applying for and/or receiving grant awards may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Such small businesses are required to follow the Program application requirements set forth in this subchapter. The application process, and the reporting requirements, if imposed, will cause small businesses to incur administrative costs. Depending upon the staff composition of such businesses, professional services may be necessary to complete the application. The audit required as part of the application is required to have been performed by an independent auditor.

Because the requirements of the proposed rules are necessary to maintain an efficient and effective Matching Grant Program, lesser requirements or exemptions cannot be provided to small business applicants or participants. The intent of the proposed rules is to create a better managed and coordinated Matching Grant Program, complementing local and Statewide tourism efforts, and resulting in more tourism dollars being spent. In the long run, many small businesses, whether Program participants or not, will benefit from the Program under these rules.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12A:12-3.

Full text of the proposed new rules follows:

SUBCHAPTER 3. MATCHING TOURISM GRANTS TO REGIONAL TOURISM COUNCILS, COUNTIES, MUNICIPALITIES AND TOURISM PROMOTION ORGANIZATIONS

12A:12-3.1 Scope and purpose

(a) The rules in this subchapter are promulgated by the Department of Commerce, Energy and Economic Development to implement the Tourism Matching Grant Program within the Department under the auspices of the Division of Travel and Tourism. This Program has been established to encourage regional tourism councils, counties, municipalities and tourism promotion organizations to engage in creative promotional projects or events which complement State tourism promotional efforts. These projects or events should also target out-of-State markets and in-State markets that are in excess of 35 miles from the activity or outside the organization's designated boundary, in order to increase travel from out-of-State and among the State's regions.

(b) Applications and questions regarding participation in this Program should be addressed to:

Matching Grant Coordinator
N.J. Department of Commerce, Energy and Economic Development
Division of Travel and Tourism
CN 826
Trenton, New Jersey 08625-0826

(c) This Program shall be open to all regional tourism councils, counties, municipalities, and tourism programs which meet the requirements of this subchapter. All applications for the grant program which meet the requirements of this subchapter shall be given due consideration; however, not all applicants are guaranteed to be awarded a grant.

12A:12-3.2 Definitions

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

"Applicant" means any regional tourism council, county, municipality, or tourism promotion organization applying for a tourism grant pursuant to this subchapter.

"Audit" means an independent certified audit stating the actual financial position of the organization.

"Commissioner" means the Commissioner of the Department of Commerce, Energy and Economic Development.

"DCEED" means the Department of Commerce, Energy and Economic Development.

"Director" means the Director of the Division of Travel and Tourism in the Department of Commerce, Energy and Economic Development.

"Division" means the Division of Travel and Tourism in the Department of Commerce, Energy and Economic Development.

"Grant Coordinator" means the Coordinator of the Division of Travel and Tourism Matching Grant Program.

"Grantee" means a regional tourism council, county, municipality, or tourism promotion organization which has been awarded a grant under the Tourism Matching Grant Program.

"Logo" means the promotional symbol authorized by the Division of Travel and Tourism in use for promoting tourism and related industries of the State of New Jersey.

"Regional tourism councils" means any or all of the six regional tourism councils designated and created under the New Jersey Tourism Master Plan by the Division of Travel and Tourism in the Department of Commerce, Energy and Economic Development.

"Tourism promotional organization" means any non-profit organization created under N.J.S.A. 15A:1-1 et seq. including, but not limited to, chambers of commerce, merchant business associations and heritage, cultural or historic commissions.

12A:12-3.3 Eligibility of counties, municipalities, tourism promotion organizations and regional tourism councils

(a) To be eligible to receive a tourism grant, the applicant shall forward to the matching grant coordinator:

1. A completed DCEED Tourism Matching Grant Application which shall include the following:

i. Proof of not-for-profit status and articles of incorporation;

ii. A copy of the organization's last fiscal year, or most recent, audit report demonstrating financial stability/condition;

iii. An overall marketing plan;

iv. An overall budget for the entire organization which includes the amount requested and all other anticipated funds for period covered by this application;

v. A description of the applicant's organizational structure, including the names and addresses of officers, directors and members;

vi. A copy of the applicant's constitution and/or by-laws; and

vii. Copies of letters of commitment for funding applicant's 50 percent share.

(b) The amount of funding requested from DCEED may not exceed 50 percent of the total budget of the event or project. For purposes of this subsection, total budget of the event or project shall identify and exclude non-eligible project cost from the request for funding.

(c) In each program cycle no more than one grant will be awarded to any organization.

(d) No organization will be eligible to receive a grant if they are not in good standing with the Division. For purposes of this subsection, "good standing" means that all terms and conditions of previously received grants have been met.

12A:12-3.4 Application deadlines for grants to counties, municipalities, tourism promotion organizations and regional tourism councils

(a) Applicants shall be advised in the instructions for grant application of deadlines for the submission of the Grant Application. These dates will be determined by the Commissioner as deemed necessary, and noticed in the New Jersey Register.

1. For purposes of this section, date of receipt of application means postmark date.

12A:12-3.5 Evaluation of matching grant applications

(a) Upon receipt of an application, the Division shall evaluate and rank the application through its Matching Grant Advisory Committee.

(b) The Matching Grant Advisory Committee shall consist of:

1. Members of the Tourism Advisory Council, as determined by the Council;

2. The Deputy Commissioner of Commerce and Economic Development or his or her designee; and

3. The Director of the Division of Travel and Tourism.

(c) The Committee shall evaluate each application on the following factors and then rank all applications based upon application scores:

1. Integration of the program or event into the overall State tourism promotional program;

2. Prominent use of the Division's promotional logo;

3. Program quality;

4. The anticipated benefit to the region in which the project is proposed;

5. The amount of local support for the program or event;

6. The amount of local funds raised during the previous year for tourism programs;

7. The scope of planning needed for the program or event; and

8. The scope of local participation in the program or project.

(d) The Matching Grant Advisory Committee shall issue a report to the Commissioner which shall include:

1. A prioritized listing for recommended grant recipients; and

2. A recommended amount for each grant.

(e) Upon receipt of the report, the Commissioner shall issue a final decision as to the grant recipients and the amount of each grant. Each grant recipient will be notified of the award in writing and will receive, along with the notification, a contract for the grant which will include the deadline for submission of said contract.

1. The Commissioner may establish the timeline for the Program grant cycle including announcement and distribution dates.

2. The Commissioner may award grants on an incremental basis, such that a grantee may be required to produce specific documents for periodic reports as a condition of receipt.

12A:12-3.6 Allowable expenditures

(a) Allowable expenditures are expenses authorized for reimbursment under this subchapter, such as:

1. Media advertising;
2. Brochure development printing and distribution;
3. Cooperative advertising programs;
4. Trade show registration, fees and booth rental;
5. Travel missions (promotional expenses only);
6. Familiarization tours (travel expenses only);
7. Trade show promotions;
8. Distribution cost of promotional material; and
9. Promotional specialty items.

12A:12-3.7 Non-eligible project cost

(a)Non-eligible project cost means a cost for which a tourism grant will not be awarded or funded. These costs include, but are not limited to:

1. Durable equipment, capital investments, restoration/rehabilitation of structures or buildings, except when these types of expenditures are an integral part of the proposed project or event;
2. Wages, payroll taxes or benefits for employees for the project or event;
3. Administrative expenses such as utility expenses, office space and equipment, postage, and office supplies;
4. Personal service contracts;
5. Travel expenses, including transportation costs, mileage, parking, lodging and per diem (excluding familiarization tours);
6. Entertainment expenses;
7. Rent of facilities (except travel show space);
8. Fireworks; and
9. Membership fees (except those required for trade show participation).

12A:12-3.8 Grant forfeiture

(a) Any grant funds not utilized by the grantee shall be returned to the general grant pool and shall be available to other applicants or to increase awards to other grantees.

(b) Failure to timely submit a fully negotiated contract, properly signed and dated with all documentation required by these rules, may result in forfeiture of the grant by the grantee.

(a)

NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY

Commission on Science and Technology

Proposed Readoption: N.J.A.C. 12A:100

Authorized By: New Jersey Commission on Science and Technology, James F. Mathis, Chairman.

Authority: N.J.S.A. 52:9X-9.

Proposal Number: PRN 1991-292.

Submit comments by June 19, 1991 to:
David Hochman
Interim Executive Director
New Jersey Commission on Science and Technology
20 West State Street
CN 832
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules governing the Innovation Partnership Grant Program expire on September 8, 1991. The Commission on Science and Technology has voted to propose readoption of the rules without amendment.

The Innovation Partnership (IP) Grant Program is a competitive matching grant program, through which the Commission encourages individual faculty investigators at New Jersey institutions of higher education to conduct peer-rated research projects in technology fields identified by the Commission and in close collaboration with New Jersey industry, from which each grantee is required to obtain matching funds in an amount equal to the grant. During the first five years of the program's operation under the rules, the Commission has periodically reviewed reports from its staff indicating that the IP program has been successful in achieving its goals as stated in the rules. The scope and purpose of the program as specified by the rules proposed for readoption therefore also remain unchanged.

In the Commission's enabling law, the IP program is defined (N.J.S.A. 52:9X-2) as a program operated under regulations adopted by the Commission pursuant to the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.). The statute also gives the Commission authority to promulgate such regulations (N.J.S.A. 52:9X-9). The rules governing the IP program appears at N.J.A.C. 12A:100-1. They were first adopted in 1986 (see R.1986 d.350 at 18 N.J.R. 1828(a)) and have been amended once since their adoption (see R.1989 d.225 at 21 N.J.R. 1146(a)). The amendments expanded eligibility for the program beyond the five graduate research universities to additionally include the four-year independent and public colleges and universities of the State. The amendments also included a new royalty policy under which grantees were required to remit to the Commission a percentage of royalties received from licensing of discoveries made under the grant, up to the amount of the Commission's grant award.

Although there is no current-year appropriation to the Commission on Science and Technology for operation of the IP program, the Commission has voted to make restoration of appropriations for the program a budgetary priority as resources become available. The rules as amended enjoyed broad support among the affected communities. There were no comments received during the notice period for the amendments. The Commission has had one year's experience operating the program under the amended rules, and found no difficulties that needed correction. Therefore, and inasmuch as the Commission intends to operate the program precisely as it was most recently operated, should appropriations be restored, the Commission has determined that the rules should be readopted without further amendment.

Social Impact

The social impact of readopting the rules should be positive, since readoption will allow the IP program to continue in operation without interruption should funding again become available. In the judgment of the Commission, the program itself has demonstrated positive social impact by encouraging commercialization-oriented research partnerships of the highest quality, between New Jersey's academic institutions and its industrial and high-technology companies.

Economic Impact

The economic impact of readopting the rules should be positive, since it will permit businesses which desire to participate in an IP research project as a matching partner to avail themselves of the benefits of the program as rapidly as possible in the budget year in which funds are again available. The Commission judges that the economic impact of the program itself has been positive, since it has provided an enhanced opportunity for New Jersey business to conduct research aimed at commercialization of new technologies in partnership with peer-rated investigators at New Jersey colleges and universities.

Regulatory Flexibility Analysis

The rules proposed for readoption regulate a grant program open to "regionally accredited four year academic institutions of higher education in New Jersey, offering accredited baccalaureate degrees in science and/or engineering fields pertinent to Commission sponsorship." None of these institutions is a small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they are either public institutions or employ more than 100 people.

However, entities serving as industry sponsors under the program, providing matching funds, may be small businesses. The rules impose no reporting or recordkeeping requirements on such sponsors, although the sponsored institution is required to provide the Commission with a copy of the sponsor's letter of confirmation of financial commitment. While there are no compliance requirements dictating what form institutional assistance from sponsors must take, N.J.A.C. 12A:100-1.8 does specify what types of assistance will be considered matching funds for the purpose of an institution's eligibility under the program.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:100.

LAW AND PUBLIC SAFETY

(a)

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

Certified Landscape Architects

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

Authorized By: State Board of Architects, Ann C. Parker, Acting President; State Board of Professional Engineers and Land Surveyors, Lewis H. Conley, Jr., President; Board of Professional Planners, Shirley M. Bishop, President.

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

Proposal Number: PRN 1991-282.

Submit written comments by June 19, 1991 to:
Barbara Hall, Executive Director
State Board of Architects
Post Office Box 45001
Newark, New Jersey 07102 .

The agency reproposal follows:

Summary

On January 7, 1991, at 23 N.J.R. 21(b), the State Board of Architects, Professional Engineers and Land Surveyors, and Professional Planners jointly proposed to amend their site plan rules. The proposal was the result of a series of interdisciplinary meetings among the three boards in which it was recognized that Certified Landscape Architects ("CLAs") are qualified to perform certain tasks relating to site planning, which tasks are currently restricted to architects, planners, engineers and land surveyors.

During the comment period, approximately 145 comments were received, the majority from CLAs who expressed their support for the proposed amendments. However, several commenters who objected to the proposal expressed the concern that the Summary and impact statements were inaccurate or misleading in that they appeared to indicate that the proposed amendments would permit CLAs to prepare complete site plans rather than to perform only specified tasks relating to site planning. Concerns were also expressed that use of the term "general layout" in subsection (j) of the rules of all three Boards is unclear. The amendments to these subsections would permit a certified landscape architect to prepare a general layout of a preliminary site plan for a multiple building project, showing the development elements including their relationship to the site and immediate environs. The commenters felt that the term "general layout" here could be construed to mean a comprehensive site plan, many of the elements of which require input from engineers pursuant to the Municipal Land Use Law, P.L. 1975, c.291.

Accordingly, in order to avoid any misunderstanding regarding the permissible division of responsibility in site planning, the three Boards have determined to repropose the amendments to their site plan rules. This reproposal does not change the text of the rule amendments as initially proposed in the Register on January 7, 1991 but amends only the accompanying statements for clarification purposes.

By this reproposal, a CLA will be permitted to perform the following services:

1. Depiction on a site plan of existing vegetation, the general flood plain, or the general location of utilities;
2. On a site plan, the locations of drives; parking layout; pedestrian circulation; and means of ingress and egress;
3. On a site plan, landscaping, signs, lighting, screening or other information not specified in the regulations;
4. On a site plan, the general layout of a preliminary site plan for a multiple building project, showing the development elements including their relationship to the site and immediate environs; and
5. On a major subdivision plan, the general location of facilities, site improvements and lot layouts.

The Boards wish to stress that while these amendments permit CLAs to perform certain functions in connection with site plan and major subdivision preparation, the tasks are limited to those set forth above, all of which the Boards have determined to be services which may be performed by certified landscape architects.

Social Impact

The proposed amendments, which define the scope of practice of certified landscape architects to include certain site planning services, will benefit the consumer of site planning services, who will have access to others able to engage in these specific services. In addition, the amendments will benefit certified landscape architects, whose scope of services will be expanded to include certain functions in connection with site planning services.

Economic Impact

Certified landscape architects may be favorably impacted in an economic sense by this recognition of their ability to render certain site planning services. Although the amendments redefine the permissible division of responsibility in connection with site planning in order to permit CLAs to perform certain tasks, the preparation of a complete site plan continues to require the services of an architect or an engineer. Therefore, an economic impact upon the consumer may be anticipated when two separate firms or individuals are retained.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the agency to give a description of the types and estimates of the number of small businesses to which the proposed rule amendments will apply. "Small business," for the purposes of the Regulatory Flexibility Act, is defined as a business which is resident in New Jersey, independently owned and operated, not dominant in its field, and employs fewer than 100 full-time employees. The Board of Architects certifies approximately 500 landscape architects as individuals, but not as business entities. It is likely, however, that many practitioners in this State would be categorized as small businesses under the criteria of the Regulatory Flexibility Act. The proposed amendments assist these small businesses by affirming that CLAs are qualified to perform certain tasks in connection with site planning and by specifically delineating the permissible activities which may be performed by CLAs. Other than this delineation, no reporting, recordkeeping or other compliance requirements are imposed on such small businesses by these amendments. There are no capital or continuing costs involved, and no additional professional services, as specified in the Regulatory Flexibility Act, are needed in order to comply.

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

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

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

(a) (No change.)

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

13:27-6.3 Preparation of site plan

(a) (No change.)

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

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

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

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

13:27-6.4 Preparation of a major subdivision plan

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

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

13:27-6.5 Effect of local ordinances

(a) (No change.)

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

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

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

(a) (No change.)

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

13:40-7.3 Preparation of site plan

(a) (No change.)

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

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

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

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

13:40-7.4 Preparation of a major subdivision plan

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

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

13:40-7.5 Effect of local ordinances

(a) (No change.)

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

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

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

(a) (No change.)

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

13:41-4.3 Preparation of site plan

(a) (No change.)

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

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

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

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

13:41-4.4 Preparation of a major subdivision plan

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

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

13:41-4.5 Effects of local ordinances

(a) (No change.)

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

(a)

STATE BOARD OF MORTUARY SCIENCE

Special Rules of Practice

Proposed New Rules: N.J.A.C. 13:36-7.1 and 7.2

Authorized By: State Board of Mortuary Science, Maurice W. McQuade, Executive Director.

Authority: N.J.S.A. 45:7-38.

Proposal Number: PRN 1991-281.

Submit written comments by June 19, 1991 to:
Maurice McQuade, Executive Director
Board of Mortuary Science
P.O. Box 45009
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Mortuary Science is proposing a new subchapter, N.J.A.C. 13:36-7, entitled "Special Rules of Practice," in order to formalize current Board policies concerning the provision of funeral services for a person who has died of an infectious or contagious disease, including AIDS. These policies establish handling and embalming procedures and disclosure requirements relating to the sale of certain funeral goods and services. The rules also state the responsibility of those in the conduct of mortuary science to provide funeral services to persons who died of an infectious or contagious disease, including AIDS.

The proposed new rules are intended to assist the Board in carrying out its statutory responsibility to protect the public health and welfare and to provide the Board with a strong legal basis for enforcement of these policies. The Board believes the proposed rules are of considerable importance in assuring that no person is denied funeral services based upon the cause of death and in reducing the risk that funeral service personnel will contract an infectious or contagious disease. The Board believes these new rules will also ensure that proper procedures are followed in the storage and disposal of medical waste, thereby diminishing the risk of transmitting a disease.

The proposed new disclosure requirements are intended to protect and assist families of those who have died of an AIDS-related illness by advising them that certain funeral goods and services are not required by State or local law. These requirements are particularly important in light of the increasing number of AIDS-related deaths in New Jersey, which have increased from 11 in 1982 to a total of 5,907 as of June 30, 1990.

Social Impact

The proposed new rules will have a beneficial social impact on the public by reducing the possibility that funeral service providers or personnel will contract or transmit an infectious or contagious disease through improper handling or embalming procedures or through improperly disposing of medical waste. The specificity of the proposed new rules will benefit licensees of the Board of Mortuary Science by eliminating any uncertainty regarding their responsibilities and the proper precautions to be taken. The Board of Mortuary Science will benefit in that it will be better able to fulfill its statutory duty to protect the public health and welfare; the precise language regarding licensee conduct will strengthen the Board's ability to enforce these rules. Finally, the families of those who have died of an AIDS-related illness will benefit from the proposed new rules in that they will be assured that funeral services are not denied based upon the cause of death and will be specifically advised that certain funeral goods and services are not required by state law or necessary for the handling of the deceased.

Economic Impact

These proposed new minimum standards for handling and embalming persons who have died of an infectious or contagious disease will not impose a significant financial burden upon licensees. Except for the requirements that embalmers and embalming personnel wear double rubber gloves and dispose of cosmetic brushes after a single use, the required equipment is no more than that already mandated by regulation. Similarly, the proposed new rules regarding disposal of regulated medical waste will impose no additional expenses upon licensees since these rules merely codify the requirements of the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq. However, a licensee's failure to comply with these proposed new rules may subject the licensee to disciplinary sanctions.

Licensees will incur minimal expense in complying with the written disclosure requirement set forth in N.J.A.C. 13:36-7.2. The Board believes, however, that the cost to the licensee is more than outweighed by the benefit this disclosure requirement affords to both the consumer and the licensee. Family members of those who have died of an AIDS-related illness may benefit economically if they are made aware that certain funeral goods and services are not required and consequently choose not to purchase them. In addition, because the disclosures must be in writing, licensees will have a permanent record of their compliance with the disclosure requirements.

Regulatory Flexibility Analysis

The proposed new rules will apply to all 2,004 licensees of the Board of Mortuary Science and to all of the 792 currently licensed funeral establishments. The proposed new rules regarding special handling and embalming procedures will not impose any additional reporting requirements on funeral homes, all of which qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These new rules merely establish minimum standards for licensee conduct and sanitary precautions; licensees are already required to comply with N.J.A.C. 7:26-3A.6 in regard to disposal of medical waste.

Compliance and recordkeeping requirements are imposed by N.J.A.C. 13:36-7.2, relating to informing the family of a person who has died of AIDS or an AIDS-related illness that certain funeral goods and services are not required. Licensees will be required to prepare a disclaimer notice for presentation to family members and to retain such notice for a period of six years. Initial and annual costs of compliance in connection with the required disclaimer notices are expected to be minimal. In any event, because this proposed new rule seeks to promote and protect the public health and welfare, no differentiation in compliance can be made relating to business size.

Full text of the proposed new rules follows:

SUBCHAPTER 7. SPECIAL RULES OF PRACTICE

13:36-7.1 Human bodies dead of an infectious or contagious disease, including AIDS; handling and embalming

(a) No person in the conduct of the practice of mortuary science shall deny funeral services for any deceased person based upon the cause of death, including a death from AIDS or any other infectious or contagious disease.

(b) Every practitioner of mortuary science, embalmer and funeral director, and their employees, shall adopt all proper methods to safeguard the public health when handling a human body dead of an infectious or contagious disease, including AIDS. These precautions shall be taken upon initial contact with the body and upon succeeding contact, as set forth in (c) through (e) below.

(c) The following precautions shall be taken by removal personnel at the time of removal of the body from the place of death:

1. Removal personnel shall be equipped with, at minimum, disposable aprons, disposable rubber gloves, disposable pouch or sheets, trash bags and topical disinfectants.

2. Removal personnel shall wear rubber gloves when handling a body dead of an infectious or contagious disease or when the potential exists for removal personnel to contact blood, blood-soiled items, body fluids, excretions and secretions and surfaces exposed to these substances or items.

3. Removal personnel shall disinfect any surface which, during the removal process, has become exposed to blood, blood-soiled items, body fluids, excretions and secretions. In the absence of a commercially prepared disinfectant, a 1:10 dilution of 5.25 percent sodium hypochlorite (household bleach) with water may be used.

4. All regulated medical waste, as defined in N.J.A.C. 7:26-3A.6, generated by removal personnel shall be stored and disposed of in accordance with the provisions of N.J.A.C. 7:26-3A.6, promulgated pursuant to the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

(d) In addition to the applicable requirements set forth in N.J.A.C. 13:36-6, the following shall apply to every person who is engaged or assists in the actual embalming of a human body dead of an infectious or contagious disease:

1. Embalmers and embalming personnel shall wear double rubber gloves, oral-nasal masks, protective eyewear, long-sleeved gowns, waterpoof aprons and shoe coverings.

2. All embalming procedures and manipulations shall be performed with care to minimize the creation of droplets and aerosols.

3. To promote contact of the formaldehyde solution with the virus particles in the blood before drainage is started, initial injection shall be made against a closed vein.

4. Embalmers and embalming personnel shall take care to avoid accidental injury from a needle and to avoid cutting or scratching themselves on the bones of the ribcage during autopsy embalming.

5. Cosmetics shall be applied with disposable brushes, which shall be properly discarded after a single use.

6. Blood spills shall be cleaned up promptly with a 1:10 dilution of 5.25 percent sodium hypochlorite (bleach) with water. The combination of sodium hypochlorite and formaldehyde may create a carcinogenic compound; to minimize this potential complication, surfaces shall be rinsed with water before the sodium hypochlorite solution is utilized.

7. Upon completion of embalming and removal of protective garb, all personnel shall thoroughly wash their hands with a liquid antiseptic soap before leaving the embalming room.

(e) The following shall apply at the conclusion of the embalming procedure:

1. The embalming table, floor and all potentially infected surfaces shall be thoroughly disinfected or washed with a 1:10 dilution of 5.25 percent sodium hypochlorite (bleach) with water.

2. Instruments, including trocars, shall be soaked overnight in gluteraldehyde.

3. Used needles shall not be recapped, bent, broken, or clipped. All regulated medical waste as defined in N.J.A.C. 7:26-3A.6, including used needles, shall be stored and disposed of in accordance with the provisions of N.J.A.C. 7:26-3A.6, promulgated pursuant to the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

4. Rags and towels used during the embalming procedure which are not deemed to be regulated medical waste shall be incinerated or washed in hot (132 degrees Fahrenheit) soapy water and bleach.

5. Aprons, gloves, masks, caps, shoe coverings and any other protective garb used during embalming which is not deemed to be regulated medical waste shall be placed in an impervious plastic bag and incinerated whenever possible.

13:36-7.2 Sale of funeral goods and services with regard to a person who has died of AIDS or an AIDS-related cause; disclosure requirements

(a) In selling or offering to sell funeral goods or funeral services to the public for a person who died of AIDS or an AIDS-related cause, it is a deceptive act or practice for a funeral provider to represent that State or local law requires any of the following:

1. Cremation;
2. A hermetically sealed casket;
3. A glass liner to permit public viewing;
4. A prohibition against public viewing; or
5. Public notification of the cause of death, in the event of public viewing.

(b) To prevent the deceptive acts or practices set forth in (a) above, as well as the unfair or deceptive acts or practices defined in N.J.A.C.

13:36-9.15(a), funeral providers shall inform the consumer in writing that the funeral goods and services enumerated in (a) above are not required by State or local law. The disclosure form shall be retained in the licensee's file for a period of six years.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Electric Service

Proposed New Rules: N.J.A.C. 14:5

Authorized By: Board of Public Utilities, George H. Barbour and Jeremiah F. O'Connor, Commissioners.

Authority: N.J.S.A. 48:2-13.

DPU Docket Number: EX91030342.

Proposal Number: PRN 1991-264.

Submit written comments by June 19, 1991 to:

Robert Chilton, Director
Division of Electric
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), the provisions of N.J.A.C. 14:5, Electric, expired on December 16, 1990. The rules had served over an extended period of time in the regulation of electric utilities subject to the jurisdiction of the Board of Public Utilities (Board) in such areas as the construction, inspection and maintenance of utility plant, the testing and accuracy of electric meters, residential underground extensions and the maintenance and preservation of records and accounts.

The rules proposed herein are identical to the expired rules which can be found at N.J.A.C. 14:5, except for those changes which are specifically identified hereinbelow. These rules are necessary in that they relate directly to the provision of safe, adequate and proper service by New Jersey electric utilities. Thus, although this chapter is proposed as a new rulemaking, it continues procedures previously in effect.

The substantive provisions of the rules proposed to be adopted by the Board are summarized as follows:

N.J.A.C. 14:5-1.1 pertains to the applicable standards for plant contruction.

N.J.A.C. 14:5-1.2 pertains to the separation and protection of communication and supply conductors or cables which are buried in the earth.

N.J.A.C. 14:5-1.3 pertains to the protection of buried supply conductors and cables at all crossings.

N.J.A.C. 14:5-1.4 pertains to the protection of communication and supply conductors or cables which are installed in the same trench generally parallel to each other.

N.J.A.C. 14:5-1.5 requires fault protection for cables where buried communication and power supply conductors of 550 volts or more between conductors are installed in the same trench without separation.

N.J.A.C. 14:5-1.6 requires each electric utility to properly identify its underground cables.

N.J.A.C. 14-5-1.7 requires ground protection where communication and power supply conductors are buried in the same trench without separation.

N.J.A.C. 14:5-1.8 pertains to the required depths for communication and power supply cables of over 550 volts between conductors which are buried in the same trench without separation.

N.J.A.C. 14:5-1.9 requires electric utilities to inspect and maintain street lighting lamps and accessories pursuant to established practice and to perform safety and service inspections before reinstalling equipment in its system.

N.J.A.C. 14:5-2.1 pertains to the amount of service connection to be supplied to customers by electric utilities.

N.J.A.C. 14:5-2.2 pertains to the supply of polyphase service.

N.J.A.C. 14:5-2.3 sets out the requirements for the standard average value of voltage for electric utilities supplying electric energy on a constant potential system and requires electric utilities supplying alternating current to adopt and maintain a suitable standard frequency.

N.J.A.C. 14:5-2.4 sets out the conditions under which main service cabinets or cabinets enclosing main fuses or breakers may be sealed.

N.J.A.C. 14:5-2.5 requires the grounding of secondaries to be in accordance with the National Electrical Safety Code.

N.J.A.C. 14:5-2.6 sets out those instances in which an electric utility may refuse to connect with a customer's installation.

N.J.A.C. 14:5-3.1 pertains to the equipment to be maintained by electric utilities for the testing of electric meters and to the inspection of such equipment.

N.J.A.C. 14:5-3.2 provides for the periodic testing of electric meters.

N.J.A.C. 14:5-3.3 pertains to the accuracy of electric meters.

N.J.A.C. 14:5-3.4 requires that all electric meters installed outdoors must be compensated for temperature variations.

N.J.A.C. 14:5-3.5 pertains to the adjustment of electric meters after testing and the testing for accuracy prior to installation.

N.J.A.C. 14:5-4.1 pertains to the applicability of the regulation for residential electric underground extensions.

N.J.A.C. 14:5-4.2 contains the definitions of the following terms used in subchapter 4: "applicant"; "Board"; "building"; "cost"; "existing street"; "extension"; "mobile home"; "multiple-occupancy building"; "new street; "subdivision"; and "utility".

N.J.A.C. 14:5-4.3 requires that an electric utility construct, own, operate and maintain its underground distribution lines only in public streets in which it has a right to occupy and on public or private lands across which it has satisfactory rights-of-way or easements. In addition, applicants for a residential electric underground extension must furnish the electric utility suitable rights-of-way or easements in sufficient time to meet service requirements, at no cost and cleared of trees.

N.J.A.C. 14:5-4.4 pertains to the physical installation of an underground extension including timing, materials, data submissions and costs.

N.J.A.C. 14:5-4.5 requires the electric utility to provide a connection from the applicant's subdivision to the utility's existing supply facilities.

N.J.A.C. 14:5-4.6 pertains to the deposit that an electric utility must require from an applicant prior to the start of construction on a section of the subdivision.

N.J.A.C. 14:5-4.7 reflects that costs specified in subchapter 4 are premised on the cooperation of the applicant in an effort to keep the cost of the construction and installation of the underground electric distribution system as low as possible.

N.J.A.C. 14:5-4.8 pertains to the construction and installation of the underground electric distribution system and the coordination with the communication utility which will be constructing and installing an underground system.

N.J.A.C. 14:5-4.9 requires that subdivisions to be supplied from underground electric facilities incorporate the design for necessary street lighting.

N.J.A.C. 14:5-4.10 pertains to records that must be maintained by electric utilities on a calendar year basis for service connections made pursuant to subchapter 4.

N.J.A.C. 14:5-4.11 permits an application for an exemption from the requirement of an underground extension or for the approval of special conditions in those cases where the application of the requirement would result in hardship or be discriminatory to existing customers.

N.J.A.C. 14:5-4.12 provides that, with certain exceptions, subchapter 4 supersedes and revokes prior rules, regulations and standards promulgated with respect to underground electric extensions.

N.J.A.C. 14:5-4.13 provides that requirements in conflict with subchapter 4 shall not be imposed through municipal ordinances or regulations.

Appendix A provides illustrative examples of how costs for underground electric extensions are to be determined in different situations.

N.J.A.C. 14:5-5.1 adopts by reference the Uniform System of Accounts for Class A and B Electric Utilities promulgated by the Federal Energy Regulatory Commission.

N.J.A.C. 14:5-5.2 adopts by reference rules governing the preservation of records by electric utilities.

N.J.A.C. 14:5-6.1 establishes guidelines to which electric utilities must adhere to constructing overhead transmission lines.

Social Impact

The proposed rules relate directly to the provision of safe, adequate and proper service by New Jersey electric utilities. Said rules are necessary to ensure that electric plant is constructed and installed pursuant to acceptable standards and is maintained and inspected in a manner that will protect the safety and well-being of the public.

Economic Impact

As a result of the proposed rules, electric utilities, as they have in the past, will incur expenses for, among other things, inspecting and testing their plant and meters and maintaining required records. Since these items represent appropriate business activities, all reasonable levels of costs associated therewith will be allowed to be passed along to ratepayers through rates for service.

Regulatory Flexibility Statement

The proposed new rules will not impose reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. The rules apply only to major utilities, all of which are considered large businesses.

Unless otherwise specifically indicated below, it is the intent of the Board that the proposed rules be identical to the prior rules which expired on December 16, 1990.

The proposed changes that follow are technical in nature in that they correct the citation format of various internal references or change the title of entities whose designations have changed since the last rule making concerning this chapter. At N.J.A.C. 14:5-4.8 and 4.10, cable television cables have been added as is current practice. Informational material is added to Appendix A.

Full text of the expired rules, proposed as new rules, can be found in the New Jersey Administrative Code at N.J.A.C. 14:5.

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

14:5-1.2 Separation and protection of conductors buried in earth

(a) (No change.)

(b)Exceptions to [subsection] (a) **above** [of this Section] are as follows:

1.-4. (No change.)

14:5-1.3 Protection at crossings of cables

(a) (No change.)

(b) Exceptions to [subsection] (a) **above** [of this Section] are as follows:

1. (No change.)

2. This protection is not required where supply conductors over 550 volts between conductors are installed in accordance with [Section 1.2(b)3 (Separation and protection of conductors buried in earth) of this Chapter] **N.J.A.C. 14:5-1.2(b)3.**

14:5-1.4 Protection of cables installed parallel

(a) Where buried communication and buried supply conductors or cables are installed in the same trench generally parallel to each other, the buried supply conductors or cables shall be covered with concrete or creosoted wood planking or equivalent mechanical protection, except that this covering may be omitted in the following cases:

1.-3. (No change.)

4. Where supply conductors over 550 volts between conductors are installed in accordance with [Section 1.2(b)3 (Separation and protection of conductors buried in earth) of this Chapter] **N.J.A.C. 14:5-1.2(b)3**.

(b) (No change.)

14:5-1.5 Fault protection

Where buried communication and power supply conductors of 550 volts or more between conductors are installed in the same trench without separation and in accordance with the requirements of [Section 1.2 (Separation and protection of conductors buried in earth) of this Chapter] **N.J.A.C. 14:5-1.2**, the cable shall be protected by devices capable of clearing phase to ground faults.

14:5-1.7 Ground protection

(a) Where communication and power supply conductors are buried in the same trench without separation, the following ground protection shall be provided:

1. At each transformer and/or pedestal installation all grounds, sheaths and neutrals shall be interconnected. The common neutral conductor shall normally be continuous. Where straight splices are required in the common neutral, only two ends of the conductors shall be joined with one conductor. All interconnections, including equipment neutral connections, to the common neutral required by [Sections 1.2 through 1.8 of this Chapter] **N.J.A.C. 14:5-1.2 through 1.8** shall be made by taps to the common neutral.

2. (No change.)

14:5-2.1 Service connections; electric

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

(c) If the length of service connection exceeds the amount mentioned in [subsection] (b) **above** [of this Section], the customer may be required to pay for the cost of such excess.

(d) (No change.)

14:5-2.3 Adequacy of service

(a) (No change.)

(b) Each electric utility supplying alternating current shall adopt a standard frequency, the suitability of which may be determined by the Board, and shall maintain this frequency; provided, however, that changes or variations of frequency which are clearly due to no lack of proper equipment or reasonable care on the part of the utility shall not be considered a violation of this [regulation] **rule.**

14:5-3.2 Periodic testing of electric meters

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

(c) All types of alternating current watt-hour meters installed upon customers' premises shall be tested as follows[.]:

1. (No change.)

[2. (Reserved)]

[3.]**2.** Self-contained single-phase meters and three-wire network meters-at least once in eight years or by a variable interval or statistical sampling technique approved by the Board.

14:5-4.2 Definitions

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

. . .

"Board" means [Department] **Board** of Public Utilities[, Board of Public Utility Commissioners].

"Building" means a permanent structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed for single-family or duplex-family occupancy.

[Note:]**1.** A duplex family building may consist of either a duplex apartment with rooms on two floors and a private interstairway, or a duplex house with two separate family units side by side.

. . .

14:5-4.4 Installation of underground distribution system within subdivision

(a) Upon receipt of a proper application the utility shall, after conditions in [Section 3 of this Subchapter] **N.J.A.C. 14:5-4.3** have been met and after coordination with other utilities, install along new streets and along existing streets not already served by overhead facilities, using suitable materials, an underground electric distribution system reasonably equivalent to a comparable overhead system which will assure that the applicant will receive safe, adequate and proper electric service[:].

[Note:] 1. "Suitable materials" shall be construed to mean those components of a direct buried residential-type underground distribution system, including, but not limited to, transformers, which shall be pad mounted unless otherwise directed by the Board, cables, conduits, street lighting poles and fixtures, switch gear and enclosures, which the industry has adopted as standard consistent with the "state of the art" as it applies to the development of such components and also consistent with the service requirements of this [regulation] **rule**. Such standards shall be understood to be reasonable standards designed to implement this [regulation] **rule** with a minimum increase in the difference in cost between overhead and [under ground] **underground** distribution systems.

[1.]**2.** (No change in text.)

[2.]**3.** No utility will be obligated to furnish electric service to any building in a subdivision unless and until an application has been made for the distribution system in the subdivision in accordance with this subsection and a deposit has been made in accordance with [Section 6 of this Subchapter] **N.J.A.C. 14:5-4.6**, unless otherwise ordered by the Board.

(b) (No change.)

(c) The applicant shall also supply the final subdivision map of the section of the subdivision which has received the final approval of the appropriate authorities and which the applicant proposes to develop in the immediate future. This submission shall also detail the planned electric load requirements as described in [subsection] (b) **above** [of this Section].

(d) (No change.)

(e) Semiannually, [commencing January 1, 1975,] each electric utility may submit a proposed tariff, modifying existing undergrounding charges. These proposed tariffs shall be supported by unit costs of construction in a form as required for approval by the Board.

(f) For the installation of an underground electric distribution system, the applicant shall pay the utility the differential cost between the construction of an underground and an equivalent overhead distribution system as determined from the utility's approved tariff as provided by [subsection] (e) **above** [of this Section].

(g)-(m) (No change.)

(n) Extensions of high-capacity main line distribution facilities, not exceeding 4MVA, to reach the applicant's subdivision, through another residential subdivision where the provisions of this [Subchapter] **subchapter** are applicable, shall be made underground. The applicant shall pay the utility a prorated differential cost for such extensions only for that capacity necessary to serve his subdivision, in addition to the charges required pursuant to [subsection] (f) **above** [of this Section]. The utility may require a deposit and charge the balance **of the differential cost to the property owner or owners of the residential subdivision through which the extension is made, when such owner or owners make an application for electric service, on a prorated basis**[:].

1. (No change.)

14:5-4.6 Advances by applicant

(a) Prior to the start of construction on a section of the subdivision, the utility shall require from the applicant a deposit equivalent to the estimated amount of the charges payable to the utility in accordance with [Section 4(f) of this Subchapter] **N.J.A.C. 14:5-4.4(f)** for the total number of building lots shown on the subdivision map supplied to the utility by the applicant under the provisions of [Section 4(c) of this Subchapter] **N.J.A.C. 14:5-4.4(c)**.

(b) (No change.)

(c) If the amount of the deposit is in excess of the charges payable to the utility in accordance with [Section 4(f) of this Subchapter] **N.J.A.C. 14:5 4.4(f)**, then the excess amount shall be returned upon completion of the installation of the distribution construction facilities.

(d) (No change.)

(e) When an applicant requests the installation of underground facilities in an area for which there is no planned immediate construction of dwelling units, the utility may require a deposit from the applicant in addition to a deposit required pursuant to [subsection] (a) **above** [of this Section]. Such a deposit shall not be more than the estimated cost of providing equivalent overhead extension and shall be collected and refunded in accordance with N.J.A.C. 14:3-8.1 [et seq].

14:5-4.7 Cooperation by applicant

(a) The charges specified in this [Subchapter] **subchapter** are based on the premise that each applicant shall agree to cooperate with the utility in accordance with [Section 3 of this Subchapter] **N.J.A.C. 14:5-4.3** in an effort to keep the cost of construction and installation of the underground electric distribution system as low as possible. This includes the scheduling of construction to preclude the necessity for trenching in frozen soils or in land fill operations before soils have become stabilized.

(b) (No change.)

(c) Requests for adjustment of charges, specified in the tariff of any utility filed pursuant to [Section 4(e) of this Subchapter] **N.J.A.C. 14:5-4.4(e)**, to cover excess cost, if any, due to temporary installations, may be referred to the Board in accordance with [Section 11 of this Subchapter] **N.J.A.C. 14:5-4.11**.

14:5-4.8 Construction

(a) Where practical, as determined by the affected utilities, electric cables [and], communication cables **and cable television cables** shall be installed in the same trench, care being taken to conform to any applicable codes and regulations.

(b) Where joint use of a trench is practical, a utility will not be obliged to commence work on an underground system unless and until the applicant has made all necessary arrangements with the communication utility **and cable television company** to commence work on [its] **their** underground system.

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

14:5-4.10 Records

(a) Each electric utility shall maintain on a calendar year basis for periodic review by, or upon request, submission to the Board the following records:

1. The amount of trench which it has shared with communication cables **and cable television cables**. The record shall also show the contribution per foot by it and by the collaborating telephone companies **and cable television companies** for joint use of trench.

2. (No change.)

14:5-4.11 Special conditions or exemptions

(a) When the application of this [regulation] **subchapter** will result in extreme hardship or inequity, or be discriminatory to other customers, the utility or applicant may refer the matter to the Board for special exemption or for approval of special conditions.

(b) The applicant invoking the jurisdiction of this Board, pursuant to [this Section] **(a) above**, may be required to deposit in an escrow account as determined by the Board, prior to hearing, a deposit up to the estimated cost differential between underground and overhead service to be advanced to the utility in the event the Board determines an exemption is not warranted.

APPENDIX A—REGULATION FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

Illustrative examples of how costs for underground extensions are to be determined in different situations.

Note: Dollar amounts shown are for illustrative purposes only and do not represent current utility charges. Such current charges are shown in the tariff of each individual electric utility and is on file with the Board and available for inspection at either the offices of the Board or the local offices of the utility.

A.-B. (No change.)

Exhibits 1 through 5 (No change.)

14:5-5.1 Adoption by reference of the Uniform System of Accounts

The Board adopts by reference the Uniform System of Accounts for Classes A and B Electric Utilities that have been promulgated by the Federal [Power] **Energy Regulatory** Commission as well as all present and subsequent amendments, revisions, deletions and corrections which the Federal [Power] **Energy Regulatory** Commission may adopt insofar as they relate to electric utilities subject to the jurisdiction of the Board and are in accordance with the Board's policies and procedures.

14:5-5.2 Adoption by reference of rules concerning preservation of records; electric utilities

(a) On September 14, 1972, the **then** Board of Public Utility Commissioners in the Department of Public Utilities, pursuant to the authority of N.J.S.A. 48:2-1 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted by reference the "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities" originally proposed to various states for adoption by the National Association of Regulatory Utility Commissioners as promulgated and published in April, 1972, for use by the electric, gas and water utilities.

(b) The Board of Public [Utility Commissioners] **Utilities** adopts these rules as its modified regulations governing the preservation and destruction of records for all classes of electric, gas and water utilities subject to its jurisdiction and as a supplement to its uniform system of accounts for all classes of electric, gas and water utilities.

(c) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Entire Net Income
Proposed Amendments: N.J.A.C. 18:7-5.1, 5.10, and 14.17

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1991-289.

Submit comments by June 19, 1991 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments are made pursuant to the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq., and particularly N.J.S.A. 54:10A-4(k) and 54:10A-10, and pertain to the concept of arm's length transactions between affiliated entities and/or owners. The corporation business tax is a fanchise tax imposed on every domestic and foreign corporation, which is not exempted, for the privilege of having or exercising its corporate franchise in New Jersey or for the privilege of doing business, employing or owning capital or property, or maintaining an office in New Jersey. Therefore, under N.J.A.C. 18:7-11.15, subject entities forming consolidated groups are required to file on a separate entity basis for New Jersey purposes, despite the fact that they may file a Federal consolidated return. The examples included in N.J.A.C. 18:7-5.1 will assist taxpayers and tax return preparers in making those changes required because of membership in a Federal consolidated group.

Secondly, an amendment is proposed to N.J.A.C. 18:7-5.10 which are grounded in N.J.S.A. 54:10A-10 and 54:10A-4(k). The proposed amendments relating to adjustments and redeterminations pertain to the concept of arm's length transactions between affiliated entities and related parties. The amendment takes into account the reality that affiliated and shareholder transactions should properly be reflected by an objective yardstick, as though they were bargained with persons or entities having independent economic interests, rather than by negotiation between corporation and shareholder or other affiliated parties. The proposed amendment will assist taxpayers and tax return preparers in preparing returns and will aid them in accurately anticipating areas of concern to the Division upon audit. This amendment is intended to cover many of the same issues, but is not limited to those issues, that the Internal Revenue Service addresses through Internal Revenue Code Section 482. The amendment contains a number of hypothetical examples which are intended, without limitation to them, to illustrate potential situations in which the rule is applicable. The deletion of N.J.A.C. 18:7-5.1(e) does not represent a change in Division policy. Rather, the deleted provision was considered no longer necessary, in view of the broader and more general amendments dealing with related party transactions. Finally, an amendment to N.J.A.C. 18:7-14.17 is proposed which clarifies for taxpayers how certain installment sales are handled for tax clearance purposes.

Social Impact

Adoption of proposed amendments will notify the public that the Division intends to look at intercompany and shareholder transactions to ascertain that they reflect economic substance and reflect a fair and reasonable tax liability of a New Jersey taxpaying entity.

Economic Impact

A positive fiscal impact is expected to accrue to the State from this amendment, since it will assist taxpayers and tax practitioners in ascertaining a fair and reasonable tax to be paid to the Division for transactions between related parties.

Regulatory Flexibility Analysis

The proposed amendments impose compliance requirements on taxpayers engaging in certain types of transactions. Some of these taxpayers may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The source of the compliance requirements is the underlying taxing statute, and in particular N.J.S.A. 54:10A-10, which is administered through the State Tax Uniform Procedure Act. No exemption from or differentiation in these requirements for small businesses is provided in the rule, since to do so would not be in compliance with the applicable statutes.

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

18:7-5.1 Entire net income; definition

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

(c) Consistent with N.J.A.C. 18:7-11.15, entire net income shall be determined on a separate entity basis as if the contemporaneous Federal return had not been a consolidated return.

Example 1: Corporation A is part of a consolidated group filing for Federal purposes which as a group incurred a net operating loss for the year. Corporation A, however, on a separate entity basis had net income of $100,000 before its charitable contribution expense of $15,000 is taken into account. Based on a separate, non-consolidated calculation under the Internal Revenue Code, and the contribution limitations applicable to all corporations for the period under review (that is, 10 percent), Corporation A's reportable net income for New Jersey purposes is $90,000 ($100,000 - ($100,000 x .10)).

Example 2: Corporation B is part of a consolidated group filing for Federal purposes which sold goods in the ordinary course of business to Corporation C, also a member of the same consolidated group filing. The selling price between Corporation B and C was at arm's length and included a profit element in it. The Federal corporate consolidated filing would not recognize the gain on the sale of the goods between Corporation B and C since Corporation C had not disposed of the property outside the group at year end. For New Jersey purposes, however, Corporation B must report the gain on the sale of the property for net income purposes, and Corporation C must incude the full sales price of the property in its inventory value.

(d) (No change.)

[(e) Entire net income shall be determined as if no election had been made under 26 U.S.C. 992(b) to be treated as a DISC or as if it were not a "Former DISC" under 26 U.S.C. 992(a)(3).]

18:7-5.10 Right of Director to correct distortions of net income [or], net worth, **allocation factors; adjustments and redeterminations**

(a) Whenever it shall appear to the Director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in a manner so as either directly or indirectly to distort its true entire net income or its true entire net worth under the Act or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under the Act, or whereby the activity, business, receipts, expenses, assets, liabilities, net income or net worth of the taxpayer are improperly or inaccurately reflected, the Director is authorized and empowered, in his discretion and in whatever manner he may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or entire net worth or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Act.

1.-2. (No change.)

3. For purposes of this section, "fair and reasonable tax" is the tax that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) had independent economic interests.

4. For purposes of this section, "substantial portion of stock" is the direct or indirect ownership of 10 percent or more of the outstanding shares of any class of stock.

(b) The application of this section is not limited to an agreement, understanding or arrangement existing between a taxpayer and any other corporation or any person or firm for the purpose of avoiding or evading tax under the Act. It is also applicable where adjustments and redeterminations relate to transfer pricing and other transactions between related persons or entities where evasion or tax avoidance are not a consideration. The Director may initiate adjustments under this section solely in the interests of determining a fair and reasonable tax, and without respect to any benefit arising out of inter-corporate relationships or the relationships of any person holding a substantial portion of the stock of a taxpayer. The Division shall not be limited to indices, trade practices, cost sheets, Internal Revenue Reports or any other factor in determining the appropriate transfer price for goods, services, intangibles or other dispositions made to related parties. Where the Director determines that there is an adjustment to net worth or net income under this section, he or she may also make a corresponding adjustment to the allocation factor.

(c) Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, the Director may adjust and redetermine items on any affected taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey. The following example is an illustration only and in no way shall be interpreted as a standard for calculating wages in a particular case.

Example: Corporation D entered into an employment agreement with its sole shareholder's spouse for the performance of services as an accounting clerk. The agreement called for the shareholder's spouse to monitor 10 accounts. For the service performed, the spouse is to receive an annual salary of $100,000 along with a substantial benefit package. The Director, upon audit, learns that the spouse works only five hours per week in completely performing the duties. The Director, based upon the going wage for such services, determines that the total compensation package would not exceed $10,000 a year and adjusts the taxpayer's expense to determine properly the net income and the taxpayer's wage fraction of the allocation factor and to provide dividend treatment for the disallowed wage compensation.

(d) Where any taxpayer, 10 percent of whose capital stock is owned either directly or indirectly by or through the same interests as those of the taxpayer, conducts any activity, transaction, or business with such interests which either directly or indirectly creates an artificial loss, net income, or allocation factor, the Director may adjust and redetermine such items on any taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey.

Example 1: Corporation E, the great grandparent of the taxpayer, borrows $1 million from the taxpayer. The agreement calls for the principal and interest at the rate of two percent per annum to be paid at the end of one year. Upon audit, the Director determines that a market interest rate given the economic conditions at the time of the loan and the circumstances of the borrower is 13 percent per annum. Therefore, he adds the additional income to the taxpayer's net income as reported, and adjusts the expense on the great grandparent's return, if it files in New Jersey.

Example 2: Corporation F is the parent company of over 10 subsidiaries and provides all administrative services for the 10 subsidiaries. Corporation F receives dividend income from its subsidiaries, interest income from other investments, and service fee income from the subsidiaries for the administrative services it performs on their behalf. All costs incurred by the parent are charged to the subsidiaries based solely upon the total assets of each subsidiary. Upon audit, the Director determines that the service fee includes no profit element and that the allocation of the costs of the administrative services bears no relationship to the services provided to each subsidiary. Accordingly, the Director imputes an element of profit, and assigns the charges to each subsidiary by a method reflecting the actual costs incurred in providing the services to each subsidiary.

(e) The following examples are merely illustrative and are in no way intended to limit the scope of the Director's discretion to inquire into transfer pricing or the determination of a fair and reasonable tax:

Example 1: K Corporation, the manufacturer of a proprietary product, sells goods to its distributors and wholesale customers at a 50 percent profit. It also sells goods to related foreign corporations at a 5 percent gross profit for marketing by them overseas.

On a separate entity basis, in an arm's length transaction these sales would yield a 50 percent gross profit and the price which might have been paid or received for the goods includes an amount sufficient to reflect that 50 percent gross profit.

The Director may include additional profits in entire net income sufficient to reflect the arm's length price which might have been paid or received.

Example 2: L Corporation is the parent corporation in a vertically integrated oil company. Its marketing subsidiary is a taxpayer. The marketing corporation reports a significantly lower gross profit than other taxpayers selling the same generic products in volume.

L Corporation has set its transfer prices to its marketing subsidiary at a higher amount than published New York tanker port prices for its product because it deems, in good faith, that its brand name value and economies of scale are more properly attributable to the parent corporation. It also uses this transfer pricing to sell goods to its independent retailers.

The fair price which might have been paid for the goods sold by the marketing subsidiary may be based upon "New York tanker prices" plus the lesser of representative contract carrier costs or the actual costs incurred for delivery.

The Director may increase entire net income reported by the marketing subsidiary to reflect this comparative uncontrolled pricing.

[(b) The Director may require any person or corporation to submit whatever information under oath or affirmation, or to permit whatever examination of its books, papers and documents, as may be necessary to enable him to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not the person or corporation is subject to the tax imposed by the Act.]

[(e)]**(f)** Whenever the Director deems it necessary, in order properly to reflect entire net income or entire net worth of the taxpayer, he **or she** may determine the year or period in which an item of income, deduction, asset or liability shall be included, without regard to the method of accounting used by the taxpayer.

(g) The Director may require any person or corporation to submit whatever information under oath or affirmation, or to permit whatever examination of its books, papers and documents, as may be necessary to enable him or her to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not the person or corporation is subject to the tax imposed by the Act.

18:7-14.17 Tax Clearance Certificate

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

(g) [Provided, however, the] **The** Director may require as a condition of issuing any Tax Clearance Certificate evidence by affidavit, or by any means that seems to him **or her** appropriate, that any foreign corporation which is not an authorized foreign corporation and which is a party to the transaction causing any corporation to seek a Tax Clearance Certificate has, itself, paid all taxes [owing by it] **which it owes.**

For example: A foreign corporation which is not subject to the corporation business tax or any property tax in New Jersey may be obligated to withhold personal income taxes or **to** remit sales and use tax. Such taxes must be paid whether or not withheld from employees or charged to customers.

(h) The Director may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

Example: A foreign corporation sold a piece of property located in this State at a substantial gain that it has elected to report on the installment method of accounting for Federal income tax purposes. Before it has recognized all of the gain on this sale, it withdraws from the State and cancels its certificate of authority to do business.

(i) In order properly to reflect the entire net income of the taxpayer, the Director may include all the unrecognized gain on the taxpayer's final return, notwithstanding any inconsistency in the timing of income for Federal and State tax purposes.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Along Any U.S. or N.J. Route

Proposed New Rule: N.J.A.C. 16:28A-1A.1

Authorized By: Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:3A-1, 27:3A-2, 27:3A-3 and 39:4-8.

Proposal Number: PRN 1991-268.

Submit comments by June 19, 1991 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule will authorize the Department of Transportation to establish "no stopping or standing" zones along either side of any U.S. or N.J. Route in the State of New Jersey which is undergoing repair or reconstruction. In addition to main roadway, this will also include all ramps and connections under the jurisdiction of the Commissioner of Transportation. The implementation of such restrictions because of construction activity or roadway repair shall be recommended, as needed, after an engineering analysis by the Department.

In the interest of maintaining the highest degree of safety in construction areas, the Department's Bureau of Traffic Engineering and Safety Programs conducted a feasibility study regarding the establishment of such a rule. The study indicated that the establishment and posting of "no stopping or standing" zones along any U.S. or N.J. Route in the State of New Jersey during a period of construction activity or roadway repair was warranted.

The Department, therefore, proposes new rule N.J.A.C. 16:28-1A.1.

The proposed new rule would authorize the placing of "no stopping or standing" zone signs by the Department of Transportation, or its agents, during a period of construction activity or roadway repair which may affect safety along the highway system, until such time as the condition no longer exists.

The "no stopping or standing" zone signs installed under this procedure shall supersede any existing rules. Previously exisiting signs which are in conflict with the "no stopping or standing" restrictions must be covered or removed temporarily.

Social Impact

The proposed new rule will authorize the Department or its agent to establish "no stopping or standing" zones along any U.S. or N.J. Route in the State of New Jersey during a period of construction activity or roadway repair, as needed, after an engineering analysis and traffic investigation by the Department, to ensure the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected by the Department to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone signs. The costs involved in the installation and procurement of signs vary, based upon the material used, size and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine, as established by N.J.S.A. 39 and the State of New Jersey "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public and those local governmental entities responsible for enforcement of the rules.

Full text of the proposed new rule follows:

16:28A-1A.1 "No stopping or standing" zones on roads under reconstruction or repair

(a) "No stopping or standing" zones may be established along either side of a portion of any U.S. or N.J. Route undergoing reconstruction or repair within the State of New Jersey, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(b) Such restrictions shall be imposed as needed, after the Department conducts an engineering and traffic investigation. Signs prohibiting stopping or standing will be erected by the Department of Transportation or its agent.

(c) The "no stopping or standing" zone signs installed under this procedure shall supersede any existing rules. Previously existing signs which are in conflict with the temporary restrictions shall be covered or removed temporarily by the appropriate authority.

(d) The temporary "no stopping or standing" zones shall cease to be effective when the construction activity has ended and the signs have been removed by the Department or its agent. At that time, the restrictions shall revert to those established prior to the posting of the "no stopping or standing" zone signs authorized by this rule.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Turn Prohibitions Route N.J. 88 in Ocean County

Proposed Repeal and New Rule: N.J.A.C. 16:31-1.6

Authorized By: Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27-1A-6, 39:4-123 and 39:4-183.6.

Proposal Number: PRN 1991-270.

Submit oral or written comments by June 19, 1991 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
609-530-2041

The agency proposal follows:

Summary

The proposed new rule will add two "no left turn" provisions along Route N.J. 88 in Point Pleasant Borough, Ocean County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The proposal also revises the rule text to designate the municipality more clearly. The Department's Bureau of Traffic Engineering and Safety Programs, as part of a review of current conditions, conducted a traffic investigation. The investigation proved that the establishment of no left turn regulations along Route N.J. 88 in Point Pleasant Borough, Ocean County, was warranted.

The Department therefore proposes to repeal the present text as it appears in the New Jersey Administrative Code at N.J.A.C. 16:31-1.6 based upon the traffic investigation.

The Department has recodified the rule to provide clarity by depicting restrictions within the municipality in Ocean County. The new additions to the rule are turn prohibitions from eastbound on Route N.J. 88 to northbound on Benedict Street and Oakland Street.

Social Impact

The proposed new rule will establish two additional left turn prohibitions eastbound on Route N.J. 88 to northbound on Benedict Street and Oakland Street in Point Pleasant Borough, Ocean County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine as prescribed by N.J.S.A. 39, and the New Jersey "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public and the government entities responsible for the enforcement of the rule.

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

16:31-1.6 Route 88

[(a) Turning movements of traffic on the certain parts of State Highway Route 88 described below are regulated as follows:

1. No left turns east on Route 88 to north into westerly driveway of the Laurel Square Plaza, Brick Township.

2. No left turns east on Route 88 to north on Bradford Drive, Point Pleasant Borough.]

(a) Turning movements of traffic on the certain parts of State highway Route N.J. 88 described in this subsection are regulated as follows:

1. In Ocean County:

i. Brick Township:

(1) No left turns from east on Route 88 to north into the westerly driveway of the Laurel Square Plaza.

ii. Point Pleasant Borough:

(1) No left turns from east on Route N.J. 88 to north on Bradford Drive.

(2) No left turns from east on Route N.J. 88 to north on Benedict Street.

(3) No left turns from east on Route N.J. 88 to north on Oakland Street.

(a)

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

Reproposed Repeal: N.J.A.C. 16:41-2

Reproposed New Rules: N.J.A.C. 16:47

Authorized By: Thomas M. Downs, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and the State Highway Access Management Act, P.L. 1989, c.32.

Proposal Number: PRN 1991-277.

The Department will schedule two **public hearings** on the reproposed rules as follows:

July 17, 1991, from 3:00 P.M. to 8:00 P.M.
New Brunswick Public Library
Livingston Street
New Brunswick, New Jersey

July 18, 1991, from 3:00 P.M. to 8:00 P.M.
Cherry Hill Municipal Building
820 Mercer Street
Cherry Hill, New Jersey

Three additional hearings will be scheduled, with appropriate notice in the New Jersey Register and the press. The purpose of the hearings is to provide the public an opportunity to comment and submit suggestions for the record for consideration prior to the adoption of the proposal. The hearings will be conducted in cooperation with the State Legislature.

Persons interested in making a presentation at a hearing are requested to also present a written transcript for inclusion in the record. Presentations will be limited to five minutes and will be tape-recorded.

Please submit written comments by July 19, 1991 to:

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

Summary of Hearing Officer's Recommendations and Agency Responses:

An 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, as follows:

Date	Time	Place	Speakers
April 9, 1990	3:00-8:00 P.M.	Rutgers University, Camden	1
April 12, 1990	3:00-8:00 P.M.	Jersey City Mun. Bldg., Jersey City	1
April 19, 1990	3:00-8:00 P.M.	Eatontown Mun. Bldg., Eatontown	2
May 10, 1990	9:35 A.M.-12:05 P.M.	Assembly Trans. Committee, Trenton	11
May 14, 1990	2:00-4:55 P.M.	Senate Trans. Committee, Trenton	16

The total number of persons attending the hearings was 22, for the April hearings, and 125, for the May hearings. Tom Johnson, who was the hearing officer at the April hearings, recommended that further comments be gathered. Robert Innocenzi, hearing officer at the May hearings, recommended that further studies be done and that the rules be reproposed. Complete transcripts of the hearings are available from the Department, at 1035 Parkway Avenue, CN 600, Trenton, N.J. 08625.

Summary of Public Comments and Agency Responses:

The Department received over 120 comment letters identifying concerns about the Access Code. The published 537 comments address and respond to the issues and concerns raised at the hearings and in those letters. The Department of Transportation also maintains a file containing the comment letters, which can be viewed at the Department's offices on Parkway Avenue.

The Department has met with the Access Code Advisory Committee, an External Working Group (comprised of some of the commenters on the April 2, 1990 proposal), the Planners Roundtable (comprised of concerned members of the State's planning and environmental communities), and other interested parties. The Department has also met with several counties and conducted presentations before many audiences. The Department has fully considered the comments of the public and has responded as indicated in the following summary of comments and responses. The positive exchange of ideas has fostered a better understanding of access management, helped the Department address the delicate task of balancing public and private rights, and assisted in maintaining consistency with the State Highway Access Management Act.

General

1. COMMENT: The proposed rules should be based on performance criteria, not numeric standards. The proposed Code is over-engineered.

RESPONSE: The April 2, 1990 proposal did contain performance criteria for certain standards, such as the minimum band widths to use in identifying acceptable new signal locations. The numerical standards for unsignalized driveway spacings were established to provide the applicant, as well as the Department, with a straightforward means for determining if the applicant's lot would conform with the spacing requirements, or be nonconforming and subject to maximum vehicular use limits. However, the standards did not preclude the use of engineering judgement in pinpointing the driveway location that would be most suitable for site-specific conditions and circumstances. The reproposed Code does not rely on absolute criteria to determine proposed driveway locations. The reproposed code specifies spacing standards for the purposes of determining conformance, and also provides greater flexibility by allowing engineering judgement for selecting the specific driveway location.

2. COMMENT: The State highway access requirements are unworkable and should be reconsidered when combined with the strict Pinelands Commission rules.

RESPONSE: The Department has modified the waiver provision, N.J.A.C. 16:47-4.35, to address the Pineland Commission rules, indicating that conflicts between the Access Code and Pinelands rules may provide a basis for a waiver.

3. COMMENT: We urge that appropriate input from county and municipal engineers and planners throughout the State be properly evaluated before finalizing the proposed standards as part of the Access Code.

RESPONSE: The Department notified all counties and municipalities of their opportunity to provide comments on the original proposal and will also accept comments on this reproposal.

4. COMMENT: You must take another look at the Act and use common sense in rethinking and rewriting the Access Code.

RESPONSE: The Department, in preparing this reproposal, has reviewed all comments submitted and engaged in dialogue with many of the commenters to understand their concerns. Many aspects of the Code have been revised and rewritten.

5. COMMENT: A more reasonable, moderate and common sense approach to access control needs to be developed.

RESPONSE: Please refer to response number 4.

6. COMMENT: Checks and balances are needed for the Access Code.

RESPONSE: The reproposed rules provide ample opportunity for affected parties to review, challenge and appeal the Department's position on any decision.

7. COMMENT: More reasonable standards than those originally proposed should be developed.

RESPONSE: In response to numerous comments, the Department reassessed all standards and then changed the rules simplifying and clarifying the standards, making them easier to understand.

8. COMMENT: Substantial capital expenditures have been made over the years on the State highway system that have not been for the sole purpose of creating arterial or limited access roads whose primary purpose is to provide for efficient traffic movement.

RESPONSE: The rules are intended to balance the relationship between mobility and access on State highways. N.J.S.A. 27:7-90c states that the Department must manage the State highway system to preserve its functional integrity and public purpose for the present and future generations and N.J.S.A. 27:7-90g further states that the access rights of an owner of property abutting a State highway must be held subordinate to the public's right and interest in a safe and efficient highway.

9. COMMENT: Where there is a relatively stronger market for commercial development, more tax appeals would be expected as a direct result of the Code.

RESPONSE: The Department does not expect any parcels to become undevelopable or valueless; however, some lots may not be developable to as full an extent once the Access Code is adopted. Reassessments may be appropriate in some instances.

10. COMMENT: The State, not the counties or municipalities, should be responsible for improvements to the State highway that are necessitated by regional nonspecific growth.

RESPONSE: It is a shared responsibility of all levels of government to coordinate and cooperate in developing and implementing projects to address the needs of regional non-specific growth.

11. COMMENT: The rules are not user-friendly in their present form.

RESPONSE: The Department has tried to keep these rules as simple as possible, but the details of access management are not simple. The Access Code is a regulatory document. However, the Department intends to publish a user-friendly Access Code guide after the Code is adopted.

12. COMMENT: The intent of the proposed rules is not being challenged. Access management is needed on the State highways.

RESPONSE: The Department received numerous comments in support of the concept of access management and the Act, and is appreciative of the support.

13. COMMENT: The proposed Code is reactive and does not plan for future opportunities for land acquisition.

RESPONSE: The Department believes that the Access Code does plan for the future. The desirable typical sections in Appendix B indicate the Department's long range expectation for each State highway, including its potential right-of-way width. The Department will review access applications, accept land dedications, and consider highway improvements based on the desirable typical sections.

14. COMMENT: Has the Access Code addressed pedestrian and cyclist safety?

RESPONSE: By minimizing the number of driveways along a highway, the number of conflicts with pedestrians and cyclists is minimized. Further, the Bicycle Compatible Roadways handbook is cited in the design standard definition, in N.J.A.C. 16:47-1.1.

15. COMMENT: The Code is based on the assumption that the State highway is always the primary artery for traffic flow in the vicinity. This is not always true, and basing the Code on this assumption undermines the efficient movement of the entire roadway network.

RESPONSE: The Code is not based on the commenter's stated assumption and the access levels that have been assigned to each State highway segment reflect the Department's recognition that some State highways function as local roads. The Department recognizes that an intersecting county or municipal street may have a higher functional classification or capacity than a State highway. This has been addressed as a waiver provision in N.J.A.C. 16:47-4.35(c)8.

16. COMMENT: The proposed Code should spell out the respective roles of the State, county, and municipal Access Codes so that they are mutually supportive.

RESPONSE: N.J.A.C. 16:47-9 has been added to the Access Code to address county and municipal access codes.

17. COMMENT: The proposed Code violates the established principle of land use planning to locate higher density residential uses so they have access to transit and other supportive infrastructures.

RESPONSE: The Access Code does not prevent properly planned high density residential uses near transit or other supportive infrastructures.

18. COMMENT: How do we overcome the volume of traffic that is already existing on the roadway system?

RESPONSE: The Access Code was never intended to solve existing transportation problems. Rather, it is intended to manage future traffic on State highways.

19. COMMENT: The Department should manage the State highway system within the areas where there are excessive driveway openings and mitigate these nuisances.

RESPONSE: When the Department's construction projects disturb driveways, they will be replaced with driveways which conform to the requirements of this Access Code. Problem locations will be remedied as public or private resources become available.

20. COMMENT: Each proposed development should be considered on its merits and its own facts.

RESPONSE: Each proposed development is considered on its own merits. That has been and will continue to be the case. The Access Code acts as a guide to applicants wishing to propose access plans to the Department. It is designed to help an applicant prepare an application. It also provides consistent evaluation standards, so that each application will be treated uniformly. The Access Code allows an applicant to know, before submitting an application, what to expect when the application is submitted to the Department.

21. COMMENT: A proposed shopping center in Hackensack is not the same as a proposed shopping center in Winslow Township.

RESPONSE: The Department recognizes the State's diversity. This reproposed code contains new provisions that distinguish between urban and rural areas with regard to level of service, requirements for mitigation, and permissible vehicular use on nonconforming lots.

22. COMMENT: The rules are extremely technical, making it virtually impossible for a landowner or layperson to interpret the rules and apply them to a specific application.

RESPONSE: The Department has made considerable strides in simplifying the rules in the reproposal. The Department will also publish a guidebook to further explain the rules, once they are adopted.

23. COMMENT: It would be extremely helpful to have a good table of contents and an index.

RESPONSE: The Office of Administrative Law will compile a table of contents for the adopted code, which will be published in the New Jersey Administrative Code. A table of contents is also provided in this reproposal, as a guide. The Department also intends to publish a user-friendly Access Code guide after the Code is adopted.

24. COMMENT: How many nonconforming lots front on Route 1?

RESPONSE: The Department has not performed a detailed analysis of Route 1 to determine the number of potentially nonconforming lots. The Department is aware that the presence of a large number of nonconforming lots is viewed negatively. Thus, the reproposal significantly reduces the number of nonconforming lots.

25. COMMENT: Many of the standards contained in the original proposal are not technically defensible.

RESPONSE: The standards are based on the Act, experience, and traffic, engineering, and planning literature from highly recognized sources throughout the country. All of the standards were thoroughly considered, are reasonable, and can be defended.

26. COMMENT: The Commissioner reserves extensive authority under the Code.

RESPONSE: The rules reflect the Commissioner's statutory authority.

27. COMMENT: The proposed rules appear to duplicate what the New Jersey Turnpike and Garden State Parkway do, as well as other interstate roadways, that is, create arteries for long-range travel.

RESPONSE: The Access Code implements N.J.S.A. 27:7-90, which calls for the State highway system to serve as a network of principal arterial routes where access is subordinate to mobility. The law was enacted as a preventative measure to preserve highway mobility well into the future.

28. COMMENT: There is no true distinction in the proposed Access Code as to size, use and impact of proposed development. They appear to all be looked at in the same manner and be subject to the same rules. Therefore, a proposed new McDonald's or a gas station is looked at in the same manner as a large office industrial park or regional shopping mall.

RESPONSE: This is not true. The requirements for low volume traffic generators are less than those for large and very large traffic generators.

29. COMMENT: We are quite concerned that the theoretical nature of the proposed Access Code will be strictly interpreted by the representatives of the Department in all cases.

RESPONSE: The Department will train staff to be flexible and fair in applying the Code. The Department is proud of the public service record for which it has been commended, and will certainly strive to continue this approach.

30. COMMENT: The proposed Access Code provides inflexible standards, which do not take into account the existing or future roadway conditions and the economic and financial impact on lot owners, developers, municipalities, and other governmental agencies.

RESPONSE: The reproposed Code has more flexibility than the original version. The desirable typical sections in Appendix B contain the Department's plan for the future of its roadways. Economic considerations are reflected in the reproposed provisions for noncomforming lots.

31. COMMENT: The Access Code is a whole new way of doing business with the Department.

RESPONSE: This is true for access management plans, access classifications, and limited access designations, but this is not the case with the permit process. The Department has historically had the authority to control access onto State highways and has been issuing permits for over 20 years. The Department is, in the reproposed Code, redefining the basis upon which permits will be issued.

32. COMMENT: The Access Code is being implemented on an unsuspecting public.

RESPONSE: The Department has done its best to inform the public and the press about the Access Code. Letters were sent to every municipal mayor, engineer, and clerk; every county; and to 200 recent applicants and their engineers. In addition, newspapers throughout the State have reported on the Code. As an added measure, Assistant Commissioner Christine Johnson wrote a guest editorial explaining the Code, which was published in newspapers and trade journals.

33. COMMENT: Regional public hearings have not been conducive to an explanation of the concepts and implementation of the Code.

RESPONSE: The public hearings provided opportunities for the public to comment on the Access Code, as required in N.J.S.A. 27:7-91a. Information centers were conducted concurrent with each hearing. Several staff and consultant members were available to answer questions from the public in a one-on-one format in the information centers.

34. COMMENT: The Access Code may work to the detriment of its intended purpose, if it is not discussed openly with developers and traffic engineers.

RESPONSE: The Department has worked openly with the Advisory Committee appointed by the Governor. The committee included representation from developers and traffic engineers. In addition, the Department has responded openly to all requests for information about the Access Code. The Department also organized and conducted extensive discussions with groups representing development and planning interests.

35. COMMENT: Winslow Township suggests that guidelines be submitted to the township for inclusion in the township's zoning and subdivision ordinances to achieve the most effective highway access standards consistent with local goals and objectives.

RESPONSE: The Access Code or a similar code may be adopted by municipalities and counties for roads under their jurisdiction. When master plans and zonings are updated the provisions of the Access Code should be considered. The Department is also interested in working with all townships to develop access management plans.

36. COMMENT: The rules impose an intolerable burden of paperwork and delay on existing and proposed highway uses along State highways.

RESPONSE: There is no evidence of this. On the contrary, the Code provides the Department and applicants with a streamlined permit process.

37. COMMENT: The Department should prepare an executive summary of the voluminous rules.

RESPONSE: After the Access Code is adopted, the Department will prepare a guidebook for the public's use. A summary of the Access Code was prepared for the original proposal; one accompanies the reproposal, and copies wil be distributed upon request.

Summary

38. COMMENT: The summary of the rules states that efficiency and safety of the highway depends to a large extent upon the amount and character of roadside interference with through traffic and, although owners of land abutting roads have certain rights of access, road users have certain rights to freedom of movement, safety and efficiency. These competing interests are considered in the application process. These statements appear to be in conflict with the definitions of a local road as found in the rules, under definitions, which state that local roads mean access classification for roads whose purpose is to provide direct access to abutting land and roads of higher classifications. Mobility is lower than for other classifications and through movements are discouraged, especially in urban areas.

RESPONSE: There is no conflict. N.J.S.A. 27:7-90g states that the access rights of owners of lots abutting a State highway must be held subordinate to the public's right and interest in a safe and efficient highway. The Code recognizes the different functional classifications of the State's highways and preserves them through its classification of access levels.

39. COMMENT: Most of the highway system in New Jersey was originally designed as local service roads. It appears through these rules that an attempt is being made to convert all State highways to limited access highways. In the present form these rules will create more unsafe conditions, difficulities in enforcement of the rules, and more accidents and congestion on our State highway system than they will correct.

RESPONSE: The Code does not attempt to convert State highways that function as local roads into limited access highways. The Department recognizes that some State highways do function as local roads and has classified those highways as access level 6. They are subject to less restrictive standards. By managing access, the Code reduces the number of conflict points along State highways and thereby reduces accident potential. Fewer access points will promote mobility and will reduce congestion.

40. COMMENT: The Code fails to identify how it will improve mobility.

RESPONSE: The Code will promote mobility by reducing conflict points along the State highways and by increasing connections between lots.

41. COMMENT: The proposal does not quantify any costs or benefits.

RESPONSE: The Code does not quantify costs and benefits because each lot along the State highway will be affected differently by the Code, and because the Code's objectives of mobility and efficiency are qualitative in nature.

42. COMMENT: A suggested paragraph to be added after the third paragraph in the summary: The Department recognizes that more limited access to highways shall affect economic development within the State. The Department's goal is to foster both economic development and highway safety and efficiency. To that end, the Department shall apply these rules in a flexible manner which permits the development of nonconforming lots and those with limited frontage in a manner consistent with local zoning so long as the lot owner provides an alternative design or traffic plan that is consistent with the goals of these rules and the State Highway Access Management Plan.

RESPONSE: This suggested paragraph is not consistent with either the Act or Departmental objectives. Although the Code was developed with the economic interests of the State in mind, fostering economic development is not its prime purpose. N.J.S.A. 27:7-93 authorizes the Department to limit vehicular use on nonconforming lots. The Code contains uniform standards by which to do this. Applying them in a flexible manner would lengthen the permit process and reduce consistency.

Social Impact

43. COMMENT: The Access Code will disrupt the link between business and social uses in established neighborhoods.

RESPONSE: The Access Code will not disrupt the link between business and social uses because access will generally not be changed for existing developments.

44. COMMENT: The Access Code encourages sprawl as opposed to the intended purpose of concentrating development in already urbanized areas. Higher density and mixed uses in urban centers will not be able to comply with Access Code standards.

RESPONSE: This reproposed Code places greater restrictions in rural areas than in urban areas. Basing spacing standards on posted speed limits favors access in urban areas, where speed limits are generally lower. The most restrictive access level applies to rural high speed arterials. This is intended to reduce sprawl. Furthermore, the nonconforming lot provisions are more restrictive in rural areas.

45. COMMENT: It is unrealistic to encourage residential development along highways when secondary roadways do not exist, or are restricted for non-residential development.

RESPONSE: The Department is not encouraging any specific type of use, but for some small lots the only practical use is one which generates few trips. Consolidation of lots, or shared access, are other desirable alternatives to consider for small lots.

46. COMMENT: The Code as written is inconsistent with the State Development and Redevelopment Guide Plan.

RESPONSE: As of this time the State Development and Redevelopment Plan has not been adopted. The Access Code will be modified, as required, to conform to the State Development and Redevelopment Plan when it is adopted. This is addressed in a new provision in N.J.A.C. 16:47-8.4.

47. COMMENT: Implementation of the Code will have the greatest effect on small vacant lots along predominantly built up highways.

RESPONSE: The Code provides for the regulation of access from all lots along State highways. Small lots which generate a small amount of traffic will be affected minimally.

48. COMMENT: The rules as proposed have the foreseen potential to shift development and access away from State highways onto local, minor or residential neighborhood roadways at municipal and county levels. Less intense traffic producing residential uses may then appear on State highways. This is backwards compared to traditional land use transportation planning, actual theory, and practice.

RESPONSE: The Department does not view the reproposed rules as fostering this scenario. The Department anticipates combined or shared access and land assemblage along State highways to be a positive force in protecting the functional integrity and public purpose of the State highway system. In addition, there may be some developments which are denied access to a State highway because the highway cannot safely and efficiently handle the associated traffic. Such developments should not be approved with access to local roads if the local governing body finds that the local roads are also unable to safely and efficiently handle the traffic.

49. COMMENT: The Code places restraints on municipalities by shifting funding responsibilities as a result of additional traffic placed on municipal facilities and by proposing onerous checklists and fee structures involving extraordinary engineering costs, including traffic studies.

RESPONSE: The Access Code requires developers to be responsible for their share of the improvements to the State highway system which are needed to handle traffic created by their developments. The Department expects municipalities to assign responsibility similarly. Existing rules under N.J.A.C. 16:41 already require municipalities to obtain street intersection and government driveway permits and to pay associated fees. The checklists provided for in the Access Code only require the information the Department needs to evaluate an application.

50. COMMENT: The Code does not appear to have been coordinated with other aspects of the transportation environment, including the Municipal Land Use Law and the State Development and Redevelopment Plan.

RESPONSE: The Department has reflected land use considerations in this reproposed Code after extensive discussions with the League of Municipalities and the Office of State Planning. Additionally, N.J.A.C. 16:47-8.4 requires revising the Code whenever the State Development and Redevelopment Plan is adopted or revised.

51. COMMENT: The Code will remove the decision making from the elected local, county and State officials and place it in the hands of people who may or may not be responsive to the general public's needs and desires.

RESPONSE: The Act is a legislative reflection of public needs and desires. The Code mirrors these public concerns. Decisions will still need to be made, but they will be made within the context of these rules.

52. COMMENT: The proposed rules would work effectively in rural or largely undeveloped areas. It is questionable as to whether the Access Code can effectively work in areas where development is already intense.

RESPONSE: The purpose of the Access Code is to promote mobility on the State highway system through regulated access. The Access Code is not designed to solve existing congestion problems. The Code will be most effective in managing new development and redevelopment as opposed to addressing nuisances created by existing development. The reproposed Code distinguishes between urban and rural areas. This will enable the Code to be workable in all areas and achieve its purpose.

53. COMMENT: The local planning boards and zoning boards of adjustment of each municipality should be informed of how their work will change with the adoption of the rules.

RESPONSE: Letters were sent to the mayor, clerk and engineer of each municipality announcing the first three public hearings. For the fourth and fifth hearings, the letters sent to the mayor included the sentence that the municipal planning board, zoning boards of adjustments, and engineer may have particular interest in these rules. Once the Access Code is adopted, the Department will send each municipality a letter with a summary of issues of which they should be aware. The Department does not believe that local work will change significantly, but some of the standards will be different.

54. COMMENT: The Department must educate developers and municipal officials.

RESPONSE: The Department agrees with the need for education and will continue to make presentations at seminars, such as those hosted by National Association of Industrial and Office Parks, and the League of Municipalities. Training of Department staff and publishing an access guidebook are also planned and, as always, staff members will be available to answer questions and provide assistance.

55. COMMENT: Are municipalities going to be confronted with trying to reassess lots along State highways because of claims that parcels have become undevelopable and valueless?

RESPONSE: Please refer to response number 9.

56. COMMENT: The policy of forcing development into "conforming lots" that are located off of the State highway system, while placing additional burden on the counties and towns involved, will also force development to become more scattered. This will result in people having to travel further to obtain goods, services, and employment. The greater distances travelled will increase energy consumption, air pollution, and congestion over a larger portion of the highway network.

RESPONSE: The Access Code does not force development to occur in any particular area of the State, but rather promotes mobility on the State highway system through regulated access. By regulating access, the Department will not deny any lot owner reasonable access to the general system of streets and highways in the State. The Department has no evidence that supports the claim that regulating access will result in scattered development and increased travel distances. In addition, the reproposed Code contains several new provisions that will significantly increase the number of conforming lots along the State highway, and promote interconnected lots, which reduce travel distance.

Economic Impact

57. COMMENT: The economic effect of the Code on the State, region and local economy was not addressed.

RESPONSE: Unmanaged access will cause economically crippling congestion. This is the economic premise underlying the Code.

58. COMMENT: The fast food industry would no longer be able to justify new stand alone units as they would not be able to fairly compete with existing units.

RESPONSE: This is an overly broad generalization. The Access Code does not limit traffic on conforming lots. This reproposed Code contains provisions that increase the number of conforming lots and the maximum vehicular use limitations on nonconforming lots.

59. COMMENT: The proposed change in access rights will adversely impact the fast food industry and other businesses relying on convenience to customers.

RESPONSE: The Access Code does not discriminate against any specific use of a lot. All lots along State highways are subject to the same set of standards. The reproposed Code does contain changes in the alternative access requirements, spacing standards, and vehicular use limitations that were developed after discussion with representatives of the fast food industry.

60. COMMENT: The proposed change in access rights will also hurt the construction industry.

RESPONSE: The Access Code will not have an adverse effect on the construction industry, because the Code does not preclude development on any lot.

61. COMMENT: We believe that the municipalities that are in desperate need of development to increase their tax base will also suffer from the drop in construction permits.

RESPONSE: Please refer to response number 60. The Department has not been convinced that a such drop in construction permits will be caused by the Access Code. The Department's decision to approve or reject an access application is based on the satisfactory compliance with the Department's access standards. These standards do not consider the municipal tax base. In any event, the need to increase the tax base cannot responsibly be satisfied by allowing excessive driveway openings, excessive traffic congestion, excessive accident rates, and undesirably low travel speeds.

62. COMMENT: The economic impact section of these proposed rules only addressed the impact of fees and regulatory review and not any other impact such as the negative effect on small businesses and the local community as a whole.

RESPONSE: Since every lot may be affected differently, the Department cannot quantify overall impacts. Some lots may become less valuable while others will appreciate. Access will continue to be one of many variables that determines the value of a lot. The economic impact of the Access Code should not only be viewed in terms of real estate development. It should also be viewed in light of the State's general economic development and welfare, which is affected by the mobility of its goods, people, and freight and by highway construction costs, environmental costs and the cost of congestion.

63. COMMENT: The Access Code will cause the loss of Federal and State tax revenue.

RESPONSE: The State and the Federal government will not lose taxes. However, they may fail to gain future taxes they have anticipated.

64. COMMENT: The impact on small businesses could and will be devastating, while the impact on large developers could be minimal.

RESPONSE: The Department has been sensitive to the concerns of small businesses. Technical documentation for minor applications has been minimized. This reproposed Code allows minor development on almost every lot.

65. COMMENT: The Access Code will have a negative impact on uses located on State highways, and will also be detrimental to businesses and consumers.

RESPONSE: The new rules focus on future access. Uses operating under existing permits will see little change as a result of the Access Code. Reasonable controls on State highway access enhance economic opportunities for the businesses and consumers of the State.

66. COMMENT: The Code discriminates against small businesses and retail uses that are largely dependent on direct access to the State highway.

RESPONSE: This reproposed Code favors small businesses because it allows minor development and direct access on almost every lot. According to N.J.S.A. 27:7-90e, however, having State highway frontage does not necessarily entitle the lot to direct State highway access.

67. COMMENT: Based on the probable long term decline in the value of real estate along State highways in Dunellen, East Hanover, and Somerdale, anywhere from a $50.00 to $150.00 annual increase in the typical residential property tax bill can be anticipated.

RESPONSE: The data supplied to support this argument was based on several faulty assumptions, including the notion that every lot denied access or limited in maximum vehicular use automatically declines significantly in value. The Department has seen no evidence to support this claim. Property values may, in fact, benefit from less congestion.

68. COMMENT: Potential future losses in construction, employment, earnings, sales, income tax revenues, and other economic activity on a Statewide basis may be devastating.

RESPONSE: Factors other than the Access Code have as much, if not more, bearing on the future economic condition of the State. The State cannot afford the devastating economic consequences of congestion nor the cost of continually expanding highway capacity.

69. COMMENT: The Code fails to analyze the effects on future land use and development. The overall economic and fiscal impacts could be severe and should be carefully examined and weighed against all anticipated benefits.

RESPONSE: The benefits of the Code will outweigh its disadvantages. Congestion on New Jersey highways is viewed as one of the major reasons people and businesses seek to relocate. A reduction in congestion on State highways and an increase in roadway capacity will have beneficial affects on future land use development decisions.

70. COMMENT: How does the Department visualize the economic impact of the Code in regards to the application fees and permit fees?

RESPONSE: The Department foresees no significant economic impact from the fees in the Code. The increase in the application fees and permit fees was proposed in the New Jersey Register on October 2, 1989, and adopted effective December 4, 1989. The increases were adopted to cover the Department's costs for handling access permits. The renewal fees were increased in the proposed Code, but due to public comment, the reproposed Code will have a smaller increase in the renewal fee for most permits. The application and permit fees have not changed since the December 4, 1989 adoption. If a permittee constructs and operates his development under the conditions of the permit, there is no fee increase as a result of the Access Code.

71. COMMENT: How does the Department visualize the economic impact of the Code on the land areas that are going to be affected by this Code?

RESPONSE: The provisions of the Code will most likely affect each lot in a different manner. Some lots may be unaffected economically, while others will be affected by the maximum vehicular use limitations. Still others may not be affected until an expansion or change in use is planned. Even a very labor intensive, costly, and time-consuming study and assessment of the total economic impact of the Code would be only speculative.

72. COMMENT: If the Access Code is adopted as proposed, it is a guarantee that there will be severely limited, if any, future commercial growth in municipalities like Winslow Township. The middle class home owner will, as a result, be asked to foot the bill with higher taxes for infrastructure improvements.

RESPONSE: Please see the responses to comment numbers 2 and 74.

73. COMMENT: The impact of these rules will be a drastic reduction in the value of property in New Jersey, especially along the State highways.

RESPONSE: Even if access on State highways is limited, no other roads provide comparable exposure to high traffic volumes. Therefore, the value of lots along State highways will remain higher than those in other locations.

74. 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: Municipalities and counties will not lose revenue. Although they may not gain the future revenue they have anticipated, they will also not be subjected to excessive congestion and similar public nuisances.

75. 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: The reproposed Code contains a new trip limit formula which allows greater traffic generating uses. Regardless of the zoning, the Department will not approve access to lots which generate more traffic than the highway can handle.

76. COMMENT: The proposals are seen as having a potential financial effect on the rehabilitation of existing sites.

RESPONSE: The Access Code allows any rehabilitation which does not make changes within State highway right-of-way. Expansions or change of use are not rehabilitations.

77. COMMENT: The benefits of the proposed Code must be weighed against the detrimental effects on existing urban and suburban uses. The economic impact should not be limited to the superficial analyses of fees.

RESPONSE: The economic impact has been expanded in the reproposed Code to address more than fees.

78. COMMENT: The economic impact analysis of the Code is deficient and violates the spirit and intent of the Administrative Procedures Act. Pursuant to the Administrative Procedures Act (N.J.S.A. 52:14B-4), the economic impact must be described in detail and analyzed. At present, there is inadequate information presented by the Department with regard to the economic effect on individual lot owners.

RESPONSE: Please refer to response numbers 71 and 77.

79. COMMENT: It is urged that the Department reconsider the rules so that economic viability, orderly growth, and a better balance between home rule and State control can result.

RESPONSE: This reproposed Code contains the results of the Department's reconsideration of the Access Code. It was based on over 500 comments received during the comment period plus many meetings with planners, engineers, developers, local officials, and Department staff.

80. COMMENT: The Department's interference in our access has caused us to lose a great deal of money already. Enough is enough!

RESPONSE: The Department acknowledges that implementation of its access rules may lessen the financial yield of a particular lot. However, N.J.S.A. 27:7-90c and d assert that the State has a public trust responsibility to manage and maintain effectively each highway within the State highway system to preserve its functional integrity and public purpose for present and future generations. Land development activities and unrestricted access to State highways can impair the purpose of the State highway system and damage the public investment in the system. These rules are, thus, designed to protect the general health, safety and welfare of the public.

81. COMMENT: The proposed rules will pose an unnecessary burden and create an adverse impact upon the development potential of existing lots fronting on Route 9 in Lacey Township.

RESPONSE: The Access Code will only limit the vehicular use of nonconforming lots. Any existing development on a nonconforming lot will be unaffected unless the owner expands the development or changes the use of the development and also causes a significant increase in traffic. A nonconforming lot may be combined with another lot or share access with a neighboring conforming lot and have no vehicular use limits.

82. COMMENT: If access is going to be denied existing lot owners, then they should be compensated for the loss of the utilization or value of their lot.

RESPONSE: Denial of direct access to the State highway will not, in most circumstances, result in the loss of the use of any lot. The Access Code does not preclude any lot owner from using his lot. As long as reasonable access to the general system of streets and highway exists, no compensation is due.

N.J.A.C. 16:47-1.1

83. COMMENT: Words are missing from the access level definition. What is the value being measured, the spacing or number of turning movements?

RESPONSE: The phrase applies to permissible turning movements and does not measure the spacing or number of turning movements.

84. COMMENT: The definition of access management plan should be expanded to include the county along with the Department and the municipality in developing the plan.

RESPONSE: The access management plan definition has been rewritten to include the county where a county road intersects the State highway segment. This change mirrors the language in N.J.S.A. 27:7-91f.

85. COMMENT: It appears that the words driveway and street are treated the same in the definition of access point.

RESPONSE: The term applies to both streets and driveways.

86. COMMENT: The definition of alternative access is inadequate.

RESPONSE: The Department is retaining the definition as originally proposed. N.J.A.C. 16:47-3.2 contains detailed rules on alternative access that supplement the definition.

87. COMMENT: The portion of the definition of applicant time that read reset to the beginning of that step of that unit's review time is objectionable and should be changed because a request for information from the applicant stops the clock and causes delay along with resetting the time frame back to the beginning of the review period. We suggest that the reset provision be withdrawn.

RESPONSE: The Department is retaining the reset provision. The Department should not be responsible for delays resulting from the applicant's failure to provide necessary information.

88. COMMENT: The definition of applicant time does not restrict the time which the Department staff may have to request additional information. The staff should be required to advise an applicant within five business days of receipt of an application, within a Department unit, whether any additional information is needed. Additionally, staff should be limited to two requests for additional information. This time frame will keep the process moving.

RESPONSE: Time frames are included in N.J.A.C. 16:47-4.8, 4.9, 4.11 and 4.13. The Department provides its units 10 days to determine if they have received acceptable information. Staff are expected to request additional information once, unless the additional information causes a need for still more information.

89. COMMENT: For average vehicle ridership (AVR)—the PM trips from work should be considered in calculating AVR. Also, is there an accepted standard?

RESPONSE: This definition has been deleted from the reproposed Code because it is not used in the Code.

90. COMMENT: The term cell is not defined.

RESPONSE: In a matrix, such as that in Appendix A, the cell is the intersection of a row and a column. The cell number is simply a numeric label assigned to every such intersection in the matrix.

91. COMMENT: For defining change of lot use, the function needs to be more clearly defined. Does it refer to a change from one use class to another or a change from one type of commercial use to another?

RESPONSE: Any alteration of the functions performed on a lot constitutes a change of lot use.

92. COMMENT: The term "combined residence/business" is not clearly defined.

RESPONSE: A clearer definition has been added to this reproposal.

93. COMMENT: The term "conforming lot" also refers to a lot conforming to land use zoning rules. A different or more specific term should be used here.

RESPONSE: The term "conforming lot" is derived from the Act and has, therefore, been retained in the reproposed Access Code.

94. COMMENT: Daily movements should be called daily traffic movements.

RESPONSE: This recommendation has been incorporated in this reproposed Code.

95. COMMENT: For deficiency meeting, add "which has been deficient after application."

RESPONSE: The definition has been revised as suggested.

96. COMMENT: The applicant, as well as the Department, should be allowed to request a deficiency meeting. The meeting should be renamed "application meeting."

RESPONSE: Only the Department may request a deficiency meeting, but the applicant may request an application conference, which is a meeting held between the applicant and Department representatives during the review process.

97. COMMENT: The desirable typical section definition should include a reference to a published planning document or filed map that the applicant may refer to.

RESPONSE: The revised definition indicates that the desirable typical sections are set forth in Appendix B.

98. COMMENT: More clarity is needed to differentiate between the distance between driveways and that for driveway spacing, as they seem to be defining the same thing.

RESPONSE: The driveway spacing is only used to determine conforming and nonconforming lots. The distance between driveways is the measurement from one driveway to an adjacent driveway. This has been clarified in the reproposed Code.

99. COMMENT: The term "expansion of property use" does not clearly define what is meant by volume of improvements. Also, the terms "expansion of property use" and "expansion of an existing development" appear to be the same. Revisions are necessary to distinguish them.

RESPONSE: The definition of expansion of lot use has been modified in the reproposed Code to encompass any increase in the floor area or function performed on a lot. The reference to improvements has been removed. The Department believes that this clarification addresses the commenter's concerns.

100. COMMENT: The definition of expiration should be limited to the formal termination of a permit. The rest of the definition is rule and should be deleted.

RESPONSE: This reproposed Code incorporates this suggestion.

101. COMMENT: The use of 100 movements in the peak travel hour needs to be further defined in the definition of expiration.

RESPONSE: The definition of expiration is now limited to the formal termination of a permit. The Department believes that this clarification addresses the commenter's concerns. Rules concerning expiration are found in N.J.A.C. 16:47-4.6(d)2 and 4.3(k).

102. COMMENT: The term "expiration" encompasses the circumstances which formally terminate an existing permit. The rule should be amended to reflect that expiration shall only occur when there is a substantial and/or continual violation of the permit, and after warning has been duly issued.

RESPONSE: The regulatory provisions concerning permit expiration have been removed. N.J.A.C. 16:47-4.3(l) states that failure to remedy a violation within 30 days after notification by the Department to do so will cause expiration of the permit.

103. COMMENT: Fair share should be redefined to mean the percentage of peak hour traffic growth attributable to the development, measuring present day conditions against anticipated capacity of the improvement.

RESPONSE: This reproposed Code modifies the fair share definition. It is based on the difference between the existing capacity and the capacity of the improvement, as well as the peak hour traffic attributable to the development. Please see N.J.A.C. 16:47-4.34.

104. COMMENT: The definition of fair share financial contribution seems to match the term "impact associated costs," as defined in the preliminary State Development and Redevelopment Plan. Add "a financial contribution equivalent to the cost of making required improvements resulting from the development" or similar phrase at the beginning of the definition. Also, clarify what improvement refers to—parcel development or roadway improvement? At what stage should this contribution be made? or does that vary on a case-by-case basis?

RESPONSE: The reproposed Code modifies the original definition to clarify that a fair share contribution is a cost. "Improvement" is defined in N.J.A.C. 16:47-1.1. The staging of the contribution will be addressed as a condition of the permit on a case-by-case basis.

105. COMMENT: The level of service definition is a clearer definition than the one in the preliminary State plan.

RESPONSE: This definition is only intended for use in the Access Code.

106. COMMENT: The term "lot" is referring to something different than the same term as defined in the State Plan. Does the term change with each rule? Perhaps a different title would be less confusing.

RESPONSE: The definition of this term has been revised to reflect its meaning in the Access Code. The definitions included in N.J.A.C. 16:47 are provided specifically for use with the Access Code.

107. COMMENT: For the low speed urban definition, insert "access" before "classifications."

RESPONSE: Access already precedes classifications. Please refer to the proposed text.

108. COMMENT: Broaden the definition of maintenance to include structures such as bridges, etc.

RESPONSE: This definition has been revised as suggested.

109. COMMENT: For the major generator definition, insert "traffic" to read "major traffic generator."

RESPONSE: This definition has been revised as suggested.

110. COMMENT: The definition of maximum vehicular use limits should be the highest number of vehicles per hour allowed to access a driveway. For conforming lots, this limit would be set at the capacity of the driveway. For nonconforming lots, this number would be a ratio of the available spacing to the required spacing, multiplied by the capacity of a driveway at that location. Capacity is based on the future design section and future anticipated volumes of the roadway.

RESPONSE: The Department has retained the definition as originally proposed, but has changed both the way nonconforming lots are determined and the formula for the limits. Please refer to N.J.A.C. 16:47-3.5.

111. COMMENT: Are there any maximum vehicular use limits on conforming lots?

RESPONSE: There are no vehicular limits, but approval of access on conforming lots is limited by the level of service of the highway and the ability of the driveway to safely and efficiently handle the traffic.

112. COMMENT: The definition for median width contains the term "swath," which is not commonly used and is confusing.

RESPONSE: This definition has been deleted.

113. COMMENT: The nonconforming driveway definition is confusing. Is this the only thing that makes a lot not conform? What about the distance from another lot, other driveways, etc.?

RESPONSE: This definition has been deleted in the reproposed Code because it is not used in the Code.

114. COMMENT: The term "offset" is also used differently in traffic signal control and timing. Perhaps retitling "offset" to "driveway offset" would be clearer.

RESPONSE: The offset definition has been deleted and a definition for access point offset has been added.

115. COMMENT: If the Department uses rates for service stations other than the Institute of Transportation Engineers' rates, the language in the following sections will have to be changed to reflect the standards being applied: N.J.A.C. 16:47-1.1, "previously anticipated daily movements;" 3.5(d) and (d)2; 4.3(i)1; and 4.30(a)3i.

RESPONSE: The Department has included standards for service stations, based on data submitted by the oil industry.

116. COMMENT: The definition of "reasonable access" is very vague and open to much interpretation by the engineer. A clearer specification of what "sufficient design" and "convenient," "direct," and "well-marked" means must be incorporated into the Access Code.

RESPONSE: N.J.A.C. 16:47-3.2 and 4.3(n) have been substantially modified. The Department has not included measurable criteria for sufficient design and convenient, well-marked areas and invites suggested criteria.

117. COMMENT: "Redevelopment" should be defined to exclude mandatory upgrades required by the Department of Environmental Protection or the Environmental Protection Agency.

RESPONSE: "Redevelopment" is not a term that is used in the rules and is, therefore, not included in the definitions.

118. COMMENT: Revise the revocation definition to clarify that an access permit is not terminated until the alternative access improvement is completed and usable.

RESPONSE: The definition has been modified in response to this suggestion.

119. COMMENT: The definition of right-of-way should be revised to add "as a public travelled way" at the end.

RESPONSE: The definition has not been modified as suggested because the New Jersey Department of Transportation Design Manual-Roadway defines "travelled way" as the portion of the roadway provided for the movement of vehicles, exclusive of shoulders and auxiliary lanes. Right-of-way encompasses more than travelled way.

120. COMMENT: The rural definition needs more specificity on what population densities or intensity of land use development, in terms of units/acre or square feet, constitute rural environment.

RESPONSE: The definition of rural has been changed to indicate that it is based on United States Census Bureau data and standards.

121. COMMENT: The definition of satellite office should be expanded to include other purposes.

RESPONSE: The definition has been modified to be more inclusive.

122. COMMENT: Service stations should be defined as any use of property accounting for at least 75 percent of the average daily trips for the sale of gasoline and petroleum products and other services for motor vehicles.

RESPONSE: A definition has been added similar to the one suggested.

123. COMMENT: Consider adding a definition of shared parking which may be roughly defined as parking serving two or more parcels resulting from a shared driveway or shared access.

RESPONSE: This term has not been added because it is not used in the Code.

124. COMMENT: The definition of significant increase in traffic is in conflict with the clear language of the State Highway Management Act and with the legislative intent and should be changed. The definition for significant increase in traffic should be defined as the greater of 100 movements in the peak hour, or 10 percent of the previously anticipated daily movements. The definition of significant increases mixes 100 peak hour movements or 10 percent increase in daily vehicle movements. For consistency, why not make it 10 percent increase in peak hour site movements? N.J.A.C. 16:47-3.5(g) and 4.3(k) require wording changes to reflect the revised definition.

RESPONSE: This definition has been modified to reflect "the greater of" in the reproposed Code. Related sections have also been modified to be consistent with N.J.S.A. 27:7-95a and N.J.S.A. 27:7-92d.

125. COMMENT: This definition of street is unfamiliar. Is this a Department standard? Also, the definition varies from the one in the Municipal Land Use Law, (MLUL), especially items 1 and 3. Lack of consistency with MLUL could be troublesome for undeveloped parcels.

RESPONSE: This definition of street is taken from N.J.S.A. 27:7-1. It can only be redefined by new legislation.

126. COMMENT: How is the term "subject highway segment" supposed to differ from "segment"? Revise definition to clarify.

RESPONSE: The definition specifies that the term "subject highway segment" is used exclusively for that portion of the State highway that is included in an Access Management Plan.

127. COMMENT: The definitions do not include travel demand management plans.

RESPONSE: The reproposed Code defines travel demand management plans as a system of actions and time tables whose purpose is to alleviate traffic problems through improved management of vehicle trip demand. The actions are structured to either reduce the use of single occupancy vehicles or to encourage travel during less congested time periods.

128. COMMENT: The definition for urban needs to be more specific.

RESPONSE: Please refer to response number 120. The standards also address urban areas.

129. COMMENT: The definition for van pools should be expanded to include smaller van pools, five to 15 passengers, which will still satisfy the State's goal of promoting van pools rather than single occupancy vehicles.

RESPONSE: The Access Code definition is based on the Ride Sharing Act of 1981 (N.J.S.A. 27:26-3). The definition should be eight to 15 passengers. The Access Code also provides for other forms of ridesharing, including carpools and buspools.

N.J.A.C. 16:47-3.1

130. COMMENT: Add text stating that the prime purpose of a frontage road parallel to the State highway system is to provide access, and that all frontage roads shall be classed as access level 4.

RESPONSE: The Department agrees with this comment and has revised N.J.A.C. 16:47-3.1. Access level 6 will apply to frontage roads.

131. COMMENT: The new system of access management must recognize the role of State highways as both traffic arteries for the movement of people and goods and as access points to lots serving commercial, residential, and industrial purposes.

RESPONSE: The Access Code does recognize this role and accounts for various types of highway use by establishing access levels for every State highway segment. There are six access levels that apply to the State highway system. These range from access level 1, where no access is permitted, to access level 6, where access is only limited by edge and corner clearance and other safety considerations. Thus, the access level assignments are clearly based on the functional classification of the highway, with the most restrictive access levels assigned to freeways and principal arterials, and the least restrictive access levels assigned to those State highways which function as local roads.

132. COMMENT: Do the warrant criteria pertain to any warrant in the Manual on Uniform Traffic Control Devices, or does the Department require fulfillment of either the one, four, or eight-hour warrants, or any combination of these?

RESPONSE: The Department prefers that the eight-hour warrant be met, but may accept a four-hour warrant. The traffic engineering criteria set forth in the Access Code and the Manual on Uniform Traffic Control Devices provide specific information on which traffic signals may be approved.

133. COMMENT: The design requirements for the various access levels are based on the assumption that making capital improvements will improve traffic flow, when in fact those improvements attract greater levels of traffic.

RESPONSE: The design requirements are not based on such an assumption. They are based on the need to enable traffic to safely leave and return to the highway. The level of service and fair share requirements of the Code are intended to ensure that development traffic does not unduly degrade mobility on the highway.

N.J.A.C. 16:47-3.1(a)5

134. COMMENT: Clarification is needed for access levels 4 and 5. The left-turn access via a left-turn lane for access level 4 will only be permitted when it can be demonstrated that a signal will be needed and installed 10 years hence.

RESPONSE: The distinction between access levels 4 and 5 is not the potential for signalization, but whether a left-turn lane is required for left-turn access from the State highway. On highways classified as access level 4, access from the State highway is only permitted where a left-turn lane can be provided. The design standards for left-turn lanes must be met. For access level 5, a left-turn lane is not required unless traffic volumes indicate otherwise. The reproposed Code eliminates the need to project whether a signal will be needed within 10 years after the final improvement.

135. COMMENT: Do access levels 4 and 5 deny left-turn access both in and out if the signal need cannot be demonstrated, or is only the outbound movement denied?

RESPONSE: Access levels 4 and 5 both allow for left-turn egress movements onto the State highway, unless safety considerations indicate otherwise.

N.J.A.C. 16:47-3.2

136. COMMENT: All highways where access rights have not been purchased provide for access to abutting lots.

RESPONSE: N.J.S.A. 27:7-90e says that every lot owner which abuts a public road has a right of reasonable access to the general system of streets and highways in the State, but not a particular means of access. Thus, having frontage on a highway does not in and of itself entitle the lot owner to access to the highway, if reasonable access to another street exists.

137. COMMENT: The onus should be on the Department to demonstrate that access would be better served by an alternative location.

RESPONSE: An applicant must provide the Department with sufficient support for requested access in an application. One purpose of the

Access Code is to help applicants to anticipate the Department's reaction to a proposal. It is in the lot owner's interest to propose an access plan to the Department that the Department will approve. It is inefficient and wasteful for both the public and private sectors when an applicant proposes plans that are not acceptable to the Department. The rules state the requirements the Department will use in evaluating a proposal. Although the Department will make the final determination, the Department believes it appropriate that applicants make an informed proposal.

138. COMMENT: Is it possible to phase in the access restrictions in exchange for municipal zoning and planning ordinances requiring alternative access with permits issued with expiration dates, such as five years?

RESPONSE: The Department finds phased or temporary permits to be inefficient and unnecessary. Municipalities already have the authority to zone and plan for alternative access and the Department encourages them to do so.

139. COMMENT: Many businesses located on State highways, especially fast food restaurants, convenience stores, and service stations that are dependent on impulse buying, will lose customers because of their inability to directly access from a State highway. This will hurt new and existing businesses and may dramatically affect sales and cause many businesses to close.

RESPONSE: No documentation has been provided to substantiate the assertion that lack of State highway access will cause a business to close. Also, it is unlikely that existing businesses will have their access closed off, unless a substantial access problem exists.

140. COMMENT: Responsibility should be assumed by the Department for mitigating any adverse impacts that will develop on county roads which will be required to provide the alternative access to developments along State highways.

RESPONSE: If the Department provides alternative access to an existing developed lot, then it will provide adequate pavement structure and roadway width on the side street which will carry the added traffic (see N.J.A.C. 16:47-4.3(n)9). If the Department seeks alternative access for a new development or redevelopment, then the appropriate agency should seek mitigation (see N.J.A.C. 16:47-3.2(a)).

141. COMMENT: Concentrating traffic on local road approaches to State highways will redue State highway green time and progression.

RESPONSE: If the Department provides mobility on the State highway, then this will not be the case. Increased delays on side streets would meter traffic onto the State highway, as is done with ramp metering.

142. COMMENT: Lack of advance guide signing will lead to unnecessary travel.

RESPONSE: The Department is sensitive to the potential difficulty caused a motorist when turning movements must be made before a site is visible. N.J.A.C. 16:47-4.4(n)8 requires that the Department erect signing for the alternative access.

143. COMMENT: The Department should formally inform the applicant of its determination as to the level of service and access designation within 30 days after considering: one, the existing levels of service of midblock, intersection, and approach levels of service to the lot: two, total system delay and travel time; three, the character of travel on the State highway; four, the design feasibility of the alternative access; five, driveby and passby traffic; six, the cost of limiting or prohibiting access; and, seven, alternative access configurations. This determination should be subject to appeals pursuant to N.J.A.C. 16:47-4.32 or modification subsequent to applicant's submission of additional information.

RESPONSE: N.J.A.C. 16:47-4.32 has been substantially revised to eliminate the need to address many of the criteria mentioned in the comment.

N.J.A.C. 16:47-3.2(a)

144. COMMENT: An exit driveway allowing a right turn onto a State highway is considered safe under certain conditions, and is better than requiring access onto the side street.

RESPONSE: The prohibition of direct access in favor of access to a local street is a fundamental access control concept. Access to major highways should be restricted for the same reasons access is prohibited on freeways and interstate highways and forced to frontage roads and cross streets. Highways need protection for through traffic. It is reasonably safe and generally more efficient to have side friction and crossover access movements delegated to the lower speed side streets, where the motorist anticipates more conflict. The Code does not deny reasonable access. A right-turn only on an arterial is not as simple as is generally perceived. At-grade arterials experience a significant amount of upstream and downstream weaving, merging, and diverging traffic movements, due to nearby access. On freeways, this weaving activity is stretched over greater distances with interchanges spaced at one or more miles. In looking at the current situation of access-related safety problems and congestion produced by yesterday's minimum standards, it is obvious that greater access management is needed. The Access Code is effective in establishing overall standards and thereby addresses cumulative impact. One driveway on an interstate highway would probably not cause a significant impact, but one access every 100 feet would create a major cumulative problem. In the same way, there will not be a compelling reason to restrict a particular access on an aterial, if the access is well designed. But the cumulative impact of many such accesses is sufficient to warrant restriction. The philosophy of past practice has been to balance delays and congestion on the general system of streets and highways. The Act establishes a hierarchy of roadway classifications and promotes freer traffic flow in higher classifications. N.J.S.A. 27:7-91b requires the classifications and N.J.S.A. 27:7-90a states that State highways should provide for safe and efficient traffic movement. Other roadways are not similarly identified. The Department believes that the letter and spirit of the Act are served by increasing vehicular travel and controlling turning movements, if doing so improves traffic flow on State highways. The Department has modified N.J.A.C. 16:47-3.2 to require alternative access when it can be a demonstrated benefit to the State highway.

145. COMMENT: Revise the Access Code to permit direct access unless there is a compelling reason to restrict access.

RESPONSE: This suggestion has been incorporated in this reproposed Code.

146. COMMENT: Municipalities will probably incur additional liability and expense for maintenance of local roads from increased traffic.

RESPONSE: Municipalities assume this responsibility by approving development and redevelopment.

147. COMMENT: Forcing commercial uses onto local roadways could have a devastating impact on the quality of life for the residents of those communities. Also, uses that have previously located on State highways will be forced onto local roadways. Thus, the Code holds the potential for reshuffling and re-ordering land uses in a manner that could lead to greater conflicts within and between communities.

RESPONSE: The Access Code will not force any existing use onto a local roadway. State highway access will not be revoked without notice and a hearing opportunity.

148. COMMENT: Municipalities and counties have no means of providing input to, or appealing, the Department's decision to route additional traffic onto their streets. The Department should formally notify affected counties and accept comments early in the process.

RESPONSE: Municipalities do have the opportunity to provide input. When the Commissioner revokes an access permit because of the availability of alternative access, the municipality in which the property is located will be notified as required under N.J.S.A. 27:7-94b. The Access Code also requires the Department to file a plan of the alternative access with the municipal clerk and the planning board secretary. N.J.S.A. 27:7-94a gives the Commissioner authority to deny access to the State highway when alternative access is available and N.J.S.A. 27:7-95b states that the decision of the Commissioner with regard to the location of the driveway shall be final.

149. COMMENT: The proposed rules permit access to the State highway only as a last resort. The criteria for reasonable access should be clarified to protect lot owners' rights.

RESPONSE: The proposed rules ensure that every lot along a State highway has reasonable access to the general system of streets and highways in the State. N.J.S.A. 27:7-90 does not guarantee direct access to the State highway, but states that the access rights of a lot owner are subordinate to the public's right to safe and efficient highways. This reproposed Code does permit direct access to a State highway, even if alternative access is available.

150. COMMENT: Retail businesses on a State highway should be permitted a minimum of one egress and one ingress whether or not alternative access is available.

RESPONSE: Please refer to response number 149.

151. COMMENT: The rules should consider the entire system of roadways and allow for access on a State highway when doing so would result in a superior overall roadway network.

RESPONSE: Please refer to response number 144.

152. COMMENT: Access should be permitted as needed on a case-by-case basis without strict compliance with the Code.

RESPONSE: The Access Code is a set of standards that pertain to all lots along State highways. The Department cannot manage access without standards. Applicants have sought consistency and predictability from the Department and this cannot be achieved when applications are evaluated on a case-by-case basis.

153. COMMENT: The provisions of N.J.S.A. 27:7-94 allowing for revocation of an access permit when alternative access exists were not intended to create a blanket prohibition of direct access to a State highway when alternative access exists.

RESPONSE: The Department has modified its position in this regard. The reproposed Code will permit direct access to the State highway when alternative access exists, although the Department may also require the alternative access if it will benefit the State highway.

154. COMMENT: The authority of the Department to require alternative access should be restricted to apply only from the date that the rules are adopted forward. There should be no retroactive provision.

RESPONSE: The N.J.S.A. 27:7-94 gives the Department the authority to provide alternative access to any lot abutting a State highway. The rules operate prospectively; however, changing conditions may require Departmental re-evaluation.

155. COMMENT: The rules should clarify that both the Department and municipality have authority to condemn land for access to developments that would otherwise require access to a State highway. This would minimize the number of potential nonconforming lots.

RESPONSE: The Department has amended N.J.A.C. 16:47-3.16 and 17 to address these provisions of N.J.S.A. 27:7-97 and N.J.S.A. 27:7-98.

156. COMMENT: Development costs will increase, in some cases drastically, where acquisition of adjacent land is required for alternative access points or where highway improvement costs are borne solely by the developer.

RESPONSE: The Code does not require the acquisition of adjacent lots for alternative access points. The Department has modified N.J.A.C. 16:47-4.34 to include a fair share provision. It is an equitable method for developers to provide mitigation, or a financial contribution toward mitigation, that is necessary to accommodate their site traffic. No developer will be required to provide more than their fair share in accordance with N.J.S.A. 27:7-91h.

157. COMMENT: In response to N.J.A.C. 16:47-3.2(a), it is recommended that the Access Code allow for right-turn ingress and egress where acceleration-deceleration lanes can be provided for driveways. Also, left-turn or jughandle access should be allowed under certain conditions, such as where crossroads are more than one-half mile apart.

RESPONSE: The reproposed Code allows direct access to a State highway, even if alternative access is available. The design standard definition referenced in the Access Code provides the sources for standards when adequate acceleration-deceleration lanes are acceptable. The reproposed Code provides standards when left-turn treatments or signalized jughandles may be allowed.

158. COMMENT: The Code should be modified regarding high volume users on small corner lots. The increase number of internal lot movements, and particularly with respect to far corner lots, the large number of crossovers necessary to access that lot create a particularly unsafe situation.

RESPONSE: The Access Code does not specify minimum lot sizes. This comment proposes to alleviate side street traffic problems by routing traffic onto the State highway. The Department finds this to be contrary to the preference for mobility on the State highway supported by N.J.S.A. 27:7-90. The volume of traffic using the lot is the most significant factor affecting highway safety and mobility. Consequently, this Code generally focuses on traffic, rather than lot size.

160. COMMENT: The following sections of the Access Code would have to be changed if corner lots were designated access level 2, regardless of alternative available access: N.J.A.C. 16:47-3.2(a) and (c), and 3.5(d)1 through 6.

RESPONSE: The reproposed Code allows flexibility in determining corner lots access, as mentioned in the response to Comment number 158.

161. COMMENT: Denial of access, if alternative access exists, appears unreasonable. If the lot is a commercial enterprise with sufficient frontage and can safely provide a right-turn entrance and exit without impact to the highway system, then it should be permitted.

RESPONSE: The reproposed Code allows direct access on the State highway in most cases, even when alternative access exists.

162. COMMENT: Alternative access should be encouraged whenever the resulting traffic flow would be more beneficial than direct access.

RESPONSE: N.J.A.C. 16:47-3.2 and several other provisions have been revised to encourage alternative access.

163. COMMENT: In order to determine if reasonable alternative access exists, a determination should be made of the existing levels of service of mid-block, intersection, and approach levels of service to the lot, on both the State highway and all alternative access routes.

RESPONSE: The Department is concerned with overburdening applicants who own lots with low intensity traffic generation uses. It is not practical to require all applicants to prepare such a detailed traffic study to produce the information suggested in the comment.

164. COMMENT: Total system delay and travel time should be measured to determine if reasonable alternative access exists. These measurements would account for the overall effect of the proposed development. In addition, if it can be demonstrated that the segment of State highway is carrying a large percentage of local traffic, then the impact of alternative access on the local street should be given a larger weight in the evaluation of alternative access.

RESPONSE: The Department does not wish to overburden all applicants with such a detailed requirement and the Department does not agree with using the concept of total system travel time. It would also unnecessarily burden the applicant to determine the percentage of local traffic on the State highway and nearby roadway network in order to establish why alternative access is not appropriate. More importantly, however, N.J.S.A. 27:7-90i and N.J.S.A. 27:7-91b indicate that the existing character of a State highway is not necessarily the foundation for the function it should serve. The Department is obligated to plan for the intended purpose of the highway, that of providing mobility for through traffic.

165. COMMENT: N.J.A.C. 16:47-3.2(a) requiring reasonable, available, alternative access is rather restrictive. This will increase trip lengths, increase conflicts, and increase congestion on local roads.

RESPONSE: Please refer to response number 144.

166. COMMENT: If a developer is required to build a marginal access roadway along a State arterial, the State should be responsible for the roadway, not the local government.

RESPONSE: N.J.S.A. 27:7-90a indicates that the purpose of the State highway system is to serve as a network of principal arterial routes that constitute major travel corridors. A marginal access road does not have this purpose and therefore should not be part of the State highway system.

167. COMMENT: The design feasibility of the alternative access must be considered to determine if reasonable alternative access exists. In many cases the Code will result in the arterial roadway serving as a traffic collector, when it is not designed to handle such traffic flows.

RESPONSE: The feasibility of alternative access will be considered during an access application review. Applicants who are concerned that the Department may require alternative access when it is not appropriate should support their position in the application.

168. COMMENT: Driveway and passby traffic that is part of the existing level of service must be taken into account in determining if reasonable alternative access exists. This is especially important for businesses with relatively short frontages and high traffic volumes.

RESPONSE: Driveway and passby traffic arguments should be appropriately documented by the access application. Please refer to response number 167.

169. COMMENT: The Department should be required to give proper consideration to various alternative designs in order to determine if reasonable alternative access exists.

RESPONSE: The Department has proposed measurable criteria which will serve as the basis of its access application evaluation. Under the waiver provision, N.J.A.C. 16:47-4.35, an applicant would be free to present such an evaluation. The Department would consider such a waiver, if presented at the time the application is submitted.

170. COMMENT: The thrust of the Code seems to strongly suggest that local and country roads should bear a greater portion of the traffic burden than the State highway system. While it is probably appropriate that the State highway operate at a better level of service than the local system, it should not be at the expense of severe operating problems on the local level.

RESPONSE: The Department has rewritten the Code to better balance overall access considerations. The Department recognizes that there must be coordination between local agencies and the Department. This coordination is initiated by this Code's requiring the Department send the municipality a copy of the alternative access plan. Coordination will also result from the mandatory requirement for all major applicants to send copies of their access applications to municipalities and counties, who may then provide comments to the Department.

171. COMMENT: Add that the access prohibition is waived in Pinelands growth areas, whether suitable alternative access exists or is proposed.

RESPONSE: The Department will consider waivers on a case-by-case basis only. All waivers are addressed in N.J.A.C. 16:47-4.35.

172. COMMENT: The Access Code is overly rigid and impractical in its application of driveway spacing standards, the treatment of nonconforming lots, and the establishment of reasonable alternative access provisions.

RESPONSE: Please see response number 158.

173. COMMENT: A new subsection (a)4 should state that notwithstanding the above, the Commissioner, shall permit highway access in a case even where alternative access exists if the applicant demonstrates a safe and efficient access design onto a State highway which is consistent with the goals of the Department or it improves traffic flow.

RESPONSE: Please refer to response number 162. The provisions for alternative access have been relaxed in the reproposed Code. Direct access may now be permitted to the State highway in most cases.

174. COMMENT: The availability of alternative access is of critical importance in the development of site plans, making a streamlined procedure essential. A determination of the access requirements and the desirable typical section should be made within 30 days by the Department to avoid undue delays in the development process.

RESPONSE: The Department considered a separate process for addressing alternative access and concluded that the need for alternative access can be best established at a preapplication conference requested by the lot owner.

175. COMMENT: If access is prohibited, the developer may submit a more extensive request that addresses the highway classification, access level, spacing standards, vehicular use limitations of nonconforming lots, type of work requiring a permit, permit type, and expiration or revocation of the access permit. All capacity analyses shall be based on existing peak-hour traffic, traffic generated by the subject site, and traffic generated by major abutting sites that will be affected by the alternative access. The Department must respond within 60 days.

RESPONSE: The applicant may request waivers, presenting documentation such as that listed in this comment. The Department must evaluate the application within the appropriate time frames for that type of application.

176. COMMENT: Any action that improves the State highway, but increases the overall amount of time spent travelling through the area, is questionable. Therefore, before access is prohibited, the Code should require an evaluation of the overall system of streets and intersections in proximity to the site, with and without the prohibition, to quantify the expected benefits.

RESPONSE: This evaluation is appropriate for a traffic impact study in conjunction with a major application with a planning review. To require a detailed study for every access application requiring alternative access would be burdensome for the applicant. As indicated in response number 144, the Department is willing to increase the travel time for some drivers in order to improve mobility on the State highway system.

177. COMMENT: The Code should require the Department to consider both the existing and future land use and circulation plan of the community.

RESPONSE: This is not mandated by the Act and is most appropriately addressed in an access management plan prepared jointly by the Department and the municipality. Please refer to N.J.A.C. 16:47-6. The Access Code contains provisions for the State and a municipality to jointly develop site-specific access management plans for individual segments of the State highway. These access management plans would take the local land use and circulation plans into account.

178. COMMENT: The cost of the action should be measured in terms of construction and right-of-way costs for providing the alternate access and necessary improvements to the local street system, and in terms of the impact on the subject property's operation.

RESPONSE: Public comment on the alternative access provisions contained in the original proposed Code has convinced the Department to modify its original position on this issue. The reproposed Code allows direct access to the State highway, in most cases, even when alternative access exists. The reproposed Code also contains provisions for a bonus on the maximum permissible vehicular use on a nonconforming lot that utilizes alternative access. The Department will consider the construction, right-of-way, and local road improvement costs before revoking or denying direct access. The Department suggests that the government with jurisdiction over the local roadway obtain from the lot owner those improvements that are necessary to accommodate traffic from the lot.

179. COMMENT: The Code attempts, both explicitly and implicitly, to place service stations solely on local road. This runs directly contrary to local zoning codes.

RESPONSE: The Code does not attempt to place any use in a specific location and does not address zoning. The changes in the reproposed Code with regard to alternative access requirements, waivers, spacing standards, the determination of nonconformity, and the definition of a significant increase in traffic are beneficial to service stations.

180. COMMENT: The construction of marginal parallel roads would minimize environmental impairment and create an alternate road network to handle local traffic off the State highways by interconnecting local and county arteries through highway parallel marginal roads. Rather than denying access, designating high speed through lanes, and encouraging developers to construct marginal parallel roads with combined user ingress and egress points would serve the Department's purpose, as well as owners and users of lots along State highways.

RESPONSE: The Department encourages frontage and other roads parallel to State highways to serve access needs as opposed to the mobility provided by the State highway.

181. COMMENT: The implementation of the Code will have serious impact on State and local road networks by forcing traffic entering and exiting development sites to initially do so from the local road systems. It will have an accompanying severe impact on local employment availability and the fiscal stability and growth.

RESPONSE: An objective of the Access Code is to promote mobility on the State highway system. Reducing the number of driveways along a highway segment achieves this. Local governments are encouraged to seek mitigation for the impact of a development's site traffic on their local roadways. The Department has not seen evidence that links unregulated access with local employment availability and municipal fiscal stability and growth. Severe congestion, however, can discourage growth. The alternative access provisions in N.J.A.C. 16:47-3.2 have been relaxed to allow State highway access for most lots having State highway frontage.

182. COMMENT: The developers of highway strip and regional mall shopping centers favor maintaining safe and adequate traffic flow around, through, from and to these shopping centers with minimal or no adverse traffic impact on the surrounding areas. We are concerned about the ability to continue orderly development of new and rehabilitated commercial uses to continue to have access to the State highway system, and for that system to continue to function in harmony with adjoining and interconnecting local and county roads. Planning for continued maintenance of traffic access and mobility of the entire roadway network must provide for a continuous dialogue between the various governmental entities. We also believe, however, that what is correct for the current and future movement of traffic in one area of the State does not necessarily apply to all areas.

RESPONSE: The Department agrees that closer communication with local agencies is desirable, and has added N.J.A.C. 16:47-4.3(o) to require that, when major applications are submitted to the Department, the applicant must provide a duplicate copy to the municipality and county to allow them to submit comments to the Department.

183. COMMENT: Wording should be changed from "alternative access exists" to "reasonable alternative access is presumed to exist."

RESPONSE: The Access Code has been substantially modified and the quoted words are no longer included.

N.J.A.C. 16:47-3.2(a)1

184. COMMENT: Why is density or land area a factor in residential purposes being considered as commercial? Wouldn't a minimum number of residential units be sufficient as a threshold?

RESPONSE: This provision is derived from N.J.S.A. 27:7-94c and cannot be altered through rulemaking.

N.J.A.C. 16:47-3.2(b)

185. COMMENT: The Act states if a lot is used for the purpose other than that for which it is zoned, the lot shall be classified in accordance with the higher use. The Code contravenes this, stating that the lot shall be classified in accordance with the more restrictive use.

RESPONSE: N.J.A.C. 16:47-3.2 has been substantially revised and alternative access is no longer based on zoning or use. However, a similar provision, N.J.A.C. 16:47-4.3(n)6, now refers to the more intense use.

186. COMMENT: A new N.J.A.C. 16:47-3.2(b) should be incorporated detailing those conditions peculiar to a lot that would suffice to rebut the presumption of reasonable alternative access, as a guide to the Department and applicants. The following is a proposed new N.J.A.C. 16:47-3.2(b):

(b) The presumption that reasonable alternative access exists may be rebutted by demonstration of the following conditions or lot restrictions:

1. Demonstration that the available alternative access point discharges traffic onto a local or county road operating at a level of service (LOS) of E or F, and the State highway operates at a LOS C or better at the proposed State highway access point;

2. Demonstration that the alternative access point is restricted by other federal or State law, including but not limited to:

(i) The Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;

(ii) The Freshwater Wetlands Act, N.J.S.A. 13:9B-1 et seq.;

(iii) Stream Encroachment Act 58:16A-50 et seq.; and,

(iv) The Federal flood hazard zone regulations; or

3. Demonstration that the available alternative access would impose an undue burden on the applicant's use of the lot or would involve unduly burdensome acquisition or construction costs to the applicant.

For purposes of uniformity and clarity the above proposed amendment should also be incorporated into the revocation procedures established under proposed N.J.A.C. 16:47-4.3(n).

RESPONSE: Changes to N.J.A.C. 16:47-3.2 make the suggested amendments unnecessary. Some of the recommendations, however, have been incorporated in the waiver provision contained in N.J.A.C. 16:47-4.35.

N.J.A.C. 16:47-3.3

187. COMMENT: Rewrite this section to improve its clarity.

RESPONSE: This comment was evidently based on a draft that preceded the Register publication. The Department believes this provision is now clear.

N.J.A.C. 16:47-3.3(c)3

188. COMMENT: This section indicates that an interchange may be permitted if the required signal spacing cannot be met. However, N.J.A.C. 16:47-3.3(d)3 states that the distance required between an interchange and adjacent signalized intersections shall be in accordance with the requirements for signal spacing. These sections appear contradictory.

RESPONSE: This potential contradiction has been eliminated by revising N.J.A.C. 16:47-3.3(d)3 to exclude from this requirement an interchange that may be permitted as a result of N.J.A.C. 16:47-3.3(c)3.

N.J.A.C. 16:47-3.3(e)

189. COMMENT: A new section, N.J.A.C. 16:47-3.3(e), should be added stating "notwithstanding the above, the Commissioner shall permit interchanges at locations where evidence of safe and efficient design shows that traffic flow will not be significantly impeded."

RESPONSE: The conditions specified in N.J.A.C. 16:47-3.3(b) and (c) are sufficiently broad to make this addition unnecessary. Furthermore, the spacing requirements in N.J.A.C. 16:47-3.3(d) are based on Federal Highway Administration standards and many years of experience in their application. This suggestion would override the Federal Highway Administration standards and, therefore, has not been added. An applicant may request a waiver, under N.J.A.C. 16:47-4.35, for approval of an interchange that does not meet these requirements.

N.J.A.C. 16:47-3.3(d)

190. COMMENT: This section should have a procedure for accepting shorter distances.

RESPONSE: The proposed distances are based on the spacing standards and the New Jersey Department of Transportation Design Manual-Roadway requirements. An applicant may request a waiver, under N.J.A.C. 16:47-4.35.

N.J.A.C. 16:47-3.4

191. COMMENT: The Code notes that a proposed driveway or a street intersection that may generate enough traffic to warrant a signal must meet the signalized spacing standards.

RESPONSE: Appendix D has been clarified to reflect the one-half mile maximum spacing standard. Preserving the quality of traffic flow and safety on State highways requires the spacing of traffic signals to assure continuous, progressive movement. The purpose of N.J.A.C. 16:47-3.5(e) is to avoid disruptions that would be caused by signalizing driveways that may warrant a signal, but do not meet the signal spacing requirements. There is latitude to reduce this spacing based on preserving band widths and the smooth progression of traffic. The unnecessary proliferation of signals, and improper placing of signals, seriously impeded through traffic on the State highway.

192. COMMENT: The spacing to signalized intersections should be based on queuing analysis and safe distances for lane changes.

RESPONSE: In order to establish spacing in the manner suggested, a detailed traffic impact study is required. This would unnecessarily burden a minor applicant. The Department agrees that good engineering and planning practice encourage minimizing access along turning lanes because the excessive lane changes and driver confusion result in a greater number of accidents. Applicants should realize that applications are not automatically approved by meeting the minimum standards.

193. COMMENT: The distances required for the location of signals are excessive.

RESPONSE: Preserving the quality of traffic flow and safety on State Highways, as mandated by N.J.S.A. 27:7-90, requires the spacing of traffic signals to assure continuous, progressive traffic movement. Improperly located signals impede through traffic. The spacing shown in Appendix D of the April 2, 1990 proposal is derived from the relationship between the optimal spacing of signals, the cycle length, and the posted speed limit. Although there are numerous instances where the optimal spacing is computed to be greater than one-half mile, a maximum one-half mile spacing has been established as noted in the Appendix D footnotes. This maximum spacing provides a balance between maintaining traffic progression and permitting U-turns and access to lots along the State highway. In addition, a signal spacing less than that shown in Appendix D may be permitted if the minimum band width for signal progression would be greater than or equal to the percentages shown in N.J.A.C. 16:47-3.4.

194. COMMENT: The design criteria contained in the Code for such elements as driveway and signal spacing should be extended to the local street system and the plan evaluated on that basis.

RESPONSE: The Department does not have the authority to extend spacing criteria requirements to local roads. Local authorities are able to develop their own Access Codes, per N.J.S.A. 27:7-91e, and apply similar standards to their roads.

195. COMMENT: It is recommended that signals be evaluated on a case-by-case basis considering the arterial conditions in that specific area. Signal optimization analysis should be performed for the section in question, to determine the effects of the new signal, and the best place to install it.

RESPONSE: This comment is correct and is consistent with the Access Code procedures. N.J.A.C. 16:47-3.4 establishes the procedure for determining if a traffic signal may be permitted. These procedures, as recommended in the above comment, do evaluate a proposed signal based on area specific conditions. The minimum distances and band widths that could be achieved with the proposed signal are computed based on posted speed limits and actual cycle lengths and take into account the existing and desirable future signal locations.

196. COMMENT: The minimum distance requirements for signal spacing, depending on site-specific conditions, between urban and rural interchanges could be reduced.

RESPONSE: Any reduction beyond those allowed by Appendix D, combined with band width analysis, is not consistent with the Code. Please refer to response numbers 191 and 195.

N.J.A.C. 16:47-3.4(a)1

197. COMMENT: Is it correct that the Department has a standard or is moving to a standard of keeping traffic signals a mile apart?

RESPONSE: Appendix D, in conjunction with the band width concept, allows traffic signals on most State highways to be spaced up to one-half mile apart.

N.J.A.C. 16:47-3.4(b)3

198. COMMENT: The use of optimum spacing of signalized intersections implies an ideal design condition. These rules should provide for minimum acceptable spacing of signalized intersections. Optimum may be appropriate for construction of new highway facilities, but certainly not for existing roadways.

RESPONSE: The word optimum was used because the band width criterion may reduce the distance between traffic signals. The Act applies to the existing State highways and the Department cannot avoid the responsibility by attempting to develop rules that will apply only to new facilities.

N.J.A.C. 16:47-3.4(c)

199. COMMENT: Is it reasonable to expect an applicant to identify the optimal location of future signals along the segment?

RESPONSE: N.J.A.C. 16:47-3.4 establishes two sets of procedures for identifying if a signal may be permitted. The first set, N.J.A.C. 16:47-3.4(b), pertains to State highway segments for which the Commissioner has designated optimal locations for future signals. For State highway segments where the Commissioner has not designated optimal locations, the applicant may request the Department to do so. The second set, N.J.A.C. 16:47-3.4(c), presents the applicant with an option that is intended to expedite the review process. Rather than waiting for the Department to designate the optimal locations for future signals, the applicant may follow the procedure set forth and make a recommendation for Department review.

N.J.A.C. 16:47-3.5

200. COMMENT: The Department should be mandated to conduct research on the relationship between accident rates and driveway spacing.

RESPONSE: The Legislature has not mandated this, but as referenced in the report entitled "Effects of Access on Capacity and Flow," a substantial amount of research has been done to establish relationships between accident rates and driveway (access) spacing. Research has shown that accident rates take on greater significance when viewed in light of the fact that they are underestimated because of the following four types of accidents which are difficult to identify in driveway related accident statistics:

1. The rear-end accident that happens upstream from the driveway because of a vehicle slowing down to enter the driveway;
2. The sideswipe accident caused by vehicles changing lanes behind a vehicle preparing to enter the driveway;
3. The rear-end accident that happens downstream from the driveway involving a vehicle from the driveway that has not yet gained enough speed; and
4. Collisions involving two vehicles using closely spaced adjacent driveways and collisions of driveway vehicles with intersection vehicles when the driveway is close to the intersection.

201. COMMENT: In order to effectively utilize an internal access ring road network, it is necessary that there be several effective access points. The Access Code in strict interpretation may eliminate access points onto State highways or, at best, substantially reduce the number.

RESPONSE: N.J.S.A. 27:7-90 promotes mobility on the State highway system through regulated access. Limiting the number of future driveways is one means of regulating access. Such limitations are, thus, consistent with N.J.S.A. 27:7-1 et seq.

N.J.A.C. 16:47-3.5(a)

202. COMMENT: A suggested method of determining minimum spacing of access points is to use the intersection sight distance criteria based on turning speeds at the upstream driveway. If this is used, the minimum spacing distance at 55 miles per hour is approximately 220 feet in each direction from the centerline of the driveway.

RESPONSE: N.J.A.C. 16:47-3.5(c) contains the spacing standards. These were selected after consideration of the above and over two dozen other methods by Department staff and many other engineering, planning and traffic groups.

203. COMMENT: The suggested new wording is "any facility along a State highway which generates 50 percent or more of its traffic from the existing highway flows on the State highway shall be entitled to an access permit, and ingress and egress shall be approved."

RESPONSE: This suggestion has not been included because it violates N.J.S.A. 27:7-92, 27:7-93, and 27:7-94. There is no entitlement to an access permit or such an automatic approval.

N.J.A.C. 16:47-3.5(b)

204. COMMENT: Add proposed wording stating that "an application for an unsignalized access point shall be rejected with reasons if the traffic volumes at the access points meet, or within ten years of the date of the final improvement are projected to meet, the criteria for warrants set forth in part 4C of the Manual on Uniform Traffic Control Devices for Streets and Highways or superseding edition, unless access is proposed to be right-in and right-out or the spacing conforms to the standards in N.J.A.C. 16:47-3.4."

RESPONSE: The requirement for an applicant to address conditions 10 years in the future has been deleted, because the provision requiring an applicant to project traffic volumes beyond the date of full build out has been deleted.

205. COMMENT: Does N.J.A.C. 16:47-3.5(b) mean that an applicant would be required to install a signal?

RESPONSE: Please see response number 204.

206. COMMENT: Application for an unsignalized access is to be denied if it is anticipated that a signal will be needed 10 years after the project's completion. Some provision should be added that if the applicant agrees to install the signal when the warrants are met in the future, the unsignalized driveway could be permitted initially until such time as the signal is required. It would appear that the Department needs the assurance that the signal will be installed when it is needed during the 10-year period.

RESPONSE: Please see response number 204. If a traffic signal is needed at the time of opening of the development, then the traffic signal will be addressed in the access permit. If there is no significant increase in traffic generated by the lot in the future, then the Department will not make the lot owner responsible for the traffic signal in the future. However, the lot owner may choose to be responsible for such a traffic signal and apply for a permit to install one.

207. COMMENT: The "shall" is prescriptive in this and should state that an application for an unsignalized access point may be rejected.

RESPONSE: Please see response number 204.

208. COMMENT: Restricting access to new development in a manner not typically existing based on a road design that may not exist for more than 10 years will not be equitable or workable. Phase in procedures are needed.

RESPONSE: Please see response number 204. There is no need to phase in this treatment.

209. COMMENT: N.J.A.C. 16:47-3.5(b) requires that any access point be rejected if the volumes will meet traffic signal warrants within 10 years. For high volume major streets, the peak-hour minor street approach volume can be as low as 75 vehicles per hour to satisfy the peak-hour warrant. It is doubtful that the traffic growth over a 10-year period can be accurately determined. The unsignalized access should be granted, with the understanding that it be subject to review after 10 years.

RESPONSE: Please see response number 206.

210. COMMENT: The traffic reduction formula should only be used when all other alternative designs are deemed inappropriate. Then, the traffic reduction formula should be based on the percentage of existing frontage over the frontage required in N.J.A.C. 16:47-3.5(c)1 multiplied by the permitted vehicle volume in full frontage where available.

RESPONSE: Since there are no readily available means for determining the vehicle volume if full frontage were available, this is not practical. This reproposed Code contains significant revisions in the method of calculating vehicular use limitations for nonconforming lots.

N.J.A.C. 16:47-3.5(c)

211. COMMENT: Stopping sight distance should be reevaluated because it is not appropriate for spacing criteria.

RESPONSE: The Department conducted a detailed, nationwide investigation of standards for the spacing of unsignalized access points. The "Access and Spacing Standards for State Highways, Task 2 Report," summarized many spacing criteria. Publications from the American Association of State Highway and Transportation Officials; the Department; Wisconsin; Colorado; Florida; New Jersey counties; The Institute of Transportation Engineers; and the Transportation Research Board were reviewed. This reproposed Code does not base its spacing criteria on stopping sight distance. The reproposed standards contain distances similar to those derived using several methods. The new spacing standards are from a research report prepared for the Federal Highway Administration. They are based on a combination of the right-turn overlap conflict and speed differential methods.

212. COMMENT: Add wording stating that "in determining the applicable frontage standards, if the applicant is seeking a full movement driveway, the location of driveways on the opposite side of the roadway shall be considered. When facing the highway from the applicant's driveway, no minimum spacing standard shall apply for a driveway to the left, due to the inability of opposing left turns to conflict with one another. When facing the highway from the applicant's driveway, the spacing standard for an opposing driveway to the right shall be equal to 1.5 times the projected queue length for the applicant's left turns plus 1.5 times the projected queue length for the opposite driveway's left turns." Should the applicant be unable to satisfy this criteria, the applicant would be permitted, without penalty, to design his driveway with right-in and right-out only access.

RESPONSE: This proposal is inconsistent with the Department's desire to produce a Code that can be objectively implemented and easily understood by applicants and Department staff. The revised requirements are in N.J.A.C. 16:47-3.5.

213. COMMENT: The proposed minimum driveway spacing requirements are contrary to the established land use and zoning patterns along the various highway segments in the three communities of Dunellen, East Hanover and Somerdale.

RESPONSE: N.J.A.C. 16:47-3.5(c) now contains revised spacing requirements. Although they intentionally deviate from existing patterns, the revised spacing standards are more consistent with existing land use patterns Statewide than the original proposed Code.

214. COMMENT: The provisions of N.J.A.C. 16:47-3.5(c) and (d) regarding spacing requirements will limit development on lots fronting State highways and thereby devalue the lots.

RESPONSE: This reproposed Code contains less restrictive spacing standards than the original proposed Code. However, the purpose of the Code is to promote mobility on the State highway stystem and the spacing standards in the reproposal are a means of achieving this goal. Also, please see response number 384.

215. COMMENT: In response to N.J.A.C. 16:47-3.5(c) and (d), it is recommended that driveway spacing be reduced by basing it on intersection sight distance criteria.

RESPONSE: Please see response number 211.

216. COMMENT: The Code should be modified to require calculation of the minimum driveway spacing distances from the center of an adjacent vacant lot, because there is no justifiable reason to measure from the lot line, and because such measurement unfairly discriminates against developed lots.

RESPONSE: The Code has been modified to provide more flexibility in locating access points. Applicants are now permitted to calculate required spacing distances from the center of adjacent lots, regardless of whether or not they are developed.

217. COMMENT: The measurement from the lot line unfairly discriminates against developed or soon-to-be developed lots based on the adjacent lot owner's desire not to develop. In such a case, the draft Code effectively gives the adjacent lot owner the ability to preclude a developer from placing a driveway where he otherwise would be entitled to.

RESPONSE: Please see response number 216.

218. COMMENT: The word "shall" should be replaced with "may" in this section.

RESPONSE: N.J.A.C. 16:47-3.5(c) has been substantially revised. The distances contained in N.J.A.C. 16:47-3.5(c) are the distances that are required to determine a lot's conformity. The actual placement of access points is not prescribed and the rules provide a lot owner some flexibility in determining the specific locations of access points. The Access Code does not require uniform distances between access points, but is looking to achieve the desired spacing on average.

219. COMMENT: N.J.A.C. 16:47-3.5(c) and (d) impose strict limitations on the spacing, location, and traffic volume of unsignalized access points.

RESPONSE: N.J.A.C. 16:47-3.5 now contains less restrictive spacing standards and more flexible means for applying them. These provisions result in fewer nonconforming lots. The reproposed Code also modifies the way in which maximum permissible vehicular use limitations on nonconforming lots are determined.

220. COMMENT: The Code should be revised to provide that driveways for single-family houses in conformance with zoning are not considered in the driveway spacing criteria, and that the driveway spacing for a non-single family zoned lot should be calculated to either the center of a nonconforming lot or to one-third of the frontage of a conforming lot.

RESPONSE: The reproposed Code specifies that driveways for single-family homes are not to be considered when determining conformance, and that driveway spacing should be calculated to the centerline of adjacent lots.

N.J.A.C. 16:47-3.5(c)1

221. COMMENT: The Access Code should allow an applicant to utilize one-third of the frontage of an adjacent vacant lot in his driveway separation calculations.

RESPONSE: Please see response number 216.

222. COMMENT: The Department should have based the standards on such factors as prevailing peak-hour speed, existence of separate deceleration area, geometrics, the type and number of vehicles using the driveway, and the type and number of vehicles using the highway. These standards are utilized to determine driveway capacity in accordance with the Highway Capacity Manual.

RESPONSE: The Department does not endorse this method as a basis for issuing permits. Prevailing peak-hour speed and the number of vehicles using the highway are subject to change and the Department does not want permits to expire for reasons beyond the control of the permittee. Also, please see response number 211.

223. COMMENT: Figure 6.12 on page 167 of the Second Edition of the Transportation and Traffic Engineering Handbook should be utilized for driveway spacing standards. It is recommended that the curves for level road, six percent grade, and 10 percent grade for passenger cars be utilized on this chart. Further, it is recommended that the speed standard utilized be based either on the prevailing peak-hour speed of the right-most traffic lane for right-turn only driveway or the highest speed traffic lane for driveways that allow left turns. In absence of that provision, it is recommended that the posted speed be utilized for left-turn driveways and the posted speed minus 10 miles per hour be utilized for right-turn only driveways.

RESPONSE: Please see response number 222.

224. COMMENT: The proposed unsignalized spacing standards are too restrictive. Spacing standards based on the speeds of vehicles entering and leaving the highway would be less restrictive without compromising safety.

RESPONSE: Please refer to response number 211.

225. COMMENT: It is strongly suggested that the Legislature mandate research by the Department of Transportation to identify comparable segments of roadways in terms of posted speed, number of lanes, and volume for research. Average unsignalized access spacing along such highways should be determined according to highway segment and accidents at points unrelated to traffic signals or jughandles should then be evaluated. Utilizing accident rates, the information should be graphed according to driveway spacing and roadway speed and volume. The graphs should then be examined to determine if an apparent break point exists which indicates obvious criteria for driveway spacing. If such a condition is observed, this Code should be modified to conform to the results of that research, regardless of how stringent or liberal. If such break point is not found, further research should be mandated by the Legislature to determine other criteria which may effect driveway spacing such that a firm engineering standard relating specifically to driveway spacing can be achieved. It is urged that this Code be considered temporary until such time as such a firm egineering standard has been determined and is in place.

RESPONSE: Please see response number 200. As referenced in the report entitled "Effects of Access on Capacity and Flow," previous safety-oriented research has substantially supported the policy of increasing control of access as through vehicle speed and traffic volume increases. The Department will monitor the Access Code and propose modifications when needed.

226. COMMENT: Spacing distances required by the Code are much too high.

RESPONSE: Please refer to response number 211.

227. COMMENT: Not all traffic is through traffic travelling at the posted speed limit.

RESPONSE: True. Nevertheless, posted speed limits are the best basis for the spacing standards because they are readily available, easy to apply, reflective of safety needs, and representative of some urban and rural distinctions.

228. COMMENT: The last sentence of this paragraph needs to be rewritten to make it more clear.

RESPONSE: This requirement has been substantially modified.

229. COMMENT: A more reasonable criteria for the minimum driveway spacing distance would recognize that a motorist exiting from an upstream driveway usually accelerates from an initial speed of under 10 miles per hour and, therefore, driveway spacing can be based on the speed of a turning vehicle from an upstream driveway and not on the speed of through traffic.

RESPONSE: Please refer to response number 211.

230. COMMENT: The Code should be revised to standardize the calculation of driveway spacing as a function of lot frontage, rather than actual driveway placement, and to allow for the fact that neighboring lots will gradually be drawn into conformance.

RESPONSE: Conformance has been reproposed as a function of lot frontage and the frontages of adjacent lots.

231. COMMENT: If a single-family house is on a lot zoned for a more intense use, then the Code should recognize that only the future use of that site could potentially interfere, and that that driveway will have to conform with the Code's requirements.

RESPONSE: The reproposed Code exempts driveways of single-family residential lots from the calculation of conformance. If the use of the lot changes so that it results in a significant increase in traffic, a new permit is required. That permit would be subject to the standards of the Access Code.

232. COMMENT: Each property can be assigned a theoretical driveway location (TDL) which is independent of the actual driveway placement, existing or proposed, as a function only of lot frontage. The theoretical driveway location is assigned according to the criteria already in the Code and results in driveways being located at the center of nonconforming parcels. The theoretical driveway location also ignores existing or potential single-family house driveways on properly zoned lots. Using this method the theoretical spacing is calculated, and it is determined whether a lot is in conformance using the criteria presently in the Code. This method is independent of existing or future driveways. Thus, development of this lot does not affect the future development of its neighbors and vice versa.

RESPONSE: The Department agrees with this comment, and the reproposed Code has incorporated the theoretical driveway location concept.

233. COMMENT: Special consideration must be given to corner lots under the TDL criteria. Spacing would normally be measured from the centerline of a street and since a street right-of-way is at best 80 feet wide, the TDL would only provide an additional 40 feet. The Department should review the Institute of Transportation Engineers publication for a minimum clearance from corners as well as the recommendations contained in National Cooperative Highway Research Program "Guidelines for Medial and Marginal Access Control on Major Roadways."

RESPONSE: The reproposed Code contains special provisions for corner lots in accordance with the theoretical driveway location. In addition, the corner clearance requirements in N.J.A.C. 16:47-3.8(k) have been modified, based on the National Cooperative Highway Research Program work and other sources.

N.J.A.C. 16:47-3.5(c)2

234. COMMENT: The Code's standards result in an excessive number of nonconforming lots, indicating that the standards are too restrictive.

RESPONSE: If the Access Code is to succeed in promoting mobility on the State highway system, a significant number of lots will have to be categorized as nonconforming. However, the reproposed Code contains changes in the spacing standards and alternative access requirements that result in fewer nonconforming lots. In addition, the method for determining the maxmium permissible vehicular use limitations on nonconforming lots has been changed to allow more site-generated traffic.

235. COMMENT: The minimum driveway spacing distances by highway profile at access points should be reduced by 50 percent; however, the spacing should be no less than 200 feet for municipalities identified as Pinelands towns or Pinelands growth areas as per the Pinelands Comprehensive Management Plan.

RESPONSE: The originally proposed standards have been reduced. The reproposed Code also contains a revised section on waivers, N.J.A.C. 16:47-4.35, that applies to lands subject to the Pinelands Comprehensive Management Plan.

236. COMMENT: No allowance is given for single-family residential lots, which have minimal traffic generation.

RESPONSE: The reproposed Code exempts single-family residential lots from nonconforming lot determinations and spacing measurement. A separate permit category is also provided for single-family residential lots in N.J.A.C. 16:47-4.6.

N.J.A.C. 16:47-3.5(c)2iii

237. COMMENT: Auxiliary lane width should be consistent with the New Jersey Department of Transportation Design Manual-Roadway. Section 5-03 of the manual permits lane widths in urban areas of 11 feet and states that even 10 foot wide lanes may be acceptable. It is unreasonable to require the public to use higher standards than the Department requires of itself. Use of these standards should be permissive not prescriptive.

RESPONSE: The public will be asked to abide by the same standards as the Department. The changes the Department made to the spacing requirements included deleting the auxiliary lane provision. The Department's Design Manual–Roadway will apply.

238. COMMENT: The application of the auxiliary lane provision seems the simplest way to bring urban areas into conformance with the rules.

RESPONSE: The auxiliary lane provision has been deleted. The Department's Design Manual–Roadway will apply.

N.J.A.C. 16:47-3.5(c)2iv

239. COMMENT: Add text to reflect that, if there is no access point on an abutting lot, then the required distance shall be measured from the access point's center line to a point one-third into the abutting lot. If the abutting vacant lot has insufficient frontage to independently become a conforming lot, and the applicant's frontage has sufficient distance to be independently conforming without utilization of the one-third frontage provision of the abutting lot, then the applicant's access point shall be located from the lot line rather than utilize the one-third frontage provision, to maximize likelihood of ability to conform for the abutting vacant lot.

RESPONSE: This section has been substantially modified. Please refer to response number 216.

N.J.A.C. 16:47-3.5(c)3

240. COMMENT: We recommend that for shopping centers under 500,000 square feet there be at least one access to a State highway, under 750,000 square feet there be two accesses, and for shopping centers over 1,000,000 square feet, there be a minimum of three access points, some of which may simply be right turn-in and right-turn out access points.

RESPONSE: In N.J.A.C. 16:47-3.5(c)3, the Department has specified the number of access points associated with different size traffic generators. The Department prefers to differentiate based on traffic, rather than land use.

N.J.A.C. 16:47-3.5(c)4

241. COMMENT: Add that access to nonconforming lots shall be limited to right-in and right-out turning movements, unless driveway locations on the opposite side of the roadway are such that the applicant's driveway location would be conforming relative to access potential on the opposite side of the roadway.

RESPONSE: This reproposed Code does not limit the turning movements based on the conformance of a lot. N.J.S.A. 27:7-93, however, states that every access permit for a nonconforming lot must specify limits on maximum vehicular use. The turning movements that are permissible are a function of the access level classification of the highway on which the lot is located, not the frontage of the lot.

242. COMMENT: The provision requiring measurement from the near lot line negates the language in N.J.A.C. 16:47-3.5(c)4, which requires that, where possible, access on a conforming lot which abuts a lot with nonconforming access locate its driveway so that a future access point meeting the requirements of the code may be located on the nonconforming lot.

RESPONSE: This provision has been deleted for the purpose of consistency.

243. COMMENT: The Code is biased against the initiator of development on adjacent vacant lots.

RESPONSE: There is nothing in the Code that evidences such a bias.

N.J.A.C. 16:47-3.5(c)5

244. COMMENT: Add (c)5 as follows stating that, "notwithstanding (c)1 and 2 above, the Commissioner shall grant access from the State highway to a lot if: (A) a safe and efficient traffic design which meets the goals of the Act and rules is submitted, (B) the distance between access points is calculated on the basis of sight distance criteria based on turning speeds at the upstream driveway, (C) a major traffic generator would meet minimum spacing distances set forth in the chart if the total frontage includes the frontage of the major traffic generator plus the frontage of abutting generators of less than 200 trips per day."

RESPONSE: Access shall be granted when the conditions set forth in N.J.A.C 16:47-3.5, as reproposed, have been met. Suggestion (A) is too difficult to quantify. Suggestion (B) is unacceptable because the permit for the downstream driveway could be invalidated if the upstream driveway was changed. Suggestion (C) is unacceptable because it is burdensome to require an applicant to identify the traffic generation for a lot other than the applicant's lot.

N.J.A.C. 16:47-3.5(c)6

245. COMMENT: Add N.J.A.C. 16:47-3.5(c)6 stating that, to the extent possible, the Department shall lease, grant, convey, or otherwise permit an applicant to develop on State right-of-way an auxiliary lane or other roadway improvements which permit safe and efficient access to the highway system.

RESPONSE: The Department already allows the use of its right-of-way for improvements needed to provide safe and efficient access to abutting lots. This provision is, therefore, unnecessary.

N.J.A.C. 16:47-3.5(d)

246. COMMENT: Nonconforming lot restrictions are too severe. It is suggested that maximum vehicular use limitations be applied to all access and be based on the volume-capacity ratio for the turning movements at the driveway. Then, a nonconforming lot would be limited by its proportion of the driveway spacing standards.

RESPONSE: The reproposed Code contains revisions to the method of determining maximum permissible vehicular use limitations on nonconforming lots. Furthermore, N.J.S.A. 27:7-93 only requires that vehicular use limitations apply to nonconforming lots. Permissible vehicular use cannot be based on the volume-capacity ratio for the turning movements at the driveway because of inherent implementation problems. The Department also considered this proposal and concluded that the allowable trip activity for a conforming site is difficult to determine and very burdensome for the applicant to obtain.

247. COMMENT: Permitting nonconforming access to developments generating less than 100 vehicles per hour may be appropriate; however, it is confusing to mix vehicles per hour and daily vehicle trip criteria (500 vehicles per day for minor permits).

RESPONSE: The reproposed Code continues to use 500 daily vehicle trips as the threshold between minor and major permits as specified in the Act. The baseline for determining maximum permissible vehicular use on a nonconforming lot has been changed in the reproposed Code, but vehicles per hour is still the basis.

248. COMMENT: A more realistic scale, along with a workable approach to dealing with nonconforming lots, needs to be developed.

RESPONSE: The April 2, 1990 proposed Code has been modified in the reproposed Code to allow more vehicular trips on nonconforming lots. Basically, any lot will be given 50 peak-hour trips plus additional trips based on urban or rural location, size of the lot, the frontage of the lot, and the posted speed limit. Allowing a minimum of 50 peak-hour trips generally means that all minor uses will be acceptable on any lot.

249. COMMENT: The proposed traffic reduction formula will result in significant economic harm to owners of nonconforming lots. In many instances it will render prime office, commercial and industrial locations infeasible for development. In the most severe cases, the proposed formula constitutes a taking pursuant to the Federal and State constitutions since it will deny a lot owner all beneficial use of the lot.

RESPONSE: Because the Access Code does not deny any lot owner all beneficial use of its lot, no taking occurs. Furthermore, the reproposed Code contains different spacing standards, different alternative access provisions, and new methods for calculating maximum vehicular use limitations on nonconforming lots. These new provisions result in fewer nonconforming lots and more permissible traffic on those lots that still do not conform with the Code. Although the Department is sensitive to the concerns of owners of nonconforming lots, as evidenced by the aforementioned revisions, the State has a broader fiscal responsibility. A safe and efficient State highway system for the movement of people and goods is an integral part of a healthy State economy.

N.J.A.C. 16:47-3.5(d)2

250. COMMENT: The Code, as written, limits a nonconforming lot to 50 or less trips per hour for a divided highway, and to 25 trips per hour on an undivided highway.

RESPONSE: The reproposed Code uses more peak-hour trips as the baseline for calculating maximum permissible vehicular use on a nonconforming lot and adds bonuses for both lots on urban areas and lots with alternative and shared access.

251. COMMENT: Why is the expansion on nonconforming lots limited by overall increase in traffic generation, which cannot exceed 100 additional peak-hour trips, or a 10 percent increase in total daily trips?

RESPONSE: This restriction against expansion on nonconforming lots is derived from N.J.S.A. 27:7-9.3, which states that every nonconforming lot access permit shall specify the maximum permissible vehicular use for the lot. Expansion on a developed nonconforming lot for which a permit has previously been duly issued is permissible, to the extent that the expansion does not trigger the need for a new permit application. N.J.S.A. 27:7-95a states that a new permit is necessary whenever the expansion results in a significant increase in traffic. That is one that adds the greater of 100 movements during the peak hour, or 10 percent of the previously anticipated daily movements. Because the Department is required to specify maximum vehicular use limits on access permits for nonconforming lots, any new permit necessitated by a significant increase in traffic is subject to maximum vehicular use limitations. For some lots, the permissible vehicular use may be less under the new permit than that traffic generation which already exists.

252. COMMENT: Route 30 has a number of vacant buildings and lots which do not meet the spacing requirements. These sites would not attract new users, given the severe limitations placed on trip generation.

RESPONSE: Please refer to response number 249.

253. COMMENT: The Institute of Transportation Engineers (ITE) trip generation rates are sometimes inappropriate, because square footage is not always a reliable indicator of traffic generation. Instead of only accepting the ITE rates, the Department should accept site-specific verifiable data on trip generation.

RESPONSE: All Institute of Transportation Engineers' rates are not based on square footage. The Department has produced rates to substitute for some land uses. It may also accept evidence to substitute for Institute of Transportation Engineers rates when provided by applicants. Refer to N.J.A.C. 16:47-4.4(f).

254. COMMENT: The nonconforming lot requirements must be studied again in order to equitably treat existing and developing lots.

RESPONSE: The Department has given serious consideration to the issue of nonconformity and N.J.A.C. 16:47-3 contains numerous provisions that significantly reduce the number of nonconforming lots, and more equitably limit maximum vehicular use on nonconforming lots.

255. 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: Pursuant to existing case law, a regulatory taking occurs only when a lot owner is deprived of the beneficial use of the lot. The owners of nonconforming lots will not be deprived of all beneficial use. N.J.S.A. 27:7-93 enables limiting vehicular use on nonconforming lots, which could allow less traffic than would be allowed under local zoning ordinances.

256. COMMENT: An equation or figure should be provided to clarify the guideline for the spacing of access points on vacant nonconforming lots. The stated requirement appears quite confusing.

RESPONSE: The spacing of access points on vacant nonconforming lots has been simplified. The Department will publish a guidebook with illustrations to help applicants.

257. COMMENT: The Code's arbitrary distinction between conforming and nonconforming lots will penalize owners of nonconforming lots in terms of allowable trip levels.

RESPONSE: The Code's distinction between conforming and nonconforming lots is not arbitrary. It is based on insufficient frontage, as mentioned in N.J.S.A. 27:7-93. This section also states that every nonconforming lot access permit shall specify the limits on maximum permissible vehicular use.

258. COMMENT: The Code appears to prohibit normal growth with respect to limitations placed on nonconforming lots and by making previously approved subdivisions null and void.

RESPONSE: Normal growth is a term that is difficult to operationally define. The Access Code is intended to promote mobility on the State highway system through access management. The Code will regulate traffic from growth so that its impact on the State highway system is minimized. N.J.A.C. 16:47-3.16(a) no longer declares subdivisions that do not conform with the Code's provisions as null and void, but states that access may be denied to any such subdivision created after the adoption of the Code.

259. COMMENT: The traffic reduction formula should be adjusted, considering the relationship between accident rates and site-generated traffic.

RESPONSE: The Department is aware of many studies correlating accidents at or near driveways. Research has shown that minimizing traffic conflicts will significantly reduce the number of accidents. However, conducting a study to precisely determine the relationship between accident rates and driveway traffic volumes would be time consuming and may bear no relationship to the the nonconformity of the particular lot. Please refer to response number 200.

260. COMMENT: If a major generator has less frontage than is required, but the property abuts an insignificant generator, the frontage of the low generators should be permitted to be added to that of the high generator to achieve conformity.

RESPONSE: The Department has agreed to exempt single family residential driveways from consideration in determining the spacing of other access points. The Department will also allow two adjacent nonconforming lots to be considered as a single lot, which may then be conforming, if the lots share a driveway.

261. COMMENT: It is inconsistent for the maximum vehicular use limits to be calculated based on frontage rather than available spacing.

RESPONSE: The Department believes that the limitations should be based on the characteristics of the lot, and has developed a method for establishing the limits, using some additional consideration of the frontages of the adjacent lots. The basis is the Theoretical Driveway Location for each lot, which is the centerline of the lot, rather than the actual driveway location.

262. COMMENT: The Code has grave impacts for smaller developments, but minimal impacts for larger developments which often have enough frontage to meet the spacing requirements.

RESPONSE: The purpose of the Code is to protect mobility on the State highway system by managing access. N.J.S.A. 27:7-93 authorizes the Department to set maximum vehicular use limitations on those lots that do not meet the frontage requirements. The Department is aware of the concerns of small businesses and has attempted to address them in the reproposed Code. Among the changes that will benefit smaller developments are the lower spacing standards, bonuses for shared access, and revisions in the formula to limit vehicular use. See N.J.A.C. 16:47-3.5.

263. COMMENT: Another method of limiting maximum vehicular use is to use a capacity measure based on the concept of critical movement analysis.

RESPONSE: This is a complex analysis fraught with assumptions. It would present implementation problems for applicants and the Department.

N.J.A.C. 16:47-3.5(d)4

264. COMMENT: Nonconforming lot maximum vehicle use limitations should be omitted.

RESPONSE: N.J.S.A. 27:7-93 allows the Department to set maximum vehicular use limitations on nonconforming lots.

N.J.A.C. 16:47-3.5(d)5

265. COMMENT: The proposed Code is neither volume-sensitive nor site-specific, but purely theoretical. The existing rules allow the Department to interpret standards and apply them to a particular project, considering all factors affecting the site. This included alternative reasonable means of access to and from the site, which has been eliminated under the proposed Code.

RESPONSE: The proposed Code reflects the Department's desire to establish a uniform set of standards. This will expedite the permit process and enable developers to know what will be required of them at the outset of their project. The Department believes that the existing access review process allows for too much interpretation, which can result in inconsistent application. Regarding alternative access, the reproposed Code will not preclude State highway access when alternative access exists.

N.J.A.C. 16:47-3.5(e)

266. COMMENT: Does N.J.A.C. 16:47-3.5(e) mean that a traffic signal will be installed when the left-turn access is closed, even though the signal cannot meet spacing standards?

RESPONSE: No. It means that the site will no longer have left-turn ingress.

267. COMMENT: Reducing the number of access points will not improve safety. Many local roads will not be able to accommodate additional traffic and the safety of motorists and residents will be impaired.

RESPONSE: Reducing the number of access points reduces conflicts. This improves safety and capacity. The Department does not agree that managing access on State highways will impair safety on other roads.

N.J.A.C. 16:47-3.5(e)1

268. COMMENT: The proposed Code states that unsignalized access points on divided highways for a major generator involving left-turn ingress and egress shall be located at existing median breaks, if any, and where access points would conform to signal spacing requirements. This rule places unnecessary restrictions on driveway locations and should be removed.

RESPONSE: Serious safety and capacity problems result when left-turn access is slightly offset from a median break. N.J.A.C. 16:47-3.5(e)1 must be considered in conjunction with N.J.A.C. 16:47-3.5(e)4ii.

N.J.A.C. 16:47-3.5(e)2

269. COMMENT: Please add the following requirements: "Every access movement for a conforming lot shall be limited in terms of projected volume to a volume-capacity ratio (V/C) of not greater than one. If left turns are proposed as part of the access permit, a condition shall be entered on the access permit that, if measured left turns exceed a volume capacity ratio of one, then left-turn access may be denied without compensation in the future. The volume to capacity ratio shall be based on the method of calculation in the current Highway Capacity Manual for unsignalized intersections and shall be based on highway projected future cross sections as well as highway volumes at the projected future condition."

RESPONSE: This suggestion unduly restricts the Commissioner's authority and is inconsistent with the Department's objective of adopting uniform standards that can be objectively implemented and easily understood by applicants and Department staff.

270. COMMENT: If warrants are met, and signalized spacing requirements are met, the Commissioner may close the left-turn access with no recourse by the applicant. It would appear that the words "could spacing requirements not be met" are missing, because if the signalized spacing could be met, then the applicant would install a signal and continue with the left-turn ingress and egress.

RESPONSE: N.J.A.C. 16:47-3.5(e)2, as written, states that it applies when signalized spacing requirements cannot be met.

N.J.A.C. 16:47-3.5(e)3

271. COMMENT: N.J.A.C. 16:47-3.5(e)3 should specify what the Department must do to change an undivided highway to a divided one, and what provisions must be made for motorists to reach sites on the opposite side of the road.

RESPONSE: If an undivided highway were to be changed to a divided one, the Department would change the access classification of the highway and the provisions of N.J.A.C. 16:47-5 would apply. This information does not belong in this section, which pertains to requirements for unsignalized access points. The Department is under no obligation to permit access to a lot from the opposite side of a divided road, although such access is usually provided through regularly spaced U-turn facilities.

N.J.A.C. 16:47-3.5(e)5

272. COMMENT: Omit opposite side driveway spacing criteria from this section.

RESPONSE: Please refer to response number 273.

273. COMMENT: The Code fails to state how cooperation between land owners to align driveways on opposite sides of the road can be achieved. Formal assistance from the Department is needed to achieve this goal.

RESPONSE: N.J.A.C. 16:47-3.5(e)5 has been revised to suggest, but not require, aligned driveways. Usually the applicant tries to align proposed driveways with exiting driveways or pays for the relocation of the driveway on the opposite side of the highway.

N.J.A.C. 16:47-3.5(e)6

274. COMMENT: Precluding access along turning lanes is unnecessarily restrictive.

RESPONSE: There are serious safety problems when exclusive turn lanes are used for other purposes. Consequently, it is Department policy to deny access on all acceleration and deceleration lanes at interchanges, intersections and jughandles. This provision of the Access Code was intended to formalize this policy. The policy does allow for exceptions, after a thorough analysis has been made with respect to the costs, benefits, and safety implications. It is true that these lanes often extend several hundred feet upstream of an intersection, but this is because such length is required. The Department has not required auxiliary lanes that are longer than needed, and does not agree that it is desirable to allow access along a portion of these turning lanes. The need for turning lanes is normally associated with one turning location, not several locations. The public expects these lanes to serve a particular purpose and any variation will, in most circumstances, reduce effectiveness and safety.

275. COMMENT: In response to N.J.A.C. 16:47-3.5(e)6, it is recommended that access should be permitted beyond 100 feet from intersection or ramp gore.

RESPONSE: This reproposed Code includes new corner clearance requirements in N.J.A.C. 16:47-3.8(k). The distances are less than or equal to 100 feet. However, as indicated in response number 274, access will not be allowed along exclusive turning lanes.

276. COMMENT: The Code prohibits all access along a striped right or left-turn lane where the lane is at its full width. This section should be modified so that access may be allowed depending on traffic patterns, geometric conditions, signal phasing and progression, and other special conditions.

RESPONSE: Please see response number 274.

277. COMMENT: No studies apparently have been performed to quantitatively document the extent or magnitude of safety or operational problems associated with access along left or right-turn lanes.

RESPONSE: This statement is not true. Guidelines, based on quantitative analysis of two-way left-turn lanes, have been available for some time. In addition, the study report, entitled "Effects of Access on Capacity and Flow," demonstrated the operational value of removing right-turn vehicles from the through lanes. Please refer to response number 274.

N.J.A.C. 16:47-3.5(e)7

278. COMMENT: Suggested new wording should state that sites with a very directional flow, such as offices, adjoining other such sites with very directional flows may calculate the spacing standard on an ingress to ingress and egress to egress basis.

RESPONSE: This wording has not been included. The spacing standards in N.J.A.C. 16:47-3.5(c) were originally proposed as the separation between access points. In this reproposed Code, the corresponding distances in N.J.A.C. 16:47-3.5(a) are only used to determine the conformance of lots. The distance between two access points is now addressed by N.J.A.C. 16:47-3.8 and safety considerations.

279. COMMENT: The smallest permitted frontage under the Code is 300 feet, yet most zoning ordinances require only 100 feet frontage in highway business districts.

RESPONSE: Although nonconforming lots will have their traffic generation limited, any lot with State highway frontage may qualify for access.

280. COMMENT: Driveway spacing standards should more accurately reflect the realities of lot ownership and existing land use patterns in New Jersey.

RESPONSE: The Access Code was necessitated in part by the failure of existing land use patterns and zoning to coordinate with the transportation infrastructure. The standards contained in the reproposed code create fewer nonconforming lots than those in the original proposed code and distinguish between urban and rural areas.

281. COMMENT: The following sections of the Code would have to be changed if the minimum spacing standards were changed to include one-half of the vacant lot frontage: N.J.A.C. 16:47-3.5(c)1 and (c)2iv.

RESPONSE: The reproposed Code reflects these changes.

N.J.A.C. 16:47-3.5(e)12

282. COMMENT: Spacing for access points along frontage roads should be less than 250 feet since the express purpose of the frontage road is to provide direct access.

RESPONSE: This reproposed Code allows access points spaced closer than 250 feet on frontage roads.

283. COMMENT: The theoretical driveway location concept should be extended to frontage road lots.

RESPONSE: The reproposed Code indicates that access level 6 applies to frontage roads, so the theoretical driveway location concept need not apply. This means that all lots on frontage roads are conforming lots.

N.J.A.C. 16:47-3.5(e)13

284. COMMENT: There are no standards for off-site requirements.

RESPONSE: Off-site requirements are determined based on N.J.A.C. 16:47-4.34, fair share financial contributions. This reference has been added.

N.J.A.C. 16:47-3.5(g)

285. COMMENT: Prohibition of expansion or change to more intense use on developed nonconforming lots discourages rehabilitation of older structures. The proposed Code does not comply with legislative intent. The Act does not prohibit significant expansions on nonconforming lots.

RESPONSE: The Access Code does not prohibit expansion or change of use. N.J.S.A. 27:7-95a says that an expansion or change that is anticipated to cause a significant increase in traffic will require a new permit. However, rehabilitation alone does not require a permit. Most lots in existence prior to the Access Code are entitled to continue their access and use under N.J.S.A. 27:7-92c. If a significant increase in traffic will result from of changes proposed by the owner, then the existing permit will expire, under N.J.S.A. 27:7-92d. If the lot is not capable of having a driveway that meets the spacing requirements, it would need a nonconforming lot permit, which might require generation of less traffic than the existing use. In such cases a lot owner may decide either not to expand or to expand less, in order to continue operating under the existing permit. If the traffic generation from the expanded site does not exceed the required nonconforming lot limitations, then the Department can allow the expansion and issue a nonconforming lot permit.

286. COMMENT: A small expansion of a small shopping center generates a small, but unacceptable, increase in traffic.

RESPONSE: N.J.S.A. 27:7-92d and 27:7-95a require a new permit for significant increases in traffic exceeding a threshold value of 10 percent of the previously anticipated traffic or 100 peak hour trips.

287. COMMENT: The proposed Code has been written so that any attempt to expand or develop properties would trigger forfeiture of existing access rights and the business would have to make new application for access rights under the restrictive guidelines.

RESPONSE: The Department does not agree that any attempt forfeits access rights. N.J.S.A. 27:7-95a indicates that permits expire when expansions or changes of use result in a significant increase in traffic. Lesser traffic increases do not trigger expiration.

288. COMMENT: The Access Code restrictions would not only have devastating ramifications on future expansion but would also dramatically reduce the upgrading of existing facilities. It is conceivable that a minor improvement to an existing facility would result in a significant loss of driveways, which translates to a loss of customers.

RESPONSE: No documentation has been provided to substantiate the assertion that fewer driveways mean fewer customers. In fact, the Department's review of nationally recognized traffic generation sources, such as the Institute of Transportation Engineers, shows traffic generation is based on the square footage or number of units of a particular land use, with no consideration for the number of access points.

289. COMMENT: Why should business owners be penalized for improving their facilities?

RESPONSE: Improvements or upgrades to existing facilities that do not create a significant increase in traffic or require construction within Department right-of-way are not affected by the provisions of the Code. N.J.S.A. 27:7-92 and 27:7-95 give the Commissioner the authority to require a new access permit when the lot covered by a permit undergoes a change that results in a significant traffic increase. The Commissioner's exercise of this authority is consistent with the intent and purpose of the Act to promote mobility on the State highway system.

290. COMMENT: Increases in traffic caused by background traffic should not be the basis for needing a new permit.

RESPONSE: The Department concurs with this statement.

291. COMMENT: Use wording stating that, "significant increases involve more than ten percent of the previously anticipated daily movements, except that increases less than or equal to 40 trips per hour shall be deemed insignificant regardless of percentage increase."

RESPONSE: This wording is inconsistent with N.J.S.A. 27:7-95a, and has not been incorporated into the revised Access Code.

292. COMMENT: Because of the severe restrictions on expansions and change of use, many parcels will have no practical utility. Therefore, efforts to revitalize, modernize, expand or even redevelop lots along Route 28 will largely be precluded by the Access Code.

RESPONSE: It is obvious that lots where expansions or changes of use are being considered already have practical utility. The reproposed code contains new provisions that will enable more lots along Route 28 and other similar highly developed areas to be redeveloped, expanded or modernized. Among these provisions are changes in the spacing standards, changes in the determination of a significant traffic increase, changes in the maximum permissible vehicular use on nonconforming lots, and bonuses for urban nonconforming lots. The Department studied the effects of these changes on several State highways and found that they result in fewer nonconforming lots and less restrictions on developing and redeveloping lots that are nonconforming. The Access Code does not preclude development on any lot.

293. COMMENT: If redevelopment and expansion opportunities are excessively restricted, the underlying value of the real estate is also likely to decline sharply.

RESPONSE: Real estate values are a function of the interplay of numerous variables. Although access to the highway is one of those variables, the safety and efficiency of the highway is another. Real estate values might decline if the Department failed to manage access, and traffic congestion precluded access and mobility. The Act and the Access Code exist to maximize highway safety and efficiency.

294. COMMENT: The underlying value of property with existing State highway access, but with limited expansion or redevelopment potential, will decline on average by anywhere from 20 percent to 40 percent over time.

RESPONSE: The Department has seen no evidence to support this claim. Please refer to response number 293.

295. COMMENT: The proposed Code does not identify who determines additional trip generation, sight line issues, and proximity to other curb costs.

RESPONSE: The permittee must determine trip generation for expansions or changes of use, based on the provisions of N.J.A.C. 16:47-4.4(f). Sight distance requirements are set forth in the New Jersey Department of Transportation Design Manual-Roadway referred to in the design standards definition in N.J.A.C. 16:47-1.1. The distance between driveways is set forth in N.J.A.C. 16:47-3.8(h).

296. COMMENT: The language of this and N.J.A.C. 16:47-4.3(k)1 regarding significant increases in traffic deviates from the language and requirements of the Act.

RESPONSE: The Department has deleted N.J.A.C. 16:47-3.5(g) and the wording of N.J.A.C. 16:47-4.3(k)1 has been revised to conform with the Act.

297. COMMENT: Current laws require large expenditures in order to bring existing gas stations into compliance with current rules, and it is anticipated that future rules will require further upgrading. In order to justify such expenditures economically, it is necessary for the oil industry to increase traffic volume at upgraded stations. This cannot be accomplished if access is curtailed by the Code.

RESPONSE: N.J.S.A. 27:7-90e enables the Department to regulate access to protect public health, safety and welfare. The Department has established service station traffic generation standards based on information provided by the oil industry. This information indicates that upgrading a service station will not result in a significant increase in traffic.

298. COMMENT: Each nonconforming access permit should be considered on its merits and in conjunction with municipal zoning.

RESPONSE: The Department prefers establishing uniform standards to apply to all nonconforming lots. This shortens review time and reduces the likelihood of subjective judgements that could result in an unequitable application of the Code.

299. COMMENT: State that, "expansions or changes which generate significant increases in traffic on developed nonconforming lots shall require the applicant to attempt to acquire additional adjoining land sufficient to make the lot conforming and if no additional land is reasonably available the applicant may seek an exception from the Department. Significant increases involve more than 500 movements during the peak hour or more than 30 percent of the previously anticipated daily movements, whichever is less."

RESPONSE: The April 2, 1990 wording of N.J.A.C. 16:47-3.5(g) has been deleted. The reproposed rules now enable existing developed nonconforming lots to generate insignificant increases in traffic as long as they do not need a new access permit. Verification of an attempt to acquire additional frontage is difficult and not necessary under this reproposal.

300. COMMENT: If the need for improvements to the local system are triggered, they would be subject to the municipal land use law. The State apparently would not have jurisdiction of these local street improvements.

RESPONSE: That is correct. The Access Code encourages municipalities and counties to seek appropriate mitigation from responsible developers in such instances.

N.J.A.C. 16:47-3.5(h)

301. COMMENT: N.J.A.C. 16:47-3.5(h) and 4.3 allow the Commissioner to require travel demand management plans, but do not include criteria for the consistent application of this procedure, nor do they include incentives for it as an option.

RESPONSE: N.J.A.C. 16:47-4.30 addresses travel demand management (TDM) Plans. These provisions have been revised to indicate that the Commissioner encourages the development of travel demand management Plans. The Commissioner will only make such plans conditions of a permit when the applicant proposes a plan in an application. The conditions would be site specific. Incentives for implementation of a travel demand management Plan include lower mitigation requirements resulting from less site-generated traffic. N.J.S.A. 27:7-92d enables the Commissioner to condition an access permit on whatever terms he or she believes are necessary to effectuate the purposes of the Act.

N.J.A.C. 16:47-3.5(i)

302. COMMENT: The Act does not provide the Department with the authority to prohibit subdivisions creating nonconforming lots.

RESPONSE: The Code was developed with the objectives of protecting the safety and efficiency of motorists using the State highway system and managing access to that system. N.J.S.A. 27:7-96 clearly states that no lot abutting a State highway shall be subdivided in a manner which would create additional lots abutting a State highway unless all abutting lots so created are in accord with the standards established in the Access Code. The Department interprets this to mean that only conforming lots may be created. The Department believes it is appropriate to create nonconforming lots having alternative access, because the alternative access would not put traffic directly onto the State highway system. This has been reflected by deleting N.J.A.C. 16:47-3.5(i) and modifying N.J.A.C. 16:47-3.16(a).

N.J.A.C. 16:47-3.5(i)

303. COMMENT: New residential developments will be impacted by nonconforming access points for streets that would need to access the State highway. Frequently, land has been subdivided with commercial lots directly fronting on the State highway with the remainder of the parcel retaining an access area to the highway.

RESPONSE: The reproposed Code reflects changes in the spacing standards and provisions for nonconforming lots which result in more conforming lots and allow more traffic generation on nonconforming lots.

304. COMMENT: Amend N.J.A.C. 16:47-3.5(i) and 3.16 to state that, "any preliminary subdivision approval granted after the effective date of this Access Code for a nonconforming lot not providing reasonable alternative access to the general system of streets and highways in the State other than the State highway itself shall be subject to access review by the Department prior to final subdivision approval by the Department to determine whether the standards of the Code have been met or whether any waiver or variance from those standards would be appropriate pursuant to N.J.A.C. 16:47-4.31 or 4.35."

RESPONSE: N.J.A.C. 16:47-3.5(i) has been deleted and N.J.A.C. 16:47-3.16(a) has been revised to indicate that future nonconforming lots will not be entitled to direct State highway access.

305. COMMENT: The prohibition against the creation of nonconforming lots renders municipal subdivision approvals null and void if approval is granted to a nonconforming parcel that does not have reasonable alternative access to the general system of streets. This subsection should be deleted, since it is inconsistent with the law. The Department does not have statutory authority to render municipal acts null and void. Under the Act, the Commissioner's authority is limited to denying access to a State highway.

RESPONSE: Please refer to response number 304.

N.J.A.C. 16:47-3.5(j)

306. COMMENT: A new subsection (j) is proposed stating that a State highway may be the only access available to lots within a municipality due to restrictions imposed by the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. In the event alternative access for a lot is prohibited due to such restrictions, the applicant shall be permitted access onto a State highway, provided the remaining provisions and standards of this Access Code are satisfied.

RESPONSE: The Department has not added this, because N.J.A.C. 16:47-4.35(c)7 now allows the Department to waive provisions of the Access Code that conflict with the requirements of the Pinelands Commission or the Pinelands Protection Act. Other changes incorporated in this reproposed Code allow access to most lots.

N.J.A.C. 16:47-3.8

307. COMMENT: The section heading should say "control dimensions of driveways."

RESPONSE: The section heading of N.J.A.C. 16:47-3.8 has been modified to "Access point control dimensions," because driveways and streets are covered.

308. COMMENT: It is suggested that the diagram shown at 22 N.J.R. 1073 be modified to imply more adequate curb or pavement return radii at the driveway entrance.

RESPONSE: The diagram shown at 22 N.J.R. 1073 is not to scale and is to be used in conjunction with the dimensions in N.J.A.C. 16:47-3.8.

309. COMMENT: Sight triangle easements should be required at all driveways and access road intersections.

RESPONSE: The Department prefers to avoid the extensive right-of-way involvement which would be associated with sight triangle easements and instead plans to address sight triangles as conditions of access permits. The sight distance requirements are shown on Figure 6-A of the New Jersey Department of Transportation Design Manual-Roadway.

N.J.A.C. 16:47-3.8(b)

310. COMMENT: The proposed five foot minimum spacing standard from a potential driveway to the lot line should be increased to provide adequate visibility at the intersection without affecting the adjacent lot. Alternately, adequate sight triangle easements on the adjacent lot should be required as a condition of the permit.

RESPONSE: The edge clearance in N.J.A.C. 16:47-3.8(b) has been increased to 12 feet. The Department will not require one lot owner to obtain a sight easement from an adjacent owner. Also, please refer to response number 309.

N.J.A.C. 16:47-3.8(c)

311. COMMENT: The maximum curbline opening should be increased to 80 feet to accommodate large trucks.

RESPONSE: The Department has modified N.J.A.C. 16:47-3.8 to include criteria which would enable an opening of up to 80 feet if frequently used by large trucks.

312. COMMENT: The residential minimum curb opening should be made 28 feet.

RESPONSE: The Department does not agree with such a large minimum curbline opening for residential driveways. Current rule N.J.A.C. 16:41-12.2(a) provides for a 12 foot minimum residential opening. This standard has been used successfully for years.

N.J.A.C. 16:47-3.8(d)1

313. COMMENT: Some driveways to major residential projects, especially those at a signalized intersection with a heavily travelled State road, would need two lanes outbound.

RESPONSE: Residential driveways are now defined in N.J.A.C. 16:47-1.1 as those serving single-family residences. All others are defined as non-residential driveways and they may be up to 40 feet wide. This would accommodate two outbound lanes.

N.J.A.C. 16:47-3.8(g)

314. COMMENT: Much larger driveway curb radii should be allowed.

RESPONSE: N.J.A.C. 16:47-3.8(g) has been revised to include larger radii as shown on Figure C-3.

N.J.A.C. 16:47-3.8(h)

315. COMMENT: Driveways included in the definition of an access point are in conflict with those in the table in N.J.A.C. 16:47-3.5(c)1.

RESPONSE: An access point is identified as a street or driveway. The table in N.J.A.C. 16:47-3.5(c)1 identifies the minimum distance between access points for the purpose of determining nonconforming lots and number of driveways. N.J.A.C. 16:47-3.8(h) identifies the actual distance required between driveways.

316. COMMENT: The proposed 25 foot minimum distance between two potential driveways on the same lot should be increased to minimize the possibility of conflicting turning movements.

RESPONSE: The minimum distance between any two driveways is 24 feet in the reproposed Code. Site conditions will be used to establish the desirable distance between two driveways. In access levels 0 through 5 for each two driveways space only 24 feet apart there will be two that are almost twice the distance in N.J.A.C. 16:47-3.5(a)4.

N.J.A.C. 16:47-3.11

317. COMMENT: This section should specify whether it pertains only to drainage pipes or whether it pertains to pipes for any purpose.

RESPONSE: This section has been revised to specify drainage pipes.

N.J.A.C. 16:47-3.12(b)

318. COMMENT: Signage to major traffic generators should be permitted within highway right-of-way to assist motorists, particularly if access from State routes is denied, thereby forcing motorists to seek alternative routes.

RESPONSE: If the Department provides alternative access to a development, then signs may be erected within State right-of-way directing traffic to the site as required in N.J.A.C. 16:47-4.3(n)8. Private advertisement signs, however, are not permitted within Department right-of-way because too many signs burden motorists.

N.J.A.C. 16:47-3.12(c)

319. COMMENT: There are no provisions in the Code concerning sight distance, and perhaps sight triangles, for roads and driveways entering State highways, nor is there a section on where and what kinds of trees should be planted.

RESPONSE: Section 6 of the New Jersey Department of Transportation Design Manual-Roadways already identifies the sight triangles required; Section 4 identifies passing sight distances and stopping sight distances; and Section 8 identifies clear zone requirements. A reference to this publication has been added to N.J.A.C. 16:47-3.5(e). N.J.A.C. 16:47-3.15 further states that vegetation shall not interfere with sight distance.

N.J.A.C. 16:47-3.12(l)

320. COMMENT: There are circumstances when site lighting should be allowed to extend to, or be installed in, State highway right-of-way.

RESPONSE: These circumstances could be the subject of a waiver as provided for in N.J.A.C. 16:47-4.35.

N.J.A.C. 16:47-3.13

321. COMMENT: There should only be one completeness review for permit applications, regardless of the scope of the application. Each application should be assigned to a case manager in Trenton, who would serve as the contact person for the Department.

RESPONSE: The Department realizes that the permit process may appear to be intimidating or cumbersome to those unfamiliar with it. In order to be accessible to the majority of applicants, the Department has a decentralized permit application system. With a decentralized process, permits are issued locally by staff who are familiar with the site and general area, and who can offer site-specific assistance. The Department plans to have a computer network that will allow any representative to readily determine the status of an application. Diverse disciplines are involved in the review of access applications; therefore, the Department intends to provide separate completeness and content reviews by each specialized discipline involved.

322. COMMENT: The Code must establish criteria for determining deficiencies in submissions that are significant. Requiring a new application and fee if the applicant unilaterally changes the development or access plan is too restrictive. A small unilateral change made by the applicant of the proposed development or access plan may not materially affect the technical results or access implications. Some language should be added about material or significant changes requiring an updated review by the Department.

RESPONSE: The Department has addressed this in a new provision under waivers, in N.J.A.C. 16:47-4.35(c)9. This allows the Department to waive the provisions of N.J.A.C. 16:47-4.8(h), 4.11(h), and 4.13(i) that require a new application and fee when a municipality, county, or other reviewing agency has imposed conditions beyond the applicant's control during the access application process. The applicant must provide supporting documentation.

323. COMMENT: Applicants who unilaterally change a proposed development or access plan should only be required to submit a new application and fee when the change is a significant one that will have a major change in the scope of the application.

RESPONSE: Please see response number 322. Applicants who unilaterally change a submitted application should request a waiver under N.J.A.C. 16:47-4.35(c)9 if they believe their change to be insignificant.

N.J.A.C. 16:47-3.13(g)

324. COMMENT: The Department should require the applicant to pay for utility pole relocations just as they do for highway improvements. The Department should pay when required to do so pursuant to N.J.S.A. 27:7-44.9.

RESPONSE: The Department does not pay for utility relocations for applicants. Whether the applicant must pay is subject to the application of certain common law doctrines.

N.J.A.C. 16:47-3.13(h)

325. COMMENT: In most instances, utility poles carrying the Department's lighting system are not installed according to a carefully arranged pattern, and can be relocated.

RESPONSE: All Department lighting systems may incorporate the use of utility-owned wood poles at locations where the utility company cannot relocate or remove their facilities. In these situations, the Department will incorporate utility-owned lighting as part of the overall design. The utility-owned lighting is then subject to the same design criteria as all other Department roadway lighting systems.

N.J.A.C. 16:47-3.15(c)

326. COMMENT: Will the Code permit landscaping within the Department's right-of-way if the developer purchases and maintains the landscaping?

RESPONSE: The Department currently permits landscaping within its right-of-way if it does not obstruct the driver's view. This policy is addressed in N.J.A.C. 16:47-3.15(c).

N.J.A.C. 16:47-3.15(d)

327. COMMENT: This section is unclear as to whether the lot owner may have an access permit in his possession or whether he is being asked to obtain a new permit.

RESPONSE: This provision has been deleted, but similar concepts are addressed in N.J.A.C. 16:47-4.33. When the Department constructs new highways, or modifies existing highways, existing driveways that are disturbed are replaced and new permits are issued. Any lot owner proposing a driveway onto a State highway must have a permit for the new driveway before the Department may build the depressed curb as part of the highway construction project.

N.J.A.C. 16:47-3.15(e)

328. COMMENT: The rules for shared access should address liability if one of the sites using shared access involves itself in an incident covered by the Environmental Cleanup Responsibility Act (ECRA).

RESPONSE: Access permits address construction, maintenance, and use of access. They do not address the Environmental Cleanup Responsibility Act.

329. COMMENT: There should be a built-in mechanism to encourage lot owners to get together for common access points. The Department should provide leadership and incentives to lot owners to share access.

RESPONSE: In order to encourage shared access, N.J.A.C. 16:47-3.2 now contains bonus provisions and incentives for the owner of a lot that would otherwise be nonconforming and, therefore, subject to limits on maximum vehicular use.

330. COMMENT: A means to provide incentive for an applicant to develop joint access is needed. It is recommended that any applicant who voluntarily provides joint access, or the ability therefore, be permitted to increase his allowable volume-capacity ratio by a certain percentage, such as 25 percent.

RESPONSE: Please refer to response number 329.

N.J.A.C. 16:47-3.16

331. COMMENT: Provisions should be incorporated in the rules to require developers responsible for specific traffic increases to make application to the State similar to development fronting along State highways.

RESPONSE: The Department's authority is limited to regulating those streets and driveways that intersect State highways. This is provided for in N.J.A.C. 16:47-4.19.

332. COMMENT: The rules should preclude counties and municipalities from limiting access to their local roads.

RESPONSE: N.J.S.A. 27:7 does not give the Department the authority to preclude counties and municipalities from limiting access on county and local roads. N.J.S.A. 27:7-91e enables counties and municipalities to adopt access codes for roads within their jurisdiction.

333. COMMENT: Would the municipalities and the counties have to adopt by ordinance this program in order to make it conform with the State requirements?

RESPONSE: The Access Code contains standards suitable for adoption by counties and municipalities for the management of access to streets and highways under their jurisdiction. If a county or municipality chooses to use the Access Code as a model for its local roadways, an ordinance or resolution, as appropriate, would have to be adopted by the respective governing body.

334. COMMENT: Is there a substantial legal difference between conditional local subdivision approvals upon approval by a State agency, and the State's blanket characterization as null and void all subdivisions that do not comply with the provisions of the Act?

RESPONSE: Rather than rendering null and void all subdivisions that create nonconforming lots, the rules now state only that such nonconforming lots will not be permitted access to the State highway. See N.J.A.C. 16:47-3.16(a).

335. 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: Zoning and land use remain local decisions under the proposed Code. Although the Access Code may prevent some lots from developing to their full zoning potential, the Legislature has given access regulation authority to the Department to enable the Department to preserve mobility on State highways. The Act intended to affect municipal land use planning. This is evidenced in N.J.S.A. 27:7-95b and 27:7-96. Existing laws and rules have not satisfactorily avoided creating excessive driveway openings, excessive traffic congestion, and undesirably low average rates of speed on State highways. The Act and Access Code should be utilized by municipalities to enhance the motoring public's ability to use arterial roadways in the manner for which they have been designed. Municipalities are encouraged to plan for economic development while also considering access and mobility. The Department also notes that N.J.S.A. 40:55D-2h of the Municipal Land Use Law encourages the location and design of transportation routes which will promote the free flow of traffic.

336. COMMENT: The Code restricts and dictates the power and authority of local officials.

RESPONSE: N.J.S.A. 27:7-90c recognizes the Department's public trust responsibility to protect the functional integrity of the State highway system and the public investment in that system. Accordingly, N.J.S.A. 27:7-91a authorizes the Commissioner to adopt rules to fulfill that responsibility. N.J.S.A. 27:7-90d further recognizes that inappropriate land development and unrestricted access to the State highway system run counter to the Department's public trust responsibility. Therefore, it is appropriate for the Code to restrict access and preclude inappropriate traffic generation. This does not translate into diminished power and authority for local officials.

N.J.A.C. 16:47-3.16(a)

337. COMMENT: The Code does not spell out the consequences of a municipality erroneously approving a nonconforming lot.

RESPONSE: N.J.A.C. 16:47-3.16(a) has been revised to indicate that such a lot shall not be entitled to State highway access.

338. COMMENT: The Department should consider relying on county subdivision reviews to prevent creation of nonconforming lots.

RESPONSE: The changes made to N.J.A.C. 16:47-3.16(a), as mentioned in response number 337, eliminate the need for the suggested county review.

339. COMMENT: The requirement that a parcel abutting a State highway may not be subdivided unless each parcel meets the Access Code requirements will prevent even right-turns in and right-turns out access to the State highway.

RESPONSE: This requirement is mandated by N.J.S.A. 27:7-96.

340. COMMENT: Out parcel development by subdivision lots would be hindered by the Access Code, even though these lots may not have full access to the State highway, but rather would work off the internal access ring road system.

RESPONSE: The Department prefers that alternative access be used when reasonable as this will maximize the capacity, safety and efficiency of the State highway. The out parcels described here would have access to a ring road, and such subdivisions would be allowed under N.J.A.C. 16:47-3.16(a).

341. COMMENT: It is unclear how N.J.A.C. 16:47-3.16(a) and (c) can be implemented to govern municipal board operations. Are they intended to be made part of the Municipal Land Use Law (M.L.U.L.)?

RESPONSE: N.J.S.A. 40:55D-1 et seq. amends the power to zone in the M.L.U.L., requiring zoning ordinances to provide for the regulation of land adjacent to State highways in conformity with the Access Code.

N.J.A.C. 16:47-3.16(b)

342. COMMENT: Add wording stating that the decision of the Department on appropriate access location shall be final, the action of a municipal or county body to the contrary notwithstanding, providing that such adding of traffic to the alternative access shall not void said alternative access point access permit. Further, such a forced relocation of volume shall automatically increase the permit for the alternative access point by the amount of the relocated volume.

RESPONSE: The Department has made extensive modifications to the alternative access provisions. Alternative access will supplement direct State highway access when the alternative access benefits the State highway. Alternative access onto a municipal or county road will be controlled by the local governing body. The Department cannot mandate that the local governing body increase the traffic volume permitted for the site.

N.J.A.C. 16:47-3.16(c)

343. COMMENT: Concerning requirements for variance applications, this section does not describe evidence of conformance and how it is acquired.

RESPONSE: This provision has been modified to describe the evidence of conformance.

344. COMMENT: The Act does not amend the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) relative to variances granted by the zoning board of adjustment. The Department does not have the authority to endorse this provision.

RESPONSE: This provision has been modified to allow a municipality to grant the variance, but not obligate the Department to grant a permit for too intense a use.

N.J.A.C. 16:47-3.16(d)

345. COMMENT: Building inspectors are not prepared to deal with waiting for the Department certificate of acceptance before issuing a certificate of occupancy.

RESPONSE: According to N.J.A.C. 5:23-2.24, certificates of occupancy should not be issued without all prior agency approvals. The Code merely restates that which is already required by Department of Community Affairs' rules. It is anticipated that this requirement will apply to approximately 100 applications per year.

346. COMMENT: The municipal engineer should be notified whenever the Department sends a notice regarding an access permit to any municipality or public agency.

RESPONSE: N.J.A.C. 16:47-3.16(d) has been modified to require that a copy of the certificate of acceptance be provided to the municipal engineer. The Department does not find it necessary to copy the municipal engineer on all access permit notices.

N.J.A.C. 16:47-3.17

347. COMMENT: The Route 1 corridor actually fits many of the site access characteristics which would be created along a State highway by implementation of the new rules, since much of the traffic generated by the recent development along Route 1 has been concentrated into crossings at existing roads. This concentration of access points results in large increases in peak-hour traffic and subsequent delays, which can only be relieved by large-scale, expensive roadway improvements to crossroads.

RESPONSE: The Department's review of Route 1 in West Windsor indicates that the existing driveway spacing average is about 500 feet. This is in line with the April 2, 1990 proposal. The development traffic is focused on crossroads and through travel times along Route 1 have actually decreased with access control. Route 1 is, thus, an example of how access management is beneficial to through traffic. Demand management strategies along local roads and municipal approvals consistent with the capacity of local roads are two other strategies that can be used to minimize delays on the crossroads.

N.J.A.C. 16:47-3.17(b)

348. COMMENT: The discretionary authority of the Commissioner to modify a proposed access or deny a permit application 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 is a clear sign that the Code is not an objective guide to planning and decision making. N.J.A.C. 16:47-3.17(b) should be stricken from any final version of the Code.

RESPONSE: Most of the standards in the proposed rules are based on the Commissioner's regulatory authority as stated in N.J.S.A. 27:7-92d. The rules were developed to apply to all roads; however, unexpected circumstances will require interpretations. The Commissioner must retain some discretionary authority to handle some site-specific considerations and to protect the public health, safety and welfare.

N.J.A.C. 16:47-3.17(c)

349. COMMENT: Add wording stating that nothing set forth in this chapter shall be interpreted as requiring the Department at its own expense to signalize, construct, or improve access points or make other improvements related thereto unless the Department has required a shift in traffic volumes to an access point. In such an event the Department has an obligation to provide adequate capacity to accommodate the volumes at said access point to which the Department has forced an increase in traffic volume.

RESPONSE: This section only applies to the State highway and remains unchanged without the recommended additional wording. The Department is not obligated to provide the adequate capacity. Before the Department can require that alternative access be utilized, it must determine that the alternative access is of sufficient design to support the traffic.

N.J.A.C. 16:47-4.2

350. COMMENT: Add wording stating that in the event that abutting applications are simultaneously before the Department for an access permit, the Department may require said parties to provide a shared access plan and to enter jointly with said parties into said joint access plan. In the event that such applicants are not jointly before the Department, the Department may be unable to force joint access. Under such conditions, the applicant shall accommodate future joint access and of committing to revision of his site at such time as the abutting lot applies for an access permit. In the event that such alternative and commitment is provided, the applicant shall then be permitted to increase his volume-capacity ratio by 25 percent.

RESPONSE: The suggested wording has not been added because the Department does not have the authority to require applicants to share access without their consent. The Department is proposing a bonus for shared access points on nonconforming lots. See N.J.A.C. 16:47-3.5(b)4.

351. COMMENT: The traffic impact of those applications in the review process must be considered when examining other applications in the region.

RESPONSE: N.J.A.C. 16:47-4.2 has been revised to enable the Department to consider the impacts of concurrent applications.

352. COMMENT: The Department should require certification from the applicant that the site plan documents submitted to the Department are the same as those submitted to the municipality and county for review.

RESPONSE: There is no requirement that applicants submit plans to a municipality or county before they submit an application to the Department. Consequently, there is no requirement as suggested.

N.J.A.C. 16:47-4.3

353. COMMENT: N.J.S.A. 27:7-95 permits the Department to restrict highway access to new uses and expansions of existing uses, rendering development along the highway impractical.

RESPONSE: The Department's experience of over 20 years with existing rules governing new uses and expansions shows that additional development is practical. While N.J.S.A. 27:7-1 et seq. gives the Department added authority, further development is expected under the new rules. New uses on lots that do not meet the spacing standards are subject to vehicular use limitations. Changes or expansions in existing uses that result in a significant traffic increase are required to obtain new access permits. These requirements will neither preclude nor render impractical development along the highway.

354. COMMENT: Any changes in traffic, caused by that part of the Access Code that attempts to reduce access points along the highway by closing highway access points where a side or rear access is available, should be exempt from the permit requirements.

RESPONSE: If the Department closes highway access points, it will issue a new permit for the lot at no cost to the owner.

355. COMMENT: Another condition constituting expiration is when the lot covered by the permit is subdivided. If the basis of this definition relies on N.J.S.A. 27:7-96, then the Department is mistaken in this interpretation of the statute. The act of subdividing lots alone does not mandate or imply that there will be additional traffic volume. The statute was tailored to address expansion of facilities which would cause additional volume on the highways. The trigger is the additional volumes, not the subdivision of lots.

RESPONSE: The expiration of a permit upon subdivision of a lot is not based on N.J.S.A. 27:7-96. This condition is authorized by N.J.S.A. 27:7-92d, which states that an access permit may be conditioned upon whatever terms the Commissioner finds necessary for effectuating the purposes of the Act. A permit authorizes a lot to generate a specified traffic volume. If the lot no longer exists, neither can the permit. N.J.S.A. 16:47-4.3(a) now requires a new permit when a lot is subdivided or consolidated.

356. COMMENT: Many of the older commercial areas were designed under 1950's and 1960's standards which required excessive parking areas. The redevelopment of these lots will be severely curtailed.

RESPONSE: The Department has not and will not regulate parking areas on lots. Redevelopment of a lot adjacent to a State highway will be subject to a new permit if there is a significant expansion or significant change in the use of the facilities on the lot. N.J.S.A. 27:7-95a mandates a new permit when there is a significant expansion or change in use.

357. COMMENT: The way N.J.A.C. 16:47-4.3(n) or 4.6(n) are written, the Department would have unilateral authority to compel lot owners to reconfigure existing developments. This provision should be rewritten to apply only from the date the rules are adopted forward. No retroactive application of this provision should be permitted.

RESPONSE: The Code assumes that all streets and driveways constructed prior to 1976 were constructed in accordance with an access permit. Although N.J.S.A. 27:7-94 enables the Department to close existing driveways, it also establishes strict requirements that the Department must follow in order to do so. These requirements protect the lot owner against a unilateral Department mandate. Before the Department revokes existing access onto a State highway, the Department must provide a plan for alternative access, file the plan with the municipality, notify all affected parties, and hold a hearing on the plan. The Department must also fund the construction of the alternative access and install and maintain signs to re-direct traffic to the new access. N.J.S.A. 27:7-94a provides the Department with authority to revoke access permits, regardless of the date of any development or access permit.

N.J.A.C. 16:47-4.3(a)

358. COMMENT: The proposed rules imply that intersections of municipal roads with State highways require a municipality to obtain a new access permit when there is a 10 percent volume increase on the municipal road.

RESPONSE: A municipality reviewing development applications that could significantly impact a State highway intersection should have an applicant provide an analysis of traffic impacts at those locations. If the municipality becomes aware of a significant increase in traffic, it should act in the public interest and see that financial contributions or improvements are made to accommodate the traffic. The Department believes that N.J.S.A. 27:7-92d applies to all access points, including municipal roads intersecting State highways. If the road has a significant increase in traffic, then the permit for the municipal road may expire.

359. COMMENT: East Brunswick Township suggests that this be changed to state that if any specific development along a municipal roadway that intersects with a State highway would cause volume changes so that a new permit is required, the developer responsible for that change required to get the access permit as well as to construct or pay for any necessary road improvements.

RESPONSE: The Department assigns responsibility for access points to the owner of the lot where the access point is located. For streets, responsibility rests with the governing body having jurisdiction over the street. The local government may require a developer to act on its behalf. N.J.A.C. 16:47-4.19 allows a developer to file the application and construct the improvement with the municipality having the permit.

360. COMMENT: East Brunswick Township suggests that a base traffic count methodology be incorporated, using the traffic flow immediately prior to any specific development as the base. The estimated flow after such development, based on sound engineering principles, would then provide the basis for determination of the increase in traffic generated by a specific development. On this basis, permit determination could be made.

RESPONSE: The traffic impact study requirements set forth in N.J.A.C. 16:47-4.30 as previously proposed and now reproposed agree with this concept.

361. COMMENT: The Code requires access permits for significant expansions and changes in use on lots having access to a State highway.

RESPONSE: Please see response number 356.

362. COMMENT: N.J.A.C. 16:47-4.3(a)2 should be amended to read that, "Reconstructing, changing, or modifying any existing driveway or street at the point where it intersects a State highway. . ."

RESPONSE: The wording has been changed accordingly.

363. COMMENT: If there is an existing State highway with substantial traffic on it and the municipality or the governing body comes in with an application for a traffic signal, would they be subject to the provisions of the Access Code?

RESPONSE: If the municipality has not submitted a complete application before the Access Code is adopted, then the traffic signal will be subject to the provisions of the Access Code.

364. COMMENT: The general development plan approval as identified in N.J.S.A. 40:55D-45.1 conveys the same rights as does preliminary approval. A developer should be entitled to rely upon general approval and be grandfathered under these rules.

RESPONSE: The Department agrees and will grandfather applications for projects with general development plan approval the same as applications for projects with preliminary municipal site plan approval.

365. COMMENT: If reconstruction, alteration or rebuilding results in work currently within the State right-of-way, then existing access permits will be modified and subject to changes in angularity, radii, spacing, and the like, if clearly necessary to improve highway safety and provided that the access is maintained in kind.

RESPONSE: A new permit is needed for any construction within State right-of-way other than in-kind maintenance.

366. COMMENT: The proposed rules contain concepts which are at variance with the new State Development and Redevelopment Guide Plan by affecting the rehabilitation of older shopping centers in existing urban and suburban areas along State highways where levels of service may already be poor.

RESPONSE: Please refer to response number 46. The reproposed Code contains numerous provisions that facilitate rehabilitation in urban areas.

367. COMMENT: Notice of remodeling or modernization shall be given by the developer to the Department in writing at least 30 days prior to all above ground physical rebuilding or modernization. Notice shall not be required for below ground work, such as tank or line related work.

RESPONSE: No such notices are necessary; however, a lot owner must apply for a new permit if required in N.J.A.C. 16:47-4.3(a).

368. COMMENT: There are provisions in the Code that allow the Department to close existing access points on constructed and operational commercial, office and industrial developments that undergo changes in their size and space. Whether in fact that is what would occur, the very threat that it could occur for any type of development along a State highway substantially impairs the ability of the developers and lot owners to obtain construction mortgage financing, permanent financing and/or refinancing of their projects.

RESPONSE: N.J.S.A. 27:7-92d requires that a new permit be obtained whenever the subject lot undergoes a change or expansion that generates a significant increase in traffic. If the owner of a nonconforming lot wants to expand or change the use of the lot so that it generates a significant increase in traffic, the new permit would be subject to vehicular use limitations, pursuant to N.J.S.A. 27:7-93. In some cases, those limitations, pursuant to N.J.S.A. 27:7-93. In some cases, those limitations could require less traffic than the site generated under its old permit. In such cases, the lot owner can still continue to operate under the original permit. The Department cannot close existing access points without providing alternative access and due process. Furthermore, the Department has not seen evidence to substantiate that financing opportunities will be hampered by the Access Code.

N.J.A.C. 16:47-4.3(c)

369. COMMENT: Is it reasonable to expect lot owners issued permits since January 1, 1970 to be capable of providing proof of an existing permit? If the current land owner cannot produce an access permit, what happens then?

RESPONSE: Please see response number 371.

370. COMMENT: The counties should be given the opportunity to comment on access applications.

RESPONSE: The checklist for major access applications now requires that the applicant send duplicate applications to the municipality and county, who then have 30 days to submit comments to the appropriate Regional Design Office.

371. COMMENT: We understand that N.J.S.A. 27:7-92c uses January 1, 1970, also reflected in this provision. We are also aware that Department records only date back to 1975. Evidence of a permit issued 20 years ago will be difficult to prove in many cases. We suggest that the Department only enforce this provision as far back as permit records are maintained.

RESPONSE: The permittee's responsibility for providing evidence of a permit has been deleted and a flowchart, Appendix G, has been added to show how the Department will administer the grandfathering of permits. Because the Department does not have complete records before July 1, 1976, access points in place at that time will be grandfathered by the rules as access points in place before January 1, 1970 were grandfathered by N.J.S.A. 27:7-92c.

N.J.A.C. 16:47-4.3(f)

372. COMMENT: The Access Code provides no indication of how joint access will take place.

RESPONSE: N.J.A.C. 16:47-4.3(f) has been revised to indicate that applications for shared access must be shown on a separate application for each lot that the driveway sits on. Each lot owner will need a permit.

373. COMMENT: The third sentence should include the word "widening."

RESPONSE: The third sentence should not include this word because the sentence covers capacity increases as lane additions. A widening without a capacity increase is covered in the fourth sentence.

N.J.A.C. 16:47-4.3(i)

374. COMMENT: The Department should establish a minimum threshold volume that does not require Department review. A minimum threshold of 40 vehicles per hour or one vehicle per 90 second traffic signal cycle should be used.

RESPONSE: N.J.S.A. 27:7-92a requires an access permit for all streets or driveways entering a State highway.

N.J.A.C. 16:47-4.3(i)1

375. COMMENT: The names of the three permit categories should be changed to: minor, intermediate and major.

RESPONSE: N.J.S.A. 27:7-91d provides for only minor and major. The Department could make the change suggested, but chooses to keep the terms that have been in use since 1987.

N.J.A.C. 16:47-4.3(k)

376. COMMENT: It is onerous and unconscionable to require the Department to be notified when a lot covered by a permit is sold.

RESPONSE: This comment is similar to comment number 369. The Department wants a purchaser to be aware of the conditions of access to the lot. The Department, however, has deleted this provision and will have the future permits recorded with the county.

377. COMMENT: The definition of expiration should be changed to allow increases of less than or equal to 40 trips per hour as an insignificant increase.

RESPONSE: N.J.S.A. 27:7-95a states that any increase in traffic that adds 100 movements during the peak hour shall be considered significant. The law does not allow 40 trips per hour to be the threshold.

378. COMMENT: This should be amended to state that, with the exception of permits held by a municipality or county, permits expire when the permittee violates any permit contentions.

RESPONSE: The Department sees no reason why a county or municipality should not have its permits expire if permit conditions are violated.

379. COMMENT: The provision for requiring work to start within one year of the date of issuance of the permit should be amended so that the approval runs concurrent with the municipal land use process. The permit would remain valid while the other permits and approvals are secured. Or, for expirations of issued permits, we request that the Department consider allowing work to start within three years of the permit issuance, as opposed to the one year that exists now.

RESPONSE: If an applicant is concerned that the project will not be completed within one year of the permit, then the applicant may request a concept review under N.J.A.C. 16:47-4.15 before submitting an application for an access permit. An applicant can request that an access permit condition extend the normal one year period or an applicant may request a one year extension of the permit before it expires, under N.J.A.C. 16:47-4.6(e).

N.J.A.C. 16:47-4.3(k)1

380. COMMENT: A commercial use may be prevented from upgrading its site plan to provide better circulations, parking or access, if such improvement also involves an increase of 10 percent or more or the commercial floor area.

RESPONSE: N.J.A.C. 16:47-4.3(k)1 may cause the existing permit to expire if such an improvement was made. If the lot is nonconforming, and the proposed traffic generation exceeds the limits for the nonconforming lot, then the Department will not issue a new permit, thereby restricting the floor area to the size allowable under the existing permit.

N.J.A.C. 16:47-4.3(k)2

381. COMMENT: This rule should state that an application to subdivide the lot shall require a new application to the Department.

RESPONSE: N.J.A.C. 16:47-3.16(a) states that 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. This subsection eliminates the application portion suggested and any fee for the application. Therefore, N.J.A.C. 16:47-3.16(a) will remain.

N.J.A.C. 16:47-4.3(k)3

382. COMMENT: There are no criteria to determine what constitutes transfer of a property. The provision requiring that a permit expire when the property is transferred should be eliminated.

RESPONSE: N.J.A.C. 16:47-4.3(k) no longer causes access permits to expire when the subject property is transferred. Instead, the Department will record permits.

383. COMMENT: The permittee transfer of property notification to the Department in N.J.A.C. 16:47-4.3(k)3 should be revised. The permits should be recorded by the county recording officer. Thereby any search on the lot will reveal the recorded permit.

RESPONSE: Please refer to response number 382.

N.J.A.C. 16:47-4.3(l)

384. COMMENT: The rules permit the closure of a business's primary access at the discretion of the Department. This is unbelievable.

RESPONSE: N.J.S.A. 27:7-90e indicates that access is subject to regulation. If closure is contemplated because of permit condition violations, N.J.A.C. 16:47-4.3(l) requires the Department to notify the lot owner before taking further action. If closure is contemplated for other reasons, N.J.A.C. 16:47-4.3(n)2 requires the Department to provide notice, an opportunity for a hearing, and alternative access.

N.J.A.C. 16:47-4.3(n)

385. COMMENT: The permit process provides only for a small generic eight square foot sign to redirect traffic. This will hardly offset the loss of business due to the closing of highway access. Also, the number of small generic signs that will be needed to identify alternative access will make it difficult for motorists to follow all the signs and increase the number of accidents.

RESPONSE: N.J.S.A. 27:7-94d requires the Department to provide suitable signing to direct motorists to the new access location. There is no evidence that any loss of business will occur as a result of the re-routing of traffic. The Department recognizes that visual clutter and driver overload must be considered in establishing signing for alternative access.

386. COMMENT: The new wording should state that the signing shall be placed in locations designated by the Commissioner and be maintained by the Department.

RESPONSE: N.J.A.C. 16:47-4.3(n)5 states that the signing shall be maintained for one year.

387. COMMENT: N.J.S.A. 27:7-94a requires a public hearing when the Commissioner revokes access, but the proposed Code merely provides the affected lot owner with the right to request a hearing.

RESPONSE: There is no need to hold a public hearing if the affected lot owner waives the right to one.

388. COMMENT: This section should be amended to state that with the exception of permits held by a municipality or county, the Department may revoke any permit after determining that reasonable alternative access is available for the lot served by the permit.

RESPONSE: N.J.S.A. 27:7-94a allows the Department to revoke any access permit after determining the existence of reasonable alternative access. N.J.S.A. 27:7-94a does not exempt permits held by municpalities and counties from the exercise of this authority by the Commissioner.

389. COMMENT: The first sentence should be deleted and replaced by a statement that there is a presumption that, upon reasonable alternative access becoming available for the lot served by any permit, the Department may revoke that permit and require the lot to use the reasonable alternative access. However, the applicant may rebut this presumption by demonstrating that the capacity of the State highway can handle the access better than the alternative access or by demonstrating that use of the alternative access should impose an undue burden on the applicant.

RESPONSE: N.J.A.C. 16:47-3.2(a) has been significantly modified. Direct access to a State highway is now generally permitted even if alternative access exists. However, the Department retains the right to revoke permits pursuant to the Act and N.J.A.C. 16:47-4.3(n).

N.J.A.C. 16:47-4.3(n)3

390. COMMENT: The commenter believes this is poorly worded and not clear.

RESPONSE: This provision is based on N.J.S.A. 27:7-94c. The reproposed code clarifies this section.

391. COMMENT: The reference "(l)3i" in N.J.A.C. 16:47-4.3(n)3iii should be "(n)3i."

RESPONSE: The reference has been corrected.

N.J.A.C. 16:47-4.3(n)6

392. COMMENT: Signing for alternative access should not be removed after one year.

RESPONSE: In accordance with the Manual of Uniform Traffic Control Devices, informational signing should be kept to a minimum. Many informational signs will create a safety problem, because drivers cannot concentrate on driving and read too many signs at the same time. N.J.A.C. 16:47-4.3(n)6 allows, but does not require, the Department to remove the sign after one year.

N.J.A.C. 16:47-4.4(a)

393. COMMENT: Planning reviews should only be required where a proposed development will significantly impact a State highway.

RESPONSE: An applicant can only determine impacts after performing a study. The results must be shared with the Department in order that consensus can be reached. The threshold for requiring such studies was established based on the likelihood of impacts. In addition, the 200 peak-hour trip threshold is less restrictive than the 100 peak-hour trip threshold commonly used around the country. The Department's position is very liberal for a densely populated and well travelled State.

394. COMMENT: A small convenience store may require a planning review, but generate a small percentage of traffic on the highway.

RESPONSE: The Department evaluates traffic impacts for a site based on the site traffic, not on the traffic on the highway. This position is derived from the definition of significant increase in traffic in N.J.S.A. 27:7-95a. Unfortunately, small convenience stores generate high traffic volumes.

395. COMMENT: The Code should be amended to provide flexibility to review each application on its individual merits.

RESPONSE: Each application will be reviewed on its individual merits. However, each application will have to satisfy the applicable requirements of the Code, unless waivers are granted under N.J.A.C. 16:47-4.35.

396. COMMENT: The threshold for minor and major access applications appears arbitrary. The effects of adding 100 movements at an intersection of a major urban arterial will not be the same as adding 100 movements along a low volume rural arterial, yet each are considered major access.

RESPONSE: The threshold for major and minor permits is based on the number of daily trips as set forth in the definitions of N.J.S.A. 27:7-1. Uses that generate less than 500 daily trips require minor permits, and those that generate 500 or more daily trips require major permits. N.J.S.A. 27:7-95a does not distinguish between major and minor permits in its definition of significant increase in traffic.

397. COMMENT: The utilization of a 500 movement reference level is arbitrary and capricious. Consideration should be given to a sliding and/or variable value based on the type of development and the time of impact.

RESPONSE: This would be inconsistent with the objective of adopting uniform standards that are easy to implement and relatively simple for applicants to follow. The thresholds in the definitions of major and minor access permits are established in N.J.S.A. 27:7-1.

398. COMMENT: The proposed rules should be amended to include a provision requiring the Department to take into consideration special conditions such as traffic patterns, geometric conditions, and signal progression.

RESPONSE: Please see response number 395.

N.J.A.C. 16:47-4.4(e)

399. COMMENT: The new wording should state that no deduction shall be allowed for passby or internal trips for classification of the type of application required.

RESPONSE: The wording has been changed to this effect.

400. COMMENT: N.J.A.C. 16:47-4.4(e) states that no deductions are allowed for passby or internal trips. This is acceptable for passby trips, which are drawn from the passing traffic stream and consequently handled at the proposed driveway or adjacent street. However, internal trips are not seen at the driveways or on the State highway system and therefore should be allowed a deduction when they can be demonstrated.

RESPONSE: N.J.A.C. 16:47-4.30 allows adjustments for passby trips and internal trips to be considered in the traffic impact study.

N.J.A.C. 16:47-4.5

401. COMMENT: The deadline for submission of comments on the Access Code should be extended.

RESPONSE: The deadline for submission of public comments was extended twice and another opportunity for public comment follows this reproposal.

402. COMMENT: The review time for an application should be reduced from the proposed 200 days. The time periods to review access permit applications seem extraordinarily long for the major application with planning review.

RESPONSE: The maximum time frame of 200 days for review of a major application is established by the N.J.S.A. 27:7-91d; however, the Department has shortened this review process in this reproposed Code. N.J.A.C. 16:47-4.5(a) provides for a 175 day review period for the most complex major applications.

403. COMMENT: N.J.S.A. 27:7-91d does not allow for the additional review time provided in the proposed Code for applications involving traffic signals and developer agreements.

RESPONSE: N.J.A.C. 16:47-4.18 was modified in the reproposed Code so that developer agreements do not extend the review period for issuing a permit. The 45 day extension for traffic signals only applies to minor permit applications.

404. COMMENT: What's the time frame for the Department to return an application back to the applicant with an approval?

RESPONSE: N.J.A.C. 16:47-4.5(a) indicates that the Department will complete its review within 35 days from receipt of a complete minor application, within 100 days of receipt of a complete major application, and within 175 days from receipt of a complete major application with a planning review. These times do not include any applicant time that may be needed during the review. If a traffic signal is involved, the review of a minor application may take 45 additional days.

405. COMMENT: What happens to a permit if the Department does not respond back to the applicant within the specified time set by the law. Is the permit automatically granted? The Code should provide that an application that has been formally approved or denied within the time frames specified in the Code shall automatically be deemed approved.

RESPONSE: No, a permit is not automatically granted. N.J.S.A. 27:7-91d does not contain such a default clause. The automatic grant of a permit to an applicant whose application is not acted upon within the specified time could produce results that are inconsistent with the Act's purpose of promoting mobility on the State highway system. Every approval effects the motoring public and the Department must ensure the safety and efficiency of the highway system.

406. COMMENT: The proposed rules, even for a preapplication or project concept, will require significant project design, detailed traffic analysis, and wide-ranging mapping/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: The Department has not made any major changes to the information it requires of applicants. Experience shows that all of the information requested is needed to make an informed decision on an application. This will also reduce the need for costly and time consuming resubmissions.

407. COMMENT: Traffic studies should be allowed to accompany access permit applications so that passby versus new trip generation may be analyzed for each new or changed access point.

RESPONSE: A traffic impact study must accompany each major access application with a planning review. This requirement is set forth in N.J.A.C. 16:47-4.14(a). A traffic impact study is not required for other types of applications, but the Department will accept them.

408. COMMENT: There is no time frame established in the rules which force the Department to notify the applicant of any deficiencies in an application. N.J.A.C. 16:47-4.8, 4.9 and 4.11 do not establish how long, when or what notification procedures are to be established by the Department.

RESPONSE: The Department has added 10 and 30 day time frames to N.J.A.C. 16:47-4.8(a), 4.11(a) and 4.13(e).

409. COMMENT: When the Department requests additional information from an applicant, the process and time frame for reviewing the application will actually restart once the Department receives the additional information it requested. There are no time frames placed upon the Department as to when it should be allowed to require additional information and whether such information should be requested by the Department within a specified time period after the application has been submitted. The possibility of abuse by the Department in requesting additional information for an application warrants the establishment of time frames.

RESPONSE: The Department is retaining the restart provision as well as the right to request additional information from the applicant to remedy form or technical content deficiencies. The Department has added time frames to N.J.A.C. 16:47-4.8(a), 4.11(a) and 4.13(e) as indicated in response number 408.

N.J.A.C. 16:47-4.5(a)

410. COMMENT: The time frames for concept reviews should be reduced to 30 days for a major application and to 60 days for a major application with a planning review.

RESPONSE: The Department is not able to perform concept reviews within these time frames. The time frames for review provided in the Code are for maximum time periods. However, the Department will strive to complete its reviews prior to the maximum time allowable.

411. 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: The Department is sensitive to the needs of the development community and has shortened the review periods, as permitted by law and in use today. As a result, the approval process has been shortened.

412. COMMENT: It is recommended that the Access Code allow for tolling the time in the event of moratoriums which may prevent an applicant from fulfilling his commitment.

RESPONSE: The Department has added a provision for tolling permits (see N.J.A.C. 16:47-4.6(l)).

413. COMMENT: Other permit applications which may be required should be listed along with the corresponding criteria.

RESPONSE: N.J.A.C. 16:47-4.7 states that other permit applications that may be required in conjunction with the access application will become companion permits to the access application and be reviewed together.

N.J.A.C. 16:47-4.5(c)

414. COMMENT: The Department should require the Major Permits Unit to schedule and hold the preapplication conference within 15 days of receipt of the letter indicating the information in N.J.A.C. 16:47-4.13(b).

RESPONSE: In general, these meetings are held within 15 days.

N.J.A.C. 16:47-4.6

415. COMMENT: It is unreasonable to require a lot owner to apply for a new access permit when the zoning of the lot changes.

RESPONSE: The Code does not require this.

416. COMMENT: Permits should be allowed to run one year from the date that all other permits needed to initiate construction have been obtained.

RESPONSE: Please refer to response number 427.

417. COMMENT: The Department application review and permit issuance should be more clearly separated into two stages—approval of the access application and issuance of the permit.

RESPONSE: These are already two functions. The Code provisions for applications are generally stated in N.J.A.C. 16:47-4.5 and detailed in N.J.A.C. 16:47-4.8, 4.11 and 4.13. The permit issuance is addressed in N.J.A.C. 16:47-4.8(d), 4.11(d) and 4.13(k).

418. COMMENT: The developer's rights should vest with issuance of the access approval.

RESPONSE: The developer's rights vest with issuance of the access permit, not with the approval of the application.

N.J.A.C. 16:47-4.6(a)

419. COMMENT: The permit renewal fees are excessive and unjustified.

RESPONSE: The Department has revised the fees for permit renewals based on its estimate of the cost to perform the work.

420. COMMENT: The fee schedule should be lowered; as proposed, they will cause negative impact on development and are exorbitant.

RESPONSE: The fee schedule for applications and permits was administratively revised, effective December 4, 1989, to reflect Department costs. Responses to comments on fees were published at 21 N.J.R. 3778(a) on December 4, 1989. The extension fees are proposed to be increased here because the current $10.00 and $20.00 fees do not cover the Department's costs for issuing the extensions.

421. COMMENT: If a major project which requires a planning review undergoes a concept review whereby planning, traffic, and the various Department bureaus have reached a consensus, it would appear logical that shortly thereafter an application for a major permit could be applied for, with the necessary construction drawings. Consequently, the total cost would be $500.00, plus $3,750 which is considerably less than making a full application for a major with planning review and paying $9,000.

RESPONSE: The Department administers conceptual review applications based on the anticipated traffic generation. If more than 200 peak hour trips are anticipated, a planning review is performed. The Department defers covering its costs for the conceptual review until the subsequent major access application with a planning review is processed. The full access application fee of $9,000 is commensurate with the work the Department performs.

N.J.A.C. 16:47-4.6(b)

422. COMMENT: A limit on the number of units in affordable housing plans that have already been approved by the court or the Council on Affordable Housing (COAH) undermines the efficacy of those plans. Therefore, the Code should either grandfather affordable housing plans that would have been entitled to an access permit under the previously-existing rules, or exempt development sites specifically identified in a court or COAH-approved affordable housing plan.

RESPONSE: The Department supports the concept of affordable housing. Affordable housing applicants may seek a waiver pursuant to N.J.A.C. 16:47-4.35. Applicants will be required to present evidence of the approval of the other authorities. Applicants will also be required to present traffic impact analyses and mitigate those impacts when Level of Service violations occur. After meeting with representatives of the Council on Affordable Housing, the Department has revised N.J.A.C. 16:47-3.4 to allow a 10 percent reduction in the total application and permit fees for affordable housing when at least 10 percent of the proposed units are for low and moderate income owners. In addition, general development plans approved prior to the adoption of the Code will be grandfathered. N.J.A.C. 16:46-4.6(m) has been added.

423. COMMENT: The economic impact analysis should consider the effects of the Code on affordable housing.

RESPONSE: The Department is sensitive to legislative support for affordable housing and has modified N.J.A.C. 16:47-4.35 to allow waivers for such developments. In addition, N.J.A.C. 16:47-4.6(b) identifies that if a development has at least 10 percent affordable housing, there is a 10 percent reduction in the application and permit fees.

424. COMMENT: The percentage reduction in fees should be equal to the percentage of Mount Laurel units provided by a developer, and should extend to the application fee and the amount of road improvement contributions required by the Department.

RESPONSE: N.J.A.C. 16:47-4.6(b) has been modified to allow for a reduction in both the application and permit fees for low and moderate income housing units, provided that the development contains at least a 10 percent set aside for low and moderate income housing. N.J.A.C. 16:47-4.34(h) has also modified the fair share financial contributions required for these units.

425. COMMENT: The rules should require a municipal certification stating that there is an obligation to provide low and moderate income units and that such obligation will be enforced, rather than requiring proof that the condition has already been satisfied before construction commences.

RESPONSE: This reproposed Code reflects this recommendation in N.J.A.C. 16:47-4.6(b).

N.J.A.C. 16:47-4.6(d)1

426. COMMENT: What happens if an access permit expires?

RESPONSE: When an access permit expires, the permittee no longer has the right to construct, use or maintain the access points covered by the permit. N.J.A.C. 16:47-4.3(l) explains the actions that the Department must take, once it becomes aware of an expiring permit.

N.J.A.C. 16:47-4.6(d)2

427. COMMENT: The stipulation that permits expire within one year is overly restrictive for medium and large projects, particularly in cases where work has not yet started and extensive local reviews are required. At a minimum, the applicant should be granted the option to petition for an extension for one year with justification. The time provisions associated with permits should be consistent with the approval process at the local level.

RESPONSE: The Department coordinated the time provisions associated with access permits with those for municipal approvals, although the purposes of the Code require some deviations. Because access permits entitle the permittee to work on public property, it is crucial that construction be completed expeditiously. Accordingly, access permits require that construction commence within one year of the permit's issue. Unless the Department grants a one year extension, construction must also be completed within that year. Issuance of an extension allows the permittee a maximum of two years in which to complete construction. If an applicant does not expect to have the necessary municipal approvals in place within this time period, he or she has the option of applying for conceptual approval from the Department before applying for an access permit. Conceptual approvals are valid for one year. Yet another common approach is for the applicant to request the municipality to condition its approvals on the applicant's eventual obtainment of an access permit.

428. COMMENT: The access permit approval process should allow for the time period for access approval and permit duration to be suspended if the developer is prevented from proceeding with the development due to legal action, directive, or order, for the length of time said action, directive or order is in effect.

RESPONSE: The reproposed Code contains a provision for tolling in N.J.A.C. 16:47-4.6(l).

429. COMMENT: The Code should provide for an automatic extension of one year on an access permit if at least 25 percent of the construction work associated with the permit has been completed. This would eliminate needless review and allow work that has already been authorized to be completed in a timely manner.

RESPONSE: The Department opposes automatic extensions. It is not easy for the Department to know when or verify that 25 percent of the work has been completed. It is less burdensome for the Department to react to a written request from the permittee for an extension. With a little foresight on the part of the permittee, previously authorized work need not be interrupted or disrupted.

N.J.A.C. 16:47-4.6(g)

430. COMMENT: The Code does not contain standards or guidelines as to how inspection costs are to be established.

RESPONSE: N.J.A.C. 16:47-4.18(g) has been added to address design review and construction inspection costs.

431. COMMENT: How is the amount of a performance guarantee established in a developer agreement?

RESPONSE: The performance guarantee is a contract provision of a developer agreement and is subject to the circumstances of the agreement.

N.J.A.C. 16:47-4.6(m)

433. COMMENT: The Code should provide that once a permit application is certified complete, all Department proceedings on the application shall be based on the rules in effect as of the date it is complete.

RESPONSE: The rules in effect at the time the Department receives a complete application are the basis for review. N.J.A.C. 27:7-92d adds that applications accepted as complete prior to the adoption of the Access Code that have also received preliminary municipal site plan or subdivision approvals are subject to the rules in effect prior to the adoption of the Access Code. This is reaffirmed in an addition to the rules, N.J.A.C. 16:47-4.6(m).

N.J.A.C. 16:47-4.8

434. COMMENT: There is no provision to allow an applicant to secure a preapplication conference with the Regional Maintenance Office or the Major Permits Unit.

RESPONSE: Preapplication conferences are only required for major applications with a planning review. Preapplication conferences for other types of applications may be arranged by contacting the Regional Maintenance Office, as provided in N.J.A.C. 16:47-4.3(d).

435. COMMENT: The time periods to review minor access applications seem reasonable.

RESPONSE: The Department is eager to complete all of its reviews within reasonable time periods and, for that reason, shortened the review periods permitted by N.J.S.A. 27:7-91d.

N.J.A.C. 16:47-4.8(d)

436. COMMENT: The time period of 180 days for an applicant to respond to the Regional Maintenance Office with completed and signed documents appears unnecessarily long.

RESPONSE: This is the maximum time frame allowed for the applicant. Applicants may respond before 180 days have elapsed.

N.J.A.C. 16:47-4.8(e)

437. COMMENT: Review times should not be restarted if the application is incomplete or unacceptable for review. Doing so penalizes the applicant and gives the Department staff incentive to request additional information.

RESPONSE: The Department is retaining the restart provision. This is critical to the Department's ability to review applications and it provides an incentive for applicants to make complete and acceptable submissions.

438. COMMENT: Department staff should be limited to two requests for additional information and should be required to advise applicant if additional information is needed within a specified time.

RESPONSE: Please refer to response number 408. If the Department is limited in the number of times it may request required information from the applicant, it will have to reject applications that are still deficient after two requests for information. This course of action will place unnecessary additional financial and time burdens on applicants.

N.J.A.C. 16:47-4.10

439. COMMENT: The scale and size of plan sheets which accompany applications should be consistent with those required at the local level, unless there are improvements shown to the State highway system.

RESPONSE: The scale and size of plans specified are those that the Department uses for its projects and records. Clearly, improvements to the State highway system should be drawn at the same scale. The Department also needs to check proposed access points, topography and geometrics shown on an application against its plans. This is easiest to do when both sources have the same scale. The plan size is based on the existing Department storage facilities for plans.

N.J.A.C. 16:47-4.13

440. COMMENT: The Code should require the Major Permits Unit to provide the applicant with written recommendations made at the preapplication meeting, and verification of the type of permit needed within 15 days from the meeting.

RESPONSE: The purpose of the preapplication conference is for the applicant and the Department to exchange ideas about an application in an informal and informative manner. The Department does not make commitments at the preapplication conference and, therefore, written recommendations are not appropriate. Potential applicants are free to document these meetings if they choose. Verification of the required permit type is done by the Regional Maintenance Office. There are also threshold charts in N.J.A.C. 16:47-4.4 and Appendix E which establish the basis for the type of permit.

441. COMMENT: The terms acceptable for review and complete should be used consistently. The section on major with planning does not contain these provisions.

RESPONSE: The reproposed Code has replaced the term complete with acceptible for review. Each Departmental review unit can declare an application acceptable for review by that unit. An application is complete if it is found to be acceptable for review by all involved units. N.J.A.C. 16:47-4.13(e) has been modified to state that the Regional Maintenance Office and the Regional Design Office will notify the applicant whether an application is acceptable.

N.J.A.C. 16:47-4.13(m)

442. COMMENT: The potential 40-day time frame for certificate of acceptance is unacceptable. A performance bond or guarantee is an acceptable mechanism to ensure work is completed and conditions met for substantially complete work. This provision will allow start-up operations to begin, even while minor punch list items need to be completed. The Code should be changed to require that the certificate of acceptance be sent to the municipality within four days of inspection.

RESPONSE: The Department cannot commit to a four-day notification schedule. A 10-day time period is not unreasonable and the Department can successfully meet such a schedule.

N.J.A.C. 16:47-4.15

443. COMMENT: The Code should specifically provide that concept approvals for Mount Laurel developments be valid for over one year as is consistent with court or the Council on Affordable Housing approval.

RESPONSE: Although N.J.A.C. 16:47-4.15(c) indicates that all concept approvals are good for one year, N.J.A.C. 16:47-4.35(d)10 specifically cites low or moderate income housing developments proposed pursuant to the Fair Housing Act or under court settlement as a basis for a waiver from the requirements of the Code.

N.J.A.C. 16:47-4.16

444. COMMENT: Very often in the concept review process, design specifics need not be addressed, as the concept deals with what access will be permitted and what major road improvements are necessary. Consequently, the concept review checklist should be streamlined and the following eliminated:

Drainage—Existing and proposed.

Site location, including existing topography within 1,000 feet in each direction (poles, grades, etc.).

Highway traffic striping—Existing and proposed (requires survey).

RESPONSE: The Department has deleted existing and proposed drainage, poles and grades, and existing and proposed traffic striping from the concept review checklist. Site location and topography are necessary and have been retained.

N.J.A.C. 16:47-4.16(a)

445. COMMENT: The concept review checklist should indicate that the traffic impact study be submitted if required, not otherwise.

RESPONSE: N.J.A.C. 16:47-4.16(a) has been modified to require a traffic study, if the application meets the requirements for a planning review.

N.J.A.C. 16:47-4.18

446. COMMENT: Any use generating more than 750 trips per day and over 50 peak-hour trips may warrant utilization of a developer's agreement.

RESPONSE: The Department does not find the need for a developer agreement to be a function of traffic generation and has not included this criterion.

447. COMMENT: There are no provisions for developer agreements in the Act. The provisions for them in the proposed Code provide the Department with excessive discretionary authority. There should be a provision for a public comment period on developer agreements, a maximum cap on fees, and an allowance for the tolling of time to complete construction.

RESPONSE: The Department has revised this provision to state that a developer agreement may be required as a condition of an access permit and to indicate the criteria used to determine when a developer agreement will be required. Public comment periods are not applicable to developer agreements or any other contracts entered into by the Department. Because the Act places no cap on an applicant's fair share financial contribution, the Department has not proposed to cap a developer's financial contribution. A tolling provision has been added as N.J.A.C. 16:47-4.6(l).

448. COMMENT: The proposed Code establishes no standards for a developer agreement. What costs will be borne by the new project?

RESPONSE: N.J.A.C. 16:47-4.18(d) and (e) list the criteria used to determine when a developer agreement is required and when it may be required. Fair share costs are to be borne by the developer and N.J.A.C. 16:47-4.18(d)7 has been revised accordingly.

449. COMMENT: Reasonable standards for developer agreements must be included in the Access Code. The rules propose vague conditions for determining when a developer agreement is required. There is also little information as to what standards apply when a developer agreement is mandated in lieu of an access permit. The rules leave tremendous discretion to the Department.

RESPONSE: The Department has included such standards in the reproposed Code. The Department will no longer require developer agreements in lieu of permits. When needed, a developer agreement will be a condition of a permit.

450. COMMENT: N.J.S.A. 27:7-91h provides that the Access Code may require developers to make financial contributions toward the cost of improvements. The Code should state that in the event any financial contributions which are required from a developer are also required under the Transportation Development District Act, then the contribution required under the Transportation Development District shall control and contributions shall not be required under this Access Code.

RESPONSE: N.J.A.C. 16:47-4.34 and other provisions have been revised to address sites within approved Transportation Development Districts.

N.J.A.C. 16:47-4.18(c)

451. COMMENT: An applicant's waiting time for developer agreements exceeds the time required by the Department to review and obtain internal approvals from the various divisions for the developer agreement. It is recommended that this internal review process be excluded from the applicant's time.

RESPONSE: The Department intended the internal approvals to be those of the applicant, not of the Department. The provision has been clarified.

N.J.A.C. 16:47-4.20

452. COMMENT: No procedure for the State assistance with condemnation of right-of-way is mentioned in the Code. Especially when the site driveway is dedicated, the State should be required to condemn the required property.

RESPONSE: The Department can only assist in right-of-way acquisitions for public improvements serving a predominantly public purpose. The Department cannot legally exercise its condemnation powers for improvements which serve a predominantly private purpose.

N.J.A.C. 16:47-4.22

453. COMMENT: The Access Code may direct growth to outlying areas, contrary to the State Development and Redevelopment Plan.

RESPONSE: In response to comments, this reproposed Code includes different levels of service standards for urban and rural areas.

454. COMMENT: The level of service requirement that no deterioration be permitted at level of service (LOS) E or F for signalized intersections or uninterrupted flow on a State highway without mitigation is totally unreasonable for small projects. A small project cannot reasonably expect to add a through lane to an uninterrupted flow highway segment along a State highway, because under the terms of these guidelines no deterioration is permissible. Consequently, there should be some minimum deterioration allowance for small projects, such as if the V/C is not affected more than three percent to five percent.

RESPONSE: The Department's permit categories effectively establish a minimum deterioration, as suggested. For small projects, less than 200 peak-hour trips, there is no traffic study performed. Therefore, the LOS is not a factor of the review. Any development that requires a major application with a Planning review and deteriorates the LOS to E or F must mitigate the traffic impact of the development. Furthermore, only fair share mitigation is required under N.J.A.C. 16:47-4.34.

455. COMMENT: The applicant should have the option of obtaining from the Department a letter of determination as to the access level and existing level of service on the segment of State highway on which the applicant's lot is located.

RESPONSE: The access levels are shown in Appendix B and the Department will confirm the access level for a lot adjacent to a highway segment if requested. The Department does not currently have an inventory of the level of service segments of highway.

456. COMMENT: The level of service standards are not clear and are unjust.

RESPONSE: The Department has been successfully using these standards since 1987. These rules are further clarified in this reproposed Code.

N.J.A.C. 16:47-4.23

457. COMMENT: The Department has made a significant policy change by changing the requirement for a development to mitigate its traffic upon project completion as in the orange booklet, Guide to Highway Access Permits, to a time 10-years beyond the project opening, stated in the draft rules. This seems unfair and unreasonable in that the project will have to deal with 10-years of background growth and provide mitigation against the then existing level of service. Also, the levels of service will only deteriorate with time, given the background growth. Consequently, there should be no requirement to analyze the project opening year, as all physical means of mitigation will logically be directed towards mitigating the 10 years after project opening.

It would appear more appropriate to provide mitigation for a more reasonable time frame of five years after project completion. Such a requirement would reduce the analyses and review procedures in that there would not be project opening and a project opening plus 10 years analyses, but simply five years after project opening. This would streamline the review process and represent a fair window of mitigation for private development.

RESPONSE: The proposed Code never required an applicant to construct the highway improvements needed to carry the site traffic plus all other traffic that may accumulate over a 10 year period. The Department has eliminated the requirement for a 10 year analysis. Analysis will only be required for the year of opening the site to traffic, except for phased developments, which shall be analyzed in each year a phase opens. The Department has also clarified the issue of financial contributions and the construction of highway improvements to require only the applicant's fair share.

N.J.A.C. 16:47-4.25

458. COMMENT: Uninterrupted flow standards permit a V/C increase of 0.1 which is not consistent with 22 N.J.R. 1085, N.J.A.C. 16:47-4.22(a), level of service requirement, which states that for highway segments expected to generate at level of service E or F, it is unacceptable for an applicant's traffic to deteriorate the level of service.

RESPONSE: The Department finds that paragraphs (a)1 and 2 of N.J.A.C. 16:47-4.25 are two measures that must be satisfied. The V/C ratio increase of less than 0.1 is acceptable unless the level of service is E or F.

N.J.A.C. 16:47-4.26

459. COMMENT: It appears that NA means not applicable in some cases and none allowed in other cases. The maximum V/C ratio of 1.2 in this table is inconsistent with the text in N.J.A.C. 16:47-4.26(b)I.

RESPONSE: The table in N.J.A.C. 16:47-4.26 has been modified to indicate that NA means not applicable. The maximum V/C ratio of 1.2 has been changed to no build or 1.2, whichever is greater.

N.J.A.C. 16:47-4.28

460. COMMENT: For weaving areas, level of service may not deteriorate with additional site traffic. A more flexible rule, such as utilizing operating speeds or reviewing accident data, should be used.

RESPONSE: Adding site traffic to a weave will decrease the operating speeds. The Department is sensitive to the need for flexibility in addressing weaves, and that was the reason that N.J.A.C. 16:47-4.28 indicates that each location is to be discussed at a preapplication meeting. Also, a review of past accidents is not likely to be conclusive in establishing the appropriateness of adding traffic to a weave. Most accidents are not recorded accurately enough to do this.

N.J.A.C. 16:47-4.30

461. COMMENT: Some traffic impact study requirements are arbitrary and the Commissioner should appoint a blue ribbon panel to review them.

RESPONSE: The requirements are not arbitrary. They are founded on the Department's experience since October, 1987 and feedback from access applicants and traffic engineers. The requirements are clarifications and expansions of previous requirements that proved to be unclear. The Department welcomes additional specific comments on this provision.

462. COMMENT: The Access Code should require that all traffic impact study reviews be signed by a professional engineer.

RESPONSE: There is no statutory requirement that all of the traffic impact study reviews performed by the Department be signed by a professional engineer. They are, however, normally accomplished under the supervision of professional engineers.

463. COMMENT: The proposed rules seem not to address the trip reduction possibilities of volunteer transportation management associations or proposed mandatory trip reduction legislation.

RESPONSE: N.J.A.C. 16:47-4.30(a)2iv enables applicants to address unique functional or operational activities. In addition, the Institute of Transportation Engineers rates assume that some voluntary carpooling is occurring.

464. COMMENT: The Institute of Transportation Engineers' Trip Generation, fourth edition, should not be applied to gasoline stations because the trip generation data do not reflect the traffic conditions experienced by gasoline stations in New Jersey. These rates are based upon eight stations in three Illinois cities in 1969. Furthermore, the vehicle trip generation rates do not rationally correlate the trip generation rate per station to the rate per pump. The Department should use actual counts of traffic or reasonable estimates of traffic at a particular site at the time of application and estimate the number of trips based on the volume of traffic on the roadway.

RESPONSE: The Department has replaced the Institute of Transportation Engineers' rates with rates established by the Department based on data supplied by the petroleum industry.

465. COMMENT: Any legal oriented advocacy for the applicant regarding the applicant's position on highway improvements necessary to mitigate traffic should not be required of the engineer.

RESPONSE: The traffic impact study must assess the no-build conditions and the build conditions with any highway improvements the applicant may propose. This assessment should not advocate any position. It should only state whether or not the Department's requirements are met.

466. COMMENT: The narrative portion of the traffic impact study should be permitted to be developed by a licensed professional engineer, as well as the applicant's legal counsel. The engineer should not be required to provide legally oriented advocacy on the part of the applicant.

RESPONSE: N.J.A.C. 16:47-4.30(a)1 specifies that a licensed professional engineer shall develop the narrative summary. This summary must either conform that the application meets the Department's requirements or point out where such is not the case. If the requirements are not met, there must be support for the applicant's position elsewhere in the application. This support may be provided by the applicant's attorney as well as by an engineer.

N.J.A.C. 16:47-4.30(a)4

467. COMMENT: The travel demand management plan requirements should be restricted to projects that generate more than 750 trips per day and more than 250 peak-hour trips.

RESPONSE: N.J.A.C. 16:47-4.30(a)4i states that the Department encourages applicants to submit a travel demand management plan. This is not a requirement and the Department sees no need to restrict this optional provision.

468. COMMENT: The Code should mention the positive impact transportation management strategies have on the local traffic conditions.

RESPONSE: N.J.A.C. 16:47-4.30(a)4 describes transportation demand management strategies and their objectives. The Department encourages the submission of transportation demand management plans.

N.J.A.C. 16:47-4.31

469. COMMENT: It is improper to base rules upon documents containing standards which have not themselves been proposed for adoption in accordance with the Administrative Procedures Act. The level of service standards, defined by reference in the Highway Capacity Manual, and the "Procedural Manual for the preparation of Design Exceptions" N.J.A.C. 16:47-4.31 should either be proposed for adoption or included in the appendix.

RESPONSE: The Department has amended this provision to reference the design standards. N.J.A.C. 16:47-4.35 provides for exceptions to these standards. The Highway Capacity Manual is the accepted industry standard used by traffic engineers and the Department. The Department welcomes comments on the appropriateness of using these standards.

470. COMMENT: The section of the Code on design exceptions fails to address the problem of substandard existing or pre-development conditions.

RESPONSE: This section has been deleted. Deviations from design standards must be justified as waivers. Existing substandard conditions have been added as a basis for waivers.

N.J.A.C. 16:47-4.32

471. COMMENT: The appeal process should be shortened to bypass the Regional Director and proceed directly to the Assistant Commissioner.

RESPONSE: The appeal process is designed to provide the applicant with ample opportunity to resolve disputes administratively. The Department's experience shows that Regional Directors frequently resolve matters.

472. COMMENT: A 30-day time deadline should be established for scheduling a meeting if the Regional Director grants a request for reconsideration.

RESPONSE: As reproposed, N.J.A.C. 16:47-4.32(a)2 and (b)2 require that reconsideration meetings be scheduled within 30 days.

473. COMMENT: The appeals section lacks clear criteria.

RESPONSE: As reproposed, N.J.A.C. 16:47-4.32(a)5 and (b)5 establish the bases of the Assistant Commissioner's review.

474. 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: The Commissioner has delegated to the Assistant Commissioner, Construction and Maintenance and the Assistant Commissioner, Design and Right-of-Way, the authority to render the final decision of the Department in permit issuance matters. There is nothing in the Act that precludes such a delegation of authority.

N.J.A.C. 16:47-4.34

475. COMMENT: What standards will be used to allocate the costs between a new project and other sources of traffic in a developer agreement?

RESPONSE: N.J.A.C. 16:47-4.34 addresses this concern by adding a process for calculating the amount of an applicant's responsibility, based on violations of the level of service standards in N.J.A.C. 16:47-4.24. Other sources of traffic have no responsibility in the developer agreement.

476. COMMENT: The fair share financial contribution definition should base the calculation on peak-hour capacity use rather than peak-hour volume in the design year.

RESPONSE: The fair share contribution definition has been modified as suggested (see N.J.A.C. 16:47-1.1).

477. COMMENT: By applying the standards as stated in comment number 476, the cost of the improvements will be more evenly assessed, with no one developer bearing a disproportionate share of the impact.

RESPONSE: The Department has substantially expanded N.J.A.C. 16:47-4.34 to include a method for determining an applicant's fair share in accordance with the rational nexus principle.

478. COMMENT: This should be amended to provide the Department with the authority to assess financial contributions on applicants only when needed.

RESPONSE: A fair share contribution is needed whenever the level of service standards are violated.

479. COMMENT: It is recommended that a clear standard be established which provides the Department with structured ability to assess, if needed, a financial contribution from an applicant. Such contributions must be assessed in a consistent manner across the board.

RESPONSE: See responses to comments number 477 and 478.

N.J.A.C. 16:47-4.34(d)

480. COMMENT: It is unclear how these rules will interrelate with the functioning of Transportation Development Districts or the Transplan Municipal-County Planning Partnership Act.

RESPONSE: N.J.A.C. 16:47-4.34(d) now provides for access permits for sites within approved Transportation Development Districts. The third piece of the Transplan legislation, The County-Municipal Planning Partnership Act, has not yet been passed by the Legislature.

N.J.A.C. 16:47-4.35

481. COMMENT: The waiver provisions of the proposed Code do not state what criteria need to be met, or what needs to be proved, in order to obtain a waiver.

RESPONSE: The waiver provision, N.J.A.C. 16:47-4.35, has been expanded to address these concerns.

482. COMMENT: It is absolutely necessary that there be a policy statement in any Access Code adopted, providing for flexibility and interpretation of the guidelines contained in the Code so that economic growth can continue to occur within New Jersey at the same time as the Department is providing for the health, safety, and welfare of the travelling public.

RESPONSE: The Department has wrestled with these at times conflicting goals. The Department strives towards making the rules as consistent, reasonable and defensible as possible and to eliminate idiosyncratic and personal judgements due to too flexible a rule. Special situations may be addressed by waivers, which have been expanded under N.J.A.C. 16:47-4.35.

N.J.A.C. 16:47-4.35(a)

483. COMMENT: This should be revised to state that, "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. A waiver may be granted when the applicant can show that the waiver is justified on one of the following grounds:

(i) Existing social, economic, or environmental constraints;

(ii) The unique character of the particular lot; or

(iii) Strict application of the standards of this Access Code would be unreasonable under the circumstances."

RESPONSE: N.J.A.C. 16:47-4.35 has been modified to incorporate these revisions.

N.J.A.C. 16:47-5.1

484. COMMENT: The provisions for requesting a classification change do not provide for sufficient public input. The provision should automatically provide for a public hearing, and should require the applicant to notify all lot owners along, and within 200 feet from the ends of, the subject roadway.

RESPONSE: Because anyone can request a change in the access classification of a segment of the State highway, requiring a public hearing on each request could prove burdensome. However, the Department agrees that the affected public should be afforded an opportunity to comment on the request. Accordingly, N.J.A.C. 16:47-5.2(b) has been changed to require that the application include copies of notices sent to the lot owners along and within 200 feet from the ends of the subject roadway giving 10 days to comment on the request. All responses and comments to such notices must also be included with the application. In addition, N.J.A.C. 16:47-5.5(c) indicates that the Commissioner's proposal to adopt a change is subject to public comment.

N.J.A.C. 16:47-5.4

485. COMMENT: Date of notice should be replaced with receipt of notice.

RESPONSE: The Department chose date of notice because the Department has no way of verifying when the applicant receives the notice unless it is sent return receipt requested. This would be an expensive administrative requirement. Also, the use of date of notice hastens the process.

486. COMMENT: Notice of a proposed classification change should be sent to the Metropolitan Planning Organization, the chief elected official, and the county engineer.

RESPONSE: The Department will require that notice be sent to the Metropolitan Planning Organization. The elected officials and county engineer should receive a copy of the notice from their clerk, the official legally authorized to receive such notice.

N.J.A.C. 16:47-5.5

487. COMMENT: Metropolitan Planning Organizations should be notified of access management plans and limited access designations.

RESPONSE: The Department added Metropolitan Planning Organizations to the notification list in N.J.A.C. 16:47-7.1 and 6.5(a).

N.J.A.C. 16:47-6.1

488. COMMENT: The Department should be required to prepare an access management plan for each municipality. It is unreasonable to require municipalities to pay up to 50 percent of the cost of an access management plan.

RESPONSE: N.J.S.A. 27:7-91f states the Commissioner may adopt access management plans which are developed jointly by the Department and the municipality in which the highway segment is located. The Department will not unilaterally prepare or fund an access management plan.

488. COMMENT: A provision should be added stating that to the extent any access management plan created pursuant to this section provides for the regulation of access, traffic and improvements at least as effectively as this Access Code, access management plans may deviate from strict adherence to the standards of the Access Code.

RESPONSE: This provision has not been incorporated because N.J.S.A. 27:7-91f requires that the access management plan must comply with or exceed the standards in the Access Code.

490. COMMENT: A copy of the access management plan should be sent to the county.

RESPONSE: N.J.A.C. 16:47-6.5(a)4 requires that the county be notified when an access management plan is initiated. The Department recognizes that the access management plan process is a joint process that includes county participation.

491. COMMENT: The rules should clarify the effect of access management plans on the requirements otherwise applicable.

RESPONSE: N.J.S.A. 27:7-91f states that the access management plan must, at a minimum, comply with the Access Code. It may be more restrictive than the Access Code. Also see N.J.A.C. 16:47-6.1(a)3. Once an access management plan is adopted, all of the Access Code requirements apply to the lots along the highway segment covered by the access management plan, except where superseded by the access management plan. Access permits are required for each lot, as provided for in N.J.S.A. 27:7-92 and N.J.A.C. 16:47-4.17.

N.J.A.C. 16:47-6.2

492. COMMENT: It must be determined how the access management plans relate to Transportation Development Districts.

RESPONSE: The Transportation Development District rules are being prepared now and will apply to only high growth areas. The access management plan may be developed anywhere regardless of growth conditions. The Transportation Development District plan will be more comprehensive than the access management plan on a district wide basis, but may not be as detailed on particular highway segments. If a Transportation Development District is proposed in an area covered by an access management plan, then the District plan must accommodate the access management plan. This requirement will be included in the rules for Transportation Development Districts.

N.J.A.C. 16:47-6.4

493. COMMENT: A traffic study should be required for access management plans.

RESPONSE: The access management plans identify the location of driveways for each lot within the highway segment. If a traffic study is needed to determine the appropriate number and location of access points, then the Department and the municipality will have a study performed as part of the development of the access management plan.

N.J.A.C. 16:47-6.5

494. COMMENT: The access management planning process should include representation from county engineering and planning departments.

RESPONSE: N.J.A.C. 16:47-6.5(a)4 and 6.5(d) provide for county representation. The chief governing official of the county may choose a designee.

495. COMMENT: Counties should have the option to initiate access management plans on State highways.

RESPONSE: The Department or a municipality must initiate an access management plan and the municipality must be willing to reflect the access management plan in its master plan and development ordinances in order for the access management plan to be adopted. This is consistent with N.J.S.A. 27:7-91f, and N.J.A.C. 16:47-6.5(b) has been modified to preclude formal initiation by a county. A county may adopt an Access Code and initiate an access management plan for a county road and then develop the access management plan jointly with the municipality.

496. COMMENT: There should be a provision for repeat extensions of access management plans.

RESPONSE: The time frames listed in N.J.A.C. 16:47-6.5(k) were intended to encourage the parties to work efficiently to develop the access management plan. As drafted, the rules provide the Commissioner with the flexibility needed to address those plans that are not advanced on time.

497. COMMENT: The recommended time frame of 30 days for municipalities and counties to decide whether to enter into the planning process with the Department to formulate an access management plan should be increased to 60 days.

RESPONSE: There is no such time frame. In N.J.A.C. 16:47-6.5(d), the first meeting will take place within 60 days of initial written notification of interest. All potentially affected parties are invited to attend. In N.J.A.C. 16:47-6.5(c), the Commissioner has 30 days to send written notice to the represented parties of the Department's decision whether or not to proceed with the development of the access management plan. The municipalities and counties adopt resolutions agreeing to proceed, but no time frames are identified to develop the resolutions.

N.J.A.C. 16:47-6.6

498. COMMENT: The access management plan provisions should require that notices be provided of all meetings of the working committee and allow for public review and comment during the development process rather than after the access management plan has been completed and submitted to the Department for review.

RESPONSE: N.J.A.C. 16:47-6.5(i) provides that all primary contacts receive notices of meetings. They are free to publicize the notices. Because of time and monetary considerations, the Code does not provide for public review during the planning process when the plan is nonexistent, but does provide for a public hearing on the submitted access management plan prior to its incorporation into municipal development ordinances and master plans. The public may also provide input at the municipal and county level meetings to incorporate the access management plan.

499. COMMENT: Public hearings on access management plans involving two counties should be held in each county during evening hours.

RESPONSE: The Department sees no need to hold multiple hearings when multiple counties are involved. All hearings will be held in reasonable proximity to the involved highway segment. The Department will make every effort to schedule public hearings so that interested citizens can attend and will require that notice be given to lot owners within 200 feet of the subject area. The Department generally holds hearings in the evening, sometimes beginning in the afternoon. Because of site specific variables, the Code does not require that public hearings be held at a particular location or time of day.

500. COMMENT: N.J.A.C. 16:47-6.6(b) should be changed to require a public hearing if major changes are made to the plan, not at the Commissioner's discretion.

RESPONSE: N.J.A.C. 16:47-6.6(b) has been changed to require a new public hearing if the revisions to the access management plan have been classified as major, similar to the provisions of N.J.A.C. 16:47-6.11(a).

N.J.A.C. 16:47-6.8

501. COMMENT: Municipalities must have veto power over the access to individual lots within the proposed access management plan.

RESPONSE: An access management plan is a collaborative effort and must be adopted in the municipal master plan as stated in N.J.S.A. 27:7-91f and in N.J.A.C. 16:47-6.7. The Department has clarified N.J.A.C. 16:47-6.1(a). Without the adoption in the master plan there can be no binding access management plan as stated in N.J.A.C. 16:47-6.2. Therefore, prior to adoption of the access management plan, the municipality has the power to veto the access management plan. To allow veto power for individual lots after adopting the master plan and receiving the Department's approval is not appropriate or necessary.

N.J.A.C. 16:47-7.2

502. COMMENT: The provisions allowing for the designation of limited access highways in N.J.A.C. 16:47-7.1 should require that any public hearings be held in the evening, and require that notice be given to lot owners within 200 feet of both ends of the proposed designated segment, as well as those within the segment.

RESPONSE: The Department will make every effort to schedule public hearings so that interested citizens can attend and will require that notice be given to lot owners within 200 feet of the subject area.

Appendix A

503. COMMENT: The access level and desirable typical sections for portions of Route 30 and Route 206 should be changed to include a center two-way left-turn lane.

Route 30 MP 27.60 TO 35.10	AL 4 DTS 4G
Route 206 MP 0.10 TO 6.27	AL 4 DTS 4F

RESPONSE: The access level of Route 30 has been changed in accordance with this comment. The access level of Route 206 has been changed to access level 4; DTS-4F from milepost 0.1 to milepost 2.3. The remainder was not changed because it is within the Wharton State Forest.

504. COMMENT: The Lacey Township Planning Board would prefer to be a pro-active partner in developing a more rational planning horizon with respect to the ultimate improvement of Route 9 within existing constraints as well as the improvement of bypass roadway corridors.

RESPONSE: The Department encourages the Planning Board to make specific comments concerning Route 9 in response to this reproposal.

Appendix B

505. COMMENT: Route 1 and 9T is not listed in Appendix B. It is suggested to change the Route 1 listing for those mileposts to Route 1 and 9T.

RESPONSE: The Department has revised Appendix B to label Route 1 and 9 from milepost 35.97 to 64.90. Route 1T records are indicated as Route 1 and 9T.

506. COMMENT: The access guidelines should provide a map indicating the routes listed and the milepost, so that applicants can determine which section of highway applies. Also, a description of the meaning of the term cell in Appendix B is needed.

RESPONSE: The Department has developed a map that shows the access levels for State highway segments. The map is intended to accompany a guide, to be developed, to further explain the rules. The Department will also produce diagrams of each highway that show this information and more. The Department will make the guide and diagrams available to the public after the Access Code is adopted. The term cell has been deleted from the Access Code.

507. COMMENT: Along Route 9 between the South Branch of the Forked River and Cedar Creek in Lacey Township, 18 percent of the lots have structures within the proposed 114 foot right-of-way.

RESPONSE: The business and historic district along Route 9 in Lacey Township may preclude the construction of a four-lane divided highway with shoulders. Accordingly, Appendix B now reflects a desirable typical section 4D requiring 78 feet of right-of-way and providing four lanes without shoulders from milepost 80.60, the Middle Branch of Forked River to milepost 82.26, Nautilus Boulevard. The desirable typical section does not preclude future development or redevelopment. It provides an access management tool whereby the Department would not be able to approve an access application that necessitates roadway improvements greater than the desirable typical section. The Department recommends that Lacey Township consider participating in the preparation of an access management plan for this area.

508. COMMENT: Three cultural and 18 historic structures would be eliminated as a consequence of right-of-way dedications on Route 9 in Lacey Township.

RESPONSE: The Access Code does not require the dedication of right-of-way. The right-of-way widths in Appendix B are to enable applicants, the municipality and the Department to plan for the future and work towards a common target.

509. COMMENT: The historic district along both sides of Route 9 and Lacey Road intersection will be isolated and segregated if not destroyed by the 114 foot right-of-way proposed.

RESPONSE: The Department sent a set of revised desirable typical sections to Lacey Township and asked for comments. The Department will revisit this section of highway after receiving comments that address the access classification, the desirable speed limit, and the desirable number of lanes.

510. COMMENT: Lacey Township indicated that the dualization of Route 9 into a high speed through-highway is unnecessary because the Garden State Parkway already serves that function for Lacey Township.

RESPONSE: Please see response number 509.

Appendix E

511. COMMENT: The State should consider a new approach to threshold levels. It would appear best to put the various performance criteria, on either peak hour vehicle trips or vehicles per day, but not mix the two. It would appear best to delete the 500 vehicles per day criteria and express it as a generator in terms of peak-hour trips which is normally the basis for the determination of highway impacts. Certainly there is wide disparity in peak-hour impacts of two developments generating 500 vehicles per day, when one generates them uniformly over a 12 to 15 hour period, and another concentrates them into two to three hours a day. All criteria should be on the basis of peak hour trips. The threshold limit established for full planning review applications is too low. We suggest major applications with planning reviews by revised to 500 or more trips per day and 250 or more peak-hour trips. The threshold limit established for full planning review applications is too low. We suggest major applications with planning reviews be revised to 500 or more trips per day and 250 or more peak-hour trips. The threshold limit established for full planning review applications is too low. We suggest major applications with planning reviews by revised to 500 or more trips per day and 250 or more peak-hour trips.

RESPONSE: The 500 daily trips threshold is required by the definitions for major and minor permits in N.J.S.A. 27:7-1. The Department strived for uniformity of application in developing the threshold standards for splitting major applications into two categories. The Advisory Committee and other groups were supportive of using peak-hour trips as the basis. The Department initially suggested 100 peak-hour trips. The Advisory Committee was uncomfortable with this and requested a higher threshold. General acceptance was gained at 200 peak hour trips. The Traffic Access and Impact Studies for Site Development, published by the Institute of Transportation Engineers, recommended practice states that a traffic impact study should be prepared when a development generates 100 additional vehicle trips in the peak direction during the roadway's peak hour or the site's peak hour. Also, the Local Area Transportation Review Guidelines for Montgomery County Planning Department, Maryland requires a traffic study when the proposed improvement would generate 50 or more new peak-hour trips. Further, the National Cooperative Highway Research Program draft report Access Management Guidelines for Activity Centers recommends a traffic impact analysis for all developments expected to generate more than 100 new peak-hour trips and sometimes even less. It should be noted that the proposed threshold is only used to determine the type of application required and exceeding the threshold is not an indication that mitigation is required. Analysis may include passby trip analysis and internal trip credits, when appropriate.

512. COMMENT: The standard used in establishing Appendix E is not identified and deviates from the Institute of Transportation Engineers Trip Generation Standard.

RESPONSE: The number of units or square footage in Appendix E were developed using the Institute of Transportation Engineers highest peak hour of the generator: AM peak, PM peak, or Saturday peak.

Task Report

513. COMMENT: Case studies of three communities, Dunellen, Somerdale and East Hanover, indicate that over 99 percent of the lots fronting on State highways are nonconforming.

RESPONSE: While the Department does not dispute these findings, its case studies in other areas indicate a higher percentage of conformity. Also, it is important to note that many lots bordering on main streets of urban towns may not require direct access since, in many instances, they rely on street or municipal parking and good pedestrian access for business rather than individual driveways. In addition, revisions to access point spacing and nonconforming lot rules will result in a decrease in the percentage of nonconforming lots.

514. COMMENT: The Access Code Task Reports made some comparison to Florida, Colorado, Oregon, Washington and their access regulations. To compare New Jersey to those states is like comparing apples and oranges.

RESPONSE: To establish the foundation for the April 2, 1990 proposal, the Department performed an extensive review of pertinent literature and recent activities in access management. In addition to considering current Departmental practices, the Department reviewed the efforts of other states and nationally-recognized technical documents. Although there certainly are differences among the states, there are still lessons to be learned from the other states that have implemented or are in the process of implementing legislation similar to the Act.

515. COMMENT: The percentages given for conforming and nonconforming lots are misleading.

RESPONSE: The Task 3 report available from the Department's Bureau of Access and Development Impact Analysis clearly identifies how the percentages for nonconforming and conforming lots were derived and what they refer to.

516. COMMENT: The Department should conduct additional surveys to include study areas in urban areas and transportation corridors.

RESPONSE: The Department has conducted surveys along segments of Routes 31, 33 and 73 and considered the results in preparing this reproposed Code.

517. COMMENT: A survey that looks at existing developed lots would be more realistic.

RESPONSE: The results from surveys conducted by the Department after the original proposal, but prior to the reproposal, include existing developed lots.

518. COMMENT: Enforcing minimum lengths of one or three miles between urban or rural interchanges is inappropriate without detailed engineering evaluation and assessment.

RESPONSE: The criteria are consistent with Federal Highway Administration interstate interchange spacing guidelines, proposed Florida interchange spacing, and Colorado's spacing criteria. These are reasonable standards and support the efforts to promote mobility on the State highway system. The applicant must prove, through a waiver request, that reduced spacing would not jeopardize safety and efficiency in specific cases.

Service Stations

The following comments were submitted regarding the Access Code's effect on service stations. Although they pertain to various sections of the Code, they are grouped separately to facilitate reference to them.

519. COMMENT: Service stations are unique land uses and should not be considered the same as other land uses in the Access Code. Service stations provide a service to the motoring public. Their presence is integral to the operation of a transportation network which promotes the public's general health, safety and welfare. They are not traffic generators, and therefore should be permitted direct access to the State highway.

RESPONSE: Although service stations generate little new traffic, access to and from a service station causes traffic conflicts and is essentially no different than any other conflict points along the highway. The Code minimizes such conflicts. The site-circulation characteristics of service stations because of their pump islands, and the need to have adequate circulation for deliveries from tanker trucks, differentiates service station lots from most other lots. The Department has revised the service station trip generation criteria to reflect New Jersey's no self-service trip rates. The spacing standards have been modified to allow direct access to the highway in most cases for a lot with alternative access.

520. COMMENT: The proposed Code does not allow service stations to redevelop to include a minimart, because the minimart addition would cross the threshold for major/minor applications.

RESPONSE: The Department has accepted information provided by the service station industry which shows that all service stations should be classified as major applications. When a development expands, a new permit is required only when the traffic generation increases by the greater of 100 peak-hour trips, or 10 percent of the previously anticipated daily trips. The information provided by the service station industry shows that a new permit would be required when a minimart is added because traffic is increased by more than 10 percent of the previously anticipated daily traffic. Please refer to Appendix E1 for this information. Any service station that wants to add a carwash, minimart, or both must also show that at least 75 percent of the total trips will be for fuel. If less than 75 percent of the trips are for fuel, then, by definition in N.J.A.C. 16:47-1.1, the use is no longer a service station. Adding a full-size convenience store will require a new permit because of the significant increase in traffic.

521. COMMENT: Gasoline stations need substantial access and to be designed to allow for the safe maneuverability of tanker trucks. The proposed rules will not always allow this.

RESPONSE: The Department agrees that the safe maneuverability of tanker trucks is important. The Department considers the reproposed Code flexible enough to allow service stations safe and adequate access.

522. COMMENT: The Department should apply pre-Code criteria in reviewing access permits for gasoline service stations, rather than the criteria set forth in the draft Access Code. This is based upon data that demonstrates that gas stations primarily service existing traffic, rather than generate new traffic. The use of pre-Code criteria for reviewing access permits for gasoline stations will necessitate changing the wording in N.J.A.C. 16:47-3.2(a) and (c), and 3.5(d)1 through 6.

RESPONSE: The Department will only use pre-Code criteria for issuing permits for those lots which qualify per N.J.A.C. 16:47-4.6(m). This reproposed Code provides flexibility in locating driveways where the April 2, 1990 proposed Code did not.

523. COMMENT: Characteristically, service stations have limited depth so that their frontage on the side street is small. If the access is limited to the side street, vehicles wishing to enter the lot will back up and conflict with the queued up traffic on the side street. The rules should consider the volume of traffic as well as provide for proper access to the side street.

RESPONSE: The reproposed Code allows direct access in most cases and requires alternative access when a public benefit may be demonstrated. The Department will consider traffic volumes in determining potential traffic benefits.

524. COMMENT: The formula for limiting traffic on nonconforming service station lots should be as follows: The proportion of A.M., P.M., or Saturday peak-hour trips, whichever is greatest, to the number of trips permitted for a nonconforming lot must be no greater than the proportion of contiguous frontage to two times the minimum spacing distance of driveways for divided highways, or four times the minimum spacing distance for undivided highways.

RESPONSE: N.J.A.C. 16:47-3.5 contains revised provisions for driveway location standards, a new method for determining a lot's conformity, and more liberal maximum permissible vehicular use limits for nonconforming lots. These revisions relate permissible trip generation to the size of the lot and the extent of its nonconformity. The Department believes that these changes eliminate the need to incorporate the suggested formula.

525. COMMENT: The upgrading, modernizing and continually improving existing service stations will be discouraged or virtually prohibited. The Access Code should clearly recognize that an upgrade or modernization which does not change the primary service station use of an existing lot is not a change in use or expansion in existing use. Service stations must be periodically remodeled and updated to comply with the requirement of changing technology and environmental controls by relocating or adding dispensers, erecting canopies, or installing new underground tanks. These upgrades and remodels should be facilitated, not discouraged or virtually prohibited.

RESPONSE: The Department does not agree that modernizations will be virtually prohibited by the Code. Adding dispensers, erecting canopies, or installing new underground tanks does not result in a significant increase in traffic and does not require a new permit.

526. COMMENT: Under the proposed Access Code, new service stations would require huge, uneconomic lots.

RESPONSE: The Code does not require minimum lot sizes. This reproposed Code contains shorter spacing standards, new traffic generation standards for service stations, and a different method for determining a lot's conformity. These changes will enable more lots with shorter frontages to be conforming, and will also allow a greater number of trips on nonconforming lots.

527. COMMENT: The Code regulates service stations based on the number of pumps, relying on Institute of Transportation Engineers informational reports. Studies have shown that a very poor correlation exists between the total traffic emanating from a site and the number of pumps provided. Service stations serve existing traffic and are not traffic generators. Approximately 95 percent of site traffic on a service station is not new traffic but passby traffic.

RESPONSE: The original proposed Code was based upon the limited Institute of Transportation Engineers information. The fuel oil industry has since provided the Department with local traffic generation data. The Department developed trip generation rates for service stations that are independent of the number of gas pumps. These are shown on Appendix E1.

528. COMMENT: Two curb cuts are required on each service station frontage in order to facilitate proper on-site traffic flows. Drivers expect two curb cuts, and on-site traffic flows should avoid crossings amid reversals of direction. On-site traffic flows, therefore, do not function well with a single, central driveway.

RESPONSE: Allowing two curb cuts on each service station frontage could create excessive conflicts on the highway. The Code allows bifurcated and one-way driveways and provides the opportunity for two State highway driveways for major traffic generators on lots that meet the spacing standards for them. On site traffic considerations are an engineering concern which will be considered during the review of an application.

529. COMMENT: Service station sites are decreasing, and therefore need to be more efficient to provide proper service.

RESPONSE: The Access Code does not affect the efficiency of a service station's operation. However, with the number of service stations decreasing, traffic generation at the remaining stations will intensify, thereby making access controls even more necessary to maintain highway safety and efficiency.

530. COMMENT: Existing service stations should have their existing access points permanently grandfathered and not subject to revocation. All grandfathered access points, however, would be subject to modification by the Department at their expense to change angularity, radii, spacing, and the like, if clearly necessary to improve highway safety and provided that the access is maintained in kind.

RESPONSE: The Act does not provide for any access points to be permanently grandfathered. N.J.S.A. 27:7-94 and 95 establish the conditions for revocation and grandfathering of access permits. The requirements apply to all land uses. The Department is responsible for providing alternative access if it revokes an existing access permit, and may also modify existing access points that do not conform to the Code.

531. COMMENT: New service stations should be allowed one right turn in and one right turn out onto an abutting State highway even if the lot has frontage on another road.

RESPONSE: The availability of alternative access does not preclude direct access to the State highway. However, the Department may require alternative access when so doing would result in a public benefit. The permissible turning movements to and from all lots abutting a State highway is determined by the access level assigned to the particular highway segment.

532. COMMENT: New service stations should have a minimum frontage on the State highway of 150 feet.

RESPONSE: The Department is not authorized to establish lot size, frontage, or other minimum dimensional requirements for lots.

533. COMMENT: The space between driveways of new service stations should be a minimum of 50 feet.

RESPONSE: N.J.A.C. 16:47-3.8(h) establishes the minimum permissible distance between driveways as 24 feet to be consistent with the 12-foot edge requirement. However, the Department will only issue permits that satisfy safe design standards, and will require longer distances between driveways of new service stations when safety considerations so warrant.

534. COMMENT: N.J.A.C. states that one-way driveways must be 20 to 34 feet wide and that two-way driveways must be 20 to 40 feet wide. Because the Department only issues permits that satisfy safe design standards, it is not necessary to establish a separate minimum driveway spacing width for new service stations.

535. COMMENT: The minimum distance between the curb return and lot line should be at least five feet for new service stations.

RESPONSE: N.J.A.C. 3.8(b) states that the distance between the curb return and the lot line shall be at least 12 feet.

536. COMMENT: There should be a minimum of 15 feet from the end of the radius of the street intersection to the curb return for new service stations.

RESPONSE: N.J.A.C. 16:47-3.8(k) states that the corner clearance for service stations is either 50 or 100 feet, depending on the characteristics of the State highway.

537. COMMENT: The following minimum setbacks should apply to new service stations:

A. Canopy—0 feet
B. Pump Island—15 feet
C. Building—30 feet

RESPONSE: The Department does not have the authority to establish setbacks. The Access Code does not even suggest setbacks for canopies. Fifteen feet is the suggested setback for a pump island and 40 feet is the suggested setback for a gasoline service station building.

538. COMMENT: Commenters submitted the following data concerning land uses in Appendix E1, Access Application Thresholds and Trip Rates for Service Stations:

Use	Units	Average Trip Rate for AM Peak Hour	Average Trip Rate for PM Peak Hour	Average Daily Trips
Service Stations with/				
gas only:	station	71	92	1,012
gas and service bays:	station	81	86	781
gas and minmart:	station	137	133	1,379
gas and car wash:	station	108	94	1,174
gas, minimart and car wash:	station	110	151	1,288

RESPONSE: The information is acknowledged and appreciated.

The following statements apply to the agency reproposal:

Summary

Under the provisions of the "State Highway Access Management Act", P.L. 1989 c.32 (hereinafter, "the Act") as incorporated in N.J.S.A. Titles 27, 39, and 40, the Department of Transportation is required to adopt a State Highway Access Management Code (hereinafter, "Access Code"). In accordance with these requirements, the Department has proposed the amendment of N.J.A.C. 16:41-2.2, Permits for Driveways (Access); Authority, to clarify that specified access applications will be evaluated pursuant to N.J.A.C. 16:41, and has proposed new rules at N.J.A.C. 16:47, which will govern all other applications.

The Access Code is a comprehensive set of rules to systematically manage vehicular access to and from State highways in accordance with the principles in N.J.S.A. 27:7-90. The Department will publish a guide to supplement the Access Code, after it is adopted.

The Access Code establishes uniform standards that are applicable to all State highways and provides for the consistent application of these standards. It enables all levels of government, as well as developers and lot owners, to readily determine how access will be managed on any given State highway. The Access Code allows development on lots abutting a State highway and ensures that the traffic generated by a lot can be safely and efficiently accommodated by the State highway system. By minimizing the number of driveways, street intersections, traffic signals, and interchanges, the Access Code maximizes traffic flow, capacity, and safety.

The efficiency and safety of a highway depends to a large extent upon the amount and character of roadside interference with through traffic. Most interference is caused by vehicles going to and from businesses, residences, or other developments along the highway. Accordingly, regulation and control of access points are necessary to provide efficient and safe operation, and to maximize capacity. Owners of lots abutting roads have certain rights of access, and road users have certain rights to freedom of movement, safety, and efficiency. These competing interests were considered in developing the Access Code reproposal.

The Legislative findings and declarations at N.J.S.A. 27:7-90 state that the State highway system serves as a network of principal arterial routes for the safe and efficient movement of people and goods in the major travel corridors of the State. Constructed at great public expense, the State highway system constitutes an irreplaceable public asset. The State has a public trust responsibility to manage and maintain effectively each highway within the State highway system to preserve its functional integrity and continued operation for the present and future generations.

Access Management Plans

At the option of local governmental units, the Department and local governments may jointly develop site-specific access management plans for individual segments of a State highway. This plan will become the governing access document for that area. The Department strongly encourages local governments to make use of this access management tool. The process is set forth at N.J.A.C. 16:47-6.

Alternative Access

The reproposal does not preclude direct access to a State highway when alternative access is available. The Department may, however, require applicants to use alternative access in addition to direct access when the alternative access will improve traffic efficiency. No lot, whether conforming or nonconforming, will be granted State highway access when safety would be compromised.

Spacing Standards

The spacing standards are based on the Federal Highway Administration's research recommendations for access point spacing. The distances developed are based on right-turn overlap conflict and speed differentials. The Department conducted further research and discussed the spacing standards with commenters before deciding to propose these standards. The spacing standards are used to determine the conformity of a lot and the number of access points allowed each lot. There are no adjustments for the grade of the highway in this reproposal. The standards are shown at N.J.A.C. 16:47-3.5.

Theoretical Driveway Location

This reproposal determines whether a lot is conforming based on a concept called the theoretical driveway location (TDL). The theoretical driveway location for any lot is the midpoint of the frontage of the lot. If the applicant's TDL is equal to or greater than one spacing standard from the midpoint of the frontage of the closest non single-family residential lot on each side, then the applicant's lot is conforming. The actual location of the driveway on the applicant's lot will be based on engineering, environmental, and planning considerations.

Obtaining the desired spacing on average will greatly enhancing mobility on a State highway. Additionally, as lots are redeveloped or future improvements are made by the Department, access may be modified to meet the standards of the Access Code.

The method for determining the conformity of a lot is shown at N.J.A.C. 16:47-3.5 and in Appendix I.

Nonconforming Lots

The reproposal addresses the comments that the Department received regarding maximum vehicular use limits for nonconforming lots. Comments stressed that the breakpoint between the amount of traffic a nonconforming lot could generate, compared to the amount of traffic allowed for a conforming lot with one more foot of frontage, was too severe. In reducing the disparity, the Department proposes to allow nonconforming lots a minimum of 50 peak-hour trips. Allowable peak-hour trips may be increased after consideration of the degree of nonconformity of the lot, the size of the lot, and whether the lot is located in a rural or urban area. The method for determining maximum vehicular use is shown at N.J.A.C. 16:47-3.5.

Nonconforming lots will be limited to one access point along the State highway. The reproposal provides for bonuses when alternative access or shared access is used.

The meaning of nonconforming lot under N.J.S.A. 27:7-93 and nonconforming use under N.J.S.A. 40:55D-4 are different. Many nonconforming lots are very small in acreage and would have difficulty generating vehicle trips in excess of the reproposed maximum vehicular use limits. Also, some State highways pass through urban downtowns with few State highway driveways serving many lots and businesses.

Access Classifications and Access Levels

The Access Code establishes an access classification system for the entire State highway network, based on the highway's posted speed limit, environment, function, and configuration. The Access Code also assigns an access level to indicate the allowable turning movements to and from every highway segment. The access classification is established in N.J.A.C. 16:47-2.1. The access classification matrix is shown as Appendix A. The Route and milepost listing of Accessible State Highways is shown in Appendix B. Permissible access movements are shown in Appendix C. Provisions pertaining to access classification change requests are set forth at N.J.A.C. 16:47-5.

In this reproposal, the Department has simplified the access classification system by reducing the number of access levels from seven to six. The Access Classification Matrix shows these six levels. Access level 2, right-turn in and right-turn out, was merged with access level 3, which permitted jughandles for left-turn access only where requirements for traffic signal spacing could be met.

Rural high speed divided minor arterials were upgraded to access level 1 to preserve the rural nature of the areas.

Also, the access level for divided collector and local highways was changed to access level 4 to provide for the safe use of those few highway segments.

The Department has sent each municipality, county, and metropolitan planning organization a package describing the classification of highways within their respective jurisdictions. As indicated in N.J.A.C. 16:47-8.5, comments have been encouraged. Department representatives will meet with representatives of each county planning board during the year following the Access Code adoption, to discuss changes to Appendix B.

Local Access Codes

N.J.S.A. 27:7-90 enables counties and municipalities to develop access codes for streets and highways under their jurisdiction. The principles of the Highway Access Code may be used by counties and municipalities as the basis of local access codes.

Access Permits

N.J.S.A. 27:7-91 establishes maximum time frames for issuing and denying access permits. However, the Department will respond to permit applicants within the shorter time frames established in the Access Code at N.J.A.C. 16:47-4.5.

N.J.S.A. 27:7-91 establishes a 45 day time frame for issuing minor access permits. Because minor permits involving traffic signals may require additional time for the review and approval of related traffic engineering and electrical engineering plans, the permits may be issued conditionally, subject to subsequent final approval of traffic signal plans.

Time constraints are imposed on applicants' responses to the Department. Opportunities for revising applications are limited. The Access Code is designed to maximize the predictability of the Department's responses to applications. This predictability should assist lot owners in obtaining other needed governmental approvals.

N.J.S.A. 27:7-91d, repeated herein at N.J.A.C. 16:47-4.6(m), states that complete access applications received by the Department prior to the adoption of the Access Code for projects that have municipal preliminary site plan or subdivision approval will be reviewed under the previous rules at N.J.A.C. 16:41. All other applications will be reviewed pursuant to the Access Code (N.J.A.C. 16:47).

All applicants for major permits will be required to submit duplicate applications to the municipal clerk and county planning board to facilitate coordination among State, county, and municipal reviews. This coordination will benefit the applicant. This requirement is set forth at N.J.A.C. 16:47-4.3.

For applications leading to developer agreements, the execution of the developer agreement is proposed to be a condition of the permit.

Some access applications propose work which must be approved by the Federal Highway Administration. The Department has no control over the time frames for Federal reviews. The Department proposes that the time period utilized by the Federal Highway Administration be considered separate and apart from the Department.

N.J.A.C. 16:47-4.34 contains a method for determining the amount of an applicant's fair share of the cost needed to safely and efficiently accommodate traffic from new development or redevelopment. The Department invites the public to recommend alternative methods of computing the appropriate fair share.

The Access Code requires a certificate of acceptance for major permits with a Planning review before municipal officials may issue a certificate of occupancy (N.J.A.C. 16:47-4.13 and 4.1).

The Department developed traffic generation standards for service stations from data provided by the oil industry. Adding a minimart or car wash to an existing service station will not necessitate a new permit because of a significant increase in traffic. All new service stations will be classified as major traffic generators.

Application and Permit Appeal Process

The appeal process at N.J.A.C. 16:47-4.32 reflects the New Jersey Supreme Court ruling in *High Horizons Development Co. v. State of New Jersey, Department of Transportation,* 117 N.J. 139, 564, A.2d 862 (1989). Several levels of appeal are established for applicants under this provision.

Lot Subdivision, Consolidation, or Sale

The reproposal provides for lot subdivision or consolidation permits. These provisions appear at N.J.A.C. 16:47-4.3, 4.40 and 4.41. The provision in the original proposal requiring that the Department be notified of a change of lot ownership has been deleted.

Tolling of Time

The reproposal provides for a tolling of time, or stopping of the clock, when any legal action prevents an applicant from constructing an access point. See N.J.A.C. 16:47-4.6.

Waivers

The reproposal provides for flexibility by allowing requests for waivers, and specifies those instances when waivers may be requested. See N.J.A.C. 16:47-4.35.

Street Intersections

Similar to the original proposal, the Access Code will allow developers to submit street applications prior to municipal approval, to expedite the review of such applications. The permit will only be issued to the municipality or county.

Commissioner's Authority and Plan of Action

Because of the extensiveness of this reproposal, the Department will not implement the access permit provisions of the Access Code until at least January 1, 1992. This is to allow enough time for the Department to provide information about the Access Code to potential applicants, to hold training sessions for the public and Department staff, and to print the necessary forms and instructions.

Through the Access Code, the Department establishes a system of access management which will protect the functional integrity of the State highway system and the public investment in that system. However, the Department recognizes that flexibility and openness are vital to successfully implementing the Access Code. When necessary, the Code will be revised pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq, the rules on Agency Rulemaking, N.J.A.C. 1:30, and N.J.A.C. 16:47-8.

Social Impact

The proposed new rules will establish an Access Code enabling the State to protect the valuable capital investment in its highway system. The Access Code balances the public's desire for mobility with the lot owner's right to reasonable access to the general system of streets and highways. The Access Code combines planning concepts and engineering practices to maintain and preserve the State transportation system for present and future generations. The public benefits through improved safety and the enhanced mobility of people and goods.

The Access Code contains the Department's long range plan for the State highway system and helps to preserve these transportation corridors. Although the highway and right-of-way widths shown in the Access Code for many highway segments may never reach these widths, the Access Code is a valuable planning tool for all levels of government as well as lot owners along and near State highways.

The Access Code fosters a regional view. Local agencies will need to consider the Access Code standards and provisions during the periodic review of county planning documents, municipal master plans, official maps, and zoning and development ordinances.

A recent New Jersey public opinion survey showed that almost two-thirds of the respondents believed that not enough attention was given to planning for the consequences from growth over the last five to ten years on the State transportation system.

As indicated in another recent New Jersey poll, an overwhelming majority of respondents expressed the opinion that developers have some responsibility for ensuring that adequate transportation facilities are provided.

Added traffic from proposed development or redevelopment will be evaluated based on the long range expectations for State highways. Traffic impacts may require mitigation by the lot owner in the form of proportionate financial contributions or the construction of public improvements. Level of service standards and a method to calculate fair share financial contributions towards the cost of providing highway improvements are included in the Access Code. The Department recognizes that accelerated needs for highway improvements and special benefits to the developer must be considered before requiring financial contributions.

When transportation capacity for additional traffic does not exist and cannot be practically created, denying access applications is consistent with N.J.S.A. 27:7-90. The Access Code incorporates incentives to enhance urban infill opportunities and discourage inefficient rural development. Some rural sprawl results in unnecessary capital expenditures of public and private resources.

The Access Code provides special accommodations to affordable housing, in support of State policy objectives.

Economic Impact

The Access Code minimizes highway congestion, higher costs and delays for the movement of the public and freight, and fuel consumption. Less congestion also means fewer accidents and lower insurance costs.

The Access Code applies to 2,651 miles of State highways. State highways where access is allowed comprise about 1,877 miles. This is about five percent of the total roadway mileage in the State.

The Access Code will balance the rights of the motorists with the rights of the lot owners, taking into account transportation needs and economic development interests. This reproposal provides a future-oriented regional framework for all levels of government to consider in evaluating long range transportation plans to manage highway infrastructure improvements and access management. Sufficient public resources are not available to buy our way out of traffic congestion.

These proposed new rules may increase some costs for applicants, such as increased expenses for the professional services needed to assist in the preparation of applications. These services could include, but are not limited to, those provided by consultants, attorneys, planners, and engineers. Actual cost increases cannot be estimated, due to variations in applications.

The proposed new rules will increase the access permit renewal fees for some permits when the work is not completed within the time period specified in the permit. However, these increases have been lowered from those initially proposed and affect only the small number of permittees which request renewals. The proposed renewal fees will offset Department costs.

This reproposal reduces the economic impacts on applicants which were expressed by the public through comments on the initial proposal. The revised spacing standards, changed methods for determining conforming lots, and increased vehicle use permitted on the remaining nonconforming lots will soften the potential economic hardship.

The Department screened several highways, based on the standards contained in the reproposed Code, and concluded that no more than a low percentage of highway lots will be prevented from that use of a lot which may generate the most trips and revenues for that lot. A review of 40 major applications received during 1990 concluded that very few would have been limited by the nonconforming lot vehicular use limits. Additionally, a review of 25 major applications with a Planning review indicated that only one was on a nonconforming lot.

Regulatory Flexibility Analysis

The proposed new rule will not impose any reporting or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, certain other compliance requirements of the application process may cause small businesses to incur increased costs, for professional services and other expenses.

The specific amounts cannot be estimated, due to the variation in applications. The Department has established permit fees, based on the size and complexity of an application, and the fee structure benefits small businesses.

The Department does not believe that other special concessions to small businesses are appropriate, due to the need to assure the safety of the public.

Full text of the proposed amendment to N.J.A.C. 16:41-2.2 follows (additions indicated in boldface **thus**).

Full text of the reproposal of N.J.A.C. 16:47 follows (additions to the original proposal indicated in boldface **thus**; deletions from the original proposal indicated in brackets [thus]):

16:41-2.2 Authority

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

(d) All access applications received after the effective date of N.J.A.C. 16:47-4 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 shall be processed in accordance with N.J.A.C 16:41, if:

1. A complete access application or concept review application has been received by the Department; and

2. Any of the following approvals has 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.

AGENCY NOTE: The following table of contents for the reproposed Access Code is provided by the Department for the convenience of readers of the reproposed rules.

CHAPTER 47
STATE HIGHWAY ACCESS MANAGEMENT CODE

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. DEFINITIONS

16:47-1.1 Definitions

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

["Average annual traffic (AADT)" means the total yearly traffic volume in both directions of travel divided by 365.]

"Access [Application] **application**" means a document submitted to the [DOT] **Department** to initiate the access [approval] **permit** process.

"Access [Classification] **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 [except controlled access roadway].

["Access Classification Matrix" means the comprehensive list of rows and columns that identify the access classification of all State highways except controlled access highways.]

"Access Code" means the State Highway Access Management Code adopted by the Commissioner [under] **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 [and roadway characteristics].

"Access management plan" means a plan showing the design of access for every lot on [an individual segment of] a State highway **segment** developed jointly by the [DOT] **Department,** [and] 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 [DOT] **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[s] or driveway[s] 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, [whose] **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 [9:00 A.M. to 5:00 P.M. work day] **traditional work-day schedule of arrivals and departures to avoid peak-hour congestion.** These programs [can] **may** include flex-time, [the] **a** compressed work week, and staggered hours.

"Alternative access" means the ability to enter a State highway indirectly through another improved roadway **instead of directly from a lot across its State highway frontage.**

"Applicant" means a private party **or entity**, municipality, [or] county, **or any public agency** applying for an access permit. **The applicant shall own the lot where the access is sought.**

"Application approval" means Department approval or acceptance of a proposed highway access plan, for which a permit may be granted[, subject to the applicant satisfying all of the following conditions:

1. Incorporation of the applicant's access proposal or plan modifications to the access proposal or plan as stipulated by DOT, in text or annotated (red-lined) plans;

2. Signature of the applicant, or an authorized representative of the applicant, on the permit documentation. Correspondence

authorizing power of attorney must accompany such representation. Ownership of the property must be affirmed; and

3. Submission of the proper permit fee to the Regional Maintenance Office].

["Application conference" means a meeting held between the applicant and DOT representatives during the review process.]

"Applicant time" means the period of time between a [DOT] **Department** request for revisions or information and [when DOT receives it] **its receipt by the Department**. Time during this period is not counted in the [DOT] **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.

"Application conference" means a meeting held between the applicant and Department representatives during the review process.

"Arterial" means a transportation route, [with] **which may have signalized** intersections [carrying a main flow of traffic through an area], **that primarily serves through traffic and provides access as a secondary function**.

"Authority" means the governing body or public official charged with the [care] **jurisdiction for control and maintenance** of a highway.

"Auxiliary lane" means a lane striped for use, but not [used] for through traffic **use**.

["Average vehicle ridership (AVR)" means a numerical value calculated by dividing the number of employees scheduled to start work between 6:00 AM and 10:00 AM into by the number of vehicles arriving to the work site between 6:00 AM and 10:00 AM.]

["Bandwidth"] **"Band width"** means the time in **elapsed** seconds [elapsed] between the passing of the first and last possible vehicle in a group of vehicles moving at the design speed of 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[n express] bus service, usually administered by an employer, with limited pickup [at] **and** destination stops, guaranteed seats, and advance[d] ticket purchase. Club buses are buspools administered by the riders.

"Carpool" means two or more people [who, on a regular basis, share a ride to and from work in one vehicle] **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 [rotating the] **alternating** vehicles used so that no money changes hands.

"Car[s]" means any motorized vehicle having two or more axles.

"Certificate of [Acceptance] **acceptance**" means a document issued by the [DOT] **Department to indicate that** [indicating] the permittee for a major permit with a [P]**p**lanning 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 [property] **lot** use" means any alteration of the functions performed on a [property] **lot**.

"Collector road[s]" 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[s] **routes**.

["Combined frontage" means for access purposes, the equivalent of conforming frontage created by joining adjacent lots with nonconforming frontages.]

"Commissioner" means the Commissioner of the New Jersey Department of Transportation or such persons as may be designated by the Commissioner.

["Common drive" means one driveway lying on the frontage of two adjoining properties and servicing both.]

"Complete application" means an access application satisfying [DOT] **Department** form and content requirements, thereby making it acceptable for [DOT] **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 [consists of allocating] **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 [addressed in a] **associated with a future** major access application.

["Conforming access point" means an access point that meets the minimum spacing distance.]

"Conforming lot" means a lot [upon which a conforming access point can be located] **which meets the standards for spacing between lot centerlines**.

["Control of access" means the condition where the right of owners or occupants of abutting land to connect with a State highway is controlled by the DOT.]

"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" [or "curb" generally] means a line, [(]whether curbing exists or not[)], which is the outer edge of the shoulder or paved highway. [It is also referred to as the gutter line.]

"Curbline opening (C.O.)" means the overall opening dimension at the curbline, whether curbing exists or not, measured [from the extreme outer edges of the radii] **between the points of tangency of the driveway and the curbline**.

"Daily **traffic** movements" means the highest estimated two-way traffic volume [at a site] **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 [DOT] **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 [the] **a** 1 1/2["] **inch** face curb within a curbline opening.

["Design exceptions" means written permission from the DOT to make improvements to the State Highway system that do not meet DOT design standards.]

"Design review" means the review of [Major] **major** [Access] **access** and [Concept] **concept** [Review] **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", 199[0] **1** or superseding issue which contains this [chapter] **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 Edition Trip Generation", 1987 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 [Management].

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 Transporation, [1983] **1989** or superseding edition, available from the Bureau of [Contract Administration] **Construction Services**.

13. [Department of Transportation Policy and Procedure Manual, available from the Division of Management Information Systems.] **Jack E. Leisch, "Capacity Analysis Techniques for Design of Signalized Intersections", Figure 9, U.S. Department of Transportation, Federal Highway Administration**.

"Desirable typical section" means the [ultimate future] **Department's long range plan for** State highway configurations [envisioned by the Department.] **, as shown in Appendix B. Each desirable typical section shows the number of through lanes. It does not generally show auxiliary lanes.**

"Developer agreement" means a contract between the [DOT] **Department** and a [developer] **lot owner** which allows [owners of land] **a lot** abutting **a** highway[s] to have access to the highway and requires the [DOT] **Department** and [developer] **lot owner** to satisfy special obligations.

"Distance between driveways (D)" means the distance measured along the curbline between curbline openings of two adjacent driveways [to the same frontage].

"Divided highway" means a highway having access on only one side of the direction of travel.

["DOT" means the New Jersey Department of Transportation.]

["DOT time" means the period of time between when the DOT receives a complete permit application and fee and when the DOT issues a permit, less any applicant time.]

"Driveway" means a private roadway providing access to a [public] street or highway.

"Driveway angle (Y)" means the angle between the driveway centerline and curbline.

["Driveway spacing" means the distance between a driveway and the adjacent access points.]

"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 [property] **lot** line to the [beginning of driveway] **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 [property] **lot** use" means any increase in the **floor** area or [volume of the improvements] **function performed** on a [property] **lot**.

"Expiration" means **the** formal termination of an access permit. [Permits expire when:

1. Traffic increases significantly because of either an expansion or change of use. Significant increases exceed 100 movements during the peak hour of the highway or the development or exceed 10 percent of the previously anticipated daily movements;

2. The permittee violates any permit conditions;

3. The property covered by the permit is subdivided; or

4. The permittee transfers the property and fails to notify the DOT at the time of transfer.]

"Extended [property] **lot** line (E.[P]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 [percentage of the peak hour traffic growth, attributable to the development, between present day conditions and anticipated conditions at the time of the construction of an improvement] **sum of the applicant's proportionate costs at each location where level of service violations occur**.

["Final improvement" means the last improvement of staged improvements.]

"Floor area ratio" means the sum of the area of all floors of buildings or structures compared to the total area of the [site] **lot**.

"Four-**day** forty-**hour** schedule or four-day work week" means a compressed work week schedule [where employees] **in which full time personnel** work their usual number of weekly hours in four days. [The fifth day is a day off. Work operations can be covered by rotating this day off among employees in a work unit.]

"Freeway" means a [type of limited access highway] **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 [property] **lot** between the side [property] **lot** lines.

"Frontage road" means a service road, usually parallel to the State highway, designed to reduce the number of [individual] **streets and** driveways that intersect a State highway.

["Governing body" means the mayor and council, town council, village trustees, commission or committee of any municipality and the Board of Chosen Freeholders of any county.]

"Government driveway" means an [exclusive] entrance or driveway **exclusively** serving a **public school, Federal,** State, municipal, **or** county [or public school] 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.

"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 [features] **factors** of improvements.

"Improvement" means[:

1. A traffic generator, either a proposed development or an expansion of an existing development; or

2. The] **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, with the exception of non-State highway approaches to signalized intersections where a volume to capacity (V/C) ratio 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 streams of traffic.

"Intersection" means the location where two or more roadways 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" has a detailed description of this concept.

"Limited access highway" means a highway, especially designed for through traffic, over which [abutters] **abutting lot owners** have no [easement or] right [of] **to** light, air, or direct access. Interstate highways, parkways, and freeways are considered limited access highways.

["Local ridesharing agency (RSA)" means an area-wide organization that markets and assists ridesharing by the general public and among employers. An RSA may be public or private.]

"Local road[s]" 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 [one or more contiguous tax lots under common ownership or lots which are the subject of shared access] **a single tax map parcel**.

"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[s] for roadways in rural environments with posted speed limits 45 mph or less.

"Low speed urban" means the access classification[s] 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, [or] 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 [development] **lots** with an expected two-way traffic volume of 500 **or more** vehicles per day [or more] **to and from the use or uses**.

"Major access applications (**or permits**) with planning review" means access applications (**or permits**) for [development] **lots** with an expected two-way traffic volume of 500 **or more** vehicles per day [or more] and with an expected peak-hour volume of 200 **or more** vehicles [or more] **to and from the use or uses**.

"Major collector" means a [sub-category for] **type of** collector road[s] in rural [environments] **areas** that serves important intra-county traffic corridors and provides service to major [county] traffic generators.

"Major **traffic** generator" means [a] **the** use or uses which generates **a total of** 500 or more [vehicular] **vehicle** trips per day, [total for both directions] **to and from the use or uses**.

"Maximum vehicular use limits" means the [highest] **greatest** number of vehicles per [day] **A.M. P.M. or Saturday peak hour** allowed to access a nonconforming lot.

"Median" means that portion of a divided highway [separating] **that separates** traffic proceeding in opposite directions.

"Median opening" means a paved area [between] **bisecting** opposite directions of a divided roadway [which]. **A median opening** is designed to permit traffic to cross at least one direction of travel.

["Median width" means a 36 foot desirable swath on collector highways and a 46 foot desirable swath on arterial highways, interstates and freeways.]

"Midblock lot" means a lot with one frontage on a State highway that is between two other lots that have frontage on the same State highway.

["Minimum spacing distance" means the required distance between access points.]

"Minor access applications (**or permits**)" means access applications (**or permits**) for [development] **lots** with an expected two-way traffic volume of less than 500 vehicles 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 [lower] **less** than on **accessible** principle arterials.

"Minor collector" means a [subchapter for] **type of** collector road[s] in rural [environments] **areas** that serves smaller places and towns and connects local[ly important] traffic.

"Minor **traffic** generator" means [a] **the** use or uses which generates less than **a total of** 500 [vehicular] **vehicle** trips per day, [total of both directions] **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, car[s]**pools** or vanpools, [buses, trains] **buspools, public transportation**, bicycles, [etc] **pedestrians, or other modes**.

"Monitoring" means the measuring of [the formation of] ridesharing modes at a work site. It entails keeping a record of [who] **how** the employees travel to and from work and how many employees drive alone, share a ride, or walk to work.

"Monolithic curb" means [when] **a** curb and gutter [are] 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** [eighty] schedule" means a compressed [work week program that allows employees to] **two-week work schedule in which full time personnel** work their usual number of hours [in] **for** a two-week/**10-day** pay period in nine days. [The tenth day is a day off. Operations can be covered by rotating this day off among employees in a work unit.]

["Nonconforming driveway" means a driveway located on nonconforming frontage.]

"Nonconforming lot" means **a** lot[s which were] in existence prior to the adoption of the Access Code [that cannot meet the standards of the Access Code] **which does not meet the standards for spacing between lot centerlines**.

["Offset" means the distance measured from the centerline of a driveway or street on one side of the highway to the centerline of the driveway or street on the other side of the undivided highway or the distance measured between a median opening, intersection, or interchange on a divided highway and a driveway.]

["Operating cost" means the ongoing costs of providing and administering a program.]

"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.

"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 [DOT] **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 [confirmed by DOT] **included** in the permit.

[Private use" means the entrance or driveway to a residence, field, woods, or similar noncommercial and lightly used driveway.]

"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 [alterations or renewal of almost all of the component factors of the original improvement] **changes to its configuration**.

"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 [to] **at** the rear of [parcels] **lots** fronting on the State highway.

["Ridesharing" means the cooperative effort between two or more people who travel together, usually to and from work. Carpools, vanpools and buspools are all examples of ridesharing. Ridesharing can include public transportation, such as buses, trains, or subways.]

"Right-of-way" means **highway** property **and property rights** owned and [acquired] **controlled** by the [DOT] **Department**.

"Right-of-way line (R.O.W. line)" means the outer edge of State highway property, separating highway property from **the** abutting [properties] **lots** [of] **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 [a type of roadway] **an** environment used for access classification purposes based on [population density and intensity of land use development] **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 [a company for] employees who are telecommuting. [It is a means of decentralizing part of a company's operations to a remote location so as to reduce commute distances for employees.]

"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 [property] **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[(s)]" means the distance between the right-of-way line and [roadside] **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 [parcels] **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**. [Whether or not a sidewalk exists, it is considered and controlled as sidewalk area.]

"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 [development] **lot** by **the greater of:**

1. 100 movements during the peak hour of the highway or the development; or [by]

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. [This lane should 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. These lanes also function as storage lanes for turning traffic.]

"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 [a] **the** network of [routes taken over and maintained by the] State **highways**.

["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.]

"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 or increases in the number of lanes on existing streets intersecting a State highway.

"Street improvement **applications (or permit)**" means **applications (or permits) for** any change[s] to an existing street **such as geometric and grade changes**, which does not increase the number of lanes intersecting the State highway.

["Study area" (for access management plans) means that area shown on the access management plan map.]

"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.

["Subject lot" means the lot covered by an access application.]

"Take over" means action by the Department in assuming the control and maintenance of a part of the State highway system.

"Telecommuting" means a [changed] work arrangement [program] **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 [future] **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 (TDM)" means strategies that reduce vehicle trips, especially peak period travel, to the commuter's destination.]

"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 (TMAs)" means [groups of employers, developers, building owners, and local government officials who work together to solve local transportation problems and establish transportation policies for their employees and the area] **a nonprofit New Jersey based corporation that brokers 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 [population density and intensity of land use development] **the U.S. Census Bureau data and standards**.

"Vanpool" means [a group of 10 to 15 passengers who are picked up at specific locations (at or near their home) to be taken to and from common or nearby employment sites. The three types of vanpools are: owner-operated, employer-sponsored, and third-party] **eight or more people commuting on a daily basis to and from work by means of a vehicle with seating for not less than eight nor more than 15 adult passengers and has a registration certificate and registration plates pursuant to N.J.S.A. 39:3-27.19**.

["Vehicle counting" means a method for monitoring the formation of carpools or vanpools by counting and manually recording how employees arrive at the work site.]

"V/C ratio" means a fraction [whose] **the** numerator **of which** is the number of vehicles passing a given point in a unit of time and [whose] **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[, accomplished by merging and diverging]. Weaving** [occurs] **areas are formed** when a merge **area** is closely followed by a diverage **area, or** [such as] 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 [Requirements] **General requirements**

There are hereby established the following access classifications for the State highway system as set forth in Appendix A of this [chapter] **Access Code**, 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 [lot] **State highway segment** shall be determined by reference to Appendix B of this [chapter] **Access Code**, incorporated herein by reference. Each access classification shall be applied to both sides of the roadway.

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: [Non-conforming lot access may be allowed for all access levels in accordance with N.J.A.C. 16:47-3.5(d). Figures C-1, C-2, and C-3 of Appendix C of this chapter, incorporated herein by reference, illustrate such non-conforming access.]

1. AL [0]**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 [I]**2**—access via street[s] **intersections** or grade-separated interchanges **and nonconforming lot access points**: [the] **The** designs set forth in Figures C-[4]**7** through C-[7]**11** of Appendix C, Access Levels Diagrams, illustrate such access. For AL [I]**1**, the **location** standards set forth in N.J.A.C. 16:47-3.3, **3.4, and 3.5** are applicable.

[3. AL II—right-turn access to and from the State highway and an access point: Figures C-8 and C-9 of Appendix C, Access Levels Diagrams, illustrates such access. For AL II, the standards set forth in N.J.A.C. 16:47-3.4 are applicable.]

[4.]**3.** AL [III]**3**—right-turn access to and from an access point and left-turn access via a signalized jughandle: Figures C-[10]**12** and C-[11]**15** of Appendix C, Access Levels Diagrams, illustrate such access. The jughandle may or may not be at access point. For AL [III] **3**, the **location** standards set forth in N.J.A.C. 16:47-3.4 **and 3.5** are applicable.

[5.]**4.** AL [IV]**4**—right-turn access to and from an access point, [and] left-turn [access] **ingress** via a left-turn lane, **and left-turn egress from an access point**: Figures C-[12]**16** through C-[16]**20** 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 [IV]**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[, or within 10 years after the date of the final improvement are projected to 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 [ed.)] **edition** or superseding edition). The **location** standards set forth in N.J.A.C. 16:47-3.3, 3.4[,] **and** 3.5 [and 3.6] are applicable in all other cases.

[6.]**5.** AL [V]**5**—access[,] to and from an access point: Figures C-[17]**21** through C-[19]**25** 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 [V]**5**, the **location** standards set forth in N.J.A.C. 16:47-[3.3]**3.4** are applicable if the traffic volumes at the intersection of the access point with the State [Highway] **highway** meet[, or within 10 years of the date after the final improvement are projected to 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 [ed.)] **edition** or superseding edition). The **location** standards set forth in N.J.A.C. 16:47-[3.4]**3.5** are applicable in all other cases.

[7.]**6.** AL [VI]**6**—access to and from the State highway and an access point, provided that there is an edge clearance of at least [five] **12** feet, **the access point is at least 24 feet from the nearest access points,** suitable sight lines **exist** and [that] the access does not otherwise create [a dangerous] **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-[21] **26** of Appendix C, [Access Levels] **access level** diagrams, illustrates such access. For AL [VI]**6**, the **location** standards set forth in [this section and] 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.

[(b)](**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 provisions for accommodating the desirable typical section in the future.**

[(c)](**d**) The owner of a lot fronting on a State highway segment may apply for a more restrictive access level than that for which the segment is designated, with [Access Level 0] **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 [with access levels I to V]

(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 alternative access will benefit the safety and operation 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.** [shall be prohibited on State highway segments for which the access level is I to V unless the applicant demonstrates that the property to be served by the access point does not have reasonable access to the general system of streets and highways in the State other than State highways. Reasonable alternative access exists if the following conditions can be met:

1. For property zoned or used for commercial purposes, 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 business or use and is so situated **so** that motorists will have a convenient, direct, and well-marked means of both reaching the business or use and returning to the State highway. For the purposes of this subsection, "property used for commercial purposes" shall include, but not limited to, property used for wholesale facilities, retail facilities, service establishments, or office or research buildings and property used for residential purposes consisting of developments or 25 or more acres with a gross density of more than four residential dwelling units per acre.

2. For property zoned or used for industrial purposes, access onto any improved public street, highway or access road, or an easement across an industrial access road shall be determined by the Commissioner, provided that the street, highway, or access road is of sufficient design to support necessary truck and employee access as required by the industry.

3. For property zoned or used for residential or agricultural purposes, except as provided in (a)1 above access onto any improved public street or highway, shall be as determined by the Commissioner.

(b) If a property is used for a purpose other than that for which it is zoned, reasonable alternative access permitted pursuant shall be defined on the basis of the more restrictive use.

(c) If the applicant demonstrates that reasonable alternative access does not exist or the proposed access is on a State highway segment for access level VI, access on the State highway consistent with the applicable access level set forth in N.J.A.C. 16:47-3.1 and 16:47-3.3 may be permitted, provided that access at the point proposed does not, as determined by the Commissioner, create an unsafe condition in light of grade, sight distances, and other pertinent factors.]

(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 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) [The location of an interchange applies to access levels I through V.] 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. [Whenever two] Two divided multi-lane accessible principal arterials cross;

2. [Where the green time available if]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 [accessible] arterials or less than 40 percent for minor arterials;

3. [Where a] **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[s] 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. [Where an] **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. [Where a] **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. [Where the] **The** minimum pecent**age** 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] **major traffic** generator is located along a**n accessible** principal [accessible] arterial where [either] 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-[3.3]**3.4** and signalization of the access point would impede the progressive flow along the highway[; or].

[4. A regional benefit to traffic movements would be demonstrated.]

(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"] **urban characteristics**, 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"] **rural characteristics**, as determined using Appendices A and B, shall be at least three miles from the closest existing interchange.

3. An interchange shall be separated from a full-movement intersection by at least the required **traffic** signal[ized] 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 I through VI] **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 [on] **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 [so designated] 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 [ed.)] **edition** or a superseding edition); and

ii. The minimum band width percentages **on the State highway** are attained or exceeded as follows:

[Functional Class] **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 [Levels by Access Class] **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.

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[s] 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 [N.J.A.C. 16:47-3.3](c)1 **above** shall be designated by the Commissioner, after recommendation by the applicant.

3. [The applicant in] **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 [ed.)] **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 [at his or her discretion].

16:47-3.5 [Location of unsignalized] **Unsignalized** access points

[(a) The location of unsignalized access points applies to access levels I to V. Unsignalized access may be provided in the manner set forth in (b) and (c) below.

(b) An application for an unsignalized access point shall be rejected with reasons if the traffic volumes at the access points meet, or within 10 years of the date of the final improvement are projected to 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 ed.) or a superseding edition.

(c) Spacing of access points on conforming lots shall be as follows:

1. An unsignalized access point on a State highway segment based on the existing cross-section (divided, multilane, or two lane undivided) with access levels I through V shall be located so that its centerline is at least the following minimum spacing distance from the closest existing access point on an abutting lot and, if there is no access point on such lot, then from the side property line of the subject lot. The following grade shall be the maximum grade within the spacing distance on the downgrade approach to the access point and the minimum grade within the spacing distance on the upgrade approach to the access point.

Minimum Spacing Distance (in feet)
By Highway Profile Grade at Access Point

Posted Speed (mph)	Less than 3%	3% to less than 6%	6% to less than 9%	9% or greater
25	150	150	150	150
30	200	215	220	230
35	250	270	280	300
40	325	345	365	395
45	400	425	455	525
50	475	505	545	590
55	550	590	590	590

2. Applicants who cannot meet the unsignalized spacing requirements in (c)1 above, may nevertheless locate an access point along their frontage, provided that the following four conditions are met:

i. The State highway onto which access is desired is divided;

ii. There is at least a 12-foot wide striped auxiliary lane, or a 13-foot wide striped auxiliary lane if the highway is curbed;

iii. The auxiliary lane is continuous and extends for a distance beyond the centerline of the proposed access point equal to or greater than the lengths for acceleration and deceleration lanes shown in the NJDOT Roadway Design Manual; and

iv. The distance from the access point's center line to the center line of the closest existing access point on the abutting lot, or the property line if the abutting lot has no access point, is 250 feet or greater.

3. If the applicant can meet the spacing requirement:

i. One two-way access point or one set of one-way access points shall be permitted for a minor permit.

ii. Two two-way access points or two sets of one-way access points may be permitted for a major permit.

iii. Two or more two-way access points or two or more sets of one-way access points may be permitted for a major permit with Planning review.

4. The applicant for an access permit on a conforming lot abutting one or more vacant or developed lots with nonconforming frontage shall consider locating a conforming access point so that a future access point meeting the requirement of this section may be located on the abutting lot, if possible.

(d) Spacing of access points on vacant nonconforming lots shall be as follows:

1. One unsignalized access point may be permitted on a vacant nonconforming lot in existence prior to the effective date of this Access Code, provided that the applicant demonstrates compliance with the requirements set forth in this subsection.

2. The Commissioner shall impose maximum vehicular use limitations as a condition of access permits on each nonconforming lot. Vehicular use shall be derived from the average traffic generation of the uses proposed on the lot, based on the Institute of Transportation Engineers' Trip Generation 4th Edition or a superseding edition. For land uses not included in this publication, the applicant shall document anticipated traffic generation, which shall be approved by the Commissioner. The applicant or, if there is a shared access and the access point in any such plan does not conform to the standards set forth in this section, the parties submitting the plan, shall limit projected A.M., P.M., or Saturday peak hour trips to and from the lot so that:

i. In the case of a State highway segment now divided as documented by field conditions or advertised for dividing; the proportion of the A.M., P.M., or Saturday peak hour trips, whichever is greatest to 100, is no greater than the proportion of contiguous frontage to two times the minimum spacing distance; and

ii. In the case of all other State highway segments, the proportion of the A.M., P.M., or Saturday peak-hour trips, whichever is greatest to 100, is no greater than the proportion of contiguous frontage to four times the minimum spacing distance.

3. In the case of lots for which vehicular traffic has been reduced proportionately in accordance with the standards set forth in (d)2 above, the minimum spacing distance may be reduced in the same proportion as the vehicular traffic limit is to 100, providing that a five foot minimum edge clearance can be provided.

4. Access in conjunction with subsections (d)2 and 3 above shall be permitted only if:

i. For State highway segments with an access class of accessible principal arterial or minor arterial, the application is for a minor permit, and the proposed development is projected to generate less than 100 trips during the A.M., P.M., or Saturday peak hour, whichever is greatest.

ii. For State highway segments with an access class of collector or local road, the proposed development is projected to generate less than 100 trips during the A.M., P.M., or Saturday peak hour, whichever is greatest.

5. The applicant shall submit an access application with a shared access plan jointly with the parties which agree thereto.

6. In the case of a lot which has more than one frontage on one State highway or frontages on two or more State highways, access points may be located only on the frontages where they conform to the standards set forth in N.J.A.C. 16:47-3.5. If there is no location at which an access point conforms, then it shall be placed on the frontage where it is most in conformance, unless otherwise determined by the Commissioner.]

(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 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:

$$V = 50 + \left(\frac{L + R}{2 \times S}\right) \times A \times 100$$

$^{L}max = S$

$^{R}max = S$

$^{A}max = 3.0$

3. For rural Strate 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:

$$V = 50 + \left(\frac{L + R}{2 \times S}\right) \times A \times 70$$

$^{L}max = S$

$^{R}max = S$

$^{A}max = 2.0$

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 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.

(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 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 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.

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.

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 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. 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. [Unsignalized] **Whenever possible, unsignalized** access points on divided highways for major **traffic** generators involving left-turn ingress and egress [shall] **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, [the Commissioner may,] as a condition of the access permit, **the Commissioner may** provide that at such time future **traffic** volumes are reached he or she may close the left-turn access with no recourse by the [applicant] **permittee.**

3. If an undivided highway becomes divided, [the Commissioner may,] as a condition of the access permit, **the Commissioner may** at such time close the left-turn access with no recourse by the [applicant] **permittee.**

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. [On] **Whenever possible, on** undivided highways, access on both sides of the road shall be aligned. Where this is not possible, [the access on both sides shall be offset by] **it is desirable to have the centerlines of access points offset** at least 200 feet [when minor generators are involved, the greater of 200 feet or the minimum spacing distance when one major generator is involved, and two times the minimum spacing distance when two major traffic generators are involved].

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. [The minimum spacing distance shall be measured from the centerline of the driveway closest to the existing access point on an abutting lot and, if there is no access point on such lot, then from the side property line of the existing lot.]

8. A left-turn lane shall be provided for access points on State highway segments with [Access Level IV] **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[, and that left turn access will not cause traffic safety problems unacceptable to the Commissioner].

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, [if] the Commissioner **may** decide[s] to permit left-turn access, pursuant to (e)8 above, [then] **if** the applicant [shall, at the Commissioner's discretion,] improve**s** 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 [NJDOT Roadway Design Manual] **New Jersey Department of Transportation Design Manual-Roadway**.

11. Access points shall be [designated to facilitate the movement of vehicles off the State highway to prevent the queuing of vehicles on the traveled way] **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. Access points may be provided at less than the spacing distances set forth in this section by connections to a frontage road, but in no case shall the distance be less than 250 feet.]

[13.]**12.** Approval of an access point in accordance with the terms of the Access Code does not relieve the [person to whom a permit was issued from providing] **permittee of an obligation to provide** any [off-site] requirements deemed necessary **under N.J.A.C. 16:47-4.34.**

(f) A street proposed [by a county or municipality] to extend to the State highway may **only** intersect a State highway [even if the distance from the street center line to the edge of the opposite property line of the adjacent lot is less than the minimum spacing distance. This shall be permitted only if the lot owners having State highway frontage on each side of the street can locate a conforming access point on their frontages.] **if it does not create non-conforming lots on either side of the intersection.**

[(g) Expansions or changes which generate significant increases in traffic on developed nonconforming lots are prohibited. Significant increases involve either more than 100 movements during the peak hour or more than 10 percent of the previously anticipated daily movements.

1. The floor area of uses on nonconforming lots shall not be increased, nor shall the use on nonconforming lots be changed unless:

i. The result of the changes is a projected increase in traffic of less than 100 trips during the peak hour and less than 10 percent of the daily movements determined by the Commissioner in the original application; and

ii. The projected number of trips meets the standard set forth in (d)2 above.

2. Access points on developed nonconforming lots may not be relocated unless the proposed location is more in conformance with the standards set forth in N.J.A.C. 16:47-3.5.

(h) In projecting vehicular trips, applicants shall use the Institute of Transportation Engineers' Trip Generation 4th Edition report or such other method as the Commissioner may specify. The Commissioner, at his or her discretion, may consider imposing traffic demand management programs designed to reduce vehicular trips during peak hours as a condition of the permit.

(i) No subdivision approval shall be granted after the effective date of this Access Code for a nonconforming lot not having reasonable alternative access to the general system of streets and highways in the State other than the State highway itself, and any subdivision so granted shall be null and void.]

16:47-3.6 Setback and driveway width

The Department will respect local building, zoning, [or] **and** setback[,] ordinances[,]; variances[,]; rules; and regulations which do not conflict with Department requirements. [Permits will not be issued which violate such ordinances and regulations.]

16:47-3.7 Driveway surfacing

(a) [Driveways should be appropriately surfaced.] The Department has jurisdiction over [that portion] **driveways** within the limits of its right-of-way; however, the Department is not responsible for maintaining driveways. [There is no standard type of surfacing that must be used. The driveway approach should be constructed of a permanent type pavement and similarly surfaced to the right-of-way line. Gravel surfacing may be suitable in some areas and rural, residential and field driveways may not require surfacing. However, all driveways shall be paved with concrete or bituminous material between the gutter line and the right-of-way line.]

(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) Concrete driveways should be constructed of Class B concrete, at least six inches thick. All unsuitable base material shall be removed before the pavement is constructed.]

[(d)](**c**) **All driveways shall be paved with concrete or bituminous material between the curbline and the right-of-way line.** [That portion of the driveway 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 [Control] **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.

[(a)](**b**) The abbreviations used in this **sub**chapter and their [meaning is] **meanings are** as follows:

[P.] **L.**L.	—[Property] **Lot** Line
R.	—Radius
CL.	—Centerline of Highway
E.	—Edge Clearance
E.[P.]L.L.	—Extended [Property] **Lot** Line
E.T.W.	—Edge of Traveled Way
MAX.	—Maximum
MIN.	—Minimum
R.O.W.	—Right-of-Way
[CURBLINE	—Curbline or Gutterline]

S.W.	—Sidewalk
VAR.	—Variable Dimension
P	**—Parking offset**
C.O.	**—Curbline Opening**

[(b)](**c**) All portions of the driveway shall be within the extended [property] **lot** lines. The edge clearance (E) shall not be less than [five] **12** feet. This is measured from the extended [property] **lot** line[,] along the curbline to the beginning of **the** curbline opening.

[(c)](**d**) The curbline opening (C.O.) shall be as follows:

1. Residential: 12 feet to 30 feet.

2. Non-residential: **minimum** 24 feet [to 50 feet]**, maximum desirable 50 feet**.

[(d)](**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**,** [to] **maximum desirable** 34 feet **and maximum allowable 40 feet.**

ii. Two-way operation: **minimum** 20 feet**,** [to] **maximum allowable** 46 feet.

[(e)](**f**) Street width (W) shall be as follows:

1. Residential: 24 feet to 50 feet.

2. Non-residential: 30 feet minimum.

[(f)](**g**) The access point angle (Y) shall be as follows:

1. One-way operation: 45 degrees minimum.

2. Two-way operation: As [near] **close to** 90 degrees **to the State highway** as site conditions will permit with a minimum **of** 60 degrees.

[(g)](**h**) Radius (R) shall be as follows:

1. Residential: [10] **30** feet maximum**. Refer to Figure C-3, Appendix C.**

2. Non-residential: [15 feet maximum]**. Refer to Figures C-2 and C-4, Appendix C.**

[(h)](**i**) The distance between driveways shall be [as follows:

1. Residential: 25] **24** feet minimum **as measured between curbline openings**.

[2. Nonresidential: 25 feet minimum.]

[(i)](**j**) The area between access points and extending from the curb or shoulder line to the right-of-way line [must] **shall** be raised six inches above the surface of the adjacent drives and seeded, sodded, or otherwise, improved.

[(j)](**k**) [The Department has no jurisdiction over areas outside right-of-way lines.] The Department recommends the following setbacks from the right-of-way line from **the** Department's desirable typical section to any building or structures [to provide off-street parking]:

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, [and small] **minor** businesses**, and retention or detention basins** [shall] **should** be a minimum of 40 feet outside the right-of-way line for **the** Department's desirable typical section.

3. [Large] **Major** restaurants and businesses should be a minimum of 50 feet outside the right-of-way line for **the** Department's desirable typical section.

[(k)](**l**) The corner clearance [for access level VI shall be a minimum of 25 feet] **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

iii. All locations with at least a 10 foot shoulder.

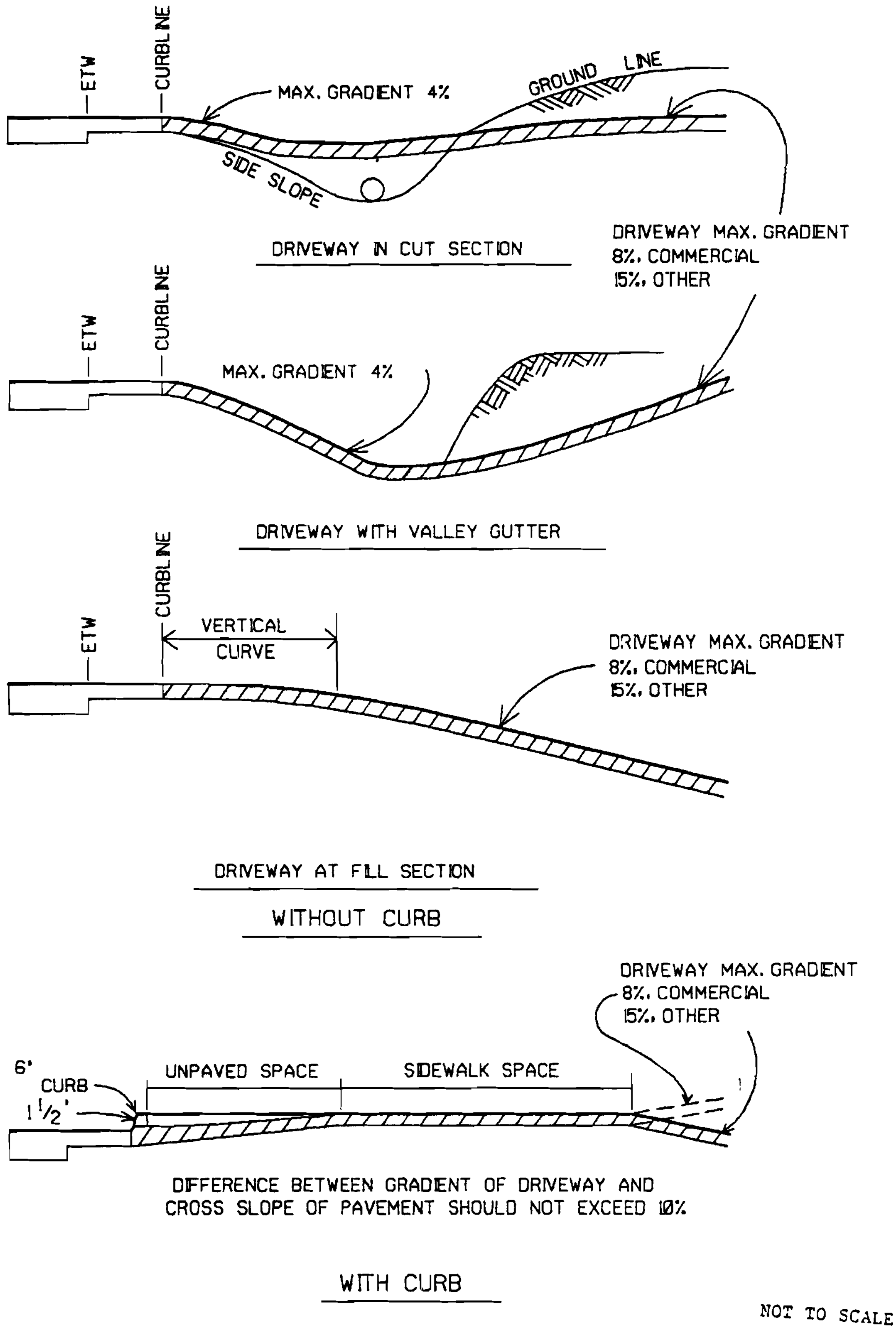
3. A minimum of 100 feet for all driveways in the vicinity of signalized intersections and locations not covered in (l)1 and 2 above.

[(l) Single driveways should be positioned at right angles to the roadway. Where two driveways are used on one frontage and they are to be used for access to and from both directions of travel on the highway, each driveway may be placed at an angle other than a right angle with the roadway, but not less than 60 degrees.]

(m) Figure 1 below shows typical driveway profiles. 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 [gutter] **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. [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: [4] **four** percent within 25 feet of curbline for driveways; [4] **four** percent within 50 feet of curbline for streets.

Figure 1

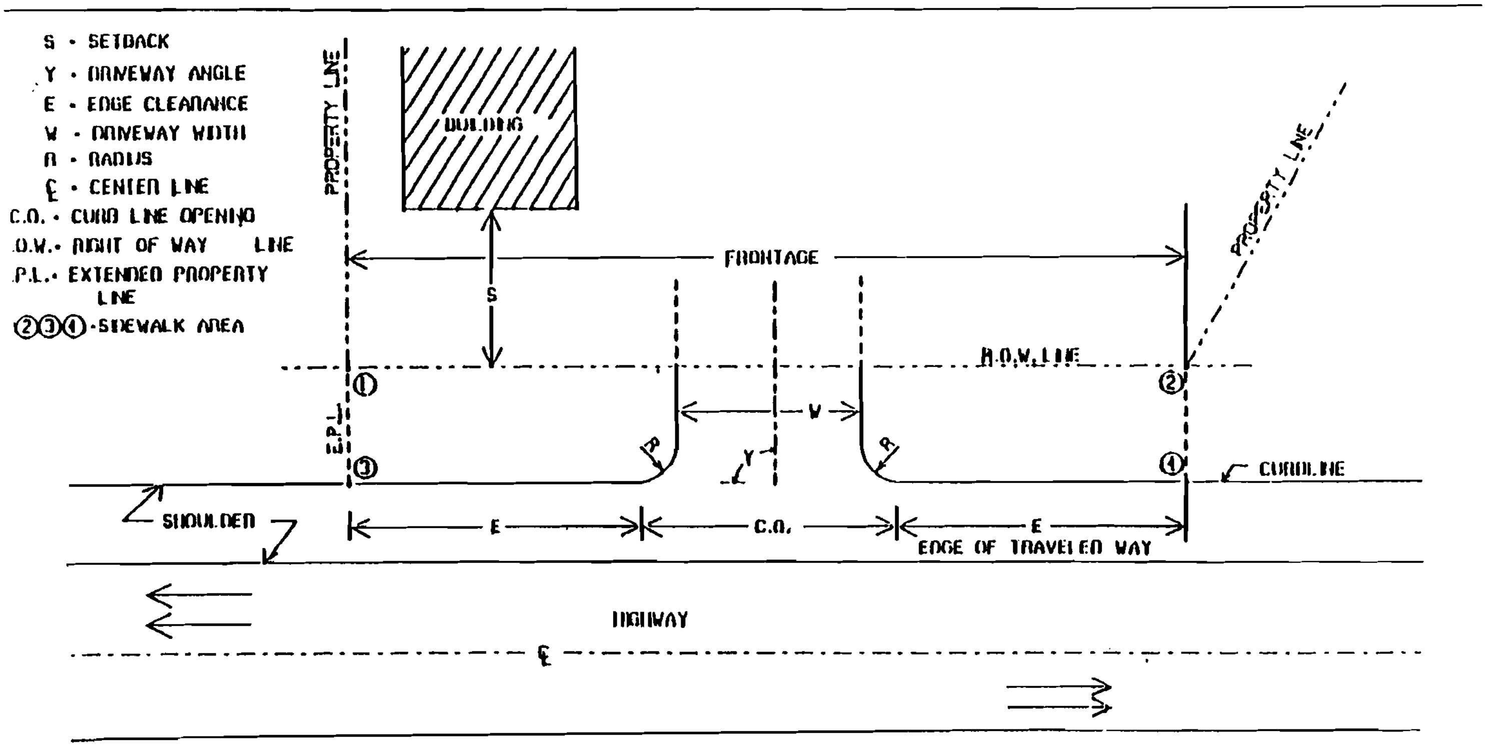


DRIVEWAY PROFILE CONTROLS

(n) Figure 2 **below** is a diagrammatic sketch and layout to illustrate and suggest geometrical designs for driveways [where large volumes of traffic are anticipated] **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 island must be offset, by a minimum of three feet from the curbline. The minimum area of the 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 [are generally] **may be** omitted when constructing [complex] driveways **which have curbed radii** and are always omitted when constructing street intersections. All islands must be paved with either concrete or bituminous concrete[, in accordance with Department specifications. Figure 2 shows a driveway on a four-lane undivided highway. The preferred angle of the drive is 90 degrees. Property 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 five feet. The island must be offset, three foot minimum from the curbline. The minimum area of the island is 75 square feet.]

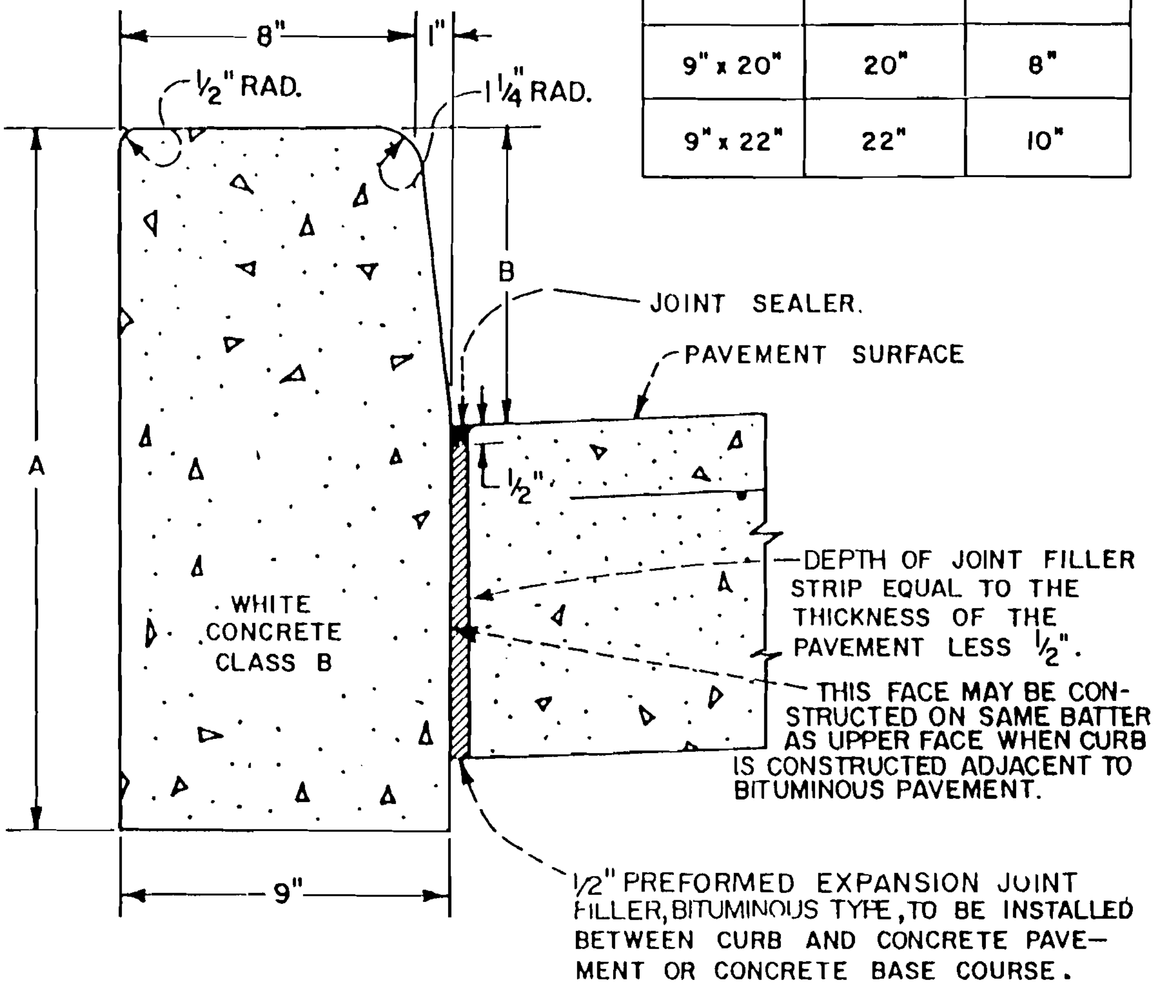
Figure 2



SINGLE DRIVEWAY - DIAGRAMMATIC FOR ILLUSTRATING DEFINITIONS

Figure 3

CURB SIZE	DIM. A	DIM. B
9" x 18"	18"	6"
9" x 20"	20"	8"
9" x 22"	22"	10"



TRANSVERSE JOINTS 1/2" WIDE SHALL BE INSTALLED IN THE CURB 20'-0" APART AND SHALL BE FILLED WITH PREFORMED BITUMINOUS-IMPREGNATED FIBER JOINT FILLER RECESSED 1/4" 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

NOT TO SCALE

(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. [The] **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** [the] right-of-way [of any State highway] 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 the curbline** [as] **at** depressed curbs, where it shall be 1½ inches higher.

(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 [issued].

(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 [high traffic volumes] **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 [property] **lot** is in progress or is contemplated in the immediate future, in which case the [property] **lot** owner must first obtain an access permit.

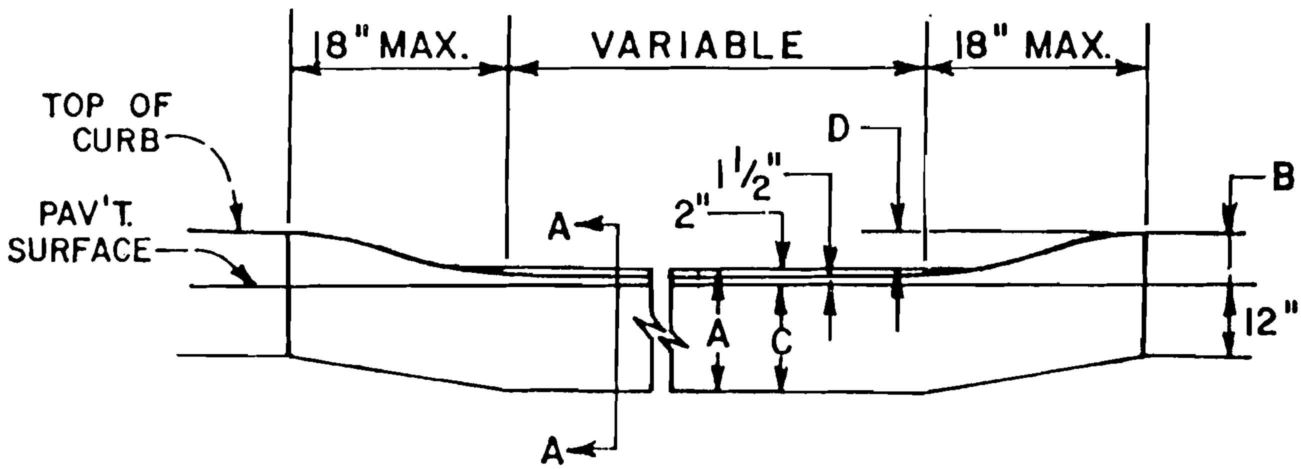
3. The top of the depressed section of curb shall be 1½ **inches** higher than and parallel to the established [gutter] **curbline** grade.

4. Depressed curb shall not be constructed as an integral part of concrete ramps or aprons.

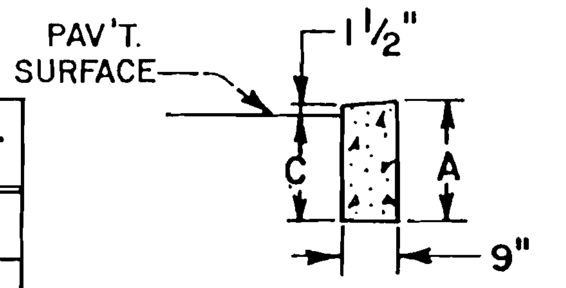
5. Existing monolithic curb shall be chiseled off to a line 1½ inches above [gutter] **curbline** grade after which the broken surface shall be finished with a 1:2 Portland [Cement Mortar] **cement mortar** mixture to present a smooth and even surface.

(h) The approach ends shall have a 10 foot transition, from a two inch face to a 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 six inth face, as shown on Figure [6]4 below. All transitions shall have joints at the six inch face end.

Figure 4



CURB SIZE	DIM. A	DIM. B	DIM. C	DIM. D
9"x 18"	18"	6"	16"	4½"
9"x 20"	20"	8"	18"	6½"
9"x 22"	22"	10"	20"	8½"

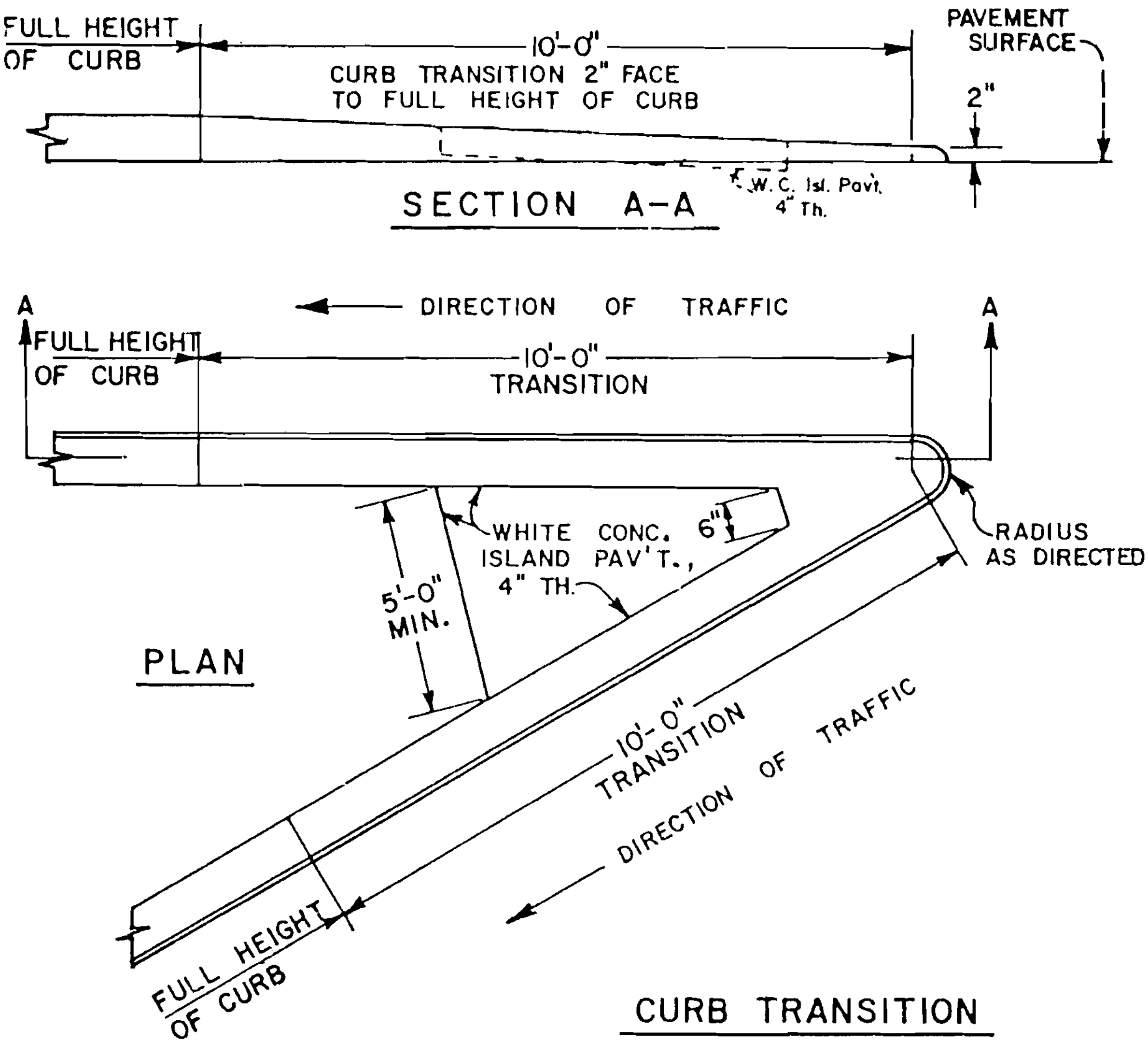


SECTION A–A

METHOD OF DEPRESSING CURB AT DRIVEWAYS

NOT TO SCALE

Figure 5



NOT TO SCALE

16:47-3.10 Sidewalk area

[(a) The area extending from curbline to right-of-way line, whether or not a sidewalk exists, is considered and controlled as sidewalk area.]

[(b)](**a**) The sidewalk area shall be graded to 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 [observed] **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.

[(c)](**b**) Concrete sidewalk shall be as follows:

1. Concrete sidewalk to be constructed within **State highway** [the] right-of-way [of any State highway] shall be Class [C] **B** air-entrained concrete, and shall conform to **the requirements set forth in** Standard Specifications for Road and Bridge Construction [except if] **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] **cement**, two parts sand, and four parts crushed stone or washed gravel as provided in [Department] 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. [Finish shall be made] **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] **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 [designated] **approved** by the Department are to be installed beneath [drives] **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.

(b) No part of highway right-of-way [is to] **shall** be used for [servicing of vehicles, displays, or to conduct private business] **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 [may] **shall** be erected on or overhanging [Department] **State highway** right-of-way, nor [may] **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. 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) 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) 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) 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) 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) Where [property] **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 [gutter] **curb**line [must] **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) [There is a five-year restriction on making] **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 [driveways] **access points**.

(k) 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) All lighting equipment for roadside establishments must be located off highway right-of-way.

(m) [No alteration or addition shall be made to any driveway within State right-of-way without first obtaining a permit from the Department.] **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 [of] **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. [16:41] **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[s] 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.

(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 [must be obtained] before access [permission] is requested.

(g) Permission may be granted for construction of a driveway which [impacts] **requires the relocation of** a utility pole or fire hydrant. Utility poles [will] **and fire hydrants shall** not be permitted on channeling islands. [Poles] **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 [arranged] **permitted**. These are placed in accordance with a carefully designed spacing pattern. However, should a new design be [necessary] **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 [driveways] **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 appropriate Bureau shall prepare an estimate of cost. Using this estimate, the Regional Maintenance Engineer, Division of Construction and Maintenance Engineering shall request, as a condition in granting the permit, a written agreement by the permittee, stating that the permittee] **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. [When Department forces have completed the work, the Bureau, which prepared the original estimate, shall notify the Bureau of General Accounting of the actual expenses involved. The Bureau of General Accounting will then bill the permittee for the total expenses] **The Department will have the work completed**.

16:47-3.14 Materials and workmanship

(a) [Materials and workmanship used in construction] **Construction** within highway right-of-way [are] **is** subject to inspection and approval [of] **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 [chapter] **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) This chapter does not pertain to controlled access highways, such as freeways, parkways, and interstates, where direct access is prohibited by law.]

[(b)](**a**) The Department will not expend public funds in assisting abutting [property] **lot** owners to obtain access to the highway[, except as indicated in (d) below].

[(c) The following apply to landscaping:]

[1.](**b**) Only [very low growing] ground cover **which will not exceed 12 inches in height** may be [maintained] **allowed** within the sidewalk area, subject to Department approval. Plantings shall not interfere with sight distance.

[(d) The policy governing the construction of driveways is as follows:

1. For existing highways, the construction, maintenance, and use of driveways shall be the responsibility of the owner of the abutting property.

2. On new construction or betterment projects, driveways that serve residential or business establishments that have been disturbed or must be redesigned will be restored or reconstructed by the Department without cost to the property owner. If new or additional curb is to be constructed within the scope of work, the Department may construct curb depressions provided the property owner has first obtained an access permit.

(e) When agreeable between two adjoining property owners, a joint or common driveway may be approved. An application for an access permit (Form MT-32) shall be endorsed by each property owner and filed, pursuant to N.J.A.C. 16:47-4.5.]

[(f)](**c**) Driveways cannot be authorized [that] **which** cross or otherwise encroach upon State property[,] or its frontage.

[(g)](**d**) Dedications or donations of land shall comply with prevailing Federal [Laws] **laws** and Federal Highway Administration [Regulations] **regulations**.

16:47-3.16 Municipal [activities] **and county actions**

(a) [No property] **As of the effective date of this Access Code, 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 if the access meets the requirements of conforming lots under this Access Code.**

(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 [for] **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) [A municipality shall not] **Municipalities are encouraged not to** grant a zoning variance for a lot abutting a State highway when the intensity of variance use would not be in conformance with the Access Code. [Municipalities shall require applicants for variances to present evidence of conformance, though conformance alone shall not compel the municipality to approve the variance.] **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 [Other provisions] **Department actions**

(a) For access levels [I] **2** through [IV] **6** along a State highway, subsections (b) and (c) below apply.

(b) 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 and safety considerations so warrant.

(c) Nothing set forth in this [chapter] **Access Code** shall be interpreted as requiring the Department at its own expense to signalize, construct or improve access points or make other improvements related thereto.

(d) 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) 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 [property] **lot**.

16:47-4.2 Concurrent applications

[When there is more than one pending access application that impacts the same portion of highway, the Department will encourage the involved applicants to work together. The Department may recommend an access arrangement and related highway improvements, but the Department will not act as an arbitrator between applicants. When cooperation between applicants cannot be obtained, the Department will review each permit application separately.] **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) [Any person must submit an application and] **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 lot or street**:

1. Constructing one or more driveways or streets [entering on] **intersecting** any State highway;

2. [Reconstructing, changing] **Changing** or modifying any existing driveway or street **intersecting any State highway**;

3. Constructing sidewalk, curb, drainage, or any other related work within the limits of **any State** highway right-of-way;

4. Significantly expanding the facilities on a lot having access to [a] **any** State highway; [or]

5. Significantly changing the use on a lot having access to [a] **any** State highway[.];

6. Subdividing a lot having access to any State highway;

7. Consolidating a lot having access to any State highway; or

8. Initiating any activity which may interfere with the free and safe movement of normal highway traffic on any State highway.

(b) [An applicant shall complete and submit the proper application form to the Regional Maintenance Office.] **An access permit is not needed to perform maintenance and in-kind replacement.**

(c) All driveways and streets in existence prior to [January 1, 1970] **July 1, 1976** shall be [assumed] **considered** to have been constructed in accordance with an access permit, even if no permit was issued. All driveways and streets constructed after [January 1, 1970] **July 1, 1976** must have had permits issued or they are presumed not to have permits. [The permittee is responsible for providing evidence of a permit.] **The Department shall administer this provision as shown in Appendix G, incorporated herein by reference.**

(d) [The Department's Regional Maintenance Offices shall be the initial point of contact for all applicants desiring access to State highways.] **An applicant shall complete the proper application form and submit it to the appropriate Regional Maintenance Office.** The Regional Maintenance Office[s] will **determine if permits are necessary**, confirm that the applicant has applied for the proper type of permit, [and] coordinate the review [process] with other Department offices, **and issue letters confirming that permits are not needed, when appropriate**.

(e) [Processing] **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 [property] **lot** owner or a representative holding an appropriate power of attorney. [Applications for new streets and lane additions to existing streets can be signed by an adjacent property owner, or the county or municipal engineer. Applications for other changes to existing streets can only be signed by the county or municipal engineer.] For share access between lots, **an application and separate fee shall be submitted for each lot,** [the application shall be] signed by the **lot** owner [of each lot]. **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 [incorporate] **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) [State highway access is provided through driveways and streets.] Access applications must be submitted for all [proposed driveways,] 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.**

[1.]**(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, superceding edition, or superceding 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.** [The Department may either provide trip generation rates or confirm documentation provided by the applicant for uses not addressed by ITE.

i. Minor applications are for uses generating less than 500 two-way trips per day.

ii. Major applications are for uses generating 500 or more two-way trips per day.

iii. Major applications with planning review are for uses generating 500 or more two-way trips per day and 200 or more two-way peak hour trips.

(j) The Department shall determine the final classification of the types of permits required.]

(k) Permits expire when the permittee violates any permit conditions. In addition to [any] site-specified conditions imposed by the Department, all **future** permits shall include the following conditions:

1. [Traffic shall not increase significantly because of either an expansion or change of use. Significant increases exceed 100 movements during the peak hour of the highway or the development or exceed 10 percent of the previously anticipated daily movements] **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 [property] **lot** covered by the permit shall not be subdivided **or consolidated with another lot**;

[3. The permittee shall not transfer the property without written notification to the Department at the time of transfer; and]

[4.]**3.** Work must be started within one year of the date the permit was issued[.];

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 [it] **he** 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 [available to the Department].

(m) When the holder of [the] **an** expired permit applies for a new permit, the application shall reflect the expanded or changed use as well as the **continuing** uses [provided] **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 that reasonable alternative access is available for the [property] **lot** served by the permit. The permit shall not be revoked until the alternative access is completed and available for use. Prior to revocation, the Department [must] **shall**:

[1. Provide to the property owner and all lessees:

i. 90 days written notice of the right to request a hearing; which shall be conducted 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

iii. The improvements the Department will make to provide the access;

2. File a copy of the plan with the municipal clerk and the planning board secretary of the municipality in which the property is located;]

[3.]**1.** Determine that [property zoned or used for] **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. [Commercial] **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 [so] situated **so** that motorists will have a convenient, direct, and well-marked means of [both] 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) [Property used for residential purposes having more than four residential units per acre with a total of 25 or more acres.] **Residential parcels of at least 25 acres and at least four residential units per acre;**

ii. [Industrial] **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. [Residential] **For a lot zoned or used for residential** or agricultural purposes (except as provided in [(1)3i] **(n)1i(6)** above), has access onto any improved public street or highway[.]; **and**

[4.]**iv.** [Purposes] **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;

[5. Assist the property owner in establishing] **4. Provide all necessary assistance in the establishment of** the alternative access. [Assistance] **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 [signage] **signs** as provided in [6] **5** below;

vii. Acquisition of lands or [any] 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[; and].

[6.]**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 [signing] **signs; and**

6. Provide the necessary roadway pavement structure and road widths meeting municipal standards as determined by the Department for local roads traversed by traffic using the alternative 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 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.

(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. 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. 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 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, Access Application Thresholds, incorporated herein by reference, [shall be used for] **in** determining the **other** types of applications and [for] **in** determining which Department units will review an application. Any use generating less than 500 trips per day **to and from the lot** requires a minor application. Any use generating 500 or more trips per day and less than 200 peak-hour trips **to and from the lot** requires a major application. Any use generating **500 or more trips per day and** 200 or more peak hour 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 [also] be determined using Appendix E[. To do so, perform the following tests] **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** sume 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 [sould] **should** be used only to determine the type of application. **Applicants should contact the Regional Maintenance Offices for assistance on the use of the table.** Any required traffic analysis for potential **traffic** signal[ization]s or traffic impact study shall use the actual trip generation process described in the [ITE] **Institute of Transportation Engineers publication entitled Trip Generation Report,** 4th edition or superseding edition. [Applicants may contact staff members in the Regional Maintenance Offices for assistance on the use of the table.]

(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 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 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.**

DEPARTMENT TIME FOR APPLICATIONS ACCEPTED FOR REVIEW (IN DAYS)[1]

	Form	Minor[2]	Major[[3]]	Major with Planning Review[[3]]
[Private] **Single Family Residential** Driveway	MT- 32	35	NA	NA
Residence and Business [Combined] **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	MT- 32	35	100	175
Concept Reviews	MT- 32	NA	100	175
Street Improvement	MT-120A	35	NA	NA
Lot Subdivision or Consolidation	**MT-**	**NA**	**50**	**NA**

Notes

(NA means Not Applicable)

1. Times are for applications in areas not covered by [Access Management Plans] **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.

[3. If a developer agreement is involved, the review may take 85 additional days.]

[The above times are for Department only and do not include any applicant time. The times also do not include time for Federal Highway Administration reviews of work on interstate highways, interchanges, or ramps.]

(b) The time for the Department review of an application may be extended with the written consent of the applicant.

(c) Potential applicants [must] **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] **with a planning review**.

16:47-4.6 Permits and permit fees

(a) The non-refundable fees for access applications, permits, and renewals are set forth below. Fees [must] **shall** be in the form of a check or money order made payable to the Department. Cash will not be accepted. The application fee [must] **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. [A permit] **The Department** shall not [be issued] **issue a permit** until the proper fee for the permit has been collected **and the permit has been signed**.

Type	Application Fee Each [Property] **Lot**	Permit Fee Each [Property] **Lot**	Renewal Fee Each [Property] **Lot**
[Private] **Single Family Residential** Driveway	$ 35.00	$ 15.00	$ 15.00
[Combined] Residence and Business **Driveway**	75.00	25.00	25.00
Government Driveway	150.00	500.00	[500.00] **250.00**
Minor	265.00	85.00	85.00
Major	3,750.00	1,250.00	[1,250.00] **250.00**
Major with Planning Review	9,000.00	3,000.00	[3,000.00] **250.00**
Concept Reviews	500.00	—	—
Street	150.00	500.00	[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 [20] **10** percent **of the housing units on the site** set-aside for low and moderate income [housing] **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 [20] **10** percent reduction in the permit fee. To be eligible for this reduction, the applicant [must] **shall** submit the full application fee and an affidavit from the municipal approving authority, certifying that the [20] **10** percent requirement has been met. Upon approval of the access, the Department will reduce the permit fee by [20] **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 [afford] **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 terms of] the permit is not started within one year of the date **the** permit was issued, the permit expires. The permittee [must] **shall** submit a new application [with plans], **with supporting documentation as set forth in the check-**

lists in N.J.A.C. 16:47-4.9(b), 4.10(b), 4.12(b) or 4.14(b), which reflects [any] changes **and the fee appropriate at the time of the new application**.

2. A permit expires if all construction work under [the terms of] the permit is not completed within one year of the date the permit was issued, unless extended or otherwise stated in the permit. Upon expiration, the Department may use the remedies described in (g) below to restore any disturbed area.

(e) When the construction work under [the terms of] the permit is started within one year of the date of issuance and cannot be completed in the indicated time [limit], the permittee [must] **shall** request an extension of time [by letter to] **in writing from** the appropriate Regional Maintenance Office [with] **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.

(g) [The] **As a condition of any permit the** Department may [demand from the applicant, as a condition of any permit,] **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 [original] permit.

(j) A permittee may use the access points designated in a permit.

(k) [Access permits may be transferred to the purchasers, successor, or assign of a permittee. The Department shall be notified in writing at the time of such transfer. Failure to so notify the Department will cause the permit to expire.] **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 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.

(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. Permit applications for all other projects shall be acted upon according to this Access Code.

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.

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 [so notify the applicant] **send a written notice** of these determinations **to the applicant within 10 days of receipt**. If the application is [incomplete] **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 [must] **shall** submit the completed and signed permit documents and permit fee to the Regional Maintenance Office within 180 days of the Regional Maintenance Office [response] **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.

(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 [deficiencies three times] **deficiency** or **the same** technical content [deficiencies] **deficiency three times** in an applicant's submissions [three times], 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 [must] **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 [inspect the access for conformance with the conditions of the permit, and] notify the permittee if any corrective action is required by the permittee.

16:47-4.9 Minor access permits checklist for [private use] **single-family residential and** residence and business combined

(a) Applications for minor access permits for [private use] **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 [gutter or] curbline. Plan sheet size [should] **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** [Property] **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 [site] **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 [driveways] **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 [property] **lot** frontage along highway;
[20. Distance from each side property line to closest driveway on adjacent properties—preceding (in feet) following (in feet);]
[21.]**20.** Distance to nearest traffic signals **if less than 250 feet**—preceding (in feet) following (in feet);
[22. Vacancy of all adjacent property;]
[23.]**21.** Zoning designation for lot; and
[24.]**22.** Waivers requested.
(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 [uses] **traffic generators**

(a) Applications for minor access permits for other minor [uses must] **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 [should] **shall** not exceed 24 inches by 36 inches. Topographic features [must] **shall** be shown on both sides of undivided roads and one side of divided roads for [250 feet to] 500 feet **beyond the lot frontage** in each direction.

(b) The following information [must] **shall** be submitted with the application:
1. [Site] **Lot** location map ([Tax maps are not acceptable.] Maps should reference at least two cross streets on each side of the [property] **lot**, milepost, north arrow and scale);
2. **Copy of tax map showing block number, lot number and** [Property] **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 [site] **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 driveways] **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 [property] **lot** line to the edge of pavement;
29. Number of new units for residential[,] **use; rooms for hotels and motels;** [or] 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 [property] **lot** frontage along highway;
[35. Distance from property line to closest driveway on adjacent properties—preceding (in feet) following (in feet);
36. Distance between centerline of proposed driveway and centerline of either nearest driveway on opposite side of undivided highway or median break on divided highway;]
[37.]**35.** Distance to nearest traffic signal **if less than 250 feet**—preceding (in feet) following (in feet);
[38. Vacancy of all adjacent property;]
[39.]**36.** Zoning designation for lot; and
[40.]**37.** Waivers requested.
(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 [so notify the applicant] **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[, unless a developer agreement is involved]. A permit will be issued within a maximum of 100 days of receipt of a complete application[, unless a developer agreement is involved] **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 [must] **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 [response] **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.

(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 [inspect the access for conformance with the conditions of the permit and] 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 [deficiencies three times] **deficiency or the same** technical content [deficiencies] **deficiency three times** in an applicant's submissions [three times], 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 [must] **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 [should] **shall** not exceed 24 inches by 36 inches. [Please note that plans] **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. [Site] **Lot** location map ([Tax maps are not acceptable.] The Key map must reference at least two cross streets on each side of the [property] **lot**, milepost, north arrow and scale);
2. **Copy of tax map showing block number, lot number and** [Property] **lot** lines;
3. Right-of-way line from Department desirable typical section;
4. Topography showing all highway features within 500 feet of the [property] **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 [site] **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[, gravel]);
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 driveways] **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 [property] **lot** line to the edge of pavement;
30. Number of new units for residential[,] **use;** rooms for hotels **and motels;** [or] 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 [development];

[38. Any joint access with other properties;]

[39.]**38.** Changes to existing traffic signals;

[40.]**39.** New traffic signals and MUTCD warrant numbers;

[41. Justification for exceptions to design standards;]

[42.]**40.** Length of [property] **lot** frontage along highway;

[43. Distance from each side property line to closest driveway on adjacent properties—preceding (in feet) following (in feet);

44. Distance between centerline of proposed driveway, driveway and centerline of either nearest driveway on opposite side of undivided highway or median break on divided highway;]

[45.]**41.** Distance to nearest traffic signal **if less than 500 feet**—preceding (in feet), following (in feet);

[46. Vacancy of all adjacent properties;]

[47.]**42.** Zoning designation for lot; [and]

[48.]**43.** Waivers requested[.]; **and**

44. Copies of transmittals of duplicate applications to the municipal clerk and county planning board.

(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 [must] **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) [Applicants] **Potential applicants** considering submission of [Major Applications] **major applications** requiring a [Planning] **planning** review shall send the Major Permits Unit a letter including the following information for the proposed development:

1. [Site] **Lot** location noting route, direction, milepost, township[,] **and** county;
2. Size and type [for] **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.

(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 [forward the traffic counts and municipal documentation for other proposed developments to] **discuss the locations to be studied and the contents of the traffic impact study with** the Bureau of Access and Development Impact Analysis **at the pre-application conference.** [to obtain Traffic Growth Rates for background traffic. The Bureau of Access and Development Impact Analysis will provide the Growth Rate to the applicant. This information must be incorporated in the applicant's Traffic Impact Study.]

(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[, unless a developer agreement is involved]. A permit will be issued within a maximum of 175 days of receipt of a complete application[, unless a developer agreement is involved] **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.

(h) If the Regional Maintenance Office, Major Permits Unit, or Bureau of Access and Development Impact Analysis finds either **the same** form [deficiencies] **deficiency** or **the same** technical content [deficiencies] **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 [must] **shall** always be submitted.

(j) The Regional Maintenance Office will [respond to the applicant and request that the applicant submit] **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 [response] **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 [inspect the access for conformance with the conditions of the permit. 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.

(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] **traffic impact study**, [9] **nine** copies of detailed plans to a scale of one inch equals 30 feet or one inch equals 50 feet. Plan sheet size [should] **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. [Site] **Lot** location map ([Tax maps are not acceptable.] The Key map must reference at least two cross streets on each side of the [property] **lot**, milepost, north arrow and scale);
2. **Copy of tax map showing block number, lot number and** [Property] **lot** lines;
3. Right-of-way line from Department desirable typical section;
4. Topography showing all highway features within 500 feet of the [property] **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 [site] **lot** driveways—existing and proposed;
13. Location of nearest driveway on adjacent [properties] **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[, gravel]);
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 driveways] **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 [property] **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 [development];

[39. Any joint access with other properties;]

[40.]**39.** Changes to existing traffic signals;

[41.]**40.** New traffic signals and MUTCD warrant numbers;

[42.]**41.** Proposed site and highway transportation improvements;

[43. Copy of Department traffic growth rate letter;

44. Justification for exceptions to design standards;]

[45.]**42.** Length of [property] **lot** frontage along highway;

[46. Distance from each side property to the closest driveway on adjacent properties preceding (in feet) following (in feet);

47. Distance between centerline of proposed driveway and centerline of either nearest driveway on opposite side of undivided highway or median break on divided highway;]

[48.]**43.** Distance to nearest traffic signal—preceding (in feet), following (in feet);

[49. Vacancy of all adjacent property;]

[50.]**44.** Zoning designation for lot; [and]

[51.]**45.** Waivers requested[.]**; and**

46. Copies of transmittals of duplicate applications to the municipal clerk and county planning board.

(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 of access approval. 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 [should] **shall** submit a concept review application with plans or a sketch [at a scale no greater than one inch equals 100 feet], 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 [process], 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. [The permit application must be submitted within one year of the conceptual approval, otherwise the approval expires.] If the concept is approved, the [Regional Maintenance Office will advise the applicant to] **applicant must** submit a permit application **within one year of the date of conceptual approval. Failure to submit a permit application within one year 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 [supported by five copies of the traffic impact study and] **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 [should] **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.** [This] **The** application [should] **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. [Site] **Lot** location, including existing topography within 1,000 feet in each direction [(poles, grades, etc.)];

3. **Copy of tax map showing block number, lot number and** [Property] **lot** lines;

4. Right-of-way line from Department desirable typical section;

[5. Drainage—existing and proposed;]

[6.]**5.** Driveway widths;

[7.]**6.** Driveway alignments;

[8.]**7.** Curbline openings;

[9.]**8.** Estimated 24-hour **and highway peak-hour** traffic count for [access points] **the lot and each access point**;

[10.]**9.** Type of construction (Concrete, bituminous, gravel, etc.);

[11.]**10.** Parking facilities and internal traffic circulation;

[12.]**11.** Speed change lanes (Acceleration, deceleration, left turn slots);

[13.]**12.** Traffic signals—existing and proposed;

[14.]**13.** Lane and shoulder widths;

[15.]**14.** Number of lanes **on the highway**;

[16.]**15.** Location of centerline on undivided highways and median on divided highways;

[17.]**16.** Location of existing median openings on divided highways;

[18.]**17.** Traffic pattern changes;

[19. Copy of Department traffic growth rate letter;]

[20.]**18.** Typical section—existing and proposed, including widths and pavement types;

[21. Highway traffic striping—exisitng and proposed;

22. Justification for exceptions to design standards;]

[23.]**19.** Length of [property] **lot** frontage along highway;

[24. Distance from property line to closest driveway on adjacent properties preceding (in feet) following (in feet);

25. Vacancy of adjacent properties;]

[26.]**20.** Zoning designation of lot; [and]

[27.]**21.** Waivers requested[.]**; and**

22. Copies of transmittals of duplicate applications to the municipal clerk and county planning board.

16:47-4.17 [Access] **Department review times for lots addressed in approved access** management plans

(a) The Department review times for [application conforming to an] **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) [When the Department determines that an access application necessitates significant highway improvements, a developer agreement will be required.] **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. Right-of-way dedication with conditions;

4. Department involvement in right-of-way acquisition;

5. Dedicated public streets as part of traffic pattern for maintenance of traffic for construction;

6. Highway improvements requiring daily monitoring by a resident engineer; or

7. 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.

[(b)]**(c)** The processing of developer agreements will require 85 days **of Department time** in addition to the application review time [to execute an agreement having proper legal, technical and financial form. The Major Permits Unit will notify the applicant in writing that a developer agreement is required and include the terms and conditions for approval of the application.] **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.**

[(c)]**(d)** Applicant time for developer agreements shall include:

1. The time required by the applicant to review and [obtain internal approvals of] **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.

[(d) The Department will require a developer agreement rather than issue an access permit whenever any of the following conditions exists:

1. Project and highway improvement phasing;

2. Off-site improvements;

3. Right-of-way dedication with conditions;

4. Department involvement in right-of-way acquisition;

5. Dedicated public streets as part of traffic pattern for maintenance of traffic for construction;

6. Highway improvements requiring daily monitoring by a resident engineer; or

7. Applicant's financial contributions.

(e) The Department may, in its sole discretion, require a developer agreement rather than an access permit whenever any of the following conditions exists. The determination would be made after the completion of the planning review.

1. The magnitude of the project so warrants;

2. Construction extends beyond the applicant's frontage; or

3. The applicant implements a travel demand management plan.]

[(f)]**(e)** Any fees paid **to the Department** as part of the access application **concept review** processes shall be credited against [the total] **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 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 [radii] **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) 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.]

[(c)](**b**) For existing streets, the following application requirements apply:

1. Applications for increases in the number of lanes [in] intersecting the State highway shall be processed in the same manner as those for a new street.

2. Applications [for] **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 [must] **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 [must] **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[; but that he is willing] **and his willingness** to waive all rights to receive compensation from the State for these lands and access rights [and] **which he** will dedicate [the land] 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 for the right-of-way dedication to the State of New Jersey; and

6. A certificate of title setting forth that the State of New Jersey is vested with good and marketable title. Said certificate 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 to the Major Permits Unit for review and approval by the Title Bureau. The applicant shall be responsible [to clear] **for clearing** all exceptions [as] 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[ization], 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[, 10th year predictions, and any key year midpoints] assuming approved applications are in place based on their estimated build-out years;

4. Use of current and predicted [arterial] 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 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 [ITE] **the Institute of Transportation Engineers publication entitled** Trip Generation, **4th Edition or superseding edition, or superseding rates adopted** [or other documented sources accepted] 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 [include] **including** a [No Build] **no-build** alternative;

17. A summary analysis that clearly indicates when [Level of Service and Delay] **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 [Design exception] **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 [the Department] 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 [will] **shall** be independent of any developer agreement [or], **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 [required as part of the proposed highway improvements].

(d) All traffic striping plans and **traffic** signal plans [should] **shall** be at a scale of one inch equals 30 feet. Traffic signal designs shall be submitted in accordance with [MUTCD] **Manual on Uniform Traffic Control Devices for Streets and Highways** requirements.

16:47-4.22 [Level of service] (**Reserved**)

[(a) The level of service (LOS) deterioration permissible for any one development is a function of the anticipated LOS of the State highway segment adjacent to the development. For highway segments anticipated to operate at LOS C or D, one-half of a LOS D deterioration is allowed, provided that the LOS does not enter LOS E. For highway segments expected to operate at LOS A or B, deterioration is allowed to the midpoint of C without regard to the amount of deterioration and without the need for mitigating measures. For highway segments expected to operate at LOS E or F it is unacceptable for an applicant's traffic to deteriorate the LOS. If LOS E or F will prevail with just the no-build background traffic, then there can be no room for the applicant's traffic and the applicant must either mitigate site traffic or increase the highway capacity. The applicant will not be required to solve existing problems, however, the applicant will not be allowed to make existing problems worse.

(b) This section relates to uninterrupted flow on a State highway, or State highway approaches to signalized intersections. Other standards apply to the minor approaches to signalized intersections.]

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 [and the tenth year thereafter. If highway improvements are required at full buildout, the analysis years will be the year the highway improvements are open and the tenth year thereafter. Buildout of the development may follow the highway improvements at its own schedule].

(b) [Both] **Fair-share financial contributions or** highway improvements and development may be phased, as long as [mitigating improvements] **appropriate fair-share financial contributions** are [opened] **made** in advance of each phase. When then [highway improvements] **fair-share financial contributions** and the development are phased, the years to be analyzed will be for the [year each highway improvement is opened and the tenth year following the final highway improvement.] **years in which fair-share financial contributions are made.** [The geographic scope of the analyses will be determined at the pre-application conference.]

(c) The applicant should not limit the **traffic analysis** focus to the specific location[s] identified where an unacceptable deterioration of the LOS standards [have] **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	[Build out +10]
Single (with improvements)	Improvement	[Improvement +10]
Multiple (**no improvements**)	Build out of each phase	[Final Improvements +10]
Multiple (with improvements)	**Completion of each improvement**	

16:47-4.24 General **level of service** standards

(a) General [level of service] **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.** [as follows:]

1. For urban highway segments anticipated to operate at:

[1. For highway segments anticipated to operate at] **i.** LOS A or B, deterioration to the midpoint of LOS C **will be allowed**[.];

[2. For highway segments anticipated to operate at] **ii.** LOS C or D, deterioration of one-half of LOS D **will be allowed**, provided the LOS does not enter LOS E[.];

[3. For highway segments anticipated to operate at] **iii.** LOS E or F, no deterioration **will be allowed**. [The capacity must be improved so that, at a minimum, build traffic conditions are not worse than no-build traffic conditions.]

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[(a)] apply.

2. For a section of **urban** highway operating at or below LOS C under the no-build condition, the uninterrupted-flow V/C ratio [will] **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[(a)] apply.

2. For all movements on:

i. An urban State highway approach operating at or below LOS C under the no-build condition, the [increase in] delay for the approach under the build condition [will] **shall** not exceed [one-half] the [range of] delay for the [LOS at said] approach under the no-build condition **by more than 7.5 seconds**, and the actual delay [will] **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. [If the no-build is LOS E or F delay will be used to compare build and no-build conditions.] **Delay will be used to compare build and no-build conditions when the 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 V/C ratio exceeds 1.2.**

4. If any no-build movement on [a]:

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 [may be] **are** required.

6. If there [are closely spaced traffic signals in the vicinity of the development] **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 [an] **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 [driveways and roadways] **access points** may be required.

(c) The [following] tables **in Appendix L, incorporated herein by reference,** summarize[s] the requirements of this section[:].

[LOS STANDARDS FOR SIGNALIZED INTERSECTIONS

Build Conditions	Movement on State-Highway Approach No-Build LOS A or B	C	D Delay <32.5 sec.	D Delay >32.5 sec.	E or F	Minor Approach
Maximum Delay (seconds)	20.0	NA	NA	40	NA	NA
Increase in Delay (sec.)	NA	5.0	7.5	NA	0	NA
Maximum V/C Ratio	NA	NA	NA	NA	NA	1.2]

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 [driveways and roadways] **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 or D the reserve capacity may decrease by 50, but shall not be less than 100. No-build reserve capacities below 100 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 or better, the reserve capacity may decrease to 100. No-build reserve capacities below 100 shall not be decreased;

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;

ii. Right and left turns from the driveway with no-build LOS of D or better, the reserve capacity may decrease to 100. No-build reserve capacities below 100 shall not be decreased.

16:47-4.28 Weaving area standards

[The addition of site-generated traffic to no-build weaving and non-weaving vehicles should not cause a deterioration in the existing LOS.] **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. [Each location will be addressed independently and mitigation will be discussed at the pre-application meeting.]

16:47-4.29 Ramp standards

(a) Ramp standards are based on the level of service criteria shown in Table 5-1 of the "Highway Capacity Manual."[.]

(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 [will] **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, [if the resultant merge flow rate exceeds 1,225, or the diverge flow rate exceeds 1,275. These are the flow rates at the midpoints of LOS C. Also,] **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 [volumes] **traffic flow rates** possible for LSO D.

3. For [the] no-build LOS E or F, [ramp capacity must be improved so that, at a minimum, build traffic conditions, as measured by the merge or diverge flow rate, are not worse than no-build traffic conditions] **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 study shall be [performed] **completed and sealed** by a **New Jersey** licensed professional engineer **or professional planner** [and include the following:].

[1. A] **(b) A traffic impact study shall include a** narrative summary as follows:

[i.]**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 [also] **either** indicate that the access points are in conformance with the Access Code **or refer to the waiver request accompanying the application.**

[ii.]**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 [must support] **shall evaluate and provide detailed justification for** the applicant's proposals.

[iii.]**3.** Figures should show the location of the [development] **lot** and access points.

[iv.]**4.** Any [highway improvements] **fair-share financial contributions determined** necessary to mitigate traffic impacts according to [the Department's guidelines should] **N.J.A.C. 16:47-4.34 shall** be generally [stated] **described** and illustrated. [Included must be the applicant's position with regard to these improvements. The entity responsible for each improvement shall be noted.]

[v.]**5.** Any improvements not required [to meet Department guidelines] **by these rules**, but desired by the applicant, should be presented along with facts indicative of their workability.

[vi.]**6.** Issues raised at the pre-application conference [should] **shall** be addressed in summary form.

[2. A] **(c) A traffic impact study shall include a** project description, including the following:

[i.]**1.** The applicant and project name;

[ii.]**2.** A location map;

[iii.]**3.** A project description **based on sizes and land use types which are** [using quantities] compatible with those **land uses listed** in the Institute of Transportation Engineers [(ITE) 4th Edition] **publication entitled Trip Generation, 4th edition,** [or a] 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;**

[iv.]**4.** Unique functional or operational activities which relate to atypical trip making activity [(]such as ridesharing participation, bus intercept **areas**, [or] recreational use facilities[)], **or travel demand management plans pursuant to N.J.A.C. 16:47-4.39;**

[v.]**5.** Project phasing identifying the year of development activities per phase and proposed access plans;

[vi.]**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:

[(1)]**i.** Peak-hour volumes;

[(2)]**ii.** Number of lanes;

[(3)]**iii.** Cross section;

[(4)]**iv.** Intersection [signalization] **traffic signals** and configuration;

[(5)]**v.** [Signal] **Traffic signal** progression;

[(6)]**vi.** Percentage of heavy trucks;

[(7)]**vii.** Grades;

[(8)]**viii.** Adjacent [driveway] **access point** locations;

[(9)]**ix.** Jurisdiction;

[(10)]**x.** Transit route; and

[(11)]**xi.** Transit frequency

[vii.]**7.** [Joint] **Shared** access agreements; and

[viii.]**8.** Proposed transportation improvements.

[3.](**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.

[i.]**1.** For trip generation, **applicants shall use** the Institute of Transportation Engineers [(ITE) trip-generation rates are the standard.] **publication entitled 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. [Other trip generation rates may be used with adequate documentation only if no ITE data exists for the land use. The documentation must cite specific locations and describe in detail the land use. Facts supporting the use of rates from these locations must be supplied.] The applicant must seek prior approval from the Department [on] **or request a waiver for** trip generation rates other than [ITE] **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.**

[(1)]**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.

[(2)]**ii.** For mixed-use developments, internal trips should be addressed in the trip distribution section.

[ii.]**2.** For trip distribution, the procedure and rationale [should] **shall** be documented. Trip [making and travel patterns] **tables** for each [site must] **land use on the lot shall** be shown. [The distribution for each land use shall be shown graphically and presented as a percentage of the total.] **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 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[, within 15 days,] submit an appeal to the Assistant Commissioner, [Cosntruction] **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[, within 15 days,] 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 [in the Department of Transportation Policy and Procedure Manual at the time this chapter is adopted].

(b) [The Department will issue either modifications to supplement existing access permits or new access permits for those lots without existing access permits, when the Department revises, eliminates, relocates, or adds access points to a lot. Such actions by the Department are not considered revocations of access permits.] **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;

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).

[(c) The Department may issue permits for lots that do not have permits at no cost to the lot owner.]

[(d)]**(c)** Permits issued by the Department for Department initiated actions shall be at no cost to the lot owner.

16:47-4.34 [Financial] **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**. These improvements may include roadway and structure widenings, frontage roads, intersection improvements, structures, reverse frontage roads, and alternative access. [The cost assumed by the applicant shall not exceed the product of the proportion of the highest peak hour site traffic to anticipated capacity of the improvement and the estimated cost of the improvement escalated to its build year.] Alternately, the Department may [require or] 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 trips which violate the LOS standards. The acceptable component is comprised of those 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 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 approaches to signalized intersections, which shall not be at capacity until the 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 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 volumes of all movements is the capacity for that scenario.

(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.

(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 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 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.

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.

[(a)]**(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.

[(b)]**(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:

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 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.

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) Those locations having the greater of 100 new half-trips during the highway or site peak-hours or 10 percent of the anticipated site traffic shall be analyzed. Intersections, uninterrupted flow sections, weaving sections, merges, and diverges are examples of locations which are subject to analysis.

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.

(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 to an existing access point or the addition or removal of an access point shall be covered 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, provided that the proposed change is 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 [600] **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 that would indicate that the segment's present access classification requires modification and indicating the negative consequences, if any, of retaining the current access classification; [and]
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. The applicant may submit within 60 days of [receipt] **the date** of **a** notice that the application is incomplete[,] such additional information as is necessary to complete the application [without payment of additional fees]. 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 [and], 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) [The Commissioner, in] **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 [of this subchapter], 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. 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.

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 procedures set forth in this subchapter have been complied with;] **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, [16:47-]3[,] and [16:47-]4 of the Access Code; and
3. An appropriate means of access has been identified in such plan for every lot within the subject 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 [adopted by the Commissioner] shall govern access on the subject 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 [adoption] **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 [16:47-]4 shall apply to all access permits for [property] **lots** which [is] **are** not subject [of] **to** an adopted access management plan, and [a] decisions on [a] permit applications may not be delayed or deferred pending adoption of an access management plan.

16:47-6.4 Contents

(a) The access management plan shall consist of a report and map [as follows]:

1. The report shall [contain] **identify** the following:

i. [Identification of the] **The** subject highway segment by route number, directions, and milepost limits;

[ii. The names of all participants in the joint planning process;

iii. The names of any transportation development districts located in whole or in part within the study area, and names of any transportation management associations having geographical jurisidction over all or part of the study area; and contiguous municipality or county if the improvements contemplated by the access management plan necessitate coordinated improvements in such municipality or county; and]

[iv.]**ii.** [Identification of all] **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 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.

2. The report may also [contain] **identify** the following:

i. The estimated cost of the proposed improvements;

ii. The cost shares to be borne by the Department and participating [municipalities and counties] **public agency**;

iii. [Identification of the] **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. Expected future mitigation measures, including traffic limitations for nonconforming lots; and]

[vii.] **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 [fronting] **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.

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 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; [and]

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 [600] **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 [party] **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 [parties] **public agencies** participating in the joint planning process, except that the expenses for reproduction, travel, communication, and supplies shall be borne by each [party] **public agency**. Costs to be shared shall include the time of on-staff professionals and of consultants. In the case of joint initiation, one [party] **public agency** shall be designated as the initiator and shall be responsible for conveying the [municipal] **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 [municipal and county officials who initiated the meeting] **public agencies which received notice pursuant to (a) above**[, if the proposal was municipally-initiated, and those to whom notice was given or their designees]. 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 [party] **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 [parties] **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 [the parties] **any of the heads of organizations listed** in (a)6 through [8]**9** above receiving notice [pursuant to (a) above] decide to [proceed with] **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[, within 20 days of receiving the last resolution from each municipality and county entitled to receive notice under (a) above and written notice from any other party invited to participate], 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 [land] **lots** within such county or municipality; or

2. An independent toll road authority, transportation development district, [or] transportation management association, **or metropolitan planning organization** fails to provide notice.

(i) The primary contact[s] **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[s] **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 [their] **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 [personal] 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 [20] **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. [At the Commissioner's discretion, a new public hearing may be held on the revised plan, with notice meeting the provisions of this subsection.] **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

[The governing bodies of the municipalities and counties which participated in the joint planning process shall, upon] **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 [of] **expended to date for** developing the access management plan.

16:47-6.9 Adoption

[The Commissioner shall, within] **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 which [participated] **participates** in an access management plan may request a revision therein by mailing a letter to all participants setting forth the proposed changes. [The Commissioner shall, within] **Within** 60 days of such notification [call], **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 [as is necessary] 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 [16:47-]6.9.

SUBCHAPTER 7. DESIGNATION OF LIMITED ACCESS

16:47-7.1 Procedures

[The Commissioner may, after] **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 [personal] **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.

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 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.

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 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

2A	78′	2 LANES, WITH SHOULDERS
2B	92′	2 LANES, WITH SHOULDERS, 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
4A	114′	4 LANES, DIVIDED, WITH SHOULDERS
4B	90′	4 LANES, DIVIDED, WITHOUT SHOULDERS
4C	102′	4 LANES, UNDIVIDED, WITH SHOULDERS
4D	78′	4 LANES, UNDIVIDED, WITHOUT SHOULDERS
4E	102′	4 LANES, UNDIVIDED, WITH SHOULDERS, PARKING (URBAN SITUATION)
4F	116′	4 LANES, UNDIVIDED, WITH SHOULDERS, 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
6B	124′	6 LANES, DIVIDED, WITHOUT SHOULDERS
6C	210′	6 LANES, DIVIDED, WITH CD ROADS
8A	172′	8 LANES, DIVIDED, WITH SHOULDERS
8B	148′	8 LANES, DIVIDED, WITHOUT SHOULDERS
8C	234′	8 LANES, DIVIDED, WITH CD ROADS

FOR CELL NUMBER SEE APPENDIX A

APPENDIX B

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	13.20	3	6A	1
1	13.20	13.70	3	8A	1
1	13.70	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
1B	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	5	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
9	28.30	28.73	4	4C	35
9	28.73	29.20	4	4C	5
9	29.20	29.80	4	4C	2
9	29.80	30.35	4	4C	32
9	30.35	30.65	4	4C	35
9	31.90	32.63	4	4C	2
9	32.63	33.22	4	4C	5
9	33.22	36.00	4	4C	2
9	36.00	41.40	4	4C	5
9	41.40	42.80	4	4C	2
9	42.80	43.80	4	4C	5
9	43.80	45.30	4	4C	2
9	45.30	52.36	4	4C	32
9	54.83	55.23	4	4C	32
9	55.23	57.30	4	4C	35
9	57.30	61.60	4	4C	32
9	61.60	62.50	4	4C	35
9	62.50	63.30	4	4A	34
9	63.30	64.60	2	4A	31
9	64.60	68.28	3	4A	34
9	68.28	70.20	4	4F	34
9	70.20	70.50	3	4B	34
9	70.50	71.05	3	4A	34
9	71.05	74.40	2	4A	31

9	74.40	80.70	3	4A	34
9	80.70	81.90	4	4D	35
9	81.90	86.56	3	4A	34
9	86.56	88.75	3	4A	1
9	88.75	89.60	3	4A	4
9	89.60	89.95	3	4A	4
9	89.95	90.93	3	4A	1
9	94.40	100.20	3	4A	1
9	100.20	102.96	3	4A	4
9	102.96	123.09	3	6A	1
9	123.09	136.23	3	8A	1
9 W	0.00	0.35	3	4B	4
9 W	0.35	0.76	3	4A	4
9 W	0.76	1.45	4	4E	5
9 W	1.45	11.00	3	4A	1
9 W	11.00	11.15	4	2A	3
10	0.00	19.70	3	6A	1
10	19.70	23.47	3	4A	1
12	0.95	10.58	2	4A	31
12	10.58	11.70	4	4A	34
13	0.00	0.43	4	4D	11
13	0.43	0.58	4	4B	10
15	0.00	2.05	4	4C	5
15	2.05	2.29	3	6A	1
15	2.29	2.46	3	8B	1
15	2.46	3.66	3	6A	1
15	3.66	5.42	2	6A	31
15	5.42	6.35	2	6A	31
15	6.35	6.75	3	6A	1
15	6.75	14.13	1	6A	0
15	14.13	16.70	5	4E	38
15	16.70	18.29	5	4E	41
15	18.29	19.52	4	4E	32
17	0.00	3.35	4	4E	5
17	3.35	3.50	4	4E	2
17	3.50	26.62	3	6A	1
18	5.14	30.85	1	4A	0
18	30.85	34.25	3	4A	1
18	34.25	36.94	3	6A	1
18	36.94	41.75	3	8A	1
18	41.75	42.00	3	6A	1
18	42.00	43.71	1	6A	1
19	0.00	0.70	1	4A	0
19	0.70	2.91	1	6A	0
20	0.00	3.98	3	6A	4
21	0.00	0.91	3	4B	1
21	0.91	2.60	4	4F	5
21	2.60	4.00	3	6B	4
21	4.00	4.10	3	6A	1
21	4.10	12.45	1	6A	0
22	0.30	0.62	1	6B	0
22	0.62	1.47	3	6B	4
22	1.47	2.00	3	6B	1
22	2.00	4.45	3	4A	1
22	4.45	19.22	1	6A	0
22	19.22	28.60	2	4A	31
22	28.60	31.50	3	4A	1
22	31.50	37.10	3	6A	1
22	37.10	41.59	3	4A	1
22	41.59	60.53	3	6A	1
22 A	2.38	3.47	4	4D	5
22 A	3.47	4.05	4	4D	2
23	0.00	2.06	4	4D	5
23	2.06	3.99	4	4D	2
23	3.99	5.05	4	4D	5
23	5.05	6.30	1	6A	0
23	6.30	16.98	3	6A	1
23	16.98	27.23	2	6A	25
23	27.23	28.78	4	4C	26
23	28.78	35.71	4	4C	29
23	35.71	37.18	4	4C	26
23	37.18	41.15	4	4C	29
23	41.15	45.20	4	4C	26
23	45.20	45.80	4	4C	29
23	45.80	46.65	4	4C	26
23	46.65	52.53	4	4C	29
24	0.00	1.50	4	4D	5
24	1.50	2.80	4	4D	11
24	2.80	4.50	5	2A	12
24	4.50	5.90	5	2A	6
24	5.90	7.45	4	4D	5
24	7.45	7.63	1	4B	0
24	7.63	10.86	1	6A	0
26	0.00	0.70	4	4E	8
26	0.70	2.10	4	4E	11
27	0.00	1.45	4	4F	5
27	1.45	3.30	4	4F	2
27	3.30	4.42	4	4F	35
27	4.42	6.40	4	4F	32
27	6.40	9.50	4	4F	2
27	9.50	10.20	4	4F	5
27	10.20	13.85	4	4F	2
27	13.85	15.37	4	4E	5
27	16.55	18.23	4	4D	5
27	18.23	23.85	4	4F	5
27	23.85	27.18	4	4F	2
27	27.18	35.79	4	4E	2
28	0.00	2.22	4	4D	2
28	2.22	5.08	4	4D	5
28	5.08	6.80	4	4D	2
28	6.80	12.47	4	4D	5
28	17.15	19.67	4	4C	5
28	19.67	19.75	4	4G	5
28	19.75	23.00	4	4C	5
28	23.00	26.63	3	4A	4
29	3.20	6.20	1	4A	0
29	6.20	6.70	3	4A	4
29	6.70	9.55	1	4A	0
29	9.55	13.80	5	2A	9
29	13.80	16.72	5	2A	36
29	16.72	18.10	6	2A	42
29	18.10	18.60	6	4C	41
29	18.60	19.60	6	2A	42
29	19.60	20.30	6	4C	41
29	20.30	23.36	6	2A	42
29	23.36	34.26	6	2A	39
30	0.96	1.20	3	6A	4
30	1.20	3.15	3	8B	1
30	3.15	3.32	3	8B	4
30	3.32	4.26	3	8A	1
30	4.26	6.40	4	4E	2
30	6.40	7.95	3	6A	4
30	7.95	8.25	3	4A	1
30	8.25	12.70	3	4A	1
30	12.70	16.30	3	4A	7
30	16.30	18.00	3	4B	34
30	18.00	21.60	3	4A	7
30	21.60	27.97	2	4A	31
30	27.97	32.60	4	4G	2
30	32.60	35.10	4	4G	32
30	35.10	40.35	3	4A	32
30	40.35	42.10	4	4G	35
30	42.10	46.00	4	4G	32
30	46.00	52.42	4	4G	2
30	52.42	54.39	3	4A	1
30	54.39	55.42	3	6B	1
30	55.42	56.75	3	8B	1
30	56.75	57.47	3	8B	4
30	57.47	58.23	3	6C	4
31	1.15	3.82	4	4C	5
31	3.82	4.30	4	4C	2
31	4.30	4.70	4	4F	2
31	4.70	6.90	3	4A	1
31	6.90	7.19	3	4A	1
31	7.19	8.60	4	4C	2
31	8.60	12.37	4	4C	26
31	12.37	16.36	2	4A	25
31	21.95	22.10	2	4A	25
31	22.10	24.40	4	4G	29
31	24.40	42.12	2	4A	25

31	42.12	42.28	3	4A	28
31	42.28	42.34	3	4A	1
31	42.34	43.19	3	4A	4
31	43.19	43.56	3	4A	1
31	43.56	46.12	2	4A	25
31	46.12	49.00	3	4A	28
32	0.00	1.18	2	4A	31
33	0.00	0.20	4	4D	5
33	1.46	2.30	4	4D	5
33	2.30	5.50	4	4C	5
33	5.50	7.86	4	4C	2
33	12.39	12.70	3	6A	1
33	12.70	13.68	4	4C	2
33	13.68	14.72	4	4D	5
33	14.72	14.77	4	4D	2
33	14.77	15.01	3	6B	1
33	15.01	16.42	3	6A	1
33	16.42	24.32	2	6A	25
33	24.32	29.30	1	4A	0
33	29.35	29.91	4	4E	2
33	29.91	31.45	6	2A	39
33	31.45	36.65	2	4A	25
33	36.65	38.30	3	4A	1
33	38.30	40.28	4	4C	2
33	40.28	40.63	1	6A	0
33	40.63	41.82	4	4C	5
33	41.82	42.46	4	4C	11
33 B	0.00	0.60	4	4A	7
33 B	0.60	2.24	4	4C	8
33 B	2.24	2.57	3	6A	4
33 B	2.57	3.36	5	4D	17
33 B	3.36	4.35	4	4E	11
33 B	4.35	5.03	4	4E	8
34	0.00	0.33	3	4A	1
34	0.33	12.60	2	4A	31
34	12.60	20.44	4	4C	32
34	20.44	21.20	4	4C	2
34	21.20	22.56	4	4C	5
34	22.56	26.79	4	4C	2
35	0.00	0.26	4	4B	10
35	0.26	0.58	5	2A	12
35	0.58	1.44	4	4A	10
35	1.44	2.07	4	6A	10
35	2.07	2.32	4	6B	7
35	2.32	2.48	4	8B	7
35	2.48	3.51	1	6A	0
35	3.51	3.65	3	6B	1
35	3.65	3.77	3	4B	1
35	3.77	9.00	3	4A	4
35	9.00	9.10	4	4C	5
35	9.10	12.51	4	4E	5
35	12.51	13.00	4	4D	5
35	13.00	16.04	3	4A	4
35	16.04	20.10	4	4F	2
35	20.10	20.56	3	4A	1
35	20.56	21.11	3	4A	4
35	21.11	22.30	3	6A	4
35	22.30	24.61	4	4C	5
35	24.61	24.94	3	4A	1
35	24.94	29.50	3	6A	1
35	29.50	31.20	4	4F	5
35	31.20	33.15	4	4C	5
35	33.15	34.37	4	4E	5
35	34.37	35.80	3	4A	1
35	35.80	43.91	3	6A	1
35	43.91	44.62	3	6B	1
35	44.62	49.52	3	6A	1
35	50.79	51.00	1	6A	0
35	51.00	52.32	4	4E	5
35	52.32	53.35	4	4F	5
35	53.35	54.87	4	4C	2
35	54.87	58.18	4	4C	5
36	0.00	1.25	3	6A	1
36	1.25	1.45	3	5A	1
36	1.45	1.55	3	6A	1
36	1.55	3.73	3	4A	1
36	3.73	4.11	3	4A	4
36	4.11	5.78	4	4D	5
36	5.78	8.31	4	4C	2
36	8.31	9.40	4	4C	5
36	9.40	11.60	4	4C	2
36	11.60	11.80	4	4D	2
36	11.80	13.00	3	5A	1
36	13.00	19.90	3	4A	1
36	19.90	24.18	3	6A	1
36	24.18	24.40	3	4A	1
37	0.00	1.53	2	4A	31
37	1.53	2.90	3	4A	1
37	2.90	6.02	3	6A	1
37	6.02	6.50	3	4A	1
37	6.50	6.75	3	8A	1
37	6.75	11.45	3	6A	1
37	11.45	12.39	1	6A	0
37	12.39	13.42	3	6A	1
38	0.00	12.00	3	6A	1
38	12.00	15.40	3	4A	1
38	15.40	16.80	3	4A	4
38	16.80	18.31	4	4A	1
38	18.31	19.23	4	4C	32
40	1.85	5.60	2	4A	31
40	5.60	8.04	4	4C	32
40	8.04	10.00	4	4C	35
40	10.00	11.02	4	4D	35
40	11.02	11.25	4	4D	35
40	11.25	19.50	4	4C	32
40	19.50	20.33	4	4C	35
40	20.33	25.73	4	4C	32
40	25.73	26.48	4	4C	2
40	26.48	27.30	4	4C	5
40	27.30	29.27	4	4C	2
40	29.27	32.55	4	4C	32
40	32.55	35.23	3	4A	1
40	35.23	46.27	2	4A	31
40	46.27	47.47	4	4C	35
40	47.47	53.10	2	4A	31
40	53.10	53.85	2	6A	31
40	53.85	56.79	3	6A	1
40	56.79	59.00	3	4A	1
40	59.00	59.72	3	4A	4
40	59.72	59.98	4	4F	5
40	59.98	60.39	3	4A	4
40	60.39	61.65	4	4F	2
40	61.65	63.57	3	4A	1
40	63.57	63.97	4	4F	5
40	63.97	64.07	4	4C	5
41	0.00	2.32	4	4D	8
41	2.32	3.00	4	4C	8
41	3.00	3.91	4	4F	8
41	3.91	4.94	4	4C	5
41	10.68	11.95	4	4F	5
41	11.95	13.02	4	4F	2
41	13.02	13.98	3	5A	1
42	0.00	6.40	3	6A	1
42	6.40	14.28	1	8A	0
44	0.00	1.28	6	2A	51
44	1.28	2.80	6	2A	39
44	2.80	2.98	5	2A	9
44	2.98	4.10	5	2A	12
44	4.10	5.20	5	2A	9
44	5.20	6.28	5	2A	12
44	6.28	8.40	5	2A	9
44	8.40	9.10	5	2A	12
44	9.10	9.60	5	2A	9
45	0.00	0.42	4	4E	5
45	0.42	2.32	4	4E	35
45	2.32	8.79	4	4E	32
45	9.43	10.14	4	4D	35
45	10.14	17.21	4	4E	32
45	17.21	17.32	4	4E	35
45	17.32	17.77	4	4D	35

45	18.16	18.24	4	4E	35
45	18.24	20.24	4	4E	32
45	20.24	22.40	4	4E	2
45	22.40	22.53	4	4E	5
45	22.53	22.60	3	4A	4
45	22.60	24.80	3	4A	1
45	24.80	24.89	3	4A	4
45	24.89	26.86	4	4D	5
45	26.86	28.51	4	4D	2
46	0.00	0.85	1	4A	0
46	0.85	6.86	4	2A	27
46	6.86	7.45	4	4A	25
46	7.45	9.63	4	4C	26
46	9.63	10.05	4	4C	29
46	10.05	10.12	4	4C	35
46	10.12	15.82	4	4C	32
46	15.82	20.63	4	4C	35
46	20.63	20.73	4	4D	2
46	20.73	21.82	4	4D	5
46	21.82	22.40	4	4B	34
46	22.40	24.58	4	4A	34
46	24.58	25.50	2	4A	31
46	25.50	29.60	3	4A	1
46	29.60	30.43	3	4A	4
46	30.43	33.48	3	4A	1
46	33.48	34.22	4	4C	2
46	34.22	35.05	4	4C	5
46	35.05	35.38	4	4C	2
46	35.38	36.05	3	4A	1
46	36.05	36.58	3	4A	4
46	36.58	37.22	3	4A	1
46	37.22	42.00	3	4A	4
46	42.00	42.38	3	4A	4
46	42.38	42.50	3	6B	4
46	42.50	43.18	3	6A	4
46	43.18	43.82	3	6A	1
46	43.82	56.70	3	6A	1
46	56.70	60.10	3	6A	1
46	60.10	61.60	3	6A	1
46	61.60	62.26	3	6A	4
46	62.26	66.07	3	6A	1
46	66.07	66.52	3	6A	1
46	66.52	68.28	3	6A	1
46	68.28	69.00	3	8A	1
46	69.00	69.18	3	6A	1
46	69.18	69.38	4	4F	2
46	69.38	70.08	4	4F	5
46	70.08	70.40	1	4D	0
46	70.40	70.73	3	6A	4
46	70.73	71.55	3	8B	1
46	71.55	72.15	3	6B	1
47	0.67	1.16	4	4A	40
47	1.16	3.18	4	4A	37
47	3.18	3.73	5	4D	41
47	3.73	3.90	4	4D	35
47	3.90	4.32	4	4C	35
47	4.32	6.10	4	4C	32
47	6.10	7.00	4	4C	35
47	7.00	17.43	4	4C	32
47	17.43	17.63	2	4B	31
47	17.63	25.60	4	4C	32
47	25.60	26.62	4	4C	35
47	26.62	33.12	4	4C	32
47	33.12	34.12	4	4C	35
47	34.12	34.80	4	4C	32
47	34.80	36.08	6	2A	39
47	36.08	38.50	5	2A	9
47	38.50	40.80	5	2C	12
47	40.80	42.20	5	2C	9
47	42.20	45.88	4	4D	8
47	45.88	46.75	4	4D	11
47	46.75	47.60	4	4D	8
47	47.60	52.03	4	4C	8
47	52.03	52.36	4	4C	11
47	52.82	56.00	4	4C	8

47		56.00	56.78	4	4C	11
47		56.78	58.17	4	4C	8
47		58.17	58.29	4	4C	2
47		58.29	59.80	4	4C	5
47		59.80	61.96	4	4C	2
47		61.96	62.29	4	4C	5
47		62.66	63.15	4	4D	5
47		63.15	64.12	4	4C	2
47		64.12	74.00	4	4C	8
47		74.00	74.98	4	4C	11
48		0.00	0.61	4	4C	11
48		0.61	1.58	4	4C	8
48		1.58	2.10	4	4C	32
48		2.10	4.26	6	2A	39
49		0.00	0.70	4	4C	2
49		0.70	3.00	4	4C	5
49		3.00	6.29	4	4C	2
49		6.29	8.30	4	4C	32
49		8.30	10.10	4	4C	5
49		10.10	11.00	4	4C	35
49		11.00	12.30	4	4C	32
49		12.30	12.88	4	4C	35
49		12.88	20.94	4	4C	32
49		20.94	21.10	4	4D	32
49		21.10	21.62	4	4D	35
49		21.62	22.10	4	4D	32
49		22.10	23.13	4	4C	32
49		23.13	24.50	4	4C	2
49		24.50	26.25	4	4C	5
49		26.25	26.50	3	4B	4
49		26.50	26.60	4	4C	5
49		26.60	27.20	4	4C	2
49		27.20	28.50	4	4C	32
49		28.50	29.00	4	4C	35
49		29.00	30.80	4	4C	32
49		30.80	35.03	4	4C	2
49		35.03	36.10	4	4C	5
49		36.10	37.37	4	4D	5
49		37.37	38.10	4	4D	2
49		38.10	40.80	4	4C	2
49		40.80	53.78	4	4C	32
50		0.00	0.24	3	4B	34
50		0.24	6.18	4	4C	32
50		6.18	7.03	4	4C	35
50		7.03	18.55	4	4C	32
50		19.18	19.67	4	4C	35
50		19.67	20.91	4	4C	32
50		20.91	21.20	1	4A	0
50		21.20	23.50	4	4C	32
50		23.50	24.20	2	4A	31
50		24.20	25.53	4	4C	32
50		25.53	26.08	4	4C	35
52		0.00	2.74	4	4E	5
53		0.00	1.53	4	4E	8
53		1.53	2.35	4	4C	8
53		2.35	3.32	4	4C	11
53		3.32	4.65	4	4E	11
54		0.00	1.11	4	4C	2
54		1.11	8.20	4	4C	32
54		8.20	8.46	4	4C	2
54		8.46	9.12	3	4A	1
54		9.12	9.98	4	4C	2
54		9.98	11.88	4	4C	5
55	F	20.00	20.80	3	4A	25
55	F	20.80	60.52	1	4A	0
56		0.00	0.17	4	4D	8
56		0.17	2.00	5	4D	38
56		2.00	7.50	6	2A	39
56		7.50	7.84	3	4B	7
56		7.84	9.23	4	4D	11
57		0.00	0.55	4	4C	2
57		0.55	2.20	4	4C	32
57		2.20	2.80	4	4C	35
57		2.80	4.38	4	4C	32
57		4.38	5.28	4	4C	35

57	5.28	6.40	4	4C	32
57	6.40	7.00	4	4C	35
57	7.00	9.10	4	4C	32
57	9.10	9.78	5	2B	33
57	9.78	11.60	5	2B	6
57	11.60	11.80	5	2B	36
57	11.80	11.90	5	2B	33
57	11.90	14.44	4	4C	32
57	14.44	15.23	5	2B	33
57	15.23	18.93	4	4C	32
57	18.93	19.55	4	4C	35
57	19.55	20.00	4	4C	32
57	20.00	20.45	5	2B	33
57	20.45	21.10	4	2B	3
58	0.00	1.27	1	4A	0
59	0.00	0.15	4	4B	22
63	0.00	0.06	3	4A	4
63	0.06	3.00	5	2B	6
63	3.00	3.11	3	4A	4
64	0.00	0.33	3	4B	4
66	0.00	0.40	3	4A	10
66	0.40	3.67	3	4A	7
67	0.00	1.32	4	4E	11
67	1.43	1.98	4	4E	11
68	0.00	1.07	3	4A	1
68	1.07	8.02	2	4A	31
70	0.00	8.50	3	6A	1
70	8.50	14.83	3	4A	1
70	14.83	20.10	2	4A	31
70	20.10	26.10	4	4C	32
70	26.10	26.50	2	4A	31
70	26.50	43.25	4	4C	32
70	43.25	43.45	4	4C	35
70	43.45	44.82	3	4A	34
70	44.82	48.58	2	4A	31
70	48.58	59.84	3	4A	1
71	0.00	0.61	5	2A	18
71	0.61	5.00	4	4E	11
71	5.00	5.09	4	6A	10
71	5.41	5.60	4	6A	10
71	5.60	9.00	4	4F	11
71	9.00	10.50	4	4E	11
71	10.50	11.67	4	4A	10
71	11.67	14.40	5	2B	12
71	14.40	14.82	4	4C	11
71	14.82	15.41	4	4C	8
71	15.41	16.76	4	4C	11
72	0.00	5.96	4	4E	32
72	5.96	11.47	4	4C	32
72	11.47	13.70	4	4E	32
72	13.70	27.18	2	4A	31
72	27.18	27.40	2	5A	31
72	27.40	27.55	2	6A	31
72	27.55	28.18	2	4A	31
72	28.18	28.72	3	5A	34
73	6.00	10.89	2	6A	31
73	10.89	12.70	3	6A	1
73	12.70	14.46	2	6A	31
73	14.46	19.58	3	6A	1
73	19.58	21.35	3	6A	1
73	21.35	32.00	3	6A	1
73	32.00	32.35	3	8A	1
73	32.35	34.10	3	6A	1
77	0.00	1.90	4	4D	5
77	1.90	3.90	4	4D	2
77	3.90	7.26	4	4D	32
77	7.26	7.85	4	4D	35
77	7.85	22.30	2	4A	31
77	22.30	22.55	4	4A	34
78	4.16	58.50	1	6A	0
79	0.00	0.35	4	4F	11
79	0.35	0.57	5	2B	12
79	0.57	1.75	6	2C	18
79	1.75	2.40	5	4D	17
79	2.40	2.55	5	4C	41
79	2.55	4.81	5	4C	38
79	4.81	5.08	3	4A	37
79	5.08	5.38	3	4A	7
79	5.38	5.80	4	4C	11
79	5.80	6.80	4	4C	8
79	6.80	9.60	5	4C	38
79	9.60	10.00	5	4C	41
79	10.00	10.25	5	4C	38
79	10.25	10.95	4	4C	8
79	10.95	11.38	4	4C	11
79	11.38	12.13	4	4D	11
80	0.50	25.48	1	6A	0
80	25.48	68.30	1	8A	0
81	0.51	1.16	3	5A	1
82	0.00	2.65	4	4E	5
82	2.65	3.35	4	4E	2
82	3.35	4.25	4	4E	5
82	4.25	4.93	4	4E	2
83	0.00	0.24	2	4B	31
83	0.24	3.84	2	4A	31
87	0.00	0.57	3	8A	7
87	0.57	0.80	3	6A	7
87	0.80	1.72	3	4A	7
88	0.00	0.30	5	2B	12
88	0.30	3.57	5	2C	12
88	3.75	5.21	4	2C	12
88	5.21	7.42	4	2C	6
88	7.42	8.60	5	2C	6
88	8.60	8.96	5	4D	5
88	8.96	9.64	5	2C	6
88	9.64	9.84	3	4B	4
90	2.00	3.20	3	8A	1
91	0.00	1.30	4	4C	8
91	1.30	2.31	4	4C	11
93	0.00	3.41	5	2A	6
94	0.20	0.72	4	4D	35
94	0.72	2.63	4	4C	32
94	2.63	3.33	4	4C	35
94	3.33	8.75	4	4C	32
94	8.75	9.33	4	4C	35
94	9.33	11.82	4	4C	32
94	11.82	14.80	4	4C	35
94	14.80	21.35	4	4C	32
94	21.35	21.55	4	4D	2
94	21.55	22.50	4	4D	5
94	24.88	27.63	4	4C	35
94	27.90	32.90	4	4C	35
94	32.90	35.15	4	4C	32
94	35.15	45.71	4	4C	35
109	1.37	1.95	4	4C	35
109	1.95	2.50	4	4A	34
109	2.50	3.06	4	4C	35
120	0.00	0.95	3	6A	1
120	0.95	2.65	3	6A	4
124	7.32	9.00	4	4A	19
124	9.00	9.40	6	4A	22
124	9.40	10.03	3	4A	4
124	10.03	11.70	4	4E	5
124	11.70	12.58	3	4A	4
124	12.58	14.84	4	4E	5
130	0.00	0.65	4	4D	11
130	0.65	2.25	4	4D	8
130	2.25	4.15	4	4D	11
130	4.15	5.28	4	4D	8
130	5.28	8.90	6	2A	39
130	8.90	11.70	4	4A	37
130	11.70	14.29	1	4A	0
130	23.53	25.43	3	4A	1
130	25.43	29.46	3	6B	1
130	30.45	37.10	3	6B	1
130	37.10	45.90	3	6A	1
130	45.90	46.65	3	8A	4
130	46.65	55.43	3	6A	1
130	55.43	55.77	3	6A	4
130	55.77	56.43	3	8B	4

130	56.43	70.00	3	6A	1
130	70.00	80.38	2	6A	31
130	80.38	83.37	3	6A	1
138	0.00	3.52	3	4A	1
139	0.00	1.49	3	8B	1
140	0.00	0.48	6	2A	18
140	0.48	0.95	5	2A	12
143	0.25	2.35	6	2A	45
147	0.00	0.80	4	4D	35
147	0.80	1.63	3	4D	32
147	1.63	3.30	4	4D	35
147	3.30	4.20	5	4D	41
152	0.00	0.17	4	4D	5
152	0.17	1.58	4	4D	2
152	1.58	1.72	4	4D	5
152	1.72	3.17	4	4D	2
154	0.00	0.30	4	4C	11
154	0.30	1.70	4	4C	8
156	0.00	1.21	5	2A	12
157	0.00	0.43	5	2A	6
157	0.43	0.91	4	2A	3
159	0.00	0.45	3	4A	1
159	0.45	0.56	3	4A	4
159	0.56	1.35	4	4E	11
161	0.00	1.10	4	4C	11
162	0.00	0.73	6	2A	39
163	0.00	0.33	6	2A	51
165	0.00	0.10	4	4A	40
165	0.10	0.28	5	4D	41
166	0.00	1.86	5	2C	6
166	1.86	1.98	4	4D	5
166	1.98	2.23	5	2C	6
166	2.23	3.75	4	2C	3
167	0.00	2.86	6	2A	51
168	0.00	0.78	3	4A	1
168	0.78	1.20	4	4C	2
168	1.20	2.65	5	2C	6
168	2.65	4.73	4	2C	3
168	4.73	7.38	5	2C	6
168	7.38	8.72	4	4C	5
168	8.72	9.79	3	4A	1
168	9.79	9.92	3	4B	4
168	9.92	10.57	4	4C	5
169	0.98	3.31	3	4A	4
169	3.31	4.00	3	4A	1
169	4.00	5.73	3	4A	4
171	0.00	0.08	3	4A	10
171	0.08	1.00	6	4F	23
172	0.00	0.35	6	4E	23
172	0.35	0.81	3	4A	10
173	0.00	0.25	5	2A	9
173	0.25	0.35	5	2B	9
173	0.35	3.19	6	2B	39
173	3.19	4.20	6	2B	45
173	4.20	4.50	6	2B	48
173	4.50	12.07	6	2B	45
173	12.43	12.80	6	2B	45
173	12.80	13.50	6	2B	48
173	13.50	14.62	6	2B	54
175	0.27	1.58	6	2A	21
175	1.58	2.15	6	2A	24
175	2.15	2.73	6	2A	21
175	2.73	2.95	4	4A	19
179	0.10	0.38	6	2A	42
179	0.38	0.71	5	4D	41
179	0.71	1.45	5	4D	38
179	1.45	6.40	6	2A	39
179	6.40	7.46	6	2A	42
181	0.00	1.41	4	4C	11
181	1.41	1.65	4	4C	8
181	1.65	4.39	5	4C	41
181	4.39	5.81	4	4C	11
181	5.81	7.43	5	4C	38
182	0.00	0.98	4	4D	5
183	0.00	0.20	2	4B	31
183	0.20	0.43	3	4A	1
183	0.43	0.58	3	4A	4
183	0.58	2.12	5	2B	6
184	0.00	0.32	3	6A	10
184	0.32	1.37	3	4A	10
185	0.00	1.42	3	4A	4
187	0.00	0.47	4	4E	8
202	0.37	19.04	2	4A	25
202	19.04	26.25	3	4A	1
202	26.25	29.00	4	4F	2
202	29.00	29.55	3	4A	1
202	29.55	29.95	3	4A	4
202	29.95	31.50	3	4A	1
202	31.50	31.90	3	4A	4
202	31.90	32.77	5	2A	12
202	32.77	32.95	6	2A	42
202	32.95	33.93	6	2A	39
202	33.93	36.20	5	2B	9
202	36.20	37.70	5	2B	12
202	37.70	37.85	4	4C	11
202	37.85	39.06	4	4C	8
202	39.06	39.30	5	2A	9
202	39.30	42.31	6	2A	39
202	42.31	42.62	4	4C	8
202	42.62	44.00	4	4C	11
202	44.00	44.74	4	4E	11
202	44.74	45.70	4	4C	11
202	45.70	47.00	4	4E	11
202	50.03	50.70	3	4B	1
202	51.43	51.87	4	4C	5
202	62.99	65.32	3	6A	1
202	65.32	65.58	5	2A	6
202	72.44	72.66	4	4D	5
206	0.00	0.10	3	4A	1
206	0.10	2.33	4	4F	2
206	2.33	6.27	4	4C	2
206	6.27	9.00	4	4C	26
206	9.00	23.30	4	4C	32
206	23.30	23.70	4	4F	32
206	23.70	30.36	4	4C	32
206	30.36	31.28	2	4A	31
206	31.28	33.40	4	4C	32
206	33.40	34.00	2	4A	31
206	34.00	35.50	3	4A	1
206	35.50	35.61	3	4A	4
206	36.27	38.49	3	4A	1
206	38.49	38.90	3	6A	1
206	38.90	39.00	3	6A	4
206	39.00	40.73	3	4A	4
206	44.50	45.00	6	4A	23
206	45.00	47.84	4	4C	2
206	47.84	48.39	1	4A	0
206	48.39	53.28	4	4C	2
206	53.28	55.80	4	4C	5
206	55.80	57.23	4	4C	35
206	57.23	64.45	2	4A	25
206	64.45	68.90	3	4A	1
206	68.90	71.25	3	6A	1
206	78.32	79.25	3	4A	1
206	79.25	89.49	2	4A	31
206	89.49	97.51	3	4A	1
206	97.51	97.80	2	4A	31
206	97.80	99.23	3	4A	1
206	99.23	102.72	2	4A	31
206	102.72	104.50	4	4A	34
206	104.50	107.18	2	4A	31
206	107.18	107.48	3	4A	34
206	107.48	108.18	3	4A	1
206	108.18	109.93	5	2B	6
206	109.93	111.10	4	4C	35
206	111.10	114.10	2	4A	31
206	114.10	116.28	3	4A	34
206	116.28	128.20	2	4A	31
206	128.20	129.22	3	4A	34
208	0.00	11.02	3	6A	1

284	0.00	0.63	5	2A	36
284	0.63	7.03	5	2A	33
322	2.24	6.28	2	4A	31
322	6.28	10.85	4	4C	39
322	11.24	11.53	4	4D	35
322	11.53	14.58	4	4C	32
322	14.58	16.10	4	4C	35
322	16.10	16.78	4	4D	2
322	16.78	18.55	4	4D	5
322	18.55	19.50	4	4D	2
322	19.50	23.05	4	4C	35
322	23.05	24.10	4	4C	2
322	24.10	24.50	4	4C	5
322	24.50	26.85	4	4C	2
322	26.85	32.90	4	4C	32
322	32.90	48.70	2	4A	31
322	48.70	50.10	2	6A	31
324	0.00	1.51	6	2A	51
439	0.00	3.94	4	4E	5
440	0.00	3.10	3	6A	1
440	3.10	3.98	1	6C	0
440	20.56	23.28	3	6A	1
495	0.80	1.97	1	6A	0
524	0.45	0.90	4	4B	13

[iii.]**3.** The traffic assignment [should] **shall** follow logically from the trip distribution. Any special conditions must be explained.

[(1)]**i.** Peak-hour traffic volumes covering the analysis area [must] **shall** be depicted graphically. They must identify site generated, primary, passby, and total traffic. [Any credits or reductions for passby trips or mixed-use developments must be supported.]

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).

[iv.]**4.** Support [will have to] **shall** be provided for any [pass-by] credits **or reductions for passby trips or mixed-use developments** [used]. Included [must] **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.

[(1)]**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.

[v. The Bureau of Access and Development Impact Analysis maintains a file of developments for which the trip generation, distribution, and assignment have been approved. Data from this bank may be used with documentation limited to a citation of the source. Submittals must conform to the following standards:

(1) Information from each development must appear on a different sheet;

(2) Trip distribution must be displayed in either graphic or tabular form. (8 1/2 inch x 11 inch preferred, 11 inch x 17 inch maximum); and

(3) Traffic assignment must be graphically displayed, with passby credits shown.]

5. The study locations shall be established pursuant to N.J.A.C. 16:47-4.36.

[4. The following concerns the travel demand management plan:

i. The Department encourages applicants to submit a travel demand management plan (TDM) to reduce vehicle miles of travel to and from the site and to seek active participation from a Transportation Mangement Association serving its area to act as an advisor to the site development plan.

ii. A transportation demand management plan contains specific strategies which focus on reducing travel, especially peak period travel. It is a plan of action that attempts to use the existing transportation infrastructure more efficiently. The strategies that can be implemented at a worksite are TDM strategies.

(1) Any mode share adjustments to site generated vehicular activity shall be justified and documented. The projected vehicle miles of travel to and from the site may be reduced if the site is located within one-quarter mile of an existing public transportation service, such as public bus line, rail transit, commuter railroad station, or passenger ferry (waterborne) service. The availability of adequate and convenient service to areas of prospective employee, tenant, and customer origins and destinations must be substantiated.

(2) 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 by carpool, vanpool, bus, train, and bicycles and to increase the number of commuters who work with a variable hour schedule or work from home. These objectives are accomplished by implementing any of the following array of strategies to change commuting behavior:

(A) Buspool;

(B) Carpool;

(C) Compressed work week program;

(D) Employee transportation coordinator or ridesharing coordinator;

(E) Four-forty schedule or four-day work week;

(F) Local ridesharing agency;

(G) Nine-eighty schedule;

(H) Ridesharing;

(I) Satellite office;

(J) Telecommuting;

(K) Monitoring;

(L) Transportation demand management;

(M) Transportation management associates;

(N) Vanpool; and/or

(O) Alternative work arrangement programs.

(3) The travel demand management plan should include a traffic reduction program which will specify the measures the company will take to reduce total peak period and concentration of trips. The plan for each unit may include:

(A) Facilitating employee use of mass transit;

(B) Facilitating employee use of rideshare/vanpool program;

(C) Establishing alternative work hours/flex-time program;

(D) Encouraging non-vehicular work trips;

(E) Consolidating carrier services;

(F) Working with transit providers to establish new service; and/or

(G) Establishing self-contained services to minimize the need for travel for nonwork trips, such as postal services, food services, and internal convenience shopping facilities.

(4) The TDM plan may include the following measures, which are applicable to the site:

(A) Preferred parking for rideshare/vanpool participants;

(B) Construction of sufficient number of transit shelters;

(C) Round trip shuttle service between the site and either a train station or remote parking facilities;

(D) Establishment of in-house or third-party rideshare or vanpool program;

(E) Information center to coordinate rideshare or vanpool efforts among smaller businesses within a complex; and/or

(F) Access and safety programs for pedestrians and bicyclists.

(5) If the applicant incorporates a travel demand management plan, than the applicant shall provide the Department with annual status follow-up reports.

(6) The applicant may include a travel demand management program designed to encourge residents' use of ridesharing programs and mass transit. Such measures could include provision of vanpool or park and ride parking lots or building shelters at public transportation pick up points. If the applicant incorporates such measures, then follow-up status reports could be required.]

(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.

[(7) Traffic]**(f) Highway traffic** volumes shall be prepared for the build year [and tenth year thereafter,] or such other years as may be appropriate due to project phasing or programmed highway improvements. [The Department will provide background annual growth rates for highways under State jurisdiction, exclusive of other specifically proposed developments. The Department will also provide annual growth rates for other roadways to be addressed in the analysis. Other major developments must be specifically addressed. Documentation of traffic volumes generated by these developments must conform to the standards. These developments will be enumerated in Department's transmittal of background growth rates.] **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.

[(A)]**1.** The 1985 Highway Capacity Manual (HCM) 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 [must] **shall** approve the use of other software. Any deviation from the HCM accepted values [must] **shall** be fully documented. **Default values shall not be used when actual values are reasonably available or obtainable.**

[(B)]**2.** Capacity analysis [must] **shall** be performed at each access point **for the lot** and [adjacent intersections or any other location as necessary within the analysis area.] **the study locations identified in N.J.A.C. 16:47-4.36.** [Identification of specific locations and the need to discuss the] **The** interaction of conflicting traffic movements [will] **shall** be [products of the pre-application conference] **addressed in the traffic impact study**.

[(C)]**3.** Impacts should be evaluated with and without development traffic and with and without any proposed transportation improvements for the build years [and the tenth year after the final improvement]. For phased developments, no-build analyses for latter phases are not to include traffic and improvements from earlier phases of the development.

[(D) The Department encourages reduced vehicle miles of travel (VMT) to and from the site, particularly during peak periods. Accordingly, the applicant should set a goal, or target, for such VMT reduction. For example, under the array of strategies described above under (a)4ii(1), the target may be to increase vehicle occupancy from the normal traffic generation of a particular development to at least 1.4 occupants per vehicle. It is the responsibility of the applicant to propose a workable plan to accomplish this.]

[(E) Alternate]**4. Alternate** access availability [should] **shall** be addressed. [If the existing roadway configuration will not support build traffic, as measured by violation of level of service (LOS) standards, in either the build year or the tenth year, then roadway improvements sufficient to meet LOS standards must be identified.]

[(F)]**5.** The no-build analysis of future years [should] **shall** be based on traffic signal timing [that] **which is possible with the existing traffic signal hardware and** will be appropriate for the future year **no-build** traffic volumes. [The applicant can only take credit for changes in timing facilitated by improvements that the applicant proposes to make.] **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.**

[(G)]**6.** Summary tables [should] **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 [should] **shall** facilitate comparison of build and no-build conditions, [or] **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.

[(8) The analysis area should extend to any point on the adjacent system that could be significantly impacted. The limits must be defined preliminarily through a pre-application conference. Locations for traffic counts will also be established at that time.

(A) Traffic counts should be shown by 15-minute intervals over a period long enough to establish a peak hour. During this period there should be no conditions such as detours, accidents, or inclement weather that could affect traffic volumes. Traffic counts should not be taken on or near holidays or other special events when traffic may not be representative of average daily traffic.

(B) Traffic counts performed outside the seasonal peak period must be adjusted to the peak period. Traffic count data taken within the previous 12 months is required. All count material should be attached to the Traffic Impact Study as an appendix. The Department may require evidence of proper calibration of automatic traffic recorder (ATR) equipment.

(C) Once AM, PM, and Saturday peak hours are established, the same times for the peak hours should be used at every location analyzed in an application.]

16:47-4.31 Design [exceptions] **standards**

[(a) The design of all highway improvements must conform to design standards. Any deviation from those standards shall be designated as a design exception. A design exception may be approved when it can be shown that the exception is justified due to existing social, economic, and environmental constraints.

[(b)](a) For improvements made to all State highways, except interstate highways, Department design standards shall apply. [Work must conform to the] **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 [referenece] **reference**, and the ["NJDOT] **New Jersey Department of Transportation** Design Manual—Roadway["] and the ["NJDOT] **New Jersey Department of Transportation** Design Manual—Bridges and Structures["]. In the case of a discrepancy, the [NJDOT] **Department** manual will govern over the AASHTO publication.

[(c)](**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.

[(d) The complete procedure for the preparation of design exceptions can be found in the NJDOT publication "Procedural Manual for the Preparation of Design Exceptions". The publication is available from the Bureau of Design Standards.]

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 [of] **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.

APPENDIX C

ACCESS PERMITTED ON STATE HIGHWAYS BASED ON DESIRABLE TYPICAL SECTION

ACCESS LEVEL	DIVIDED OR UNDIVIDED	PERMISSIBLE TURNING MOVEMENTS: AT INTERCHANGE	AT STREET	AT CONFORMING LOT DRIVEWAY	AT NONCONFORMING LOT DRIVEWAY	LEFT TURN TREATMENTS: 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

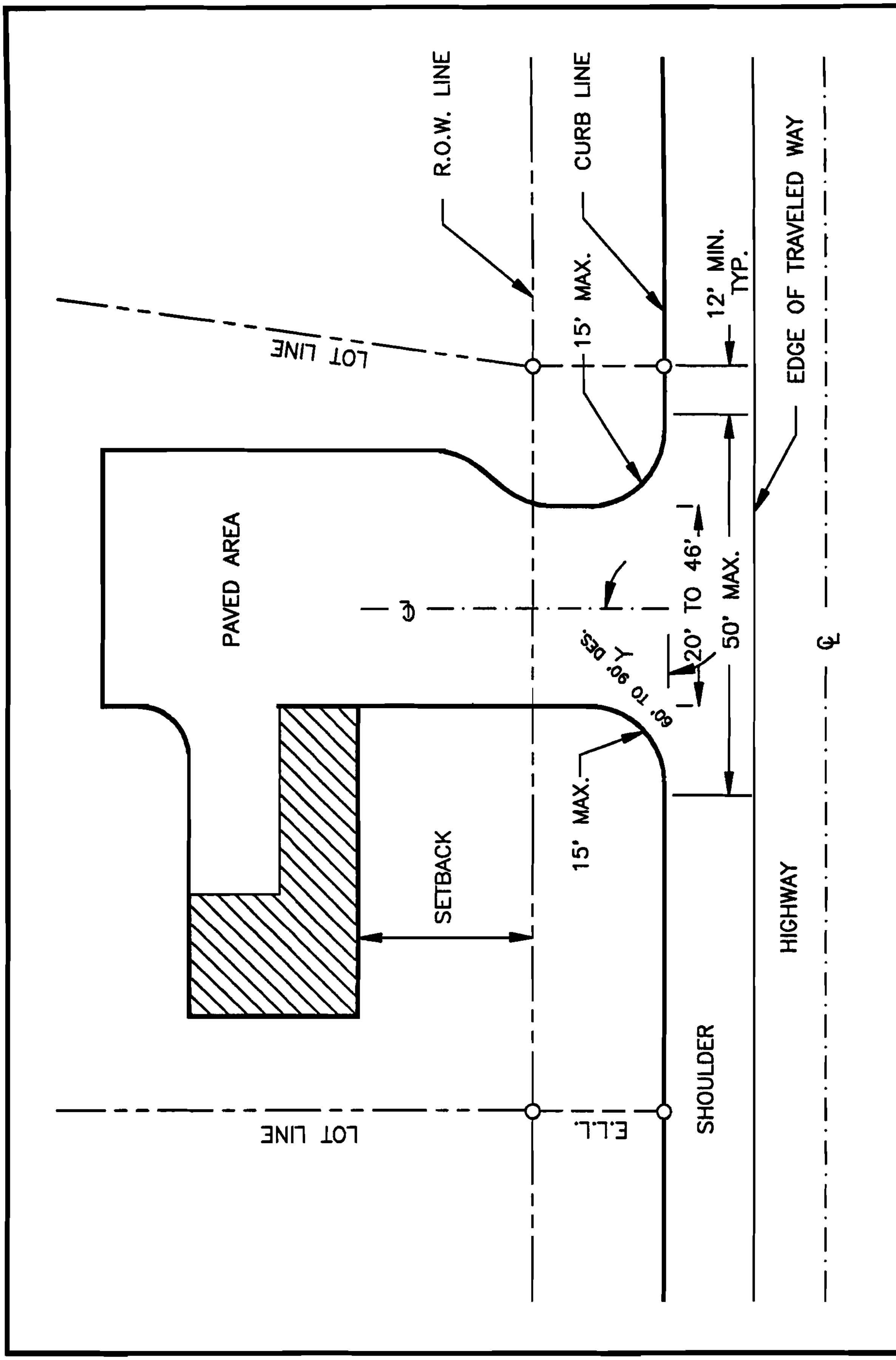
ACCESS LEVEL	DIVIDED OR UNDIVIDED	APPLICABLE SPACING REQUIREMENTS: INTERCHANGE	SIGNALIZED	UNSIGNALIZED	APPLICABLE DRIVEWAY DESIGN CRITERIA: SAFETY PER DESIGN MANUAL	CORNER CLEARANCE	EDGE CLEARANCE
1.	DIVIDED	YES	NA	NA	YES	NA	NA
2.	DIVIDED	YES	YES	YES	YES	YES	YES
3.	DIVIDED	YES	YES	YES	YES	YES	YES
4.	EITHER	YES	YES	YES	YES	YES	YES
5.	UNDIVIDED	YES	YES	YES	YES	YES	YES
6.	UNDIVIDED	YES	YES	YES	YES	NA	YES

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

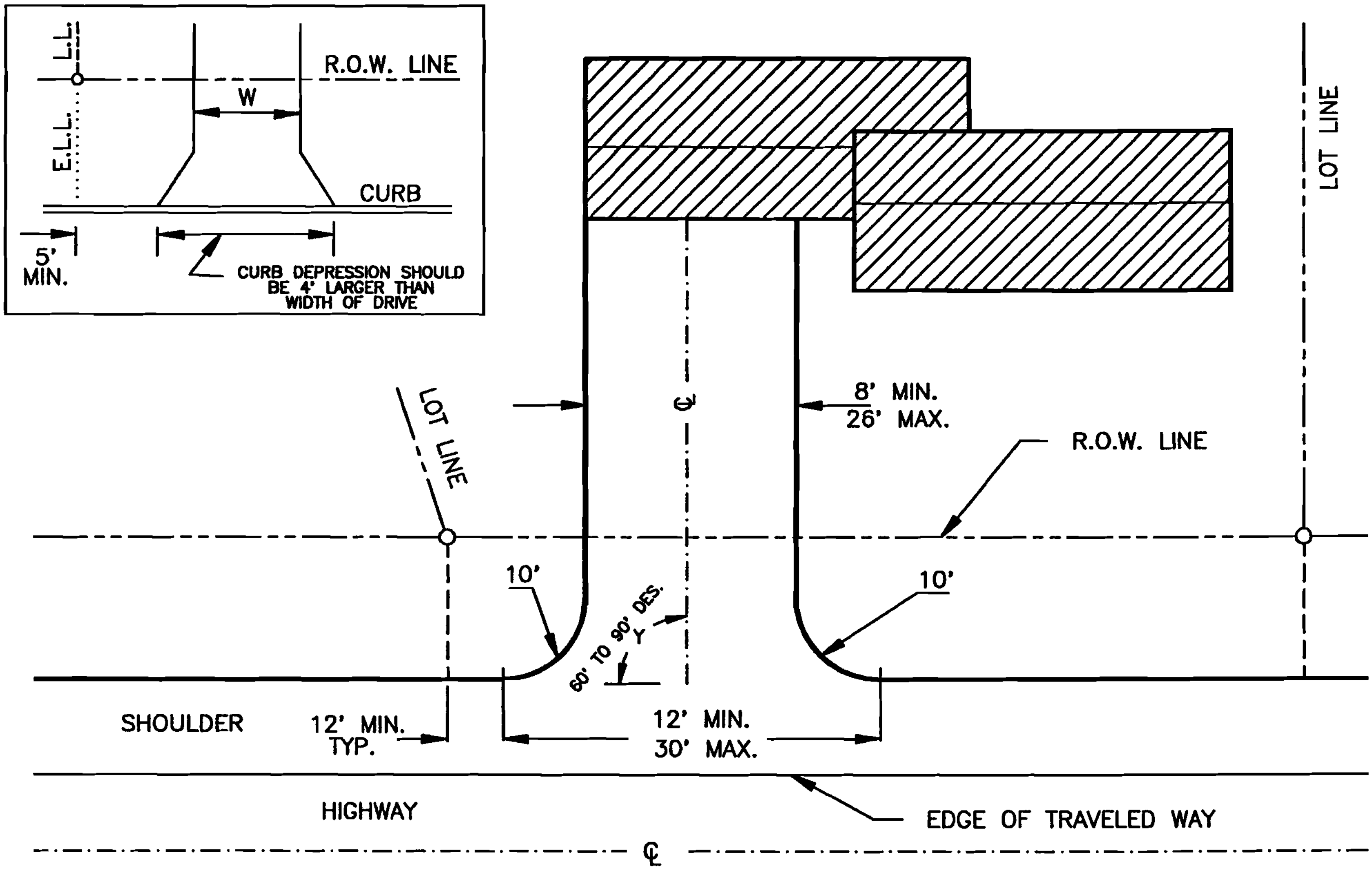
FIGURE C-1



NON-RESIDENTIAL DRIVEWAY ON DIVIDED OR UNDIVIDED HIGHWAY
(NOT TO SCALE)

FIGURE C-2

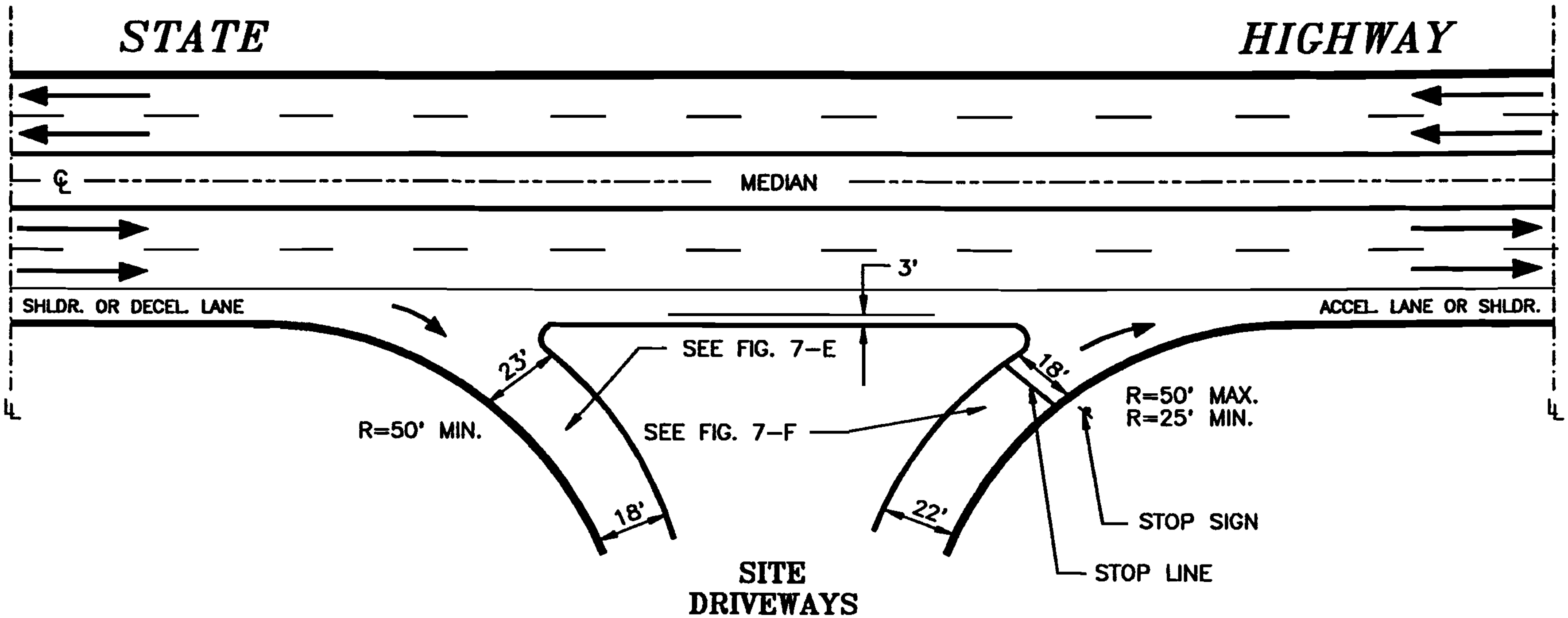
8924-16



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)

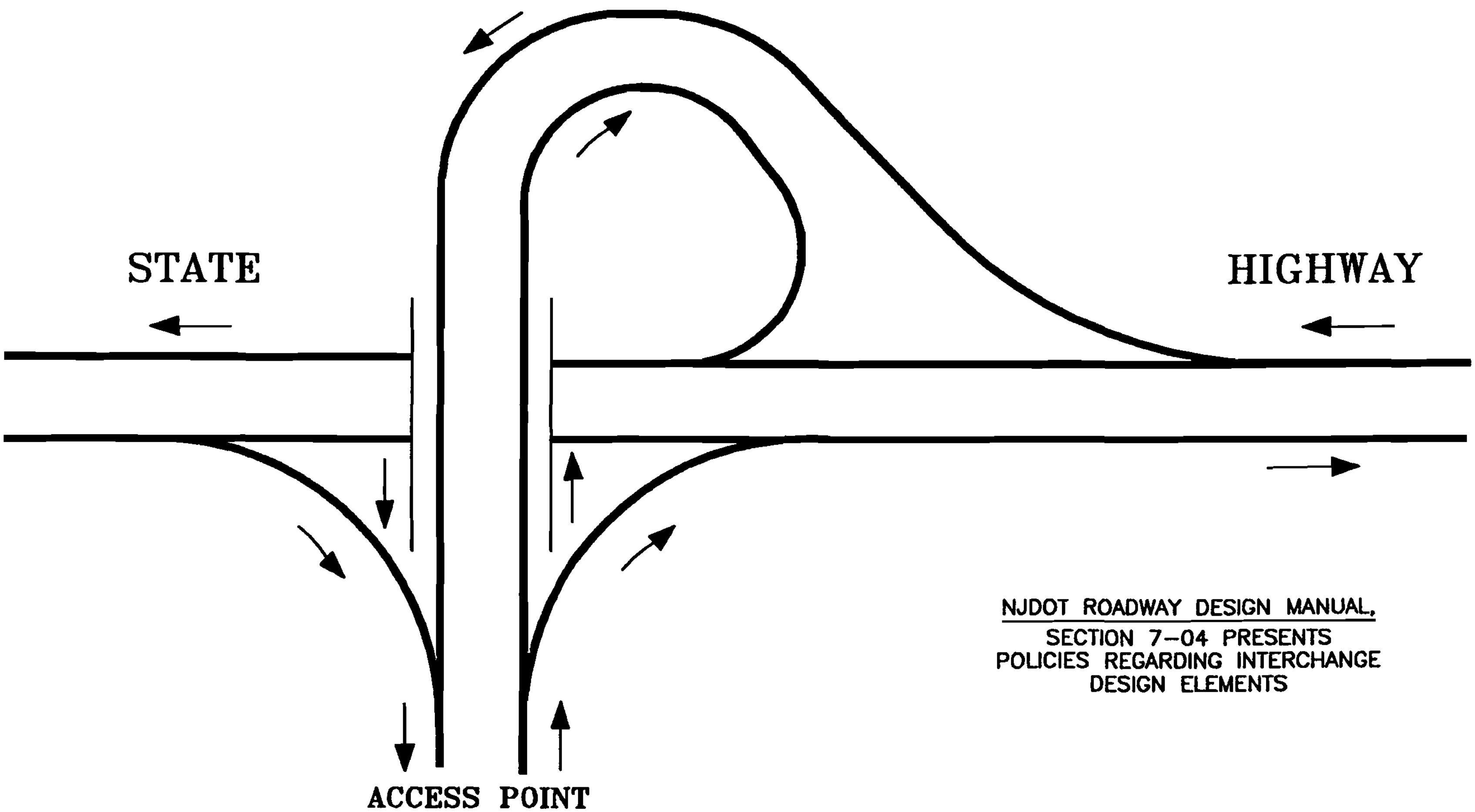
NOTE: DRIVEWAY ISLAND HAS DEPRESSED APPROACH NOSES

SOURCE: NJDOT. CONTROL OF ACCESS DRIVEWAYS

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-17

FIGURE C-4



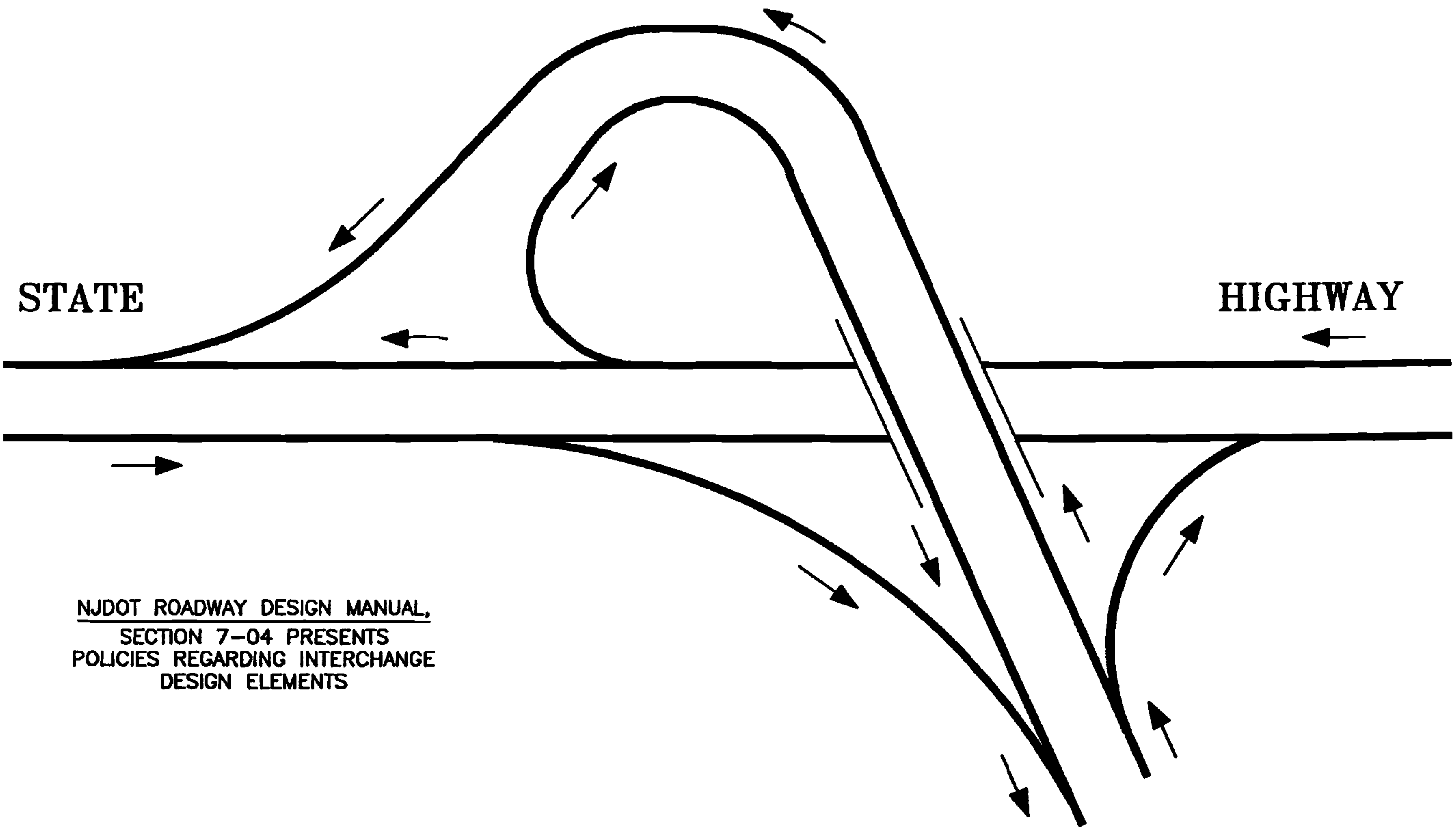
ACCESS LEVEL 1
FULLY CONTROLLED ACCESS

ACCESS VIA
GRADE-SEPARATED INTERCHANGE
(OPTION 1)

(NOT TO SCALE)

8924RR

FIGURE C-5

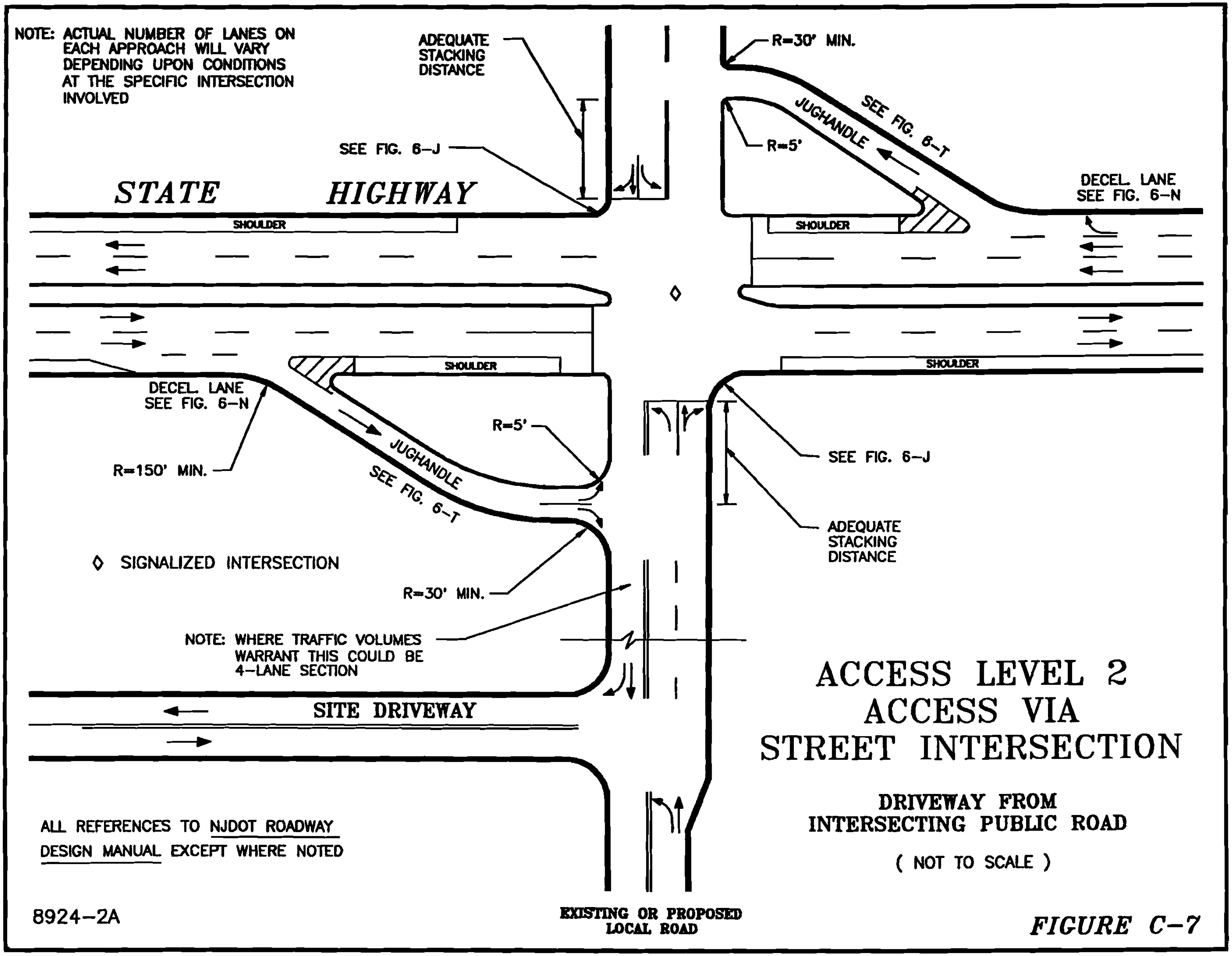


ACCESS LEVEL 1
FULLY CONTROLLED ACCESS

ACCESS VIA
GRADE-SEPARATED INTERCHANGE
(OPTION 2)

8924-4

FIGURE C-6



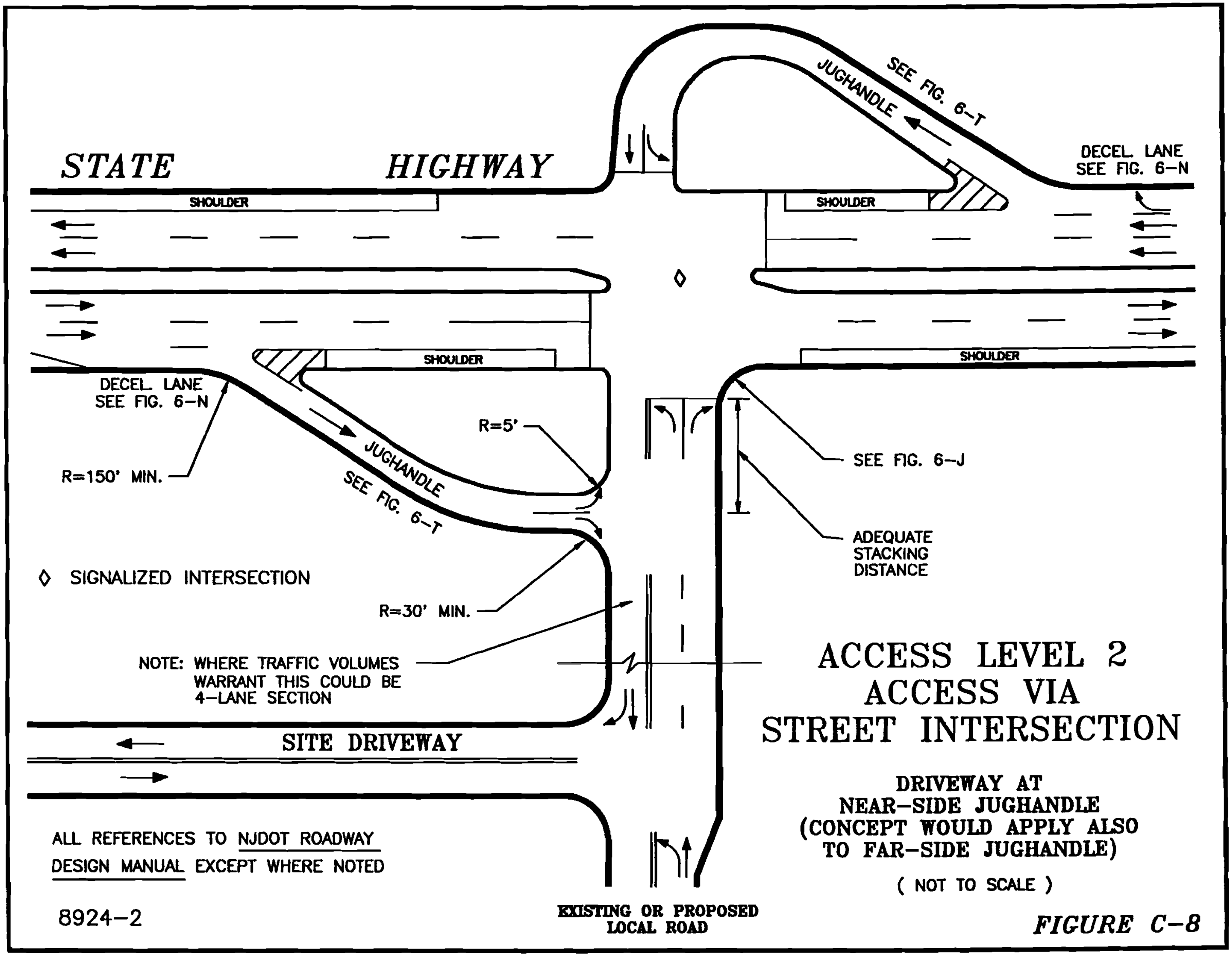
ACCESS LEVEL 2
ACCESS VIA
STREET INTERSECTION

DRIVEWAY FROM
INTERSECTING PUBLIC ROAD

(NOT TO SCALE)

FIGURE C-7

Interested Persons see Inside Front Cover

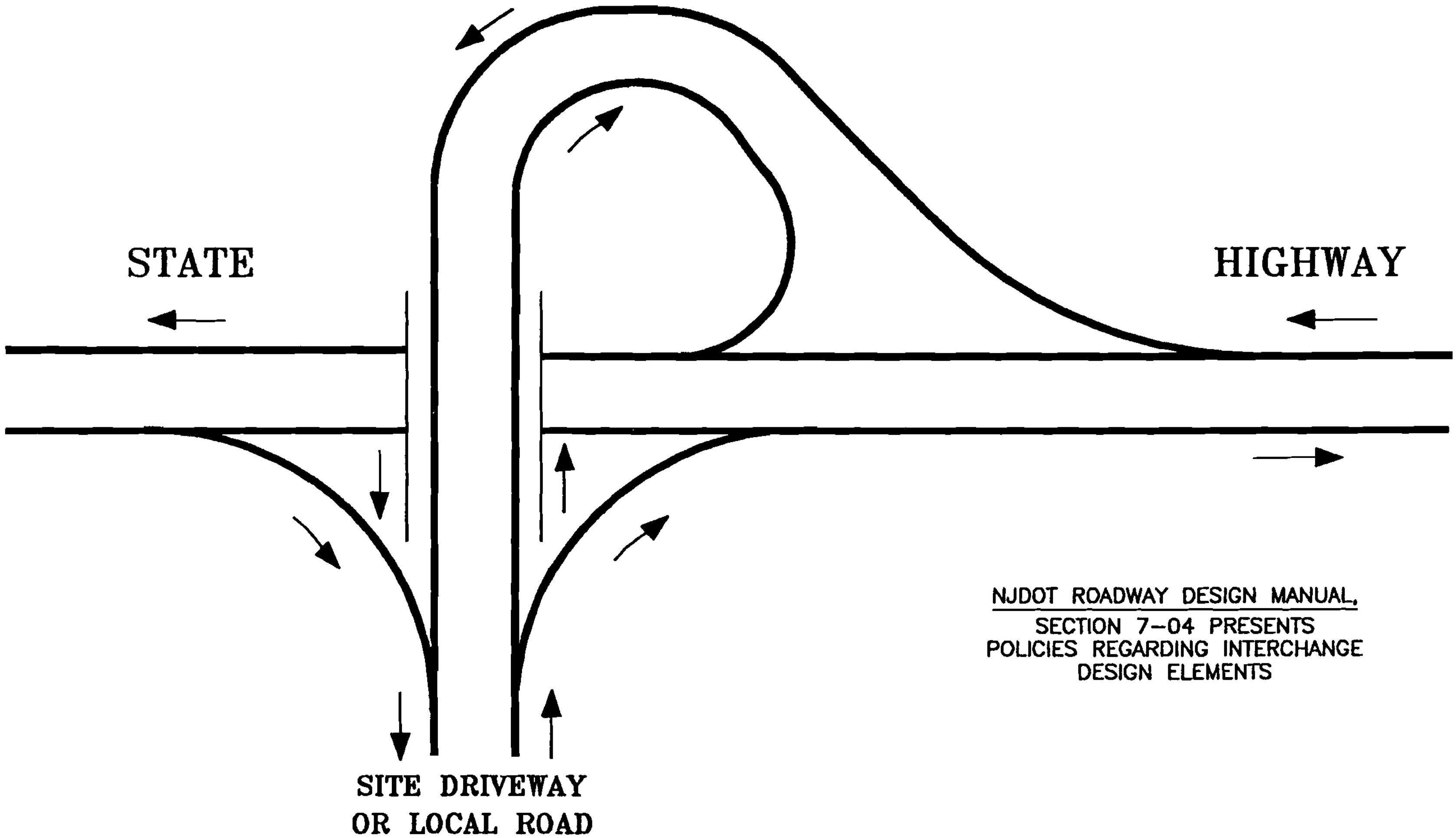


ACCESS LEVEL 2
ACCESS VIA
STREET INTERSECTION

**DRIVEWAY AT
NEAR-SIDE JUGHANDLE
(CONCEPT WOULD APPLY ALSO
TO FAR-SIDE JUGHANDLE)**

(NOT TO SCALE)

FIGURE C-8



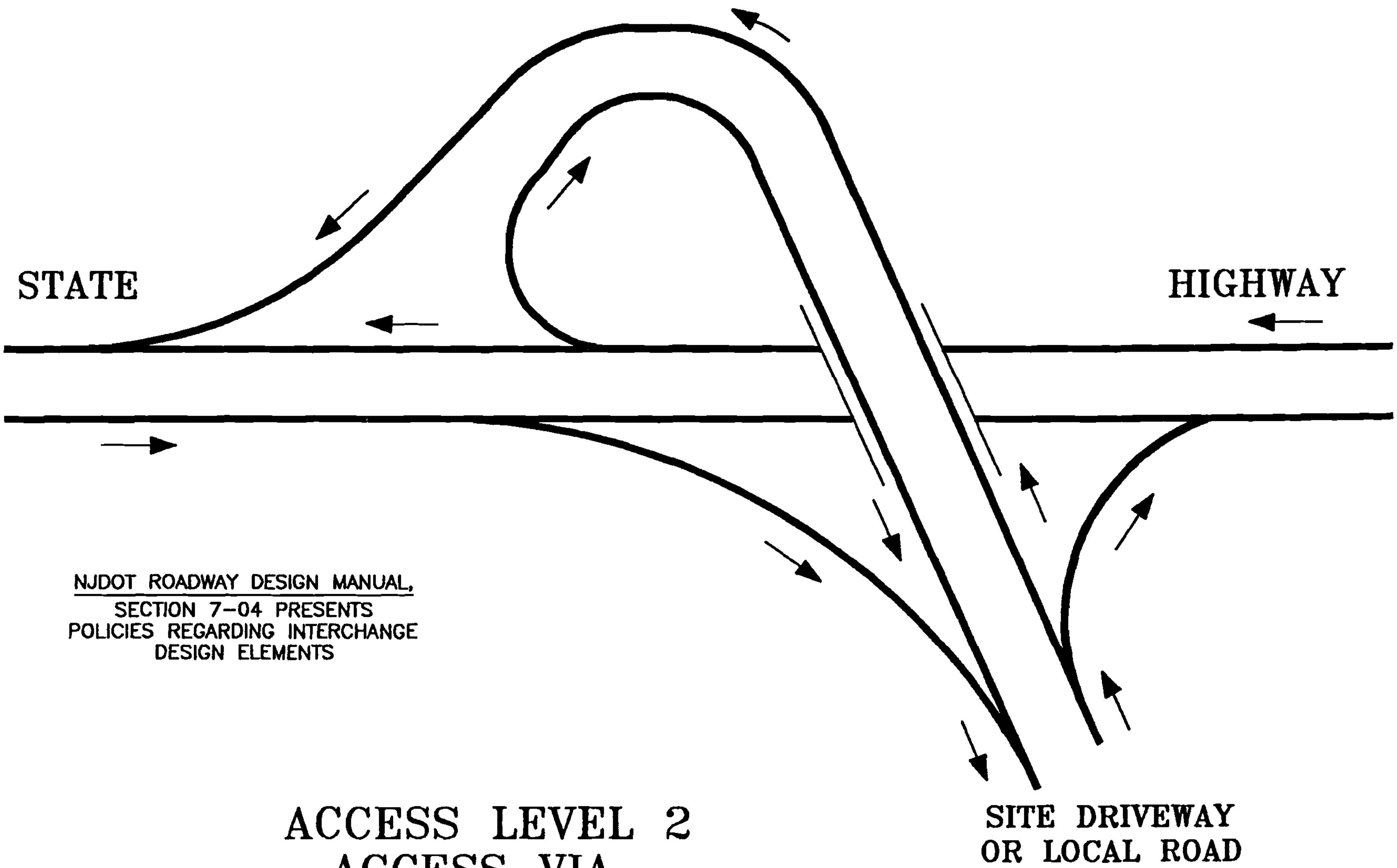
NJDOT ROADWAY DESIGN MANUAL,
SECTION 7-04 PRESENTS
POLICIES REGARDING INTERCHANGE
DESIGN ELEMENTS

ACCESS LEVEL 2
ACCESS VIA
GRADE-SEPARATED INTERCHANGE
(OPTION 1)

(NOT TO SCALE)

8924 LAY6

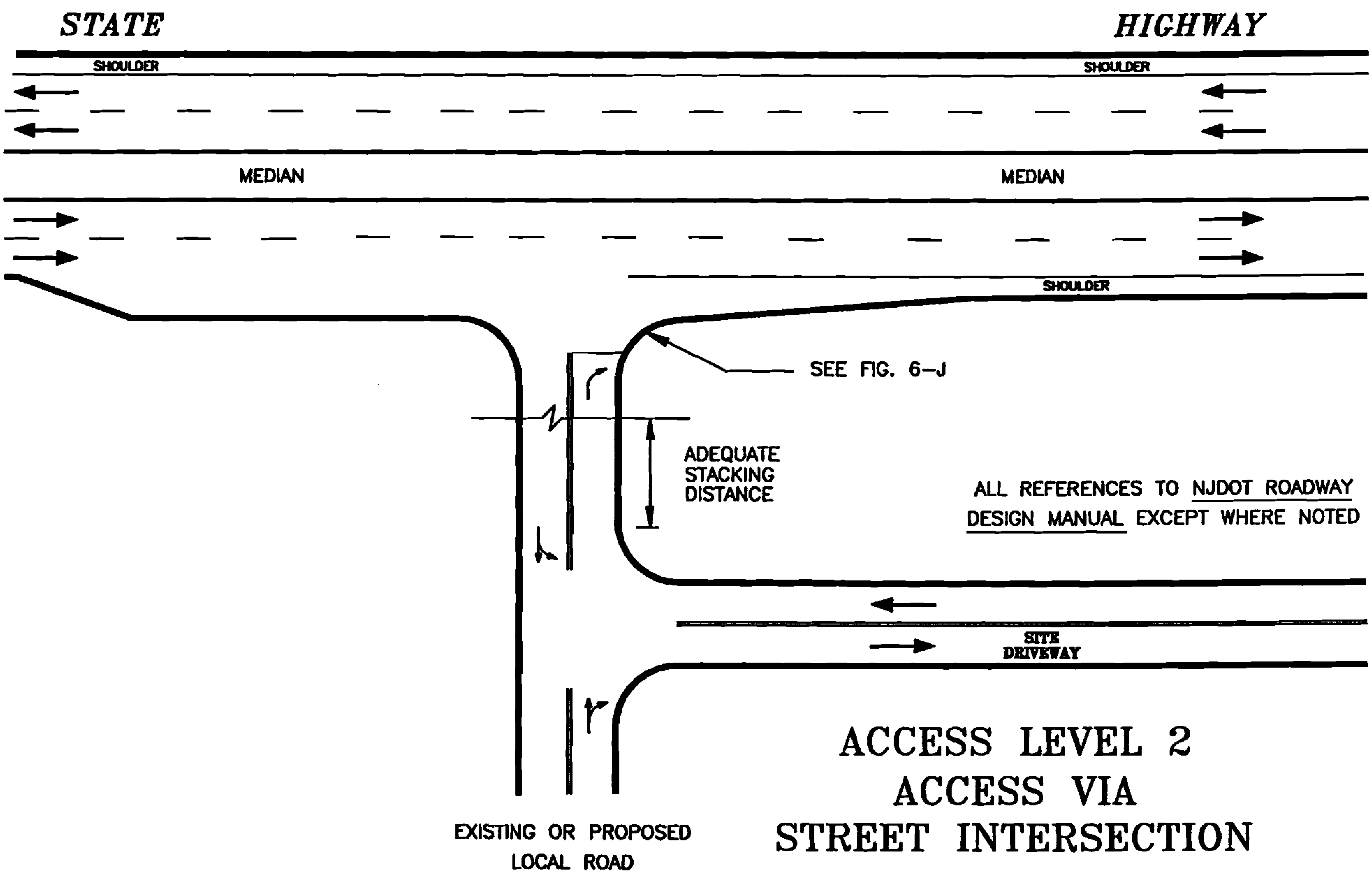
FIGURE C-9



ACCESS LEVEL 2
ACCESS VIA
GRADE-SEPARATED INTERCHANGE
(OPTION 2)

8924-4A

FIGURE C-10



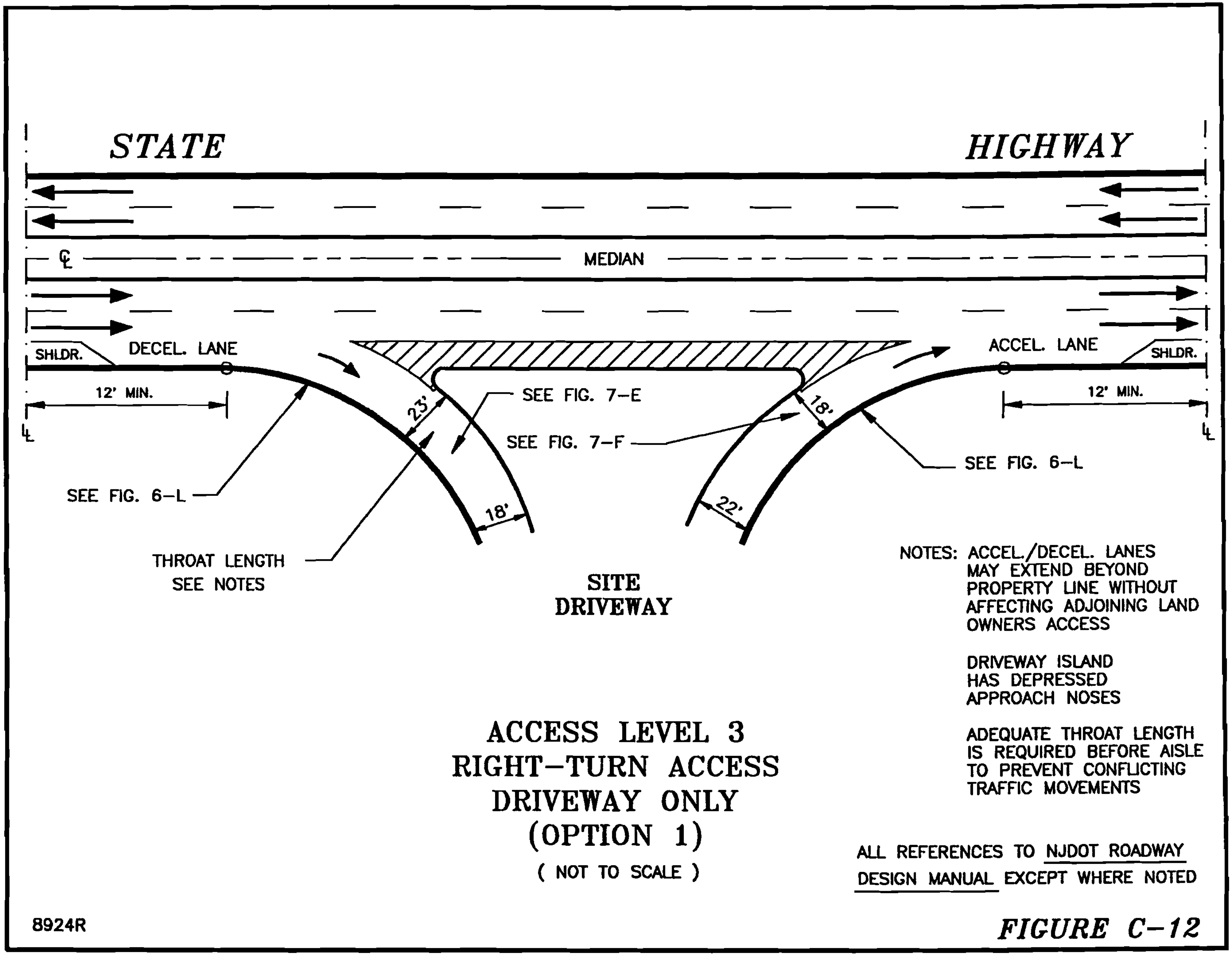
ACCESS LEVEL 2
ACCESS VIA
STREET INTERSECTION

DRIVEWAY FROM
INTERSECTING PUBLIC ROAD

(NOT TO SCALE)

8924R5A

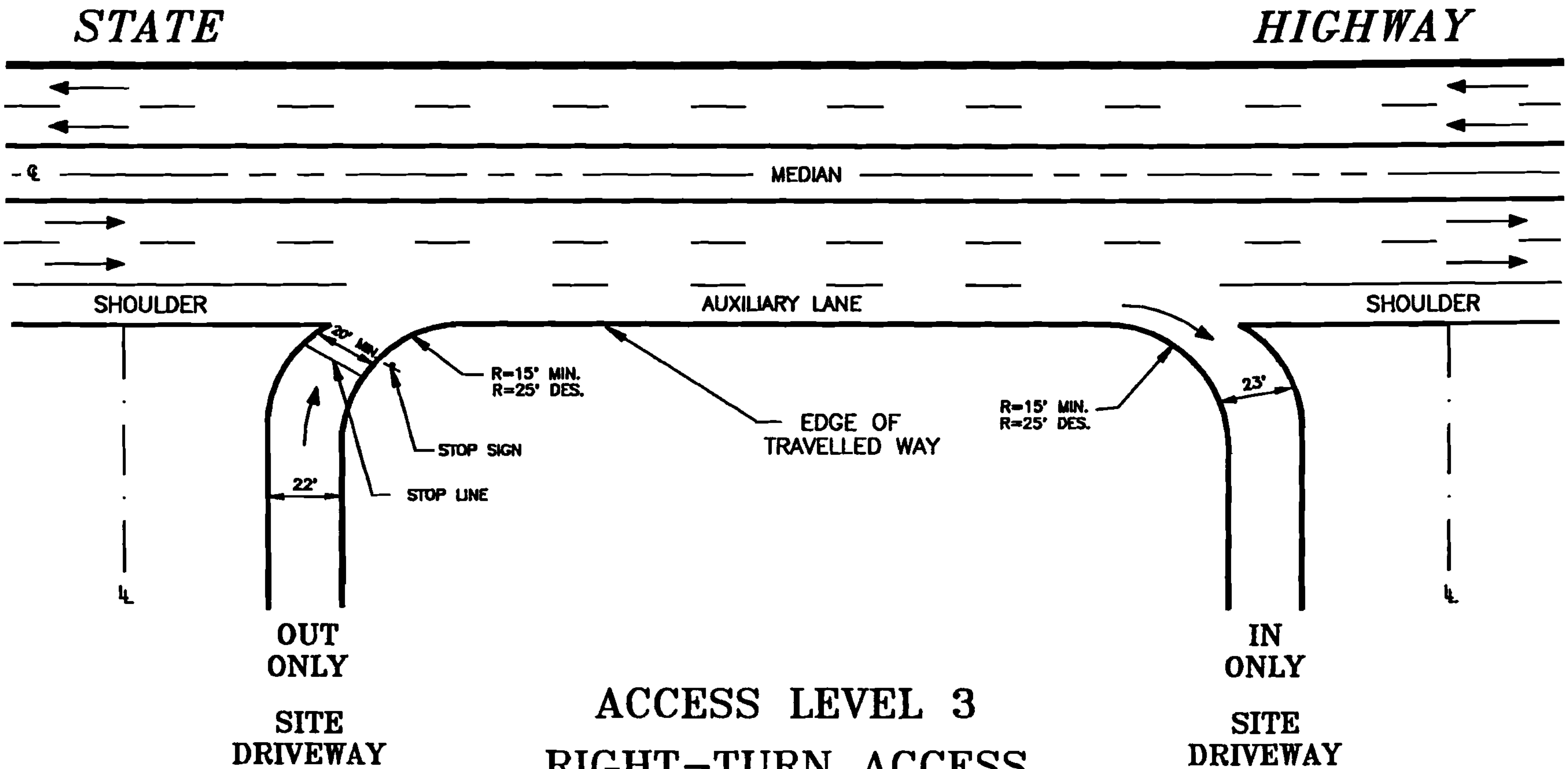
FIGURE C-11



ACCESS LEVEL 3
RIGHT-TURN ACCESS
DRIVEWAY ONLY
(OPTION 1)
(NOT TO SCALE)

FIGURE C-12

Interested Persons see Inside Front Cover



ACCESS LEVEL 3

RIGHT-TURN ACCESS DRIVEWAY ONLY (OPTION: 2)

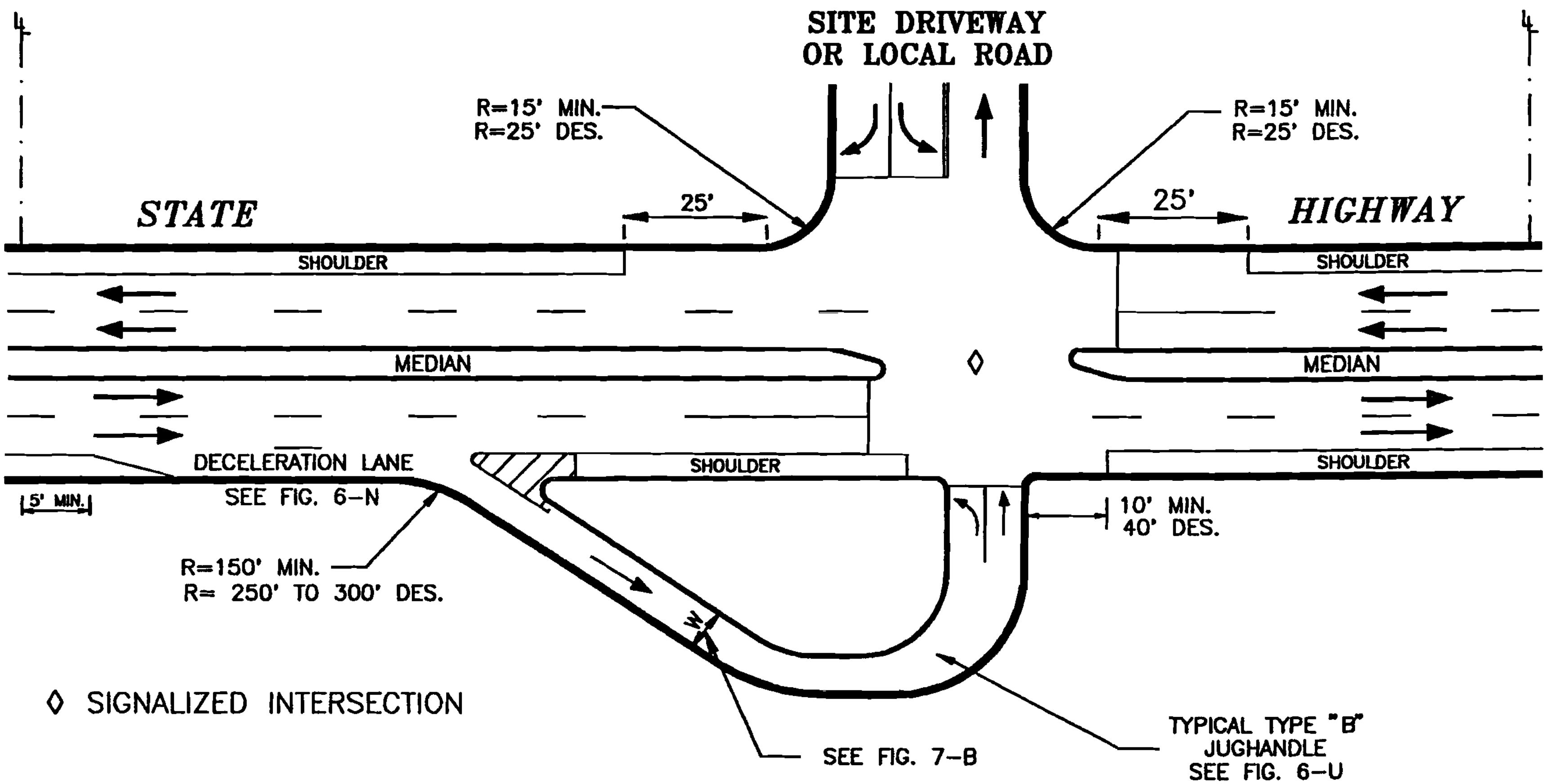
(NOT TO SCALE)

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-13

FIGURE C-13

Interested Persons see Inside Front Cover



ACCESS LEVEL 3
RIGHT-TURN ACCESS WITH
LEFT-TURN VIA SIGNALIZED
JUGHANDLE

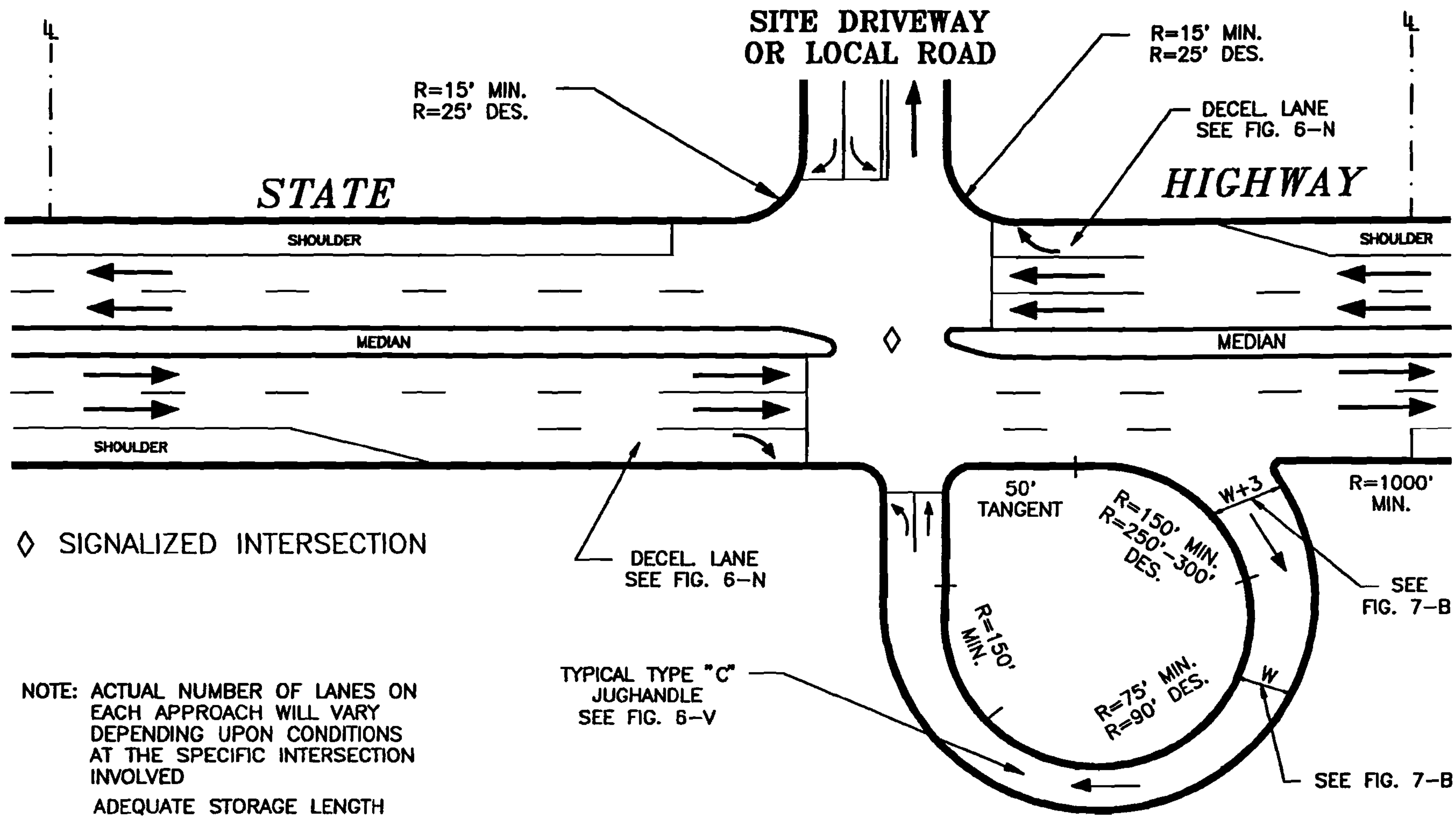
(NOT TO SCALE)

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 <u>NJDOT ROADWAY DESIGN MANUAL</u> EXCEPT WHERE NOTED

8924 LAY2

FIGURE C-14



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

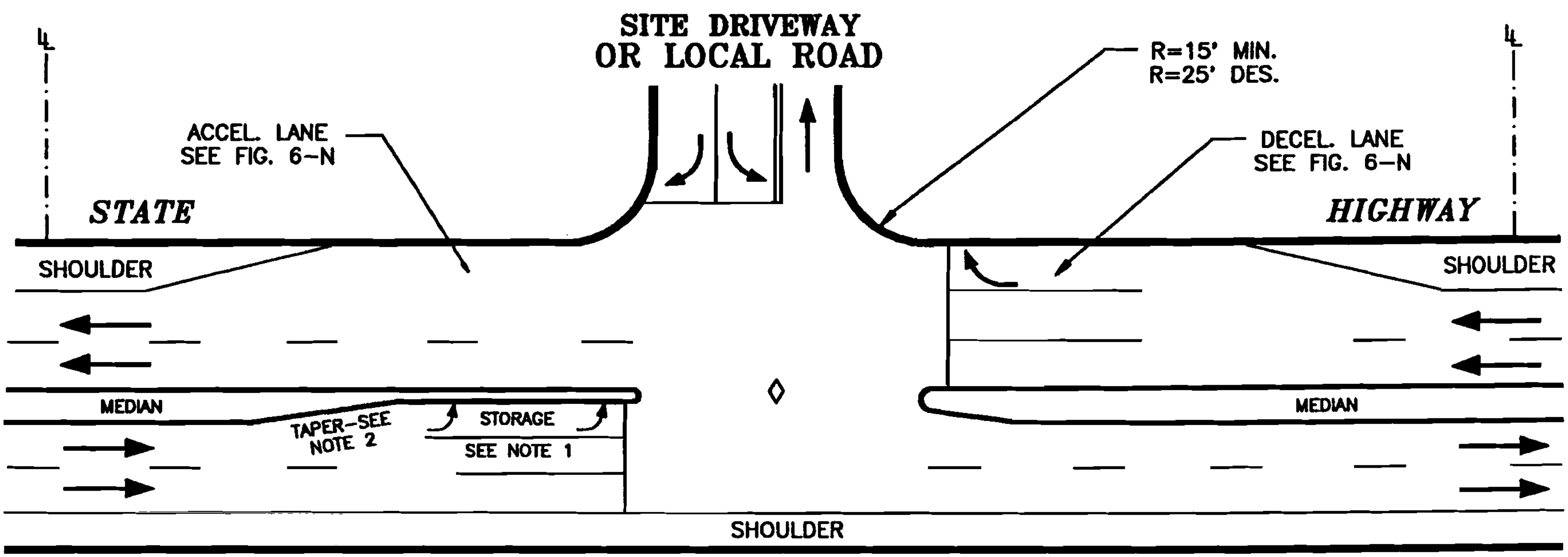
ALL REFERENCES TO <u>NJDOT ROADWAY DESIGN MANUAL</u> EXCEPT WHERE NOTED

ACCESS LEVEL 3
RIGHT-TURN ACCESS WITH LEFT-TURN VIA SIGNALIZED JUGHANDLE

(NOT TO SCALE)

8924-1

FIGURE C-15



◊ 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

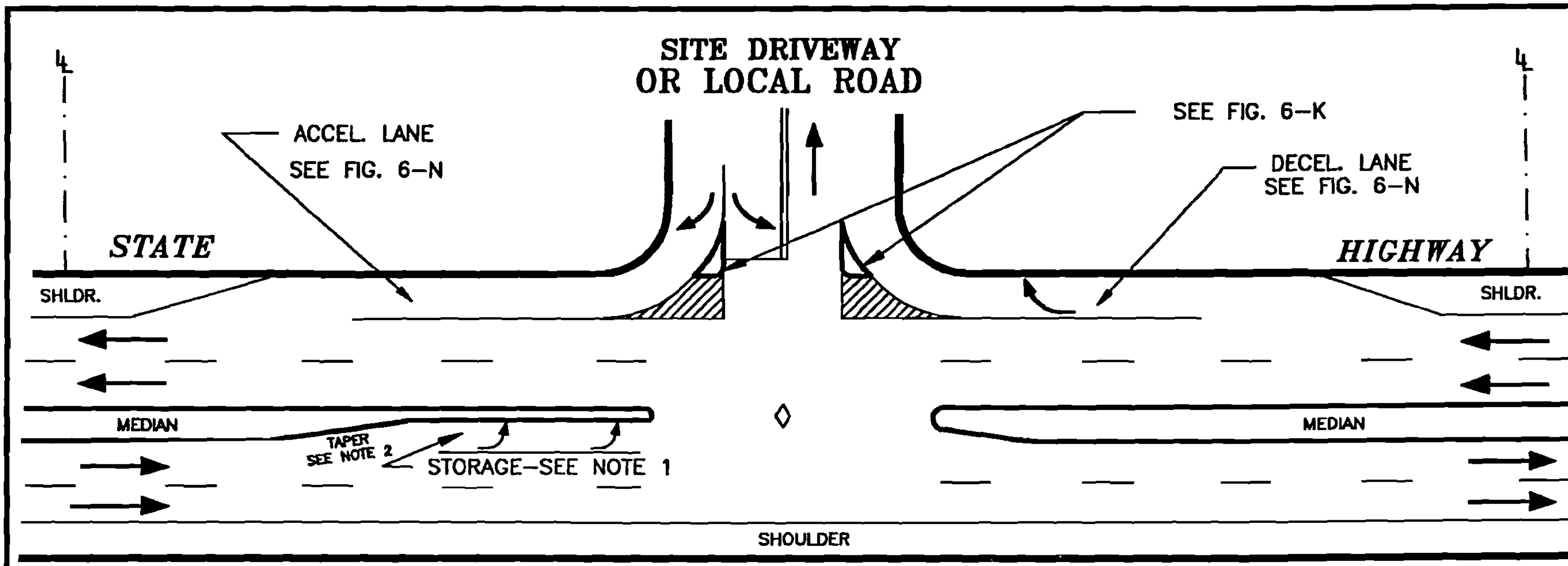
ACCESS LEVEL 4
RIGHT–TURN ACCESS AND LEFT–TURN INGRESS VIA A LEFT–TURN LANE

SIGNALIZED DRIVEWAY OR LOCAL ROAD ON DIVIDED HIGHWAY (OPTION 1)

(NOT TO SCALE)

8924–10

FIGURE C–16



◊ 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)

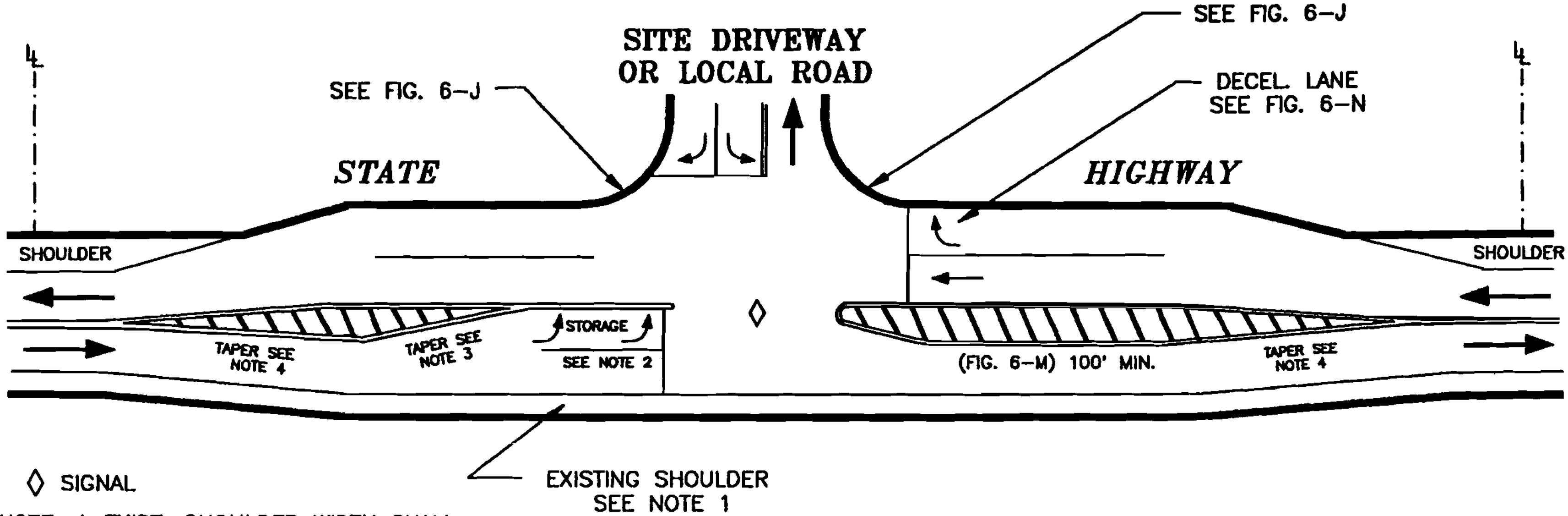
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO <u>NJDOT ROADWAY DESIGN MANUAL</u> EXCEPT WHERE NOTED

8924 LAY3

FIGURE C–17



◊ SIGNAL

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)

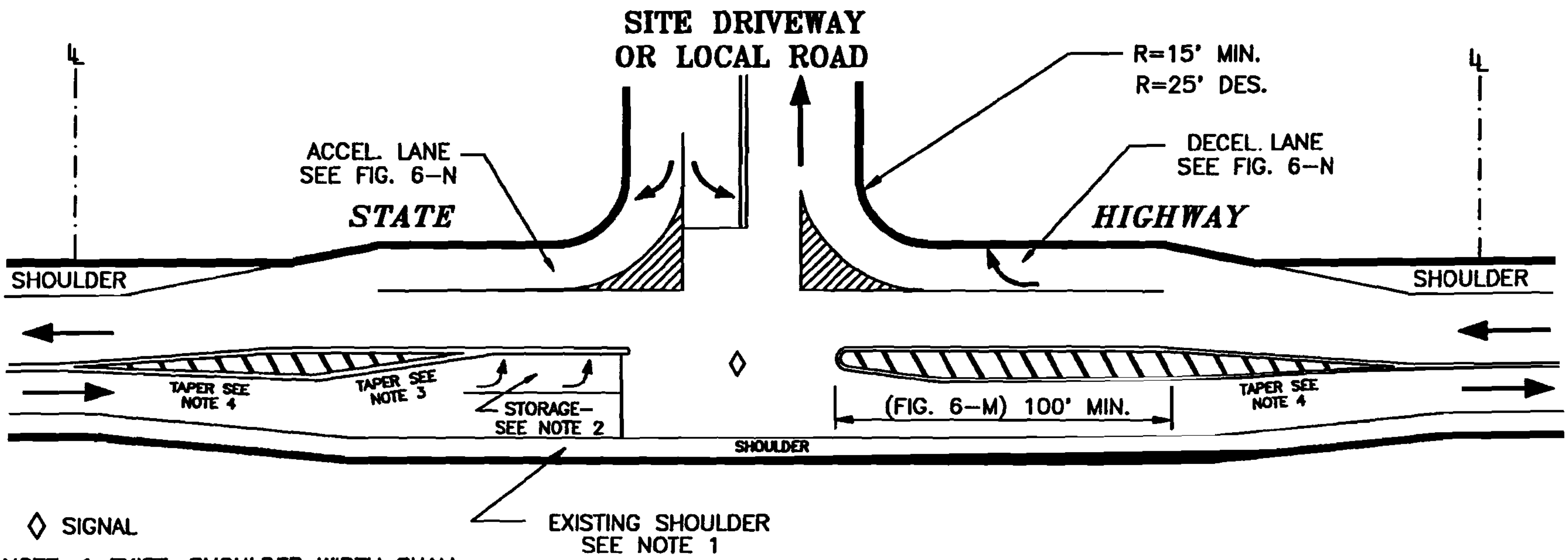
(NOT TO SCALE)

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



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: $L=S\times W$

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)

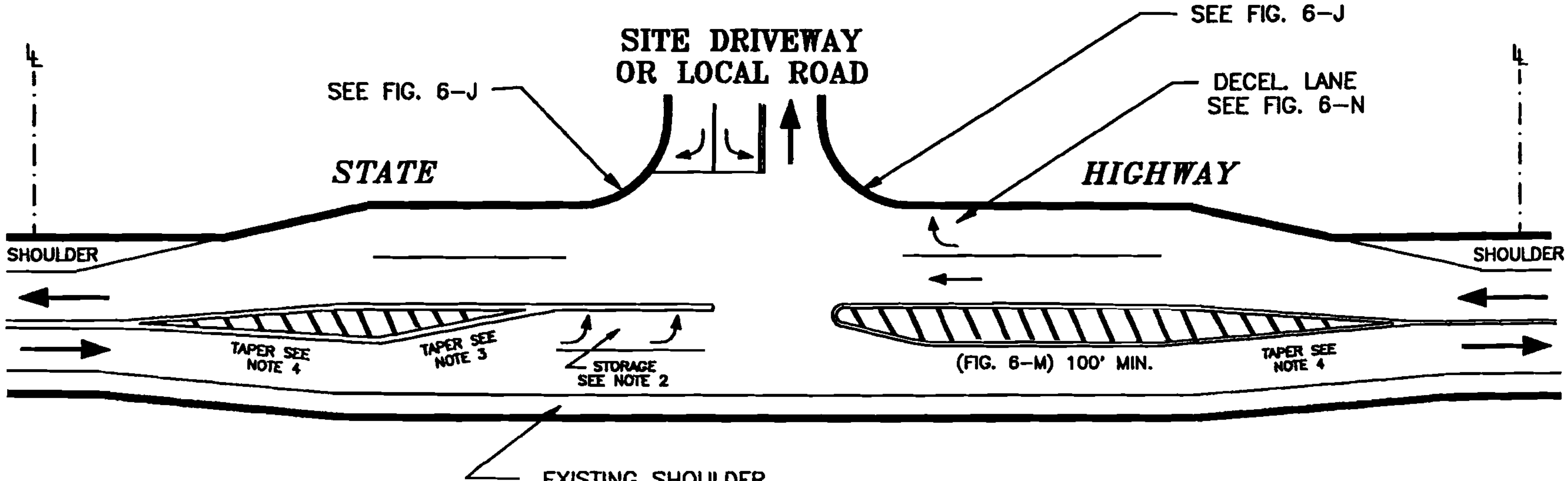
(NOT TO SCALE)

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



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

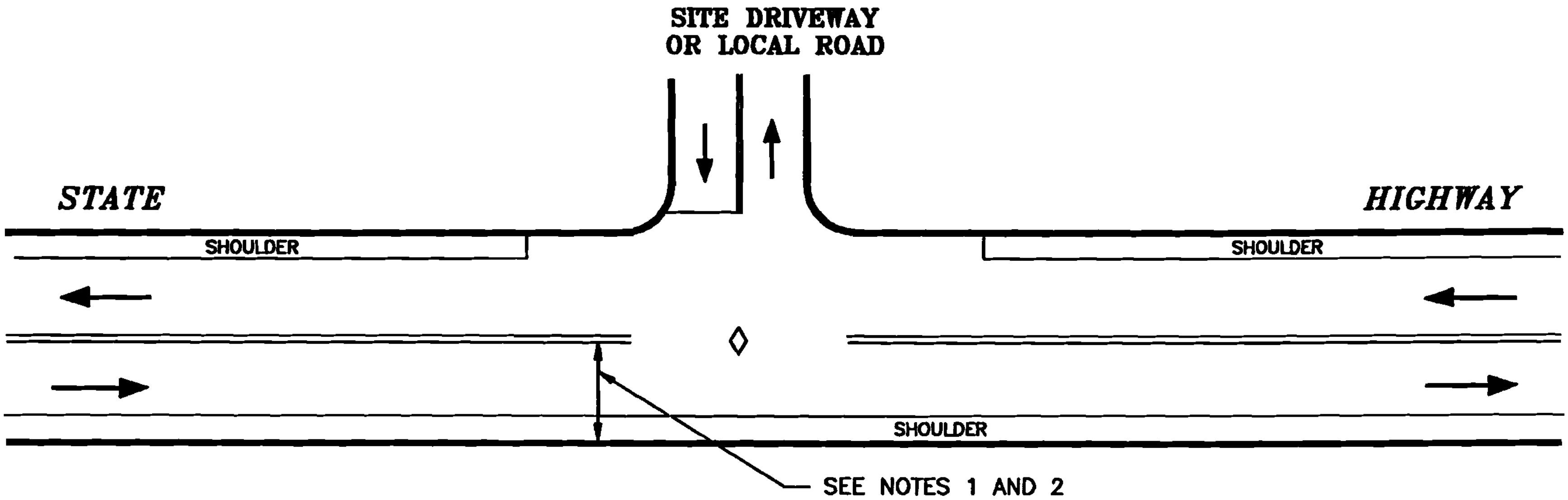
(NOT TO SCALE)

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



◊ 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

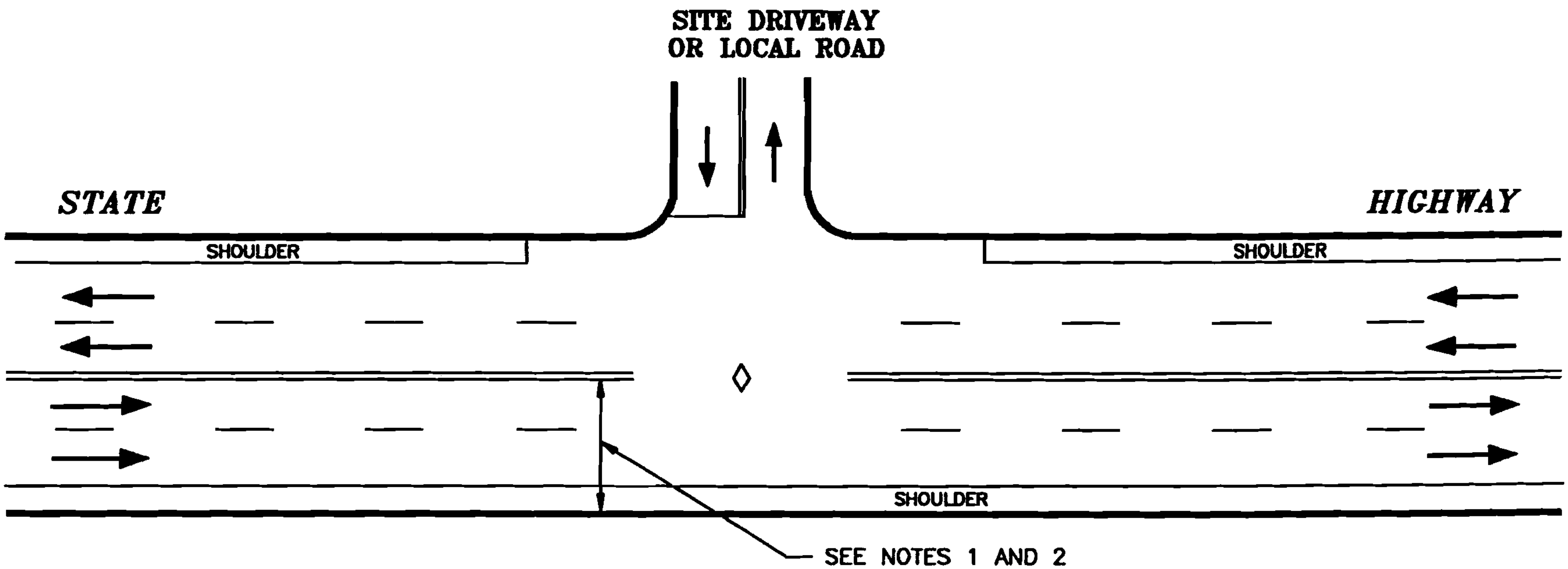
LEFT-TURN INGRESS CONSIDERED WITHOUT LEFT-TURN LANE

(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



◊ 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

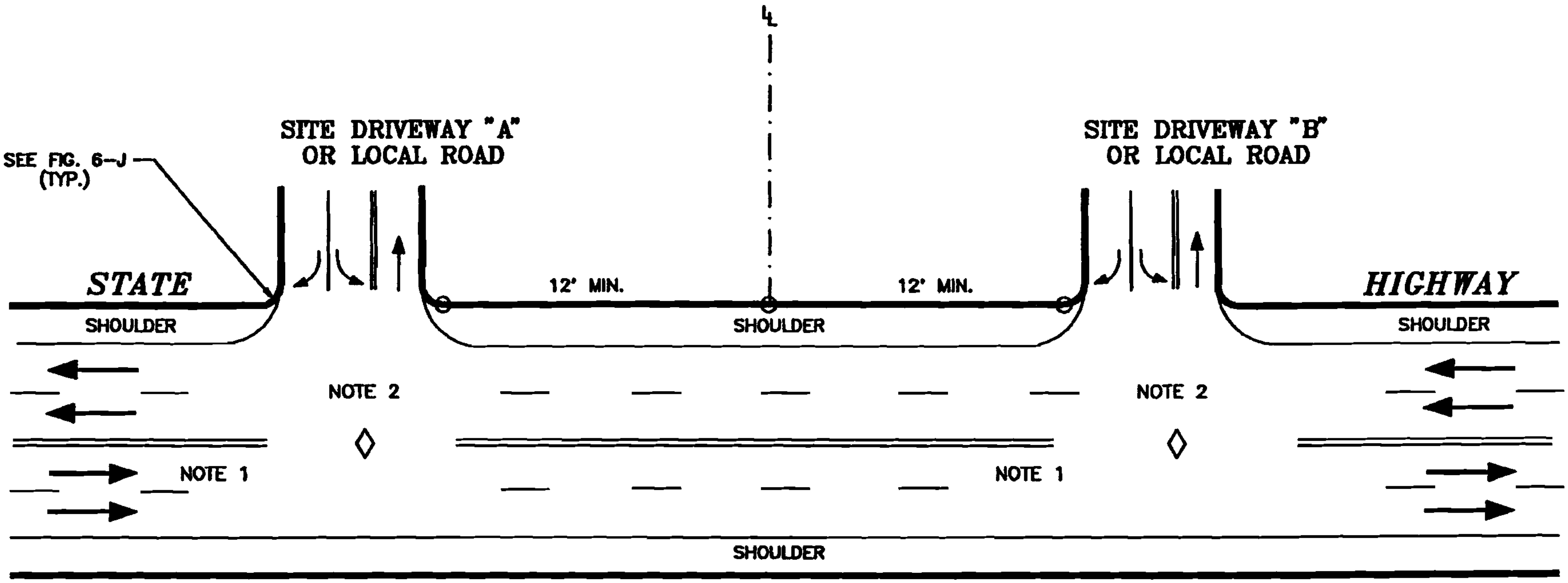
UNSIGNALIZED DRIVEWAY OR LOCAL ROAD WITH LEFT-TURN ACCESS (WITHOUT LEFT TURN LANE)

(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



◊ 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)

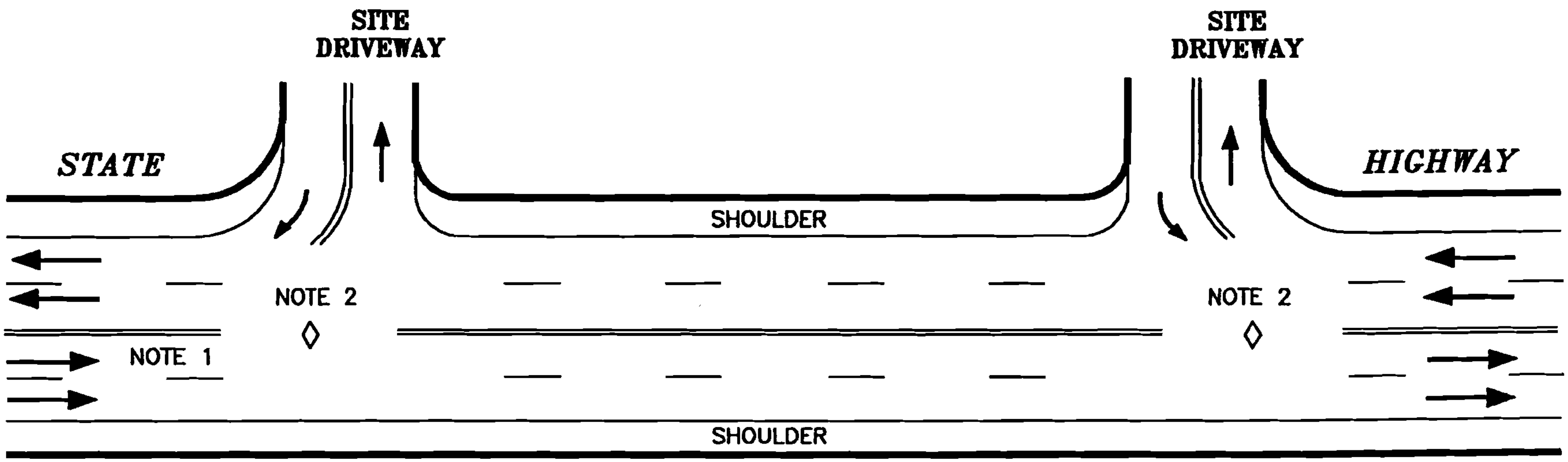
NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-3C

FIGURE C-23

Interested Persons see Inside Front Cover



◊ 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)

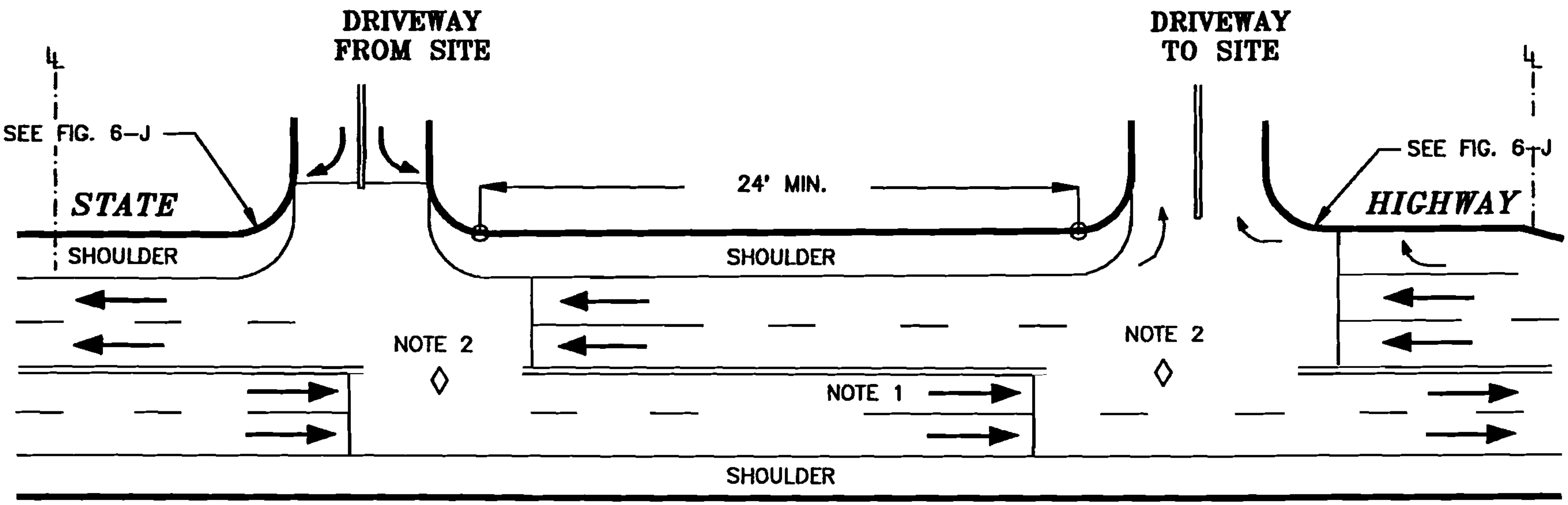
(NOT TO SCALE)

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



◊ 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)

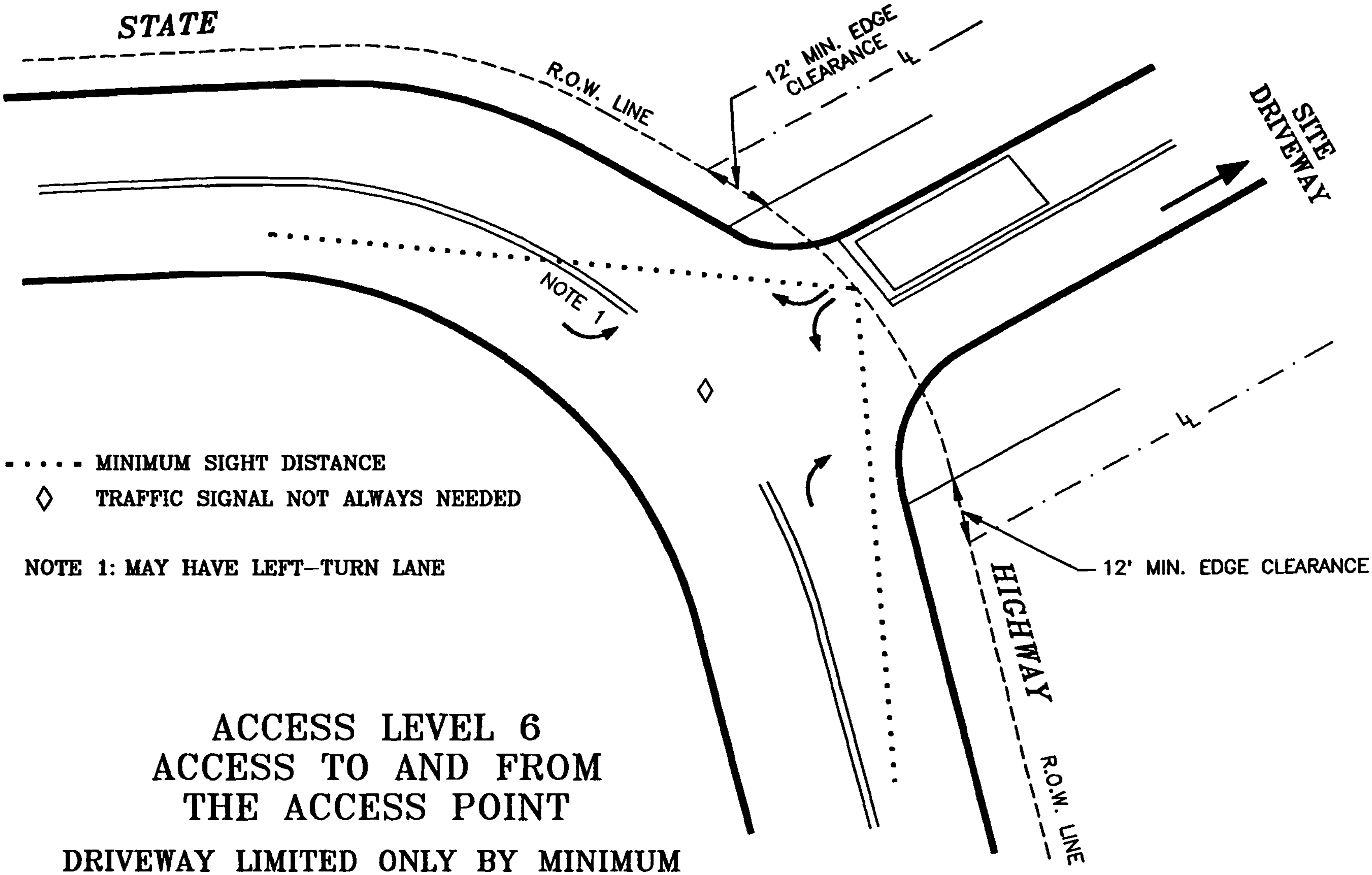
NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924–3E

FIGURE C–25

Interested Persons see Inside Front Cover



ACCESS LEVEL 6
ACCESS TO AND FROM
THE ACCESS POINT

DRIVEWAY LIMITED ONLY BY MINIMUM
EDGE CLEARANCE AND
SAFETY CONSIDERATIONS

(NOT TO SCALE)

8924R8A

FIGURE C–26

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 E
ACCESS APPLICATION THRESHOLDS[1]

CATEGORY	LAND USE CODE	USE	UNITS	THRESHOLD FOR MAJOR[2] 500 TRIPS PER DAY	THRESHOLD FOR MAJOR WITH PLANNING, 200 PEAK HOUR TRIPS
Residential	210	Single Fam. Det. Housing	unit	29	193
	220	Apartments	unit	76	362
	222	High Rise Apt. 3 Levels	unit	88	587
	230	Condo/Townhouses	unit	74	398
	240	Mobile Home Park	unit	101	349
	250	Retirement Community	unit	152	500
	252	Congregate Care Facility	unit	233	948
	260	Recreational Homes	unit	158	216
	270	Residential Planned Unit	unit	49	245
	310	Hotel	room	64	221
	320	Motel	room	54	313
	330	Resort Hotel	room	48	353
Business	150	Warehousing	1,000 sf	102.4	256.2
	151	Mini Warehouse	1,000 sf	198.2	441.5
	110	General Light Industry	1,000 sf	68.9	180.4
	120	General Heavy Industrial	1,000 sf	768.1	768.1
	140	Manufacturing	1,000 sf	132.1	308.0
	130	Industrial Park	1,000 sf	0.0	180.9
		Flexspace (all office)[2]	1,000 sf	26.0	101.9
		Distribution Centers	1,000 sf	50.7	222.0
			acre	6.1	25.8
Office	710	General Office	1,000 sf	26.0	101.9
	750	Office Park	1,000 sf	36.7	75.4
	760	Research Center	1,000 sf	70.1	143.2
	770	Business Park	1,000 sf	14.1	118.5
	714	Corporate Headquarters	1,000 sf	71.3	168.5
	720	Medical Office Bldg.	1,000 sf	18.4	56.6
Medical	630	Clinic	1,000 sf	21.0	40.2
	610	Hospital	1,000 sf	0.0	0.0
			bed	0	147
	620	Nursing Home	bed	214	561
Schools	520	Elementary school	student	550	887
	530	High school	student	243	506
	540	Jr. or Community College	student	323	1112
	550	University	student	208	1112

Shopping Center	815	Discount stores	1,000 sf	31.0	37.3
	820	Shopping Center	1,000 sf	1.6	8.5
	812	Building Materials/Lumber	1,000 sf	16.4	48.3
	850	Supermarket	1,000 sf	4.0	16.8
	851	Convenience Market	1,000 sf	0.6	1.9
	860	Wholesale Market	1,000 sf	74.3	346.6
	911	New Car Dealerships	1,000 sf	10.5	33.3
	841	Banks walk-in	1,000 sf	2.0	6.4
	912	Banks Drive-in	windows	2	4
Entertainment	443	Movie Theater w/o Matinee	seat	284	562
			screens	4	4
	444	Movie Theater w/Matinee	screens	3	4
	420	Marina	berths	64	770
	430	Golf Course	acre	93.6	314.0
	740	Civic Center	1,000 sf	20.0	70.0
Gasoline/Fuel Stations[3]					
Food	831	Quality Restaurant	1,000 sf	5.7	17.3
	832	High Turnover Restaurant	1,000 sf	2.2	4.5
	833	Fast Food Restaurant w/o	1,000 sf	0.6	1.4
	834	w/drive through	1,000 sf	0.0	5.3

[1]The ITE Trip Generation Report, 4th Edition or superseding edition, should be checked for appropriate land use, if that use is not included in Appendix E or E-2.
[2]Any use that generates less than 500 trips per day will require a minor application.
[3]See Appendix E1 for gasoline/fuel station thresholds.

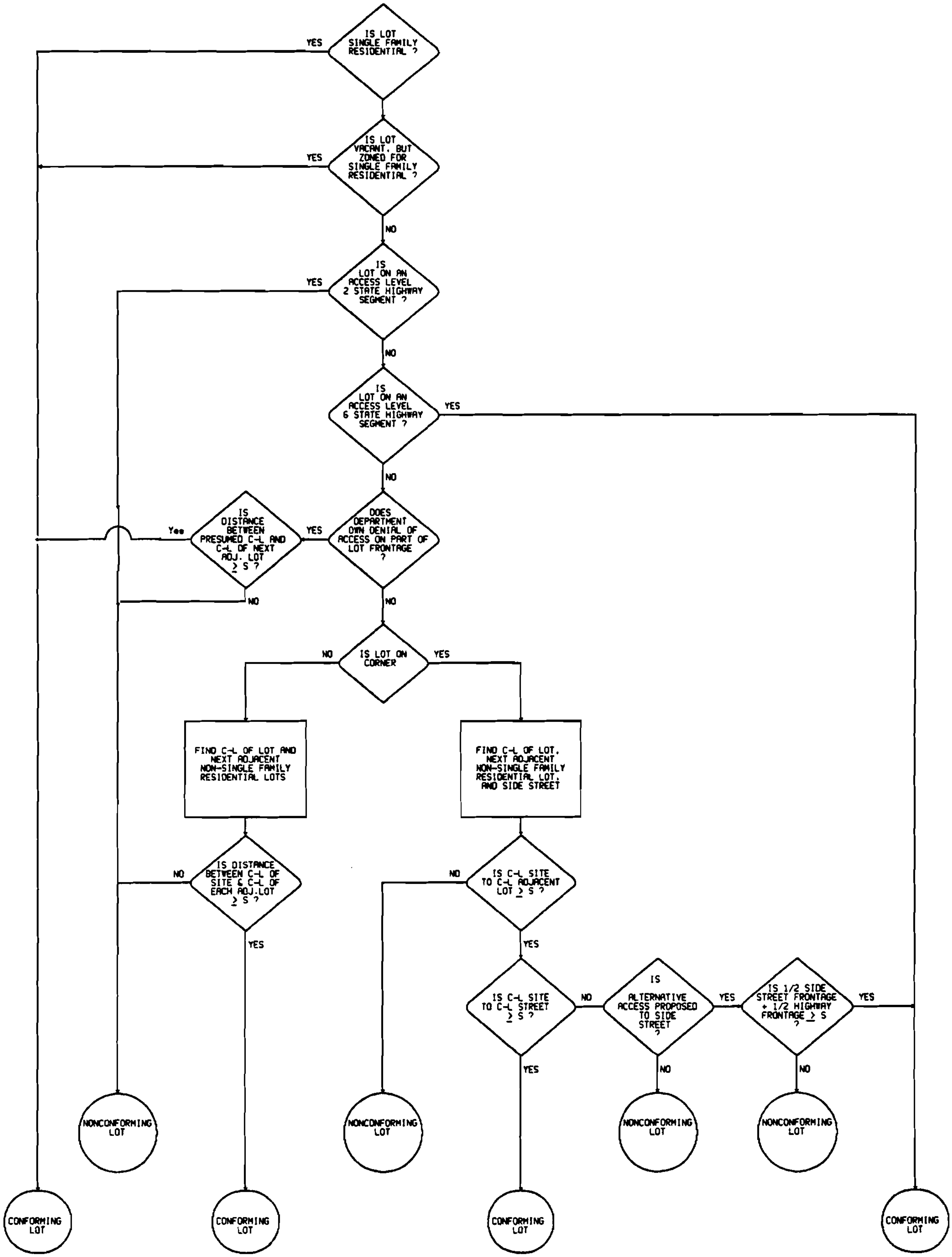
APPENDIX E1
ACCESS APPLICATION THRESHOLDS AND TRIP RATES FOR SERVICE STATIONS

				THRESHOLD	
CATEGORY	LUC	USE	UNITS	FOR MAJOR[1] 500 TRIPS PER DAY	FOR MAJOR WITH PLANNING 200 PEAK PEAK HOUR TRIPS
Gasoline/Fuel Stations	NJDOT	Service Stations with/			
	DATA	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

[1]Any use that generates less than 500 trips per day will require a minor application.

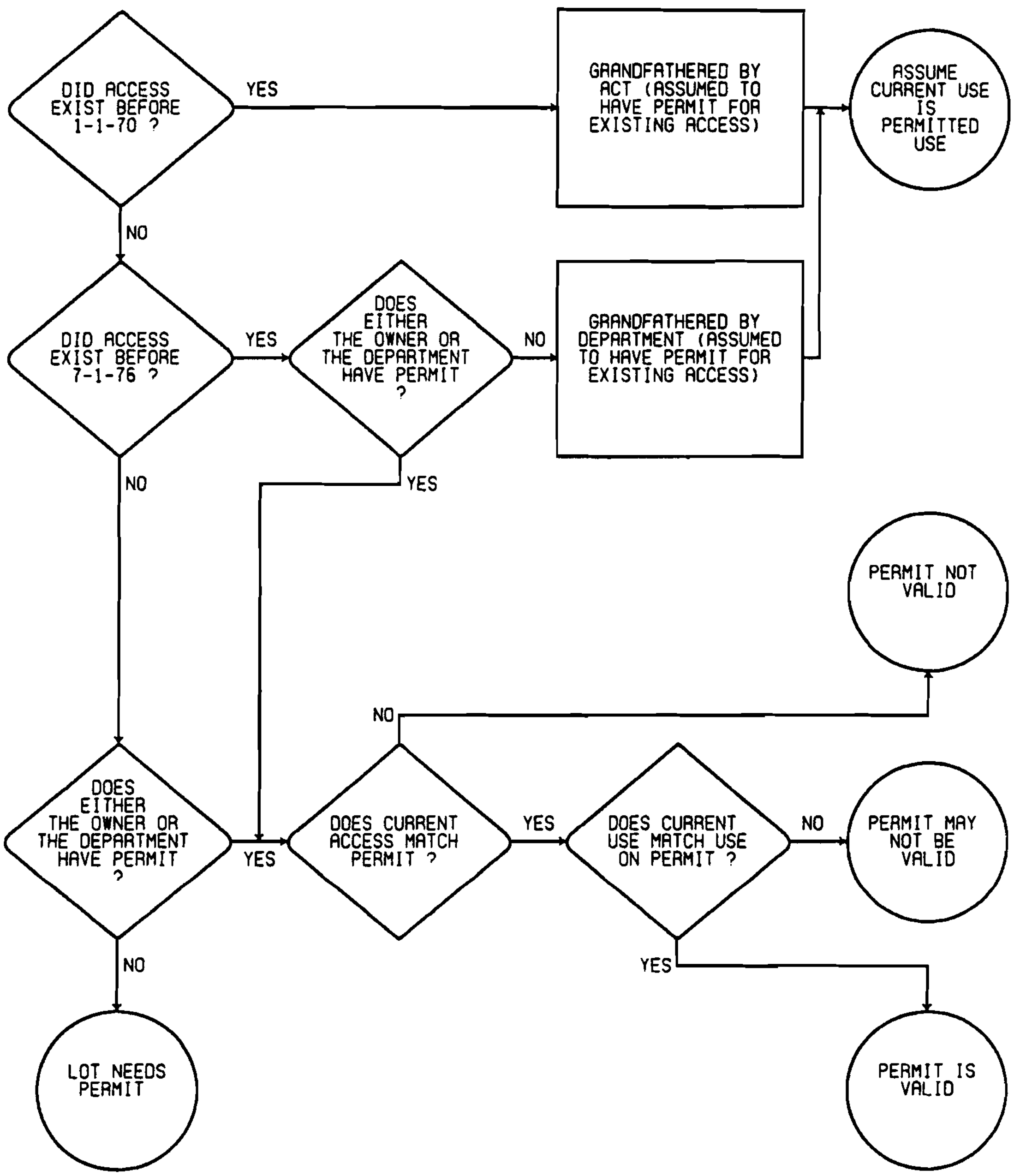
APPENDIX F

FLOWCHART FOR DETERMINING LOT CONFORMANCE



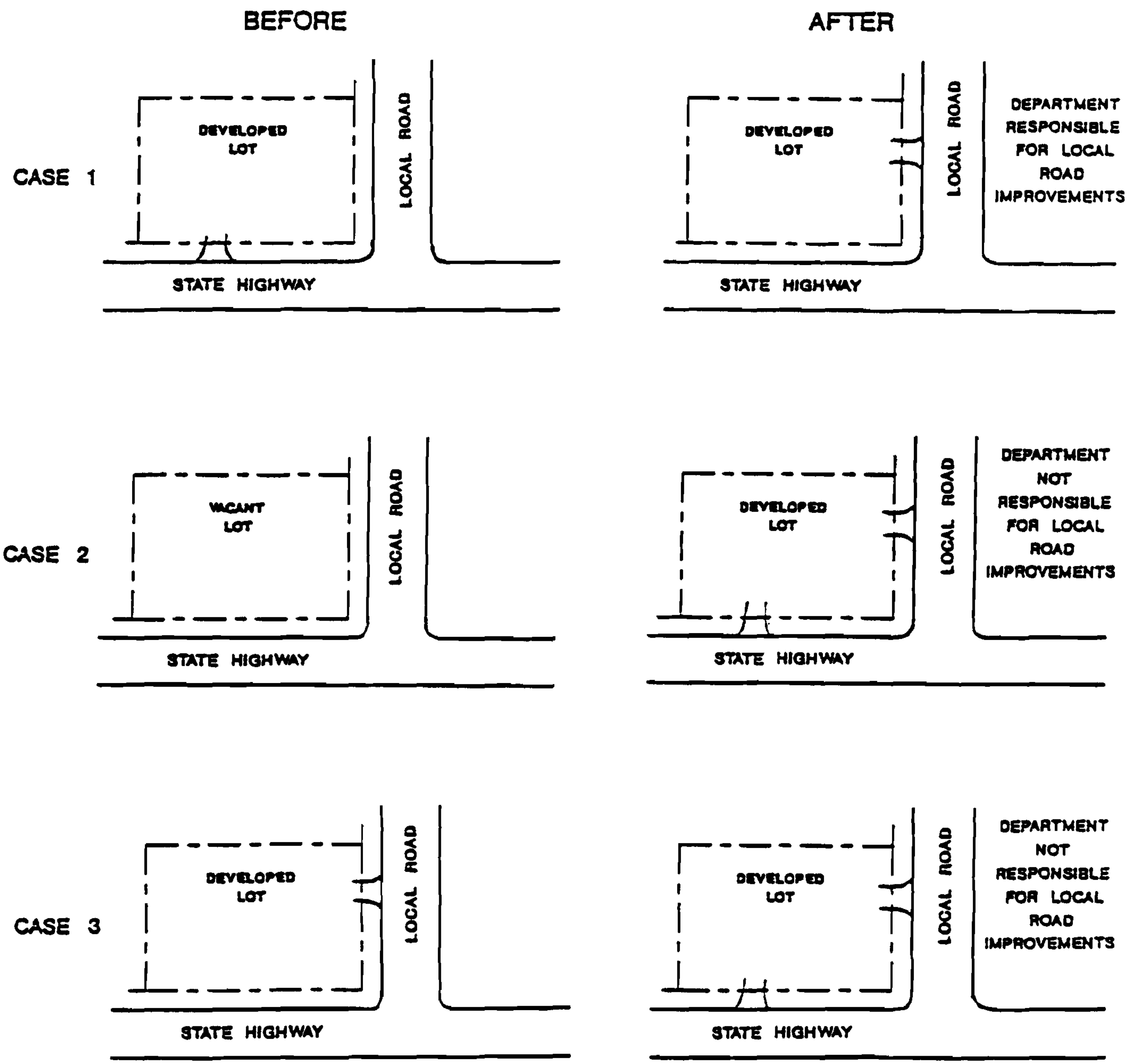
APPENDIX G

GRANDFATHERING ACCESS PERMITS

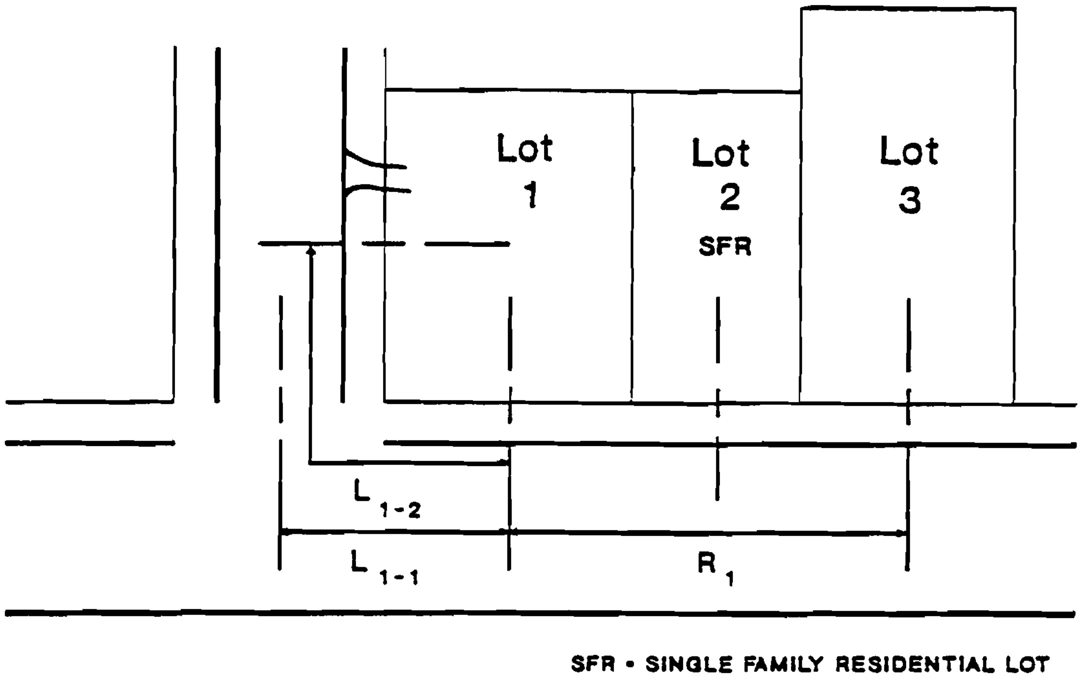


APPENDIX H

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



<u>FOR LOT 1</u>

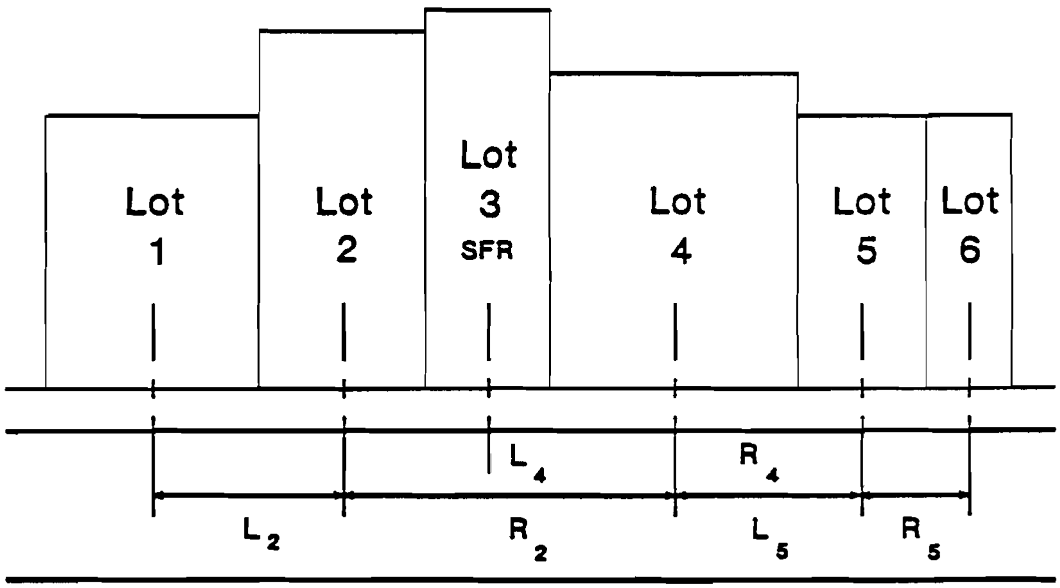
IF R_1 FOR LOT 1 IS LESS THAN THE SPACING DISTANCE, THEN LOT IS A NONCONFORMING LOT.

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.

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.

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.

APPENDIX I-2
N.J.A.C. 16:47-3.5(a)4ii
MEASURING MIDBLOCK LOTS FOR CONFORMANCE



SFR • SINGLE FAMILY RESIDENTIAL LOT

<u>FOR LOT 2</u>

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.

<u>FOR LOT 4</u>

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.

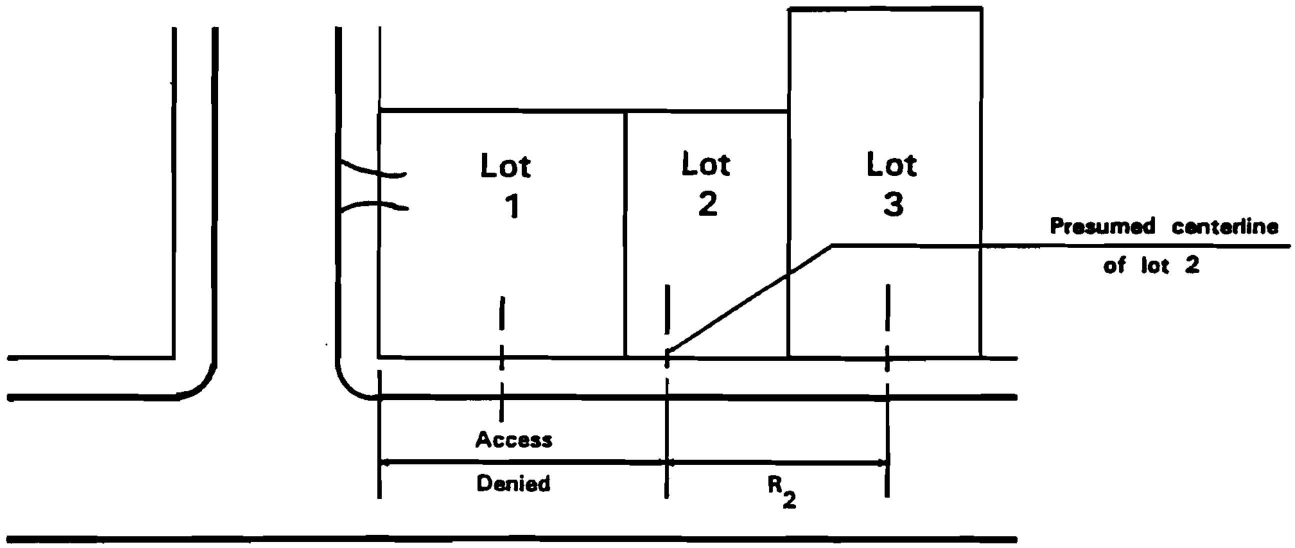
<u>FOR LOT 5</u>

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.

APPENDIX I-3

N.J.A.C. 16:47-3.5(a)4iii

MEASURING PARTIAL DENIAL OF ACCESS LOTS FOR CONFORMANCE



FOR LOT 2

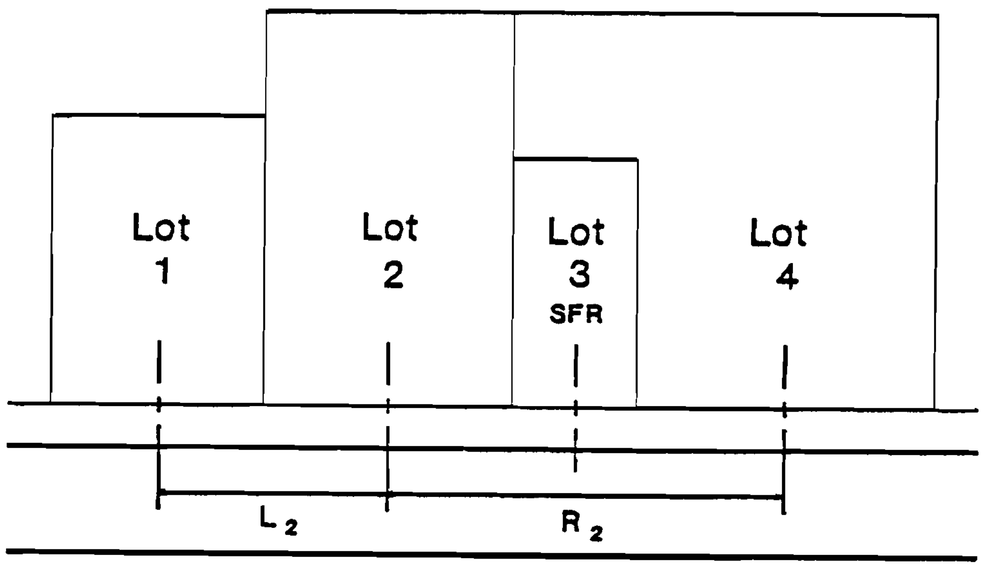
IF R_2 FOR LOT 2 IS LESS THAN THE SPACING DISTANCE,
THEN LOT 2 IS A NONCONFORMING LOT.

IF R_2 FOR LOT 2 IS GREATER THAN OR EQUAL TO THE SPACING DISTANCE,
THEN LOT 2 IS A CONFORMING LOT.

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

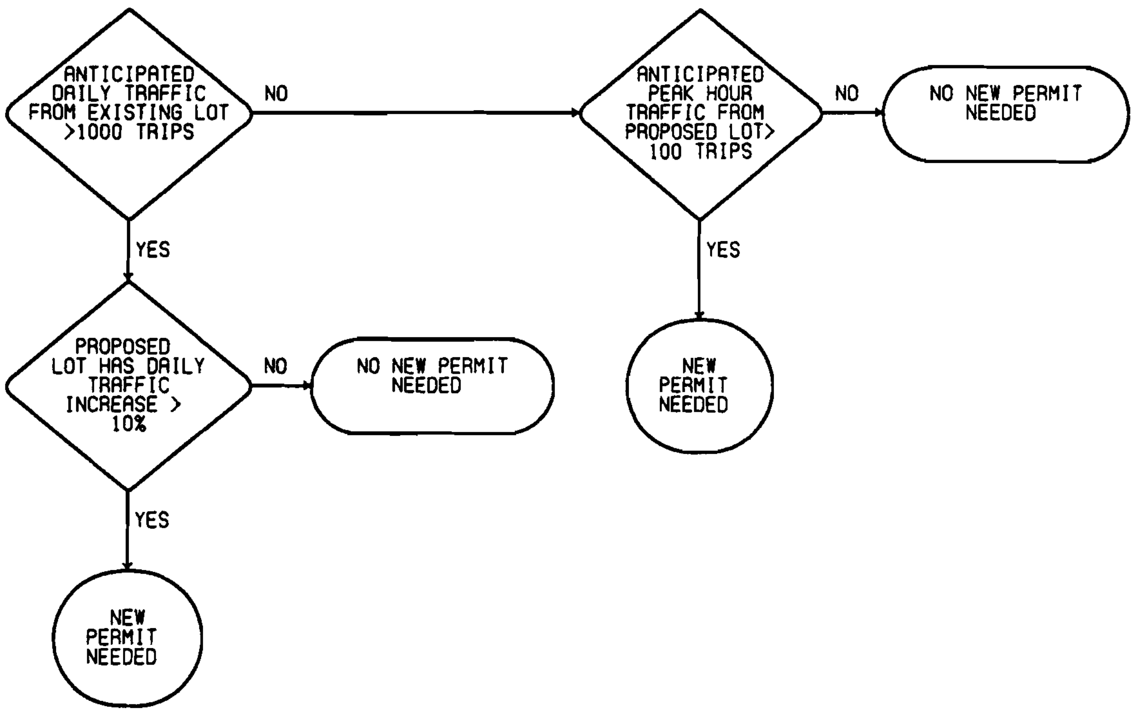
<u>FOR LOT 2</u>

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.

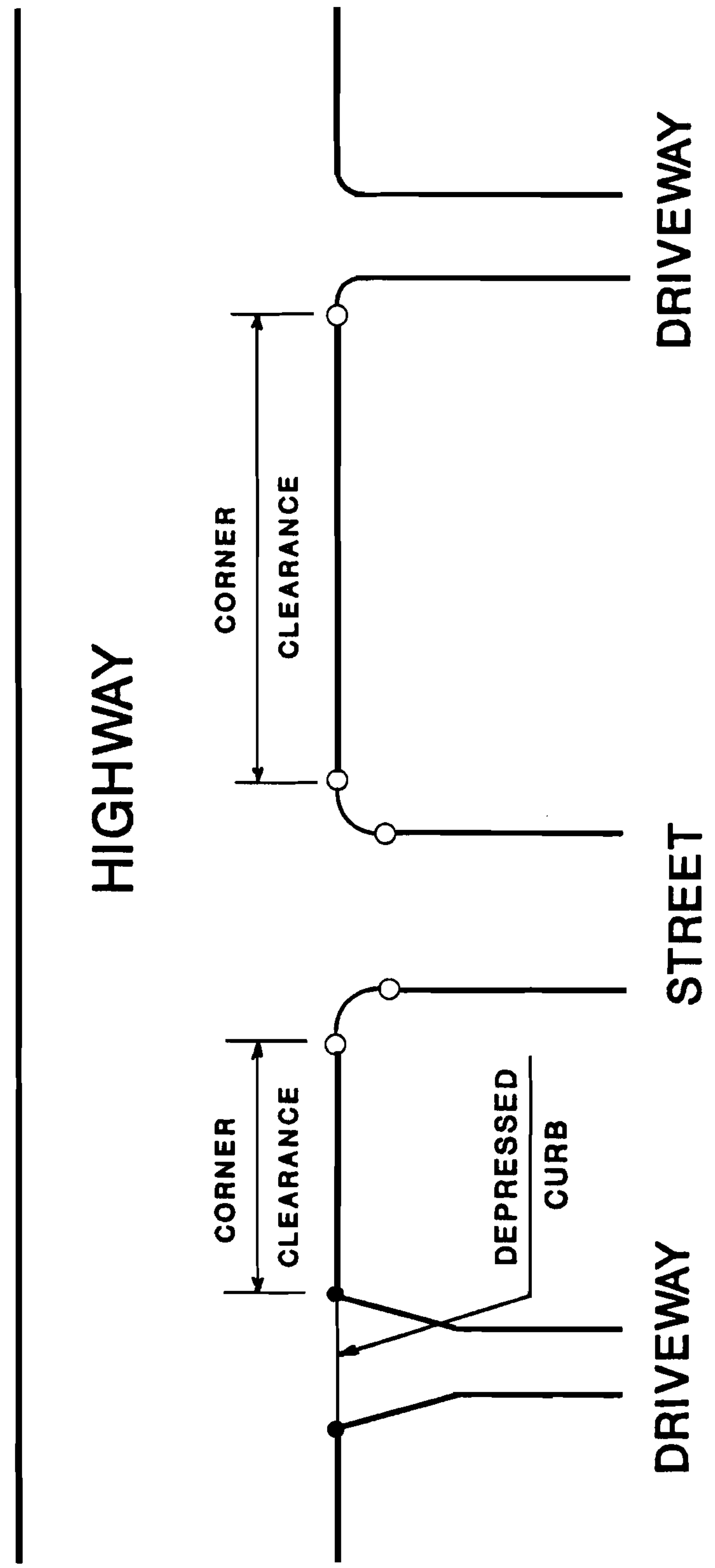
IF LOT 2 IS A CONFORMING, MAJOR TRAFFIC GENERATOR WITH A PLANNING REVIEW, AND L_2 PLUS R_2 IS GREATER THAN OR EQUAL TO 4 TIMES THE SPACING DISTANCE, THEN LOT 2 MAY HAVE 3 DRIVEWAYS.

APPENDIX J

DETERMINING A SIGNIFICANT INCREASE IN TRAFFIC



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 $\leq$15.0 sec.	Delay $\leq$25.0 sec.	Delay $\leq$32.5 sec.	Delay $\geq$32.5 sec.	Delay $\geq$60.0 sec.	V/C $\leq$1.2	V/C > 1.2	V/C <1.2	V/C $\geq$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 $\leq$15.0 sec.	Delay $\leq$25.0 sec.	V/C $\leq$1.2	V/C > 1.2	V/C < 1.2	V/C $\geq$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.

HUMAN SERVICES

(a)

CONTRACT POLICY AND MANAGEMENT UNIT

Contract Administration
Cognizant Division Contracting
Proposed New Rules: N.J.A.C. 10:3-4

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:1-12.
Proposal Number: PRN 1991-266.

Submit written comments by June 19, 1991 to:
Henrietta Small, Manager
Contract Policy and Management Unit
Department of Human Services
CN 700
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Human Services is proposing the following new rules and finds them to be reasonable, necessary and proper for the intended purpose. Proposed new rules N.J.A.C. 10:3-4 apply to the establishment of procedures and practices for contracting provider agencies that are funded by two or more departmental components within the Department of Human Services.

The Department of Human Services contracts with many public and private community provider agencies for the delivery of social services and training. At times, a provider agency may contract with more than one departmental component, resulting in the delivery of the same or different client services. Each departmental component requires basic fiscal and programmatic documentation that the provider must formalize and forward to the individual departmental components before contracts can be negotiated and approved. Oftentimes, the data requested is duplicative in nature and results in the provider agency forwarding identical information in different formats to the various departmental components. Current practice also requires that a representative from each departmental component meet with the provider agency independently to discuss the various contractual details submitted.

Cognizant division contracting will consolidate the fiscal aspect of the contracting process by selecting a cognizant or lead agency to negotiate (with prior input from the other involved departmental components) all of the fiscal elements of a contract with the provider. Each departmental component will maintain responsibility for the integrity and monitoring of its own programmatic proposals, which will be independently prepared and forwarded to the cognizant contracting departmental component for inclusion into the contract proposal package prior to contract negotiations with the provider agency. The cognizant process will require more coordination by the involved departmental components prior to provider agency negotiations. However, it should significantly reduce the volume of paperwork for provider agencies and the need for multiple meetings by the provider with individual departmental components, as well as reducing the commitment of time currently expended by the provider agencies in gathering information and completing forms.

Social Impact

The proposed new rules have potential social significance to those community provider agencies that contract with more than one departmental component. Current data indicates that approximately seven percent of Department provider agencies contract with more than one departmental component. Historically, provider agencies have continually petitioned the Department to reduce the volume of contracting information and forms required. The cognizant process is a step in that direction. The Department believes that most of the affected provider agencies are supportive of the cognizant process. Evidence supporting the Department's position arises from the fact that a number of providers have contacted the Department on their own initiative and requested to become part of a cognizant pilot project implemented by the Department to study cognizant contracting. The study demonstrated that, with few reservations, 93 percent of the provider participants were in favor of the cognizant process and spoke positively of the process and anticipated future benefits.

The cognizant division concept also encourages contract administrators from different departmental components to share contract information and ideas that allow a meaningful exchange of dialogue to identify common problem areas. In addition, it will assist decentralized staff in solving localized situations using methods learned from a larger departmental perspective. Consolidation of the fiscal procedures under cognizant division contracting means more standardized and consistent practices regarding contract negotiation, approval, payment, and service delivery.

Economic Impact

There is no appreciable economic impact to the Department's clients. Cognizant division contracting, which involves approximately $100 million, will provide uniformity in documentation and expenditure reporting for the Department and provider agencies at no additional cost. On the other hand, the uniformity of practice should economize time and show some dollar savings, since it places all of the involved departmental components on the same payment schedule for the provider agency.

There is no economic impact to the public since the amount of money being expended does not change, only the method of administering the contracts is being modified. An increase in administrative cost by one component should be offset by a decrease in administrative cost to another component, so that the net administrative cost to the Department should be the same.

Regulatory Flexibility Analysis

Based on current data, cognizant division contracting will affect approximately 120 provider agencies that are currently delivering services to the Department's clients. Most of these community providers may be considered small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose certain reporting, recordkeeping and compliance requirements, specifically including the documentation and submission of periodic fiscal and programmatic reports, as well as operational monitoring functions by the Department. These requirements are already in place and will not increase or expand as a result of the cognizant process, the aim of which is to consolidate the fiscal aspect of the contracting process. The cognizant division contracting process should reduce the amount of paperwork and effort required by the community-based service providers. The reduced paperwork should translate into lower administrative costs for provider agencies.

The proposed new rules must be applied consistently and are necessary to effect a standardized and consolidating contracting process. Regarding the use of outside professional services, the proposed new rules do not require that extra outside consultants be employed, nor does it advocate the purchase of additional professional services. It is not anticipated that compliance with the proposed new rules will be unduly burdensome to provider agencies, regardless of size. Therefore, no differentiation based upon business size is made in the application of these requirements.

Full text of the proposed new rules follows:

SUBCHAPTER 4. COGNIZANT DIVISION CONTRACTING

10:3-4.1 Purpose and scope

The purpose of these rules is to advise provider agencies of the policies and procedures to be followed in cognizant division contracting. These rules apply to all provider agencies that contract with more than one departmental component and have a cognizant division assigned to coordinate the contracting process.

10:3-4.2 Definitions

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

"Cognizant division" means the division or other designated departmental component responsible for all fiscal contract administration functions when a provider agency contracts with more than one departmental component.

"Contract" means one of the Department's social service or training contracts with a provider agency. Terms and conditions of the contract are included in the standard language document, annexes, appendices, attachments (including any approved assignments, subcontracts and modifications) and supporting documents. The contract constitutes the entire agreement between the Department and the provider agency.

"Contract modification" means the formal procedures entailing the Department's written approval to allow certain programmatic and/or financial changes in the contract during the contract term.

"Day" means calendar days.

"Department" means the New Jersey Department of Human Services. As used in these rules, it also means, where appropriate from the context, the division, commission, bureau, office, unit or other designated component of the Department of Human Services responsible for the administration of particular contract programs.

"Departmental component" means the division, commission, bureau, office, or other unit within the Department responsible for the negotiation, administrative review, approval and monitoring of certain social service or training contracts.

"Intra-departmental agreement" means the document signed by the cognizant and non-cognizant division(s) which delineates the authority and responsibilities of the cognizant and non-cognizant division(s) that contract for services with the same provider agency.

"Provider agency" means the public or private organization which has a social or training contract with the Department.

"Reimbursable ceiling" means the total cost of the contract to the Department. The reimbursable ceiling is the maximum payment to the provider agency.

"Standard language document" means the document which establishes the non-negotiable obligations, responsibilities, rights and relationships of the contract parties.

10:3-4.3 Administrative policies

(a) A cognizant division shall be identified and may be assigned by the Department's Contract Policy and Management Unit when a provider agency contracts with more than one departmental component.

(b) Generally, the cognizant division is chosen based on the departmental component which provides the most contract dollars to the provider agency, unless circumstances and/or past history indicate the selection of another departmental component.

(c) A copy of the intra-departmental agreement shall be forwarded to the provider agency by the cognizant division after the agreement is completed and signed by all involved departmental components. The intra-departmental agreement delineates the authority and responsibilities of the cognizant division and non-cognizant division(s) that contract for services with the same provider agency.

10:3-4.4 Administrative procedures

(a) For pre-contract negotiations, the following procedures shall apply:

1. The Contract Policy and Management Unit shall:

i. Annually notify the departmental components of those provider agencies which contract with more than one departmental component; and

ii. Meet with the responsible contract administration supervisors of the departmental components to determine the assignment of a cognizant division for each provider agency.

2. The cognizant division shall:

i. Notify the provider agency that a cognizant division has been assigned and is responsible for coordinating the contract negotiation process; and

ii. Coordinate the planning, negotiating, finalizing and distribution of the intra-departmental agreement in a timely manner.

3. The cognizant/non-cognizant division(s) shall:

i. Ensure that each responsible contract administration supervisor designate a contact person, usually the contract administrator assigned to the provider agency, to coordinate all aspects of its participation in the cognizant contract; and

ii. Ensure that the intra-departmental agreement is signed prior to the contract effective date.

(b) For contract negotiations, the following procedures shall apply:

1. The cognizant division shall:

i. Coordinate contract negotiations with the non-cognizant division(s) and provider agency;

ii. Be responsible for obtaining the provider agency authorized signature on the standard language document (SLD) and the addendum to the SLD;

iii. Receive the signed and approved contract confirmation letter from the Department's Office of Finance and Accounting; and

iv. Send a copy of the following documents to the provider agency and the non-cognizant division(s):

(1) The signed contract;

(2) The cognizant designation letter, Appendix A, incorporated herein by reference;

(3) The intra-departmental agreement, Appendix B, incorporated herein by reference;

(4) The reporting requirements form, Appendix C, incorporated herein by reference; and

(5) The signed and approved contract confirmation letter.

(c) For the contract term, the following procedures shall apply:

1. Fiscal procedures as follows:

i. The provider agency shall be responsible for sending the required expenditure reports to the cognizant division according to the time frames established during contract negotiations. The cognizant division shall distribute copies to the non-cognizant division(s).

ii. The cognizant division shall make scheduled payments (monthly, quarterly, etc.) consistent with the cognizant division's payment system as specified in the contract negotiations.

iii. The cognizant division, with the assistance of the non-cognizant division(s), shall monitor contract expenditures. If provider agency expenditures are significantly over or under the contract reimbursable ceiling, the appropriate non-cognizant division(s) shall contact the cognizant division for consultation concerning possible modification to the contract or other appropriate action.

2. Programmatic procedures as follows:

i. The provider agency shall send all required program reports to the cognizant division according to the time frames established during contract negotiations. The cognizant division shall distribute copies to the non-cognizant division(s).

ii. All departmental components (cognizant and non-cognizant) shall monitor their own programmatic service delivery, unless otherwise negotiated through the intra-departmental agreement.

iii. If there is a programmatic inconsistency or failure by the provider agency to meet contractual programmatic levels, the cognizant and non-cognizant division(s) must consult with each other for any contemplated remedial or fiscal action.

(d) For contract closeout and audit, the following procedures shall apply:

1. The provider agency shall send a completed notification of the licensed public accountant form and a photocopy of the accountant's license to operate to the cognizant division.

2. The provider agency shall send a copy of the audit report for each departmental component, including the Department's Office of Auditing, to the cognizant division within 120 days after its fiscal year end.

3. The cognizant division shall process and distribute the provider agency's final expenditure report and any other reconciliation documents.

4. The cognizant division shall consult with the non-cognizant division(s) to determine final settlement with the provider agency. Any amount remaining due for contract services within the specified funding ceiling will be paid, any refund amount determined to be an overpayment and/or disallowed cost, which has not been authorized for retention by the provider agency, will be collected.

Appendix A

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

COGNIZANT DESIGNATION LETTER

Subject: Cognizant Division Contracting

In accordance with Department of Human Services' Policy Circular P1.25, ____________ has been assigned as the Cognizant Division for all Department contracts with your agency for the period ________ to ________.

The Cognizant Division is responsible for coordinating the contracting process into one consolidated contract. The consolidation includes the coordination of most contract functions such as contract modifications, reporting requirements, and contract closeout. Although the program commitments will remain separate for each Departmental Component, the consolidated contract budget and the individual Annex A materials should be submitted to the Cognizant Division.

Attached for your information and review are forms (Funding Summary and Reporting Requirements) that identify the available Department funding and routine contract reporting requirements for the contract term.

The contract administrator assigned to assist you in all contract matters is ____________ and may be reached at ________. ____________

Attachments

____
(Signature)

____
(Title)

c: Contract Policy and Management Unit
Non-cognizant division(s)
Office of Auditing
Contract File

Appendix B

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

INTRA-DEPARTMENTAL AGREEMENT
CONTRACT SUMMARY

Provider Agency	Provider Agency: Address: Executive Director ________	Telephone No. ________	
	Federal I.D. No. ________		
	Contract No. ________	From ________	To ________
	Contract No. ________	From ________	To ________
Cognizant Division	Division: Address:		
	Contact Person ________	Telephone No. ________	
	Contract Services ________		
	Credit Account # ________	Amount $________	FY________
	Credit Account # ________	Amount $________	FY________
Non-Cognizant Division	Division: Address:		
	Contact Person ________	Telephone No. ________	
	Contract Services ________		
	Debit Account # ________	Amount $________	FY________
	Debit Account # ________	Amount $________	FY________
Non-Cognizant Division	Division: Address:		
	Contact Person ________	Telephone No. ________	
	Contract Services ________		
	Debit Account # ________	Amount $________	FY________
	Debit Account # ________	Amount $________	FY________

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

INTRA-DEPARTMENTAL AGREEMENT
FOR COGNIZANT DIVISION CONTRACTING

The purpose of this intra-departmental agreement is to delineate the authority and responsibilities of the cognizant division and non-cognizant division(s) when a provider agency contracts with more than one departmental component.

I. Cognizant Division

A. Pre-contract negotiations

1. Schedule any meetings with the non-cognizant division(s) necessary to expedite the intra-departmental agreement.

2. Notify the provider agency of the assigned cognizant division.

B. Contract negotiations

1. Coordinate completion and signing of the intra-departmental agreement.

2. Process the certificate(s) of debit and credit (AR 30) applicable to the appropriate State fiscal years.

a. Contracts that begin on the State's fiscal year will require one certificate of debit and credit. The non-cognizant division(s) will transfer its full share of the contract reimbursable ceiling to the cognizant division via this document.

b. Contracts that have an effective date other than the State's fiscal year will require two certificates of debit and credit. The first certificate of debit and credit form shall reflect the applicable portion of the contract reimbursable ceiling that coincides with the first State fiscal year. A second debit and credit shall be completed for the balance of the reimbursable ceiling to cover the second State fiscal year.

C. Contract term

1. Receive, monitor, and process the interim, fiscal-year-end and final expenditure reports.

2. Distribute copies of the expenditure reports to the non-cognizant division(s).

3. Make all contract payments to the provider agency.

D. Contract audit/close-out

1. Obtain, review and forward the provider agency's notification of licensed public accountant form and a photocopy of the accountant's license to operate to the Office of Auditing.

2. Obtain, review, and forward the provider agency's annual organization-wide audit report to the non-cognizant division(s) and the Office of Auditing.

3. Coordinate the recovery/resolution of any audit disallowances with the non-cognizant division(s).

4. Return any unexpended funds to the non-cognizant division(s), unless otherwise mutually agreed upon.

5. Complete contract close-out.

E. Contract modification

Approve any contract modification after consultation and agreement with the non-cognizant division(s); review those modifications which involve changes in the program(s) sponsored by the non-cognizant division(s).

II. Non-Cognizant Division

A. Pre-contract negotiations

1. Send all forms and information (fiscal and programmatic) to the cognizant division for inclusion in the contract proposal package.

2. Review the provider agency's completed contract proposal package and any subsequent revisions, submitting comments or requests for changes or additional information to the cognizant division.

B. Contract negotiations

1. Assist the cognizant division in negotiating the programmatic and fiscal aspects of the contract.

2. Complete and forward certificate(s) of debit and credit to the cognizant division in accordance with current policy circulars.

C. Contract term

Monitor the programmatic aspects of its programs, unless otherwise noted.

D. Contract modification

Consult with the cognizant division regarding any contract modification which involves a fiscal or programmatic change in accordance with current policy circulars.

III. General

A. The cognizant and non-cognizant division(s) may terminate the intra-departmental agreement upon 30 days' advance written notice to the other party after consultation and approval by the Department's Contract Policy and Management Unit. If the agreement is terminated, the cognizant division shall make available to the non-cognizant division its appropriate share of funds not paid to the provider agency. A final reconciliation for the period in question will be completed by the cognizant and non-cognizant division(s).

B. Copies of any special monitoring reports, correspondence, program observations, or any information pertinent to the contract shall be made available to the cognizant or non-cognizant division(s), as necessary or upon request.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

INTRA-DEPARTMENTAL AGREEMENT

AGREEMENT SIGNATURES

The terms of this Intra-departmental Agreement have been read and understood by the persons whose signatures appear below. The Departmental Components agree to comply with the terms and conditions of the Agreement and to work cooperatively in all aspects of the Agreement.

BY:	______________ (signature)	BY:	______________ (signature)
	______________ (type name)		______________ (type name)
TITLE:	______________ (type)	TITLE:	______________ (type)
COGNIZANT DIVISION:	______________ (type)	NON-COGNIZANT DIVISION:	______________ (type)
BY:	______________ (signature)	BY:	______________ (signature)
	______________ (type name)		______________ (type name)
TITLE:	______________ (type)	TITLE:	______________ (type)
NON-COGNIZANT DIVISION:	______________ (type)	NON-COGNIZANT DIVISION:	______________ (type)

AGREEMENT EFFECTIVE DATE: ______________

Appendix C

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

COGNIZANT DIVISION CONTRACTING

PROVIDER AGENCY REPORTING REQUIREMENTS

AGENCY ______________________________

ADDRESS ______________________________

CONTRACT # ______________ CONTRACT TERM ______________________________

COGNIZANT DIVISION ______________________________

DEPARTMENTAL COMPONENT	REQUIRED REPORTS	DUE DATES

NOTE: All required reports listed above shall be prepared and submitted by the Provider Agency to the Cognizant Division in an accurate, complete and timely manner.

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS
Patient Supervision at State Psychiatric Hospitals
Proposed Readoption with Amendments: N.J.A.C. 10:36

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:1-12 and 4-27.21a.
Proposal Number: PRN 1991-267.

Submit comments by June 19, 1991 to:
Alan G. Kaufman, Director
Division of Mental Health and Hospitals
CN 727
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:36, Patient Supervision at State Psychiatric Hospitals, will expire on August 18, 1991. The Division of Mental Health and Hospitals (Division) has reviewed these rules and has determined them to be necessary, and is proposing a readoption with amendments.

N.J.A.C. 10:36 is comprised of three subchapters. N.J.A.C. 10:36-1 provides a uniform process for each State psychiatric hospital patient to receive the level of clinical supervision appropriate to his or her condition while hospitalized. N.J.A.C. 10:36-2 provides a mechanism for the comprehensive review of the clinical treatment and management of certain hospitalized special status patients at State psychiatric hospitals, including those involved with the criminal justice system. N.J.A.C. 10:36-3 defines factors and delineates procedures related to evaluation of the need for transfers between State psychiatric hospitals. The purpose and effect of these rules is to provide uniform policies and procedures regarding patient supervision at State psychiatric hospitals within various applicable legal parameters.

Subsequent to the adoption of N.J.A.C. 10:36-3, Transfers of Involuntarily Committed Patients Between State Psychiatric Facilities, on September 4, 1990, the Department of the Public Advocate filed a Notice of Appeal regarding the adoption with the Superior Court of New Jersey, Appellate Division (*In the Matter of the Appeal from the Adoption of Regulations at N.J.A.C. 10:36-3*). The proposed amendments to N.J.A.C. 10:36-3 have resulted from discussions between the Departments of the Public Advocate and Human Services to resolve that appeal. Generally, the proposed amendments are intended to clarify the relationship between the facility's transfer discretion and the patient's rights in several additional contexts. Specifically, the proposed amendments at N.J.A.C. 10:36-3.3(a) and (b) are intended to clarify the relationship between the patient's wishes, the family's wishes and the hospital's plans regarding proposed transfers. Additional text is proposed at N.J.A.C. 10:36-3.4(d)1 and rule text deleted at N.J.A.C. 10:36-3.4(d)4 in order to redefine an emergency transfer. Finally, N.J.A.C. 10:36-3.5, Procedures when patients object to transfer, has been added to the chapter, in order to provide procedures for internal reviews regarding patients who object to a proposed transfer and to clarify the relationship between the facility's transfer discretion and patient's rights.

Additionally, the Department has initiated a comprehensive review of the rules contained in N.J.A.C. 10:36-1, Level of Supervision System, and N.J.A.C. 10:36-2, Clinical Review Procedures for Special Status Patients. These rules have been in effect since August 18, 1986 and November 3, 1986, respectively. This review will continue for several more months and is likely to conclude in proposed amendments to subchapter 1 and 2. Until this review is completed and prior to the proposal of amendments, however, both subchapters 1 and 2 are being readopted without amendments. To demonstrate the Department's commitment to complete the review and propose the amendments in a timely manner, an expiration date of June 30, 1992 will be established for N.J.A.C. 10:36 rather than the five-year expiration date in 1996 which Executive Order No. 66(1978) would permit.

Social Impact

By providing uniform policies and procedures regarding patient supervision at State psychiatric hospitals within applicable legal parameters, the rules proposed for readoption will have a positive social impact on the patients at those facilities and other parties interested in the quality of their care. The rules will help ensure that these patients receive appropriate treatment in an appropriate program consistent with applicable law and balanced with the need to protect the general public from potentially dangerous behavior by some patients.

Economic Impact

By providing uniform hospital policies and procedures regarding patient supervision, the rules proposed for readoption foster cost-effective programs, which is a form of social savings for both patients and the general public. The Department does not anticipate a direct economic effect on any specific individuals by these rules. No additional administrative costs are required by them and no funding sources are affected by them.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments govern patient supervision at the seven State psychiatric hospitals. Being public institutions, these hospitals are not small businesses as defined under The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:36.

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

10:36-3.2 Scope

(a) The rules of this subchapter apply in all instances to involuntarily committed patients who are residing at and being considered for transfer to any of the following facilities specified in N.J.S.A. 30:4-160:

1. Greystone Park Psychiatric Hospital;
2. Trenton Psychiatric Hospital;
3. Marlboro Psychiatric Hospital;
4. Ancora Psychiatric Hospital;
5. The Forensic Psychiatric Hospital; and
6. The Senator Garrett W. Hagedorn Center for Geriatrics.

(b) Prior to a patient's initial commitment hearing, only emergency transfers may be made. Postponement of such hearings beyond 20 days after admission may not be requested by hospital staff due to the emergency transfer of a patient.

10:36-3.3 Factors

(a) Any of the factors described below may serve as a basis for the transfer of a patient from and to any facility cited in N.J.A.C. 10:36-3.2:

1. To place him or her in closer proximity to family members;

i. **If a patient and his or her family members disagree on a transfer request based on proximity to family members, a clinical determination shall be made by the hospital staff based solely on the clinical best interest of the patient;**

2.-9. (No change.)

(b) A patient's stated preference for treatment at a particular State psychiatric facility shall always be a relevant consideration in transfer decisions. Transfers over the objection of a patient are permitted, however, when a clinical determination has concluded that the transfer is in the transferee's clinical best interest or necessary for the safety of other patients or administratively necessary due to a factor listed in (a) above. A transfer is permitted only when, in the judgment of the treatment team, the transfer's permissible purpose outweight any potential harm to the patient from the transfer.

1. When a transferring facility is capable of meeting the clinical or administrative purpose for a proposed transfer as contained in the factors at (a) above, an objecting patient shall not be transferred.

2. Transfers shall be the least restrictive available treatment alternative necessary to achieve the purposes of the transfer request as contained in the factors at (a) above.

10:36-3.4 [Procedures] **General procedures**

(a) (No change.)

(b) Transfers occurring as a result of overcrowding, life-safety concerns, natural catastrophes, **treatment impasse** or consolidation of services shall require the approval of the Director, Division of Mental Health and Hospitals.

(c) (No change.)

(d) The following procedures shall be followed in cases of emergency transfers:

1. [Emergency transfers are those that must be resolved after hours or on weekends or have clinical or administrative urgency.] **Emergency shall be defined, for the purposes of this subchapter, as imminent danger of serious bodily harm to self or others which less restrictive available treatment alternatives other than transfer cannot adequately address. Only these factors in N.J.A.C. 10:36-3.3(a)4 or 8 may serve as the basis for an emergency transfer.**

2. The family **and attorney** of residents [who have been] **being** transferred [should] **shall** be notified by institutional staff of the transfer and the reason for the transfer as soon **as possible** after the transfer [as possible] **decision has been made.**

3. (No change.)

[4. For the purpose of this section, "clinical urgency" means that the patient being proposed for transfer is considered by his or her clinician as imminently dangerous to self or others or an imminent security risk if not immediately transferred. That finding is also to have been endorsed by the chief executive officer or designee on call.]

Recodify existing 5.-7. as **4.-6.** (No change in text.)

10:36-3.5 Procedures when patients object to transfer

(a) Regarding non-emergency transfers, the following apply:

1. At least seven days prior to the transfer date, patients and their attorneys shall receive notice of proposed non-emergency transfers and their procedural rights in this chapter.

2. If a patient objects to such a transfer, he or she shall be provided an opportunity to state the basis for his or her objection, and present any relevant facts including statements by other individuals, with or through a representative if so desired, before an individual who is not a member of the treatment team seeking transfer. The hospital's Clinical Director shall designate this individual, who may be a member of the office of the hospital's clinical director or other hospital staff member capable of providing an independent review of the need for the proposed transfer.

3. The individual who reviews the proposed transfer shall have the authority to approve or disapprove the proposed transfer.

(b) Regarding emergency transfers, the following apply:

1. In an emergency as defined at N.J.A.C. 10:36-3.4(a)1, a patient may be transferred in accordance with procedures outlined at N.J.A.C. 10:36-3.4.

2. If a patient or a representative of the patient objects to such a transfer, a designee of the Division Director shall review the basis for the transfer, including providing the patient or his or her representative with an opportunity to state the basis for their objection and present any relevant facts or statements. The designee shall not be a member of the patient's treatment team at either the sending or receiving hospital and shall provide an independent review of the need for the proposed transfer.

3. The individual who reviews the proposed transfer shall have the authority to approve or disapprove the proposed transfer.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Mechanical Restraints and Safeguarding Equipment

Proposed Repeal and New Rules: N.J.A.C. 10:42

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

Authority: N.J.S.A. 30:4-6 et seq., 30:1-12 et seq., and 30:6D-5.

Proposal Number: PRN 1991-271.

Submit comments by June 19, 1991 to:

James M. Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 726
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10:42, Emergency Mechanical Restraints, was adopted effective August 18, 1986, and expires on August 18, 1991. For the sake of clarity, the Commissioner, Department of Human Services, proposes that N.J.A.C. 10:42 be repealed and new rules adopted in order to incorporate numerous changes in language, format and organization of material. The proposed new rules delineate the procedures and safeguards required for the use of mechanical restraints and safeguarding equipment with individuals served by the Division of Developmental Disabilities. Because some of the individuals the Division serves, at times, exhibit behaviors that pose a threat to themselves or others, the use of mechanical restraints and safeguarding equipment becomes necessary in some situations. The Division recognizes its responsibility to minimize the need to use such extreme measures by providing individuals with environments and activities that support their growth and development. Where aggressive, destructive or self-injurious behaviors are exhibited on a regular basis, professionally designed programs are provided to attempt to change the problem behavior.

The four subchapters of N.J.A.C. 10:42 identify the procedures to be followed when an individual exhibits behaviors that put himself or herself or others at risk and the application of mechanical restraints and safeguarding equipment is considered necessary. Mechanical restraints and safeguarding equipment should be used only when other less restrictive techniques (for example, diverting the individual's attention to other activities or counseling) are not effective. The decision to use mechanical restraints and safeguarding equipment must be based on an assessment of the individual's current condition and situation. Thus, the proposed new rules require a decision to be made by a qualified professional at the time of crisis. The rules also require that the restraint be applied only by staff trained in the use of the restraint and that regular checks of the individual's condition be made and recorded as long as the individual continues to stay in restraint, providing further safeguards for the individual.

Subchapters 1 through 4 are summarized as follows.

Subchapter 1 sets forth general provisions:

N.J.A.C. 10:42-1.1 and 1.2 set forth the chapter's purpose and scope;

N.J.A.C. 10:42-1.3 provides definitions of certain terms used in the chapter; and

N.J.A.C. 10:42-1.4 outlines specific provisions.

Subchapter 2 sets forth requirements for the use of safeguarding equipment and mechanical restraints:

N.J.A.C. 10:42-2.1 provides guidelines for the use of safeguarding equipment; and

N.J.A.C. 10:42-2.2 provides guidelines for the use of mechanical restraints.

Subchapter 3 sets forth policies and procedures for application and implementation:

N.J.A.C. 10:42-3.1 provides procedures for application to use restraints;

N.J.A.C. 10:42-3.2 delineates implementation standards for developmental centers/licensed private residential facilities; and

N.J.A.C. 10:42-3.3 delineates implementation standards for community programs for the developmentally disabled.

Subchapter 4 sets forth the guidelines for use of restraints for medical/dental evaluations, examinations or treatment.

Social Impact

The use of mechanical restraints on developmentally disabled individuals served by the Division of Developmental Disabilities must be monitored to assure that they are appropriately utilized. The proposed new rules provide safeguards and guidelines for the use of mechanical restraints.

The proposed new rules protect the rights of the individual served when the restraint is used to control a behavior in emergency situations or when used as safeguarding equipment. The proposed new rules also provide guidelines for the use of mechanical restraints for medical/dental evaluations, examinations or treatments as well as in behavior plans.

The rules will have a positive social impact because they ensure that the rights of developmentally disabled are protected. Agencies providing service, who utilize mechanical restraints, must be in strict compliance with the rules.

Economic Impact

The proposed new rules will have no economic effect on the developmentally disabled served by the Division or on the public. Provider agencies are expected to expend funds to employ physicians or licensed psychologists to authorize the use of the restraint. Statistical information is not available because the use of a mechanical restraint is reviewed on a case-by-case basis. The proposed new rules will require no additional expenditures as the procedures were previously implemented under divisional administrative procedures.

Regulatory Flexibility Analysis

The proposed new rules set forth safeguarding procedures for the use of mechanical restraints, if necessary, on individuals being served by the Division of Developmental Disabilities. The proposed new rules apply to components of the Division, as well as providers regulated by and under contract with the Division. Approximately 900 of these agency providers would qualify as small businesses as defined under N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The majority of these small businesses are community care homes, which in all likelihood would not accept individuals who require mechanical restraints.

The proposed new rules do impose some recordkeeping and compliance requirements, which are summarized as follows: the rules require a prescription from a licensed physician for the use of safeguarding equipment by a provider; a provider must secure prior approval from the Division for the use of mechanical restraints; a physician must certify that the use of mechanical restraint is not medically contraindicated for the individual; each use of restraint must have a restraint order; and 15-minute checks on the individual under restraint must be documented by designated staff. At N.J.A.C. 10:42-4, reporting and compliance requirements are set forth regarding the use of mechanical restraint for medical/dental examinations of Division clients.

There is no differentiation of requirements based upon the size of the provider agency because the proposed new rules seek to protect and ensure the health and safety of the individual clients served by the Division, as is statutorily required. Regarding the use of outside professional services, the proposed new rules require that a provider agency must contract with a licensed physician or psychologist for the authorization of a mechanical restraint. Costs associated with this process will vary depending upon the relationship between the physician or psychologist and the provider.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C 10:42.

Full text of the proposed new rules follows:

CHAPTER 42

MECHANICAL RESTRAINTS AND SAFEGUARDING EQUIPMENT

SUBCHAPTER 1. GENERAL PROVISIONS

10:42-1.1 Purpose

The purpose of this chapter is to detail the policies and procedures for the utilization of safeguarding equipment and mechanical restraints.

10:42-1.2 Scope

This chapter applies to components of the Division of Developmental Disabilities, as well as providers regulated by or under contract with the Division.

10:42-1.3 Definitions

For the purpose of this chapter, the following terms shall have the following meanings:

"Acute physical distress" means the individual is having difficulty breathing, is choking, has vomited, appears to be in pain, is bleeding, unconscious, discolored, has swelling at the points of stress or has cold and discolored extremities. Such and other similar manifestations (fainting, turning blue) must be investigated to insure the safety of the individual.

"Continual observation" means that the person in mechanical restraint can be seen by a staff member at all times.

"Emergency procedures" means the brief use of procedures to control severely aggressive or destructive behaviors that place the individual or others in imminent danger or physical harm when those behaviors reasonably could have been anticipated.

"Highly restrictive mechanical restraint" means restraints whose use is considered to be intrusive, and can restrict circulation, breathing or render an individual vulnerable to other persons in the immediate area. Highly restrictive mechanical restraints include, but are not limited to: a camisole, wrist cuff, ankle cuff, papoose boards, restraint chairs and standing boxes.

"Human Rights Committee" means a group comprised of professionals, individuals served, advocates, and/or interested individuals from the community at large who function as an advisory body to the chief executive officer, executive director, regional administrator, or superintendent on issues directly or indirectly affecting the rights of individuals served by the Division.

"Individual Habilitation Plan" (IHP) (see N.J.S.A. 30:6D-10 et seq.) means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It may identify a continuum of skill development that outlines progressive steps and the anticipated outcomes of services. The IHP is a single plant that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan. The complexity of the IHP will vary according to the needs capabilities and desires of the person. For an individual who has been determined by an Interdisciplinary Team (IDT) to require active treatment, the IHP shall address all needs identified. For an individual who makes only specific service requests, the IHP shall be a service plan which addresses only those specific requests.

"Informed Consent" means a formal expression, oral or written, of agreement with a proposed course of action by an individual who has the capacity, the information and the voluntariness to render such agreement.

"Interdisciplinary Team" (IDT) means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the person receiving services; the person's parent or family member (if the adult desires that the parent or family member be present); guardian; those persons who work most directly with the individual served; and professionals and representatives of service areas who are relevant to the identification of the person's needs and the design and evaluation of programs to meet them.

"Mechanical restraint" means the application of a device which restricts freedom of movement either partially or totally. These devices include, but are not limited to: domed or enclosed cribs, bedside rails, mitts, jumpsuits, arm splints, vest, helmets and body harness.

"Qualified mental retardation professional (QMRP)" means a person who has at least one year of experience in working with the developmentally disabled and is one of the following:

1. A doctor of medicine or osteopathy;
2. A registered nurse;
3. A professional program staff person who is licensed, certified or registered, as applicable. If the professional program staff do not fall under the jurisdiction of State licensure, certification or registration requirements, he or she shall meet the following qualifications:

i. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Associaton or another comparable body;

ii. To be eligible as an occupational therapy assistant, an individual shall be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or other comparable body;

iii. To be eligible as a physical therapist, the individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or other comparable body.

iv. To be eligible as a physical therapy assistant, an individual shall be eligible for registration by the American Physical Therapy Association or be a graduate of a two-year college level program approved by the American Physical Therapy Association or other comparable body;

v. To be designated as a psychologist, an individual shall have at least a master's degree in psychology from an accredited school;

vi. To be designated as a social worker, an individual shall:

(1) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(2) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body;

vii. To be designated as a speech language pathologist or audiologist, an individual shall:

(1) Be eligible for a certificate of clinical competence in speech language pathology or audiology granted by the American Speech Language Hearing Association or other comparable body; or

(2) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification;

viii. To be designated as a professional recreation staff, an individual shall have a bachelor degree in recreation or in a specialty area such as art, dance, music or physical education;

ix. To be designated as a professional dietician, an individual shall be eligible for registration by the American Dietetics Association;

x. To be designated as a human services professional, an individual shall have at least a bachelor degree in a human services field, including, but not limited to, sociology, special education, rehabilitation, counselling or psychology.

"Safeguarding equipment" means devices which restrict movement used to provide support for the achievement of functional body position or proper balance; devices used for specific medical, dental or surgical treatment; and devices to protect the individual from symptoms of existing medical conditions, including, but not limited to, seizures and ataxia.

"Unusual incident" means an exeptional or extraordinary occurrence involving a client, staff member or program operation which has resulted in or may lead to serious or harmful consequence.

10:42-1.4 General requirements

(a) The Division of Developmental Disabilities recognizes that acceptable behavior in developmentally disabled children and adults is fostered and maintained by a stimulating environment, participation in activities that encourage development of new skills and support from the people with whom they come into contact. The Division is committed to providing a supportive environment to the developmentally disabled individuals it serves. However, the Division also recognizes that, even in a supportive environment, some individuals will exhibit aggressive, destructive or self-injurious behaviors. When such behaviors present a danger to the individual himself or herself or others, action must be taken to help the individual control himself or herself, or, if that is not possible, to control the individual. If the individual exhibits these problem behaviors on a regular basis, a professionally designed program (such as a medical intervention or behavior modification) shall be applied to change these behaviors. When the individual exhibits a dangerous behavior that has not been previously observed or reported, emergency measures must be available to assist them in protecting the individual or others. Among the emergency measures that are used in such situations are mechanical restraints. Some of the devices used as mechanical restraints may also be used to help an individual achieve functional body alignment or to protect the individual from harm. In some instances, only the intended use of the device will determine whether it is a mechanical restraint or a piece of safeguarding equipment.

(b) Devices such as bed rails, mitts, jumpsuits, arm splints, vest, helmets and body harnesses may be used as either a mechanical restraint for control purposes or safeguarding equipment, depending upon circumstances. For example, a helmet used to prevent injury due to seizures is a safeguarding device. Use of a helmet to prevent injury due to self-injurious behavior is for control purposes.

(c) Primary reliance on punishment, physical or mechanical restraints or aversive techniques to decrease undesirable behavior is contrary to the requirements for active treatment. Mechanical restraints for control purposes are considered to be appropriate only when absolutely necessary and their use shall be minimized in favor of other, more positive interventions.

(d) When highly restrictive mechanical restraints are in use, continual observation by staff is required to recognize obvious signs of acute physical distress.

(e) All devices shall be applied only by staff trained in their use and applications.

(f) The need for the particular device to be used as safeguarding equipment or for behavioral intervention shall be documented in the Individual Habilitation Plan (IHP) and re-evaluated no less than annually as a part of the IHP review or as specified.

(g) Only commercially produced devices shall be employed for control purposes. If a special device must be developed, the need for the device shall be:

1. Documented in the IHP;

2. Approved by the Division's Medical Director or the Department's Chief Medical Consultant; and

3. Approved by the appropriate Human Rights Committee.

(h) All safeguarding equipment shall be prescribed by a licensed physician. With regard to dental matters, the safeguarding equipment shall be prescribed by a dentist.

(i) Restraints may be used on a temporary basis to conduct medical and dental evaluations, examinations or treatments when the individual's behavior prevents the evaluation, examination or treatment.

(j) Mechanical restraints shall be inspected prior to each use to ensure that they remain in good repair and free from tears or protrusions which may cause injury.

(k) The Division of Developmental Disabilities may require a service provider to terminate restraint usage for an individual if any requirements of this chapter are violated.

SUBCHAPTER 2. SAFEGUARDING EQUIPMENT AND MECHANICAL RESTRAINTS

10:42-2.1 Use of safeguarding equipment

(a) The use of safeguarding equipment shall be initiated on the prescription of a physician.

(b) A physician shall document in the client record the need for safeguarding equipment and the specific device to be applied. That prescription shall indicate the specific medical condition for which the safeguarding equipment is to be used and the length of time permitted for its use. The prescription shall be included in the client record.

(c) If the equipment is used to prevent accidental self-injury, the physician shall document the specific medical condition which warrants its use. The equipment is to be used to address a specific symptom of the individuals medical condition which is not likely to be changed through behavior modification.

(d) Once the physician has documented the need for safeguarding equipment, the need shall be reviewed by the individual's IDT. If the use of the safeguarding equipment is consistent with the goals and objectives in the individual's IHP and can be implemented, the use of the safeguarding equipment shall be included in the IHP.

(e) If the use of the safeguarding device cannot be integrated into the IHP, the IDT shall meet to revise the plan to provide for the individual's safety and habilitation needs. The IDT shall meet within 10 working days from the initial application for a safeguarding device.

(f) The need for safeguarding equipment shall be reviewed as part of the IHP no less than annually.

(g) The continued need for a safeguarding device shall be authorized by a physician in the client record at least annually.

10:42-2.2 Mechanical restraints

(a) Mechanical restraints may be utilized only as follows:

1. As an emergency measure to control a person in order to protect him/herself or others from harm;

2. As part of an approved behavior modification program utilizing aversive techniques to attempt to change a targeted behavior;

3. As a safeguarding device to protect the individual from accidental self-injury; or

4. As a control device for medical, surgical and dental examinations.

(b) A facility or service provider may implement a program of mechanical restraint only with specific authorization of the Director, Division of Developmental Disabilities.

(c) Mechanical restraints shall not be used as punishment (retribution), for the convenience of staff, or as a substitute for programming.

(d) The individual shall be immediately released if he or she appears to be in acute physical distress.

(e) The individual must be placed in the least restrictive form of mechanical restraint unless clinical evidence to justify the use of a more restrictive technique is available.

(f) Only personnel who have successfully completed a training program approved by the Division of Developmental Disabilities shall be permitted to apply, monitor and release mechanical restraints.

(g) Whenever an individual exhibits serious assaultive, self-injurious or destructive behavior, controllable only by use of mechanical restraint, the interdisciplinary team shall meet to identify possible causes and develop strategies to address the maladaptive behavior.

SUBCHAPTER 3. APPLICATION AND IMPLEMENTATION

10:42-3.1 Application to use mechanical restraint

(a) Each facility or service provider requesting approval to utilize mechanical restraints shall submit to the Director, Division of Developmental Disabilities, comprehensive written procedures governing the use of restraint.

(b) The procedure submitted shall include the following:

1. A statement specifically identifying the forms of mechanical restraint to be used and the number of trained staff that shall be available to apply restraints;

2. Criteria for use of mechanical restraint;

3. Instructions for the application of each type of restraint;

4. Precautions for the use of mechanical restraint including certification by a physician that the use of restraint is not medically contra-indicated for the individual;

5. Recordkeeping and review requirements; and

6. A curriculum for training staff which shall include, but not be limited to, training in the proper use and application of each form of mechanical restraint to be employed as well as the recognition of the signs of physical distress.

10:42-3.2 Implementation standard: development centers/licensed private residential facilities

(a) Following approval by the Director, Division of Developmental Disabilities, for the use of mechanical restraint, the following standards shall apply:

1. Prior to the initial restraint authorization, a physician must certify that the technique to be employed is not medically contraindicated for the individual.

2. In an emergency situation, the superintendent, chief executive officer (CEO) or his or her designee shall be responsible for authorizing the use of restraint. The authorized agent must be a qualified mental retardation professional (QMRP) as defined in 42 CFR 483.430(a) and this chapter.

3. The superintendent/CEO shall identify those QMRPs who are responsible to authorize the use of restraint.

4. As soon as possible, but in less than 24 hours, a physician must review and countersign each "emergency" restraint order.

5. An emergency restraint order shall be effective for not more than 12 consecutive hours. If a new order is issued, all authorizations must be renewed.

6. Restraint orders shall include documentation of the type of mechanical restraint authorized, the length of time to be applied, the reason for restraint, and any special instruction. Each restraint order must be signed and dated by the authorizing agent.

7. Individuals placed in highly restrictive forms of mechanical restraint shall be under continual observation by staff trained to recognize obvious signs of physical distress.

8. While in mechanical restraint, documentation of a physical check by a staff member every 15 minutes is required. The check shall address the following:

i. Whether the continued use of the restraint is necessary; and

ii. Whether the restraint is applied in accordance with principles of good body alignment, a concern for circulation and allowance for change of position.

9. The individual shall be released from restraint for a period of not less than 10 minutes during each hour of restraint. One limb may be released at a time for the 10-minute period if the person cannot be completely released.

10. The use of jumpsuits or open-faced helmets does not require 15-minute checks. The individual does not have to be removed from the restraint for a 10-minute period during each hour.

11. The individual's personal hygiene and nutritional needs shall be met while in restraint.

12. If a crib is used as a safeguarding device, documentation of 15-minute checks shall not be required. If a crib is used for control purposes, checks shall be required. It is not necessary to remove the individual from a crib for 10 minutes during each hour of use if the crib is used for sleeping.

13. The nature, reasons for and notation of each staff check shall be recorded in the individual's records.

14. Whenever an individual exhibits serious assaultive self-injurious or destructive behavior controlled by use of mechanical restraints, a special meeting of the IDT must be held to review current programming and alternatives. If the recurrence of the behavior may be anticipated, a behavior plan shall be developed.

15. An unusual incident report shall be completed.

10:42-3.3 Implementation standards: community programs for the developmentally disabled

(a) In community programs, the utilizations of mechanical restraint shall be considered only for those special programs adequately staffed by trained professional personnel and serving individual who present a danger to himself or herself as others.

(b) Following approval of a mechanical restraint program by the Director, Division of Developmental Disabilities, the following shall apply:

1. Only a licensed psychologist or physician may authorize each use of mechanical restraint.

2. Prior to or at the time of the initial authorization, a physician must certify that the technique to be employed is not medically contra-indicated for the individual.

3. Whenever possible, the restraint order shall be immediately signed by the licensed psychologist or physician. However, the use of mechanical restraint may be authorized over the telephone by the qualified authorizing agent in accordance with the following:

i. Such approval is strictly temporary and the restraint order shall be reviewed and signed by the authorizing agent as soon as possible but at least within 12 hours of its application; and

ii. The specific circumstances necessitating approval over the telephone shall be part of the individual's record and include the name of the party requesting or authorizing the restraint.

4. Restraint orders shall be effective for not more than 12 consecutive hours. If a new order is issued, all authorization shall be renewed.

5. Restraint orders shall include documentation of the type of mechanical restraint authorized, the length of time to be applied, the reason for restraint, and any special instruction for utilizing the restraint. Each restraint order must be signed and dated by the licensed psychologist or physician.

6. Individuals placed in highly restrictive forms of mechanical restraints shall be under continual observation by staff trained to recognize obvious signs of physical distress.

7. While in mechanical restraint the individual shall be checked by a staff member every 15 minutes. The check shall document the following:

i. Whether the continued use of the restraint is necessary; and

ii. Whether the restraint is applied in accordance with principles of good body alignment, a concern for circulation and allowance for change of position.

8. The individual shall be released from restraint for a period of not less than 10 minutes during each hour of restraint. One limb may be released at a time for a 10-minute period.

9. The use of jumpsuits or open faced helmets do not require 15-minute checks. The individual does not have to be removed from the restraint for a 10-minute period during each hour of use since it does not restrict range of motion.

10. The nature, reasons for and notation of each staff check shall be recorded in the client record.

11. The individual's personal hygiene and nutritional needs shall be met while in restraint.

12. The service provider shall forward a report of the unusual incident to the Division Director.

13. Whenever an individual exhibits serious assaultive, self-injurious or destructive behavior controlled by the use of mechanical restraints, a special meeting of the IDT must be held to review programming and alternatives. If a recurrence of the behavior is anticipated, a behavior plan shall be developed. The IDT shall forward the results of their review to the regional Human Rights Committee within 15 working days.

14. The Regional Human Rights Committee shall review the pertinent circumstance surrounding the utilization of each application of emergency mechanical restraints. The results of this review shall be forwarded to the Assistant Director of Community Services, appropriate Regional Administrator, and the Office of Licensing and Inspections within 10 days of the review by the Human Rights Committee.

SUBCHAPTER 4. MEDICAL/DENTAL EVALUATIONS, EXAMINATIONS OR TREATMENT

10:42-4.1 Use of mechanical restraint for medical/dental evaluations, examinations or treatment

(a) The physician/dentist may use or direct the use of restraint to accomplish a needed evaluation, examination or treatment. Such use shall be documented in the client record.

(b) Informed consent shall be required unless an emergency exists.

(c) In the judgment of the physician/dentist, when there is an emergency he or she may use or direct the use of restraints to accomplish a needed evaluation, examination or treatment. Such use shall be documented in the client record.

(d) Restraints shall be used under the continuous observation of the physician/dentist or his/her designee. The individual shall be released upon completion of the necessary procedures.

(e) At no time shall the individual be permitted to remain in restraints for the convenience of staff including pre- and post-treatment.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Other Governmental Programs/Extended Medicaid Eligibility for Newborns

Proposed Amendments: N.J.A.C. 10:81-8.22 and 8.23

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

Authority: N.J.S.A. 44:7-3 and 44:10-3; 4603 of P.L. 101-508, cited as 1902(e) of the Social Security Act, codified as 42 U.S.C. 1396a(e).

Proposal Number: PRN 1991-275.

Submit comments by June 19, 1991 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 10:81-8.22 and 8.23 align State rules with recent changes in Federal statutes concerning medical eligibility assistance for newborn infants, as specified in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508). Similar amendments will be proposed in the very near future in the New Jersey Register by the Division of Medical Assistance and Health Services (DMAHS), since that Division coordinates the administration of medical assistance with the public welfare program.

Current policy provides that after a baby is born to a Medicaid recipient, the child becomes eligible for Medicaid benefits for one year, providing that the mother remains Medicaid eligible during that period and the child remains in the household of the mother, whether or not application is made. Health services rendered to the child during the first 60 days after birth can be billed on the mother's Medicaid number, or, as soon as the child's own number has been issued, on the child's number.

The proposed amendments expand eligibility for Medicaid benefits to low income mothers and their unborn children by providing coverage which is no longer dependent only upon the mother's continued eligibility, but alternatively, upon her potential eligibility, if she were pregnant. The child must remain in the household of the mother to be eligible for this extension of Medicaid coverage, and the mother must be Medicaid eligible on or before the date the child was born. If a presumptively eligible woman is determined to be ineligible for the month in which the child is born, the newborn is not eligible for Medicaid unless an application is submitted on the child's behalf and the child is found eligible.

Language has been amended at N.J.A.C. 10:81-8.22(e) to indicate ineligibility of a child for extended Medicaid coverage if the child is born to a presumptively eligible woman who is determined ineligible for Medicaid for the month in which the child is born. Text has been added concerning mothers who would remain eligible for Medicaid if pregnant, thus extending Medicaid coverage to newborns of such mothers.

N.J.A.C. 10:81-8.23(d)2i(1) has been amended to describe the Medicaid coverage period for a newborn under Medicaid Special. The child remains eligible for one year whether or not application has been made, if the mother remains eligible or would remain eligible if pregnant. The child must reside with the mother for continued coverage.

Social Impact

The proposed amendments impact on newborns by enabling access to Medicaid services for up to one year after birth without requiring the mother to complete an application or to have eligibility redetermined.

The proposed amendments will have a limited but positive impact on providers, because a valid Medicaid Eligibility Identification Card must still be presented showing a person number for the infant after the expiration of the 60-day period when services could be billed under the mother's identification number. However, the proposed amendment will expedite the provider's access to payment since eligibility for the majority of newborns does not require an application for receipt of benefits which will alleviate any application processing problems which have occurred previously.

A limited but positive impact on county welfare agencies is also anticipated. Those agencies identify and establish eligibility records for affected newborns. The numbers of newborns requiring application for benefits shall be reduced due to the proposed eligibility changes. Thus, in the majority of newborn cases, the agency eligibility process will entail the issuance of an identification card for the infant when the hospital verified birth form is received by the agency.

Economic Impact

No economic impact is anticipated due to the proposed amendments because most of the newborns whose eligibility would be expedited under these provisions would already be eligible for Medicaid with submittal of an application.

Regulatory Flexibility Statement

The proposed amendments impact on patients and on recipients, as well as on county welfare agencies, which are responsible for making eligibility determinations. However, neither of these affected groups is a small business, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The effect of the proposed amendments is to simplify and reduce paperwork, rather than to impose additional reporting requirements on these groups.

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

10:81-8.22 Persons eligible for medical assistance

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

(e) For newborns of eligible women who have applied (before or on the date of the birth) and are eligible for Medicaid on the date of birth (**except for a presumptively eligible pregnant woman, as defined at N.J.A.C. 10:72-6.1, who is subsequently found ineligible for the month the child was born**) eligibility continues for both mother and child through the last day of the month in which the 60-day post-partum period ends, without regard to other program requirements. So long as the mother remains eligible, **or would remain eligible if pregnant,** and the child resides with her, the child remains eligible for Medicaid for a period of one year, whether or not application has been made for the child.

(f)-(g) (No change.)

10:81-8.23 Medicaid Special

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

(d) Rules concerning pregnant women age 21 and over are:

1. (No change.)

2. Eligibility is determined for an eligible family of two, **or more if a multiple pregnancy** (woman and unborn [child] **children**) based on her income and available resources only, or, if she is married and living with her spouse, on an eligible family of three **or more** (woman, spouse and unborn [child] **children**) including income and available resources of both spouses. Medicaid coverage does not include the spouse even though his income is included in the eligibility determination.

i. A pregnant woman with other dependent children should be assisted in making immediate application for AFDC. If she is found ineligible for AFDC, the CWA shall determine eligibility for Medicaid Special on behalf of her unborn child. The eligible family shall consist of the woman, her spouse if present, any dependent child(ren) and the unborn child. All income and resources shall be applied to the appropriate AFDC-C or -F standard but only the woman and the unborn child may be eligible for Medicaid coverage.

(1) Coverage under Medicaid Special begins with the medical determination of pregnancy and ends, for the mother [and the newborn], with the last day of the month in which the 60-day post-partum period expires. **So long as the mother remains eligible, or would remain eligible if pregnant, and the child resides with her, the child remains eligible for Medicaid for a period of one year, whether or not application has been made.** The child may remain eligible for Medicaid Special in accordance with **this subsection or with** (b) above; he or she will keep the same case number.

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

(e) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Administration

Proposed Readoption with Amendments: N.J.A.C. 10:120

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

Authority: N.J.S.A. 30:1-9 and N.J.S.A. 52:14B-4(b).

Proposal Number: PRN 1991-272.

Submit comments by June 19, 1991 to:
Kathryn A. Clark
Administrative Practice Officer
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The Commissioner of the Department of Human Services, pursuant to the authority of N.J.S.A. 30:1-9 and 52:14B-4(b), proposes to readopt N.J.A.C. 10:120, Administration, with amendments. The present chapter will expire by operation of Executive Order No. 66(1978) on August 21, 1991.

Amendments are proposed to subchapter 1, formerly Agency Purpose and Scope, to make this subchapter reflect the current organization of the Division of Youth and Family Services. Subchapters 2 and 3, on the administrative hearings and reviews procedures of the Division, are now in the process of being revised. Revisions to both subchapters will be proposed as amendments shortly. Since the Department has determined that the readoption of these subchapters is necessary, reasonable and proper for the purpose for which they were originally intended, and to avoid expiration under the provisions of Executive Order No. 66(1978), subchapters 2 and 3 are being readopted without change.

The following is a summary of the proposed amendments and the content of N.J.A.C. 10:120.

N.J.A.C. 10:120-1.1 states the purpose, goals and responsibilities of the Division of Youth and Family Services.

N.J.A.C. 10:120-1.2 describes the scope of the activities of the Division.

N.J.A.C. 10:120-2.1 gives the scope of the administrative hearing rules.

N.J.A.C. 10:120-2.2 outlines the subject matter jurisdiction.

N.J.A.C. 10:120-2.3 provides that these rules shall be liberally construed to allow the Division to discharge its statutory functions.

N.J.A.C. 10:120-2.4 gives the definitions of terms used in the subchapter.

N.J.A.C. 10:120-2.5 provides procedures for the issuance of a notice of complaint.

N.J.A.C. 10:120-2.6 states how a notice of complaint is to be served.

N.J.A.C. 10:120-2.7 provides that all hearings shall conform to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

N.J.A.C. 10:120-2.8 gives the procedures for the Director's review and final decision.

N.J.A.C. 10:120-2.9 provides for appeal of the final decision of the Director.

N.J.A.C. 10:120-3.1 states the right to a fair hearing.

N.J.A.C. 10:120-3.2 provides for notification of the right to a fair hearing.

N.J.A.C. 10:120-3.3 gives the procedures for complaints.

N.J.A.C. 10:120-3.4 states the time limitations on entitlements to a fair hearing.

N.J.A.C. 10:120-3.5 details the client's eligibility for continued services.

N.J.A.C. 10:120-3.6 provides for the withdrawal of a request for a fair hearing.

N.J.A.C. 10:120-3.7 gives the requirement for local agency availability.

N.J.A.C. 10:120-3.8 provides for accessibility of records.

N.J.A.C. 10:120-3.9 outlines procedures for hearings involving medical issues.

N.J.A.C. 10:120-3.10 states that fair hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

N.J.A.C. 10:120-3.11 gives the procedures for adjournments.

N.J.A.C. 10:120-3.12 provides for group hearings.

N.J.A.C. 10:120-3.13 gives the procedures regarding the decision of the fair hearing.

N.J.A.C. 10:120-3.14 states the role of local agency personnel during the fair hearing.

N.J.A.C. 10:120-3.15 states the role of the agency liaison.

Social Impact

The proposed amendments to subchapter 1 are expected to have a positive social impact in explaining the mission of the Division of Youth and Family Services to the public. The proposed readoption of subchapters 2 and 3 will allow the Division to continue its administrative hearings and reviews and fair hearings programs in full force and effect while the thorough and comprehensive revision of these rules is completed.

Economic Impact

No economic impact is anticipated from the revision of subchapter 1 on the Organization of the Division of Youth and Family Services. As to the readoption of subchapters 2 and 3, by continuing the hearing eligibility of DYFS and Social Services Block Grant clients, the continuance of these rules will have a positive economic benefit on those clients who prevail at their hearings.

Regulatory Flexibility Statement

The proposed readoption with amendments does not impose any reporting, recordkeeping, or other compliance requirements on small businesses, as the term is defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. The rules proposed for readoption with amendments are intended to explain the purpose and scope of the Division of Youth and Family Services, and to govern administrative hearings and reviews.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C 10:120.

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

SUBCHAPTER 1. [AGENCY PURPOSE AND SCOPE] **ORGANIZATION OF THE DIVISION OF YOUTH AND FAMILY SERVICES**

10:120-1.1 Purpose

[(a) The Division of Youth and Family Services was created in May, 1972, as part of the Department of Human Services. It assumed the responsibilities of the former Bureau of Children's Services as well as various day care, juvenile justice, licensing, and early childhood development programs then housed in other state government agencies. The Division also assumed responsibility for supervision of the social service units of the county welfare agencies.

(b) The Division of Youth and Family Services (DYFS) serves as the State's comprehensive social services agency for children and families in New Jersey. Its primary goal is to preserve and strengthen the family unit by providing a wide range of supportive and reinforcing services designed to encourage and maintain family stability and self-sufficiency.]

(a) The Division of Youth and Family Services (DYFS) serves as the State's comprehensive social services agency for children and families in New Jersey. Its primary goals are to preserve and strengthen the family unit and to protect children from abuse and neglect, by providing a wide range of supportive and reinforcing services designed to encourage and maintain family stability and self-sufficiency.

(b) The Division of Youth and Family Services is responsible for the investigation of abuse and neglect complaints involving children. The Division provides a wide range of services and programs that address the protective service needs of children. These services include, but are not limited to: foster care, residential treatment, adoption, family preservation, day care, counseling, advocacy, and case management.

10:120-1.2 Scope

[(a) The entire service delivery function of the Division is vested in three regional offices. Each regional office is headed by an administrator responsible for local district offices as well as for adoption and foster care units, direct and purchased day care, purchase of service contracts, and supervision of county welfare agency social service units in the counties comprising that region.

(b) The three regional offices are: Northern, which includes Bergen, Hudson, Morris, Passaic, Sussex, and Warren Counties; Central, which includes Essex, Union, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, and Somerset Counties; and Southern, which includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties.

(c) The Central Office in Trenton provides support functions to the regional and local offices. Some of these functions are policy and procedure development and publication, management and fiscal services, monitoring residential placement facilities, and staff training.

(d) Services provided directly to children and their families by the Division include protective services for abused and neglected children, adoption services, foster and institutional placement, day care services, casework and counseling. The Division is responsible for licensing or regulating certain privately operated child care centers, private adoption agencies placing children for adoption in New Jersey, shelters for dependent and neglected children, and children's residential treatment centers and group homes accommodating DYFS children.

(e) The Division supervises the social service units of the County Welfare Agencies. These units provide a wide range of services through the Federal Social Service Block Grant program of the Social Security Act, including home health aid, homemaker, medical transportation, housing related services, counseling and information and referral. Their service population includes public assistance recipients requesting services and other adults and families requesting services who have limited income. The CWA social service units are also designated to be responsible for the provision of adult protective services and services to those in boarding homes or in need of boarding home services.

(f) The Division is the State agency responsible for the administration of both direct and purchased service programs under the Social Service Block Grant program of the Federal Social Security Act. Among the programs provided by such contracts are: day care for children, protective services for battered spouses, adult day care, home delivered meals and transportation for the elderly, homemaker/home health aide services, family planning, personal counseling of all kinds, housing-related services, and legal services in non-criminal matters.]

(a) The Division of Youth and Family Services is responsible for the implementation of programs to preserve families and protect children from abuse and neglect in New Jersey. The Division is responsible for investigating allegations of child abuse and neglect occurring in families and institutions. The Division is mandated to license and regulate publicly and privately operated facilities and programs serving children and families, including, but not limited to: child care centers, children's residential treatment facilities, children's group homes, children's and families'-in-crisis shelters and homes, and adoption agencies. The Division regulates the State's voluntary family day care registration program, which utilizes local family day care sponsoring organizations to assist in registering day care home providers. The Division is also responsible for supervising the social service units of the county welfare agencies, which include the adult protective services program and the personal attendant services program.

(b) Services of the Division are provided through a regional structure. Each regional office is headed by an administrator responsible for supervising DYFS local district offices, community social service providers under contract with the Division, and county welfare agency social services units in the counties comprising that region. The Division also operates adoption resource centers, children's residential treatment centers and children's day care centers.

(c) The Division's central office in Trenton provides support functions to the regional and district offices. These functions include, but are not limited to: policy and procedure development and publication, research and evaluation, management and fiscal services, monitoring residential placement facilities, quality assurance and accountability, regulatory and legislative services, and supervision of staff training.

(d) The Division of Youth and Family Services provides a variety of services to children and families directly. These services include, but are not limited to: protective services for abused and neglected children, foster and group home placements, residential placements, day care centers, adoption placement centers, counseling, advocacy, and case management.

(e) The Division administers services to vulnerable adults through the social service units of the county welfare agencies, and by contracting with county offices on aging and with community providers. These services, within available resources, include, but are not limited to: services to residents of rooming houses, boarding homes, and residential health care providers, services to handicapped individuals living at home, and services to families whose level of functioning is marginal.

(f) The Division contracts with community social service providers for services DYFS does not provide directly. These services include, but are not limited to: day care for children, protective services for victims of domestic violence, services to the homeless, family planning, mental health therapy and counseling, housing-related services and legal services in non-criminal matters.

(g) The policies and procedures of the Division of Youth and Family Services are formalized in DYFS Field Operations and Provider Manuals. The DYFS Field Operations and Provider Manuals are available in the DYFS central, regional and district offices for examination or review during regular office hours on regular work days. DYFS issues these manuals and revises them as necessary.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Voluntary Wage Deduction for Repayment of Financial Obligations to the State of New Jersey

Proposed New Rule: N.J.A.C. 12:55-1.4

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, and 34:11-4.4b(8).

Proposal Number: PRN 1991-280.

Submit comments by June 19, 1991 to:
Linda Flores
Special Assistant for External & Regulatory Affairs
Office of the Commissioner
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Pursuant to the authority reposed in the Commissioner of Labor by N.J.S.A. 34:1-20 to promulgate such rules and regulations as may be necessary to enforce the provisions of the Labor laws contained in Title 34, New Jersey Statutes Annotated, the Commissioner of Labor hereby proposes to promulgate a new rule, N.J.A.C. 12:55-1.4, Voluntary wage deduction for repayment of financial obligations to the State of New Jersey. The proposed new rule would authorize an employer to make certain deductions from an employee's wages. Under N.J.S.A. 34:11-4.4b(8), amounts may be withheld or diverted for, "Such other contributions, deductions and payments as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of this act, if such deductions are approved by the employee."

Pursuant to the above-cited statutory authority, the Commissioner proposes to promulgate a new rule authorizing an employer to deduct from the salary of an employee any debt or obligation that may be due the State of New Jersey if such employee voluntarily agrees to such payment.

The Commissioner believes that the proposed new rule comports with the legislative purposes and intent of N.J.S.A. 34:11-4.4b. It would create express legal authorization for an employer, with the employee's consent, to withhold from the salary of that employee such portion of a debt owed to the State of New Jersey as that employee may willingly and voluntarily authorize the employer to withhold from his or her salary, and to pay such withheld portions on a recurrent basis to the State of New Jersey to satisfy a debt or an obligation which is outstanding from the employee to the State of New Jersey. It is noted that some employers who wish to establish such a program for their employees have been discouraged by legal advice that it cannot be done in the absence of specific statutory or regulatory authority.

Social Impact

If a person owes the State money for any reason, whether it be taxes, repayment of a loan, or reimbursement for services it has subsidized, there is no explicit provision in N.J.S.A. 34:11-4.4 or in the New Jersey Administrative Code which authorizes an employer to make deductions from a debtor-employee's paycheck and forward them to the State in satisfaction of the debt.

There is presently no mechanism that would encourage voluntary installment payments of a debt to the State. On the other hand, the debt could become a lien against the debtor-employee's real estate, if it remained unpaid; or if the State obtained a judgment against the debtor-employee, it could garnish that debtor-employee's salary.

The proposed new rule would simply provide legal authority for a system under which a debtor-employee of the State could be encouraged to repay his or her debt by a direct payroll deduction that would be agreeable both to him or her and his or her employer.

Under present law, the only way that the State may collect from a debtor's paycheck is through garnishment. The proposed new rule would permit the debtor to repay a debt through a payroll deduction before the debt reaches the point of garnishment. The proposed new rule thus has the salutary effect of avoiding both an adverse credit report relating to this indebtedness and overburdening the judicial collection system.

Economic Impact

The proposed new rule on deduction for funds owed to the State would have a salutary economic impact upon both the debtor-employee and the State. It would provide the debtor-employee with a heretofore unavailable mechanism to make installment payments on an obligation to the State. The proposed new rule also has a positive economic impact upon the State by facilitating its ability to recoup monies owed. Regarding the anticipated economic impact on employers, the primary purpose in proposing the new rule is to permit an existing plan for the State of New Jersey to continue to deduct payments from its own employees to repay the State for debts incurred for various reasons. While private sector employers may participate, they are not required but may cooperate with the intent of the proposed new rule on a voluntary basis. Most employers have systems for dealing with payroll deductions; therefore, it is anticipated that voluntary compliance with the proposed new rule would result in a very small administrative expense to these employees.

Regulatory Flexibility Analysis

The proposed new rule allows for voluntary participation by both employee and employer by authorizing an employer to make certain deductions from an employee's wages for any debt or obligation due to the State of New Jersey, if such employee voluntarily agrees to such payment. The proposed new rule applies to every employer employing any person in this State (N.J.A.C. 12:55-1.1(b)); therefore, some of the employers may be small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. If an employer chooses to participate, the proposed new rules impose certain reporting, recordkeeping and compliance requirements, which include that an employer who institutes such a repayment plan shall withhold on a periodic basis from an employee's salary only such an amount as that employee shall have expressly authorized in writing and that the employer must pay the amount of such withheld salary to the appropriate State officer or agent (see N.J.A.C. 12:55-1.4(b)-(c)). The proposed new rule also imposes some additional bookkeeping responsibilities on the employer; however, most employers in the State currently make payroll deductions for other purposes and these bookkeeping functions are already in place. There are no requirements that outside professional services are needed to comply with the proposed new rules; however, an employer may use such services if it chooses to do so. It is anticipated that the burden upon the participating employer of meeting these requirements would be minimal and not unduly burdensome, regardless of the size of such business. Therefore, no differentiation in the application of these requirements is made based upon business size.

Full text of the proposal follows:

12:55-1.4 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey

(a) Each employer may institute a system whereunder a portion of an employee's salary is withheld as an installment payment against any financial obligation by that employee to the State of New Jersey.

(b) Any employer who institutes such a repayment plan pursuant to (a) above shall withhold on a periodic basis from an employee's salary only such an amount as that employee shall have expressly authorized in writing.

(c) Any employer who withholds any sum from an employee's salary for repayment of a financial obligation by the employee to the State shall forthwith pay the amount of such withheld salary to the appropriate State officer or agent to whom such obligation is made payable.

(d) Nothing in this section shall be construed as mandating participation by any employer or employee in such an installment repayment program.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Surety Bonds

Adopted Amendments: N.J.A.C. 3:18-10.5 and 3:38-1.5

Proposed: March 18, 1991 at 23 N.J.R. 802(a).

Adopted: April 24, 1991 by Jeff Connor, Commissioner, Department of Banking.

Filed: April 29, 1991 as R.1991 d.272, **without change.**

Authority: N.J.S.A. 17:1-8.1; 17:11A-45.3 and 54; 17:11B-8 and 13.

Effective Date: May 20, 1991.

Expiration Date: N.J.A.C. 3:18, January 19, 1993.
N.J.A.C. 3:38, October 5, 1992.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows.

3:18-10.5 Bonds

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

(d) A licensee shall provide the Department with the original copy of a surety bond. If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Department with the amended original copy of the surety bond. A surety company shall not cancel a bond for any cause unless written notice of its intention to cancel is filed with the Department at least 30 days before the day upon which cancellation shall take effect, and cancellation without such notice shall not be effective.

(e) When a person submits a claim with a surety company against the bond of a licensee, the surety company shall immediately notify the Department and shall not pay any claim unless and until it receives notice to do so from the Department.

(f) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the licensee conducts or conducted business advising consumers of their right to file claims against the bond. This notice shall be in the following form:

NOTICE TO CONSUMERS

TO ANY CONSUMER HAVING CLAIMS AGAINST (Name of Licensee), A SECONDARY MORTGAGE LOAN LICENSEE

TAKE NOTICE that in order to provide a procedure for the orderly resolution of claims against the bond obtained by (Name of Licensee) for the benefit of any consumer injured by the wrongful act, omission, default, fraud or misrepresentation of (Name of Licensee), you are hereby required to present your claims against (Name of Licensee) at the following address:

N.J. Department of Banking
20 West State Street
CN 040
Trenton, NJ 08625
Attn.: Regulatory Affairs Division

Each claim shall be presented in writing, specifying the amount claimed and the particulars of the claim, and shall be duly verified under oath or affirmation.

TAKE FURTHER NOTICE that each person having claims against (Name of Licensee) should file a claim no later than (one month after last notice) or risk losing the opportunity to file a claim.

Commissioner of Banking

(g) The Department shall review all timely claims made against the bond of a licensee and shall decide which claims are valid. All consumers with timely valid claims shall share pro rata in their claims against the bond. The Department shall then submit claims it has against the licensee for unpaid examination charges or for other penalties, charges or fees to the surety company for payment. Consumers submitting claims after the filing date set forth in the published notice but before the expiration of the applicable statute of limitations period shall recover next against the bond in the order that the claims are submitted.

(h) The surety company shall pay consumers' claims based on the damages directly incurred by the wrongful act, omission, default, fraud or misrepresentation of the licensee. Attorney's fees, pre- or post-judgment interest, court costs and similar charges are not recoverable through the bond, unless such charges are included in a final judgment against the licensee and the surety company was given prior notice of the court action and an opportunity to respond. A consumer may not recover third party charges for services which are necessary and transferable for future mortgage loan applications.

3:38-1.5 Bonds

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

(e) A licensee shall provide the Department with the original copy of a surety bond. If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Department with the amended original copy of the surety bond. A surety company shall not cancel a bond for any cause unless written notice of its intention to cancel is filed with the Department at least 30 days before the day upon which cancellation shall take effect, and cancellation without such notice shall not be effective.

(f) When a person submits a claim with a surety company against the bond of a licensee, the surety company shall immediately notify the Department and shall not pay any claim unless and until it receives notice to do so from the Department.

(g) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the licensee conducts or conducted business advising consumers of their right to file claims against the bond. This notice shall be in the following form:

NOTICE TO CONSUMERS

TO ANY CONSUMER HAVING CLAIMS AGAINST (Name of Licensee), A LICENSED MORTGAGE BANKER OR BROKER

TAKE NOTICE that in order to provide a procedure for the orderly resolution of claims against the bond obtained by (Name of Licensee) for the benefit of any consumer injured by the wrongful act, default, fraud or misrepresentation of (Name of Licensee), you are hereby required to present your claims against (Name of Licensee) at the following address:

N.J. Department of Banking
20 West State Street
CN 040
Trenton, NJ 08625
Attn.: Regulatory Affairs Division

Each claim shall be presented in writing, specifying the amount claimed and the particulars of the claim, and shall be duly verified under oath or affirmation.

TAKE FURTHER NOTICE that each person having claims against (Name of Licensee) should file a claim no later than (one month after last notice) or risk losing the opportunity to file a claim.

Commissioner of Banking

(h) The Department shall review all timely claims made against the bond of a licensee and shall decide which claims are valid. All consumers with timely valid claims shall share pro rata in their claims against the bond. The Department shall then submit claims it has against the licensee for unpaid examination charges or for other penalties, charges or fees to the surety company for payment. Consumers submitting claims after the filing date set forth in the published notice but before the expiration of the applicable statute of limitations period shall recover next against the bond in the order that the claims are submitted.

(i) The surety company shall pay consumers' claims based on the damages directly incurred by the wrongful act, default, fraud or misrepresentation of the licensee. Attorney's fees, pre- or post-judgment interest, court costs and similar charges are not recoverable through the bond, unless such charges are included in a final judgment against the licensee and the surety company was given prior notice of the court action and an opportunity to respond. A consumer may not recover third party charges for services which are necessary and transferable for future mortgage loan applications.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Condominium, Fee Simple and Cooperative Conversion and Mobile Home Park Retirement Senior Citizens and Disabled Protected Tenancy

Adopted Amendments: N.J.A.C. 5:24-2.3 and 2.5

Proposed: March 4, 1991 at 23 N.J.R. 645(a).
Adopted: April 16, 1991, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: April 18, 1991, as R.1991 d.252, **without change.**
Authority: N.J.S.A. 2A:18-61.2 and 61.38.
Effective Date: May 20, 1991.
Expiration Date: July 10, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:24-2.3 Application procedure
(a) (No change.)
(b) Upon request of the administrative agency or officer, a tenant seeking protected tenancy status shall supplement the form with such documentation as the administrative agency or officer shall deem necessary in order to make a determination as to eligibility.
1. An application may be deemed incomplete, and may be rejected, if supplementary documentation is not provided to the administrative agency or officer within 10 days of request therefor; provided, however, that this provision shall not be construed as precluding timely reapplication.
i.-ii. (No change.)
iii. Proof of disability shall be in the form of certification of entitlement to Social Security or SSI disability benefits, or of proof that the applicant has been honorably discharged, or released under honorable circumstances, from active service in any branch of the United States Armed Forces and is rated as having a 60 percent disability or higher as a result of that service by the Veterans' Administration, or, if the applicant does not receive such disability benefits or have such rated disability, of such evidence as the administrative agency or officer shall deem to be equivalent.
2. (No change.)
(c) (No change.)

5:24-2.5 Determination of eligibility
(a) (No change.)
(b) The administrative agency or officer shall determine each applicant to be eligible, conditionally eligible or ineligible.
1. (No change.)
2. A tenant shall be determined to be conditionally eligible only if he or she has established to the reasonable satisfaction of the administrative agency or officer, that he or she meets all requirements established by the Act as of the date of application, except the one-year residency requirement or the 62-year age requirement, or both; provided, however, that the one-year residency requirement shall not apply to a tenant who is occupying the unit as his or her principal residence under a lease with a term of more than one year.
i. A conditionally eligible tenant shall automatically become eligible if the conversion recording, as defined in the Act, occurs after the tenant's first anniversary of establishing a principal residence in the building, if applicable, or 62nd birthday, whichever is later.
ii. If the conversion recording precedes either such first anniversary, in the case of a tenant not having a lease with a term of more than one year, or such 62nd birthday, the tenant shall automatically become ineligible.
iii. (No change.)
3. (No change.)
(c) (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF COASTAL RESOURCES

Notice of Administrative Correction

Coastal Zone Management Buffers and Compatibility Uses

N.J.A.C. 7:7E-8.13

Take notice that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:7E-8.13(b)1. The cross-reference to the rules concerning Special Areas is to "N.J.A.C. 7:7E-3.1 through 3.4." The Special Areas rules actually appear at N.J.A.C. 7:7E-3.1 through 3.48, and the rule will be corrected administratively to reflect this proper reference. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

7:7E-8.13 Buffers and compatibility of uses
(a) (No change.)
(b) Development shall be compatible with adjacent land and water uses to the maximum extent practicable.
1. Development that is likely to adversely affect adjacent areas, particularly Special Areas (N.J.A.C. 7:7E-3.1 through [3.4] **3.48**) or residential or recreational uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.
2. (No change.)
(c) (No change.)

(c)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System

Adopted Amendments: N.J.A.C. 7:11-2.2, 2.3 and 2.9.

Proposed: December 17, 1990 at 22 N.J.R. 3676(a).
Adopted: April 25, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: April 29, 1991 as R.1991 d.270, **with substantive changes** not requiring additional public comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 043-90-11.
Effective Date: May 20, 1991.
Operative Date: July 1, 1991.
Expiration Date: May 13, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (hereafter "Authority") is adopting amendments to N.J.A.C. 7:11-2. In accordance with N.J.A.C. 7:11-2.11(a)4, Procedures for rate adjustments, the Authority held a pre-public hearing meeting with the Authority's contractual water customers to present and explain the proposed adjustments to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water customers and Public Advocate's office as required by N.J.A.C. 7:11-2.11(a)4. This meeting was held on January 8, 1991 at the Authority's Administration Building conference room and was attended by representatives from the Elizabethtown Water Company, Middlesex Water Company, the Middlesex County Planning Board, the City of New Brunswick and the Township of East Brunswick. A representative from the Public Advocate, Division of Rate Council did not attend.

Notice of the proposed rate adjustments and public hearing was legally advertised in the New Brunswick Home News, Trenton Times, Newark Star Ledger, Asbury Park Press, Hunterdon County Democrat and the Courier-News. A news release covering the proposed rate adjustments was also distributed to newspapers of general circulation in the water customers' service area. In addition, a direct mailing of the Notice of Public Hearing was made to all water customers and approximately 280 interested parties on the Authority's mailing list.

A public hearing concerning this rule was held on February 7, 1991 to provide interested persons the opportunity to present testimony. Four individuals attended the hearing and two parties presented comments. Two written letters were received during the public comment period which closed on March 19, 1991. The only comment received at the public hearing and during the comment period which ended on March 19, 1991 is summarized below.

The following is a list of those persons or organizations that made either written or oral comments related to the proposed amendments:

Water Users Association
Thomas J. Cawley, Elizabethtown Water Company
L. Mason Neely, Township of East Brunswick
Dennis G. Sullivan, Middlesex Water Company

OPERATIONS AND MAINTENANCE RESERVE LEVEL

COMMENT: The commenters proposed that the Authority reduce its General Reserve for operations and maintenance expenses from a level of three months to two months of operating expenses ($1,500,000 to $1,000,000) for its Fiscal Year 1992 operations. The commenters maintained that the reduction of approximately $500,000 in the operating reserve on a one time basis, would for the most part eliminate the need for an upward rate adjustment for Fiscal Year 1992.

RESPONSE: The terms of the Authority's Series 1988 Revenue Bond Indenture for the financing of the Authority's current $32.4 million Capital Improvement Program require the Authority to maintain a reserve for Operations and Maintenance at a level equal to "at least twenty-five percent (25%) of the annual Operations and Maintenance budget." This mandated level corresponds to three months of operating expenses.

Summary of Hearing Officers' Recommendations and Agency Response:

Authority Board Members Peggy Haskin and Charles Moeller, Jr. served as Hearing Officers at the February 7, 1991 public hearing. After reviewing the testimony presented at the public hearing, Hearing Officers Haskin and Moeller have made the following recommendations:

1. The General Reserve for Operations and Maintenance should remain at a level adequate to sustain at least three months of operations in accordance with the conditions of the Series 1988 Revenue Bond Indenture.

2. Due to unanticipated revenues in the budget year ending June 30, 1991, an amount of $313,260 is available for appropriation into the Rate Stabilization Fund. This amount is recommended for appropriation into the Rate Stabilization Fund to be applied to the Fiscal Year 1992 revenue stream for the purpose of offsetting projected FY92 operational expenses.

3. The proposed Operations and Maintenance Expense Component of $114.61 per million gallons should be reduced to $109.21 per million gallons (effective July 1, 1991).

4. The remaining adjustments to the Rate Schedule should be adopted as originally proposed to become effective on July 1, 1991.

The Authority accepts these recommendations, and has modified the rules accordingly upon adoption.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:11-2.2(b) and 2.9(a)1 and 2

Due to greater than projected revenues for Fiscal Year 1991, which will be applied to the FY92 revenue stream, the projected operations and maintenance component of the rate schedule is changed in this adoption from $114.61 as the charge per million gallons set forth in the proposed rule to $109.21 per million gallons, a reduction of $5.40 per million gallons. This reduced rate is reflected at N.J.A.C. 7:11-2.2(b) which actually sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-2.9(a), which references N.J.A.C. 7:11-2.2 and sets forth the operations and maintenance charge for standby service users.

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

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:

1.-7. (No change.)

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of 152.296 million gallons per day has been used in setting the rate listed at (b) below.

(b) General Rate Schedule for Operations and Maintenance:

Allocation	Rate/Million Gallons
Million Gallons per Day (MGD)	*[$114.61]* ***$109.21***

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of 151.801 million gallons per day. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation	Rate/Million Gallon
7/1/91 to 6/30/2002	Million Gallons per Day (MGD)	$13.90

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following debt service assessment rate, based on a sales base of 152.226 million gallons per day, in addition to that included in (b) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallon
7/1/91 to 10/30/2006	Million Gallons per Day (MGD)	$33.23

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of 152.226 million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallon
7/1/91 to 6/30/92	Million Gallons per Day (MGD)	$44.99
7/1/92 to 6/30/93	Million Gallons per Day (MGD)	$55.07
7/1/93 to 6/30/95	Million Gallons per Day (MGD)	$56.91

7:11-2.9 Standby Charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly Standby Charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3.

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

Maximum withdraw capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	*[$114.61]* ***$109.21*** plus annual debt service assessment rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

2. For Standby Contracts within the Raritan River Basin:

Maximum withdraw capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	*[$114.61]* ***$109.21*** plus annual debt service assessment rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply Systems

Adopted Amendments: N.J.A.C. 7:11-4.3, 4.4 and 4.9

Proposed: December 17, 1990 at 21 N.J.R. 3678(a).
Adopted: April 25, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: April 29, 1991 as R. 1991 d.271, **without change.**

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 042-90-11.

Effective Date: May 20, 1991.
Operative Date: July 1, 1991.
Expiration Date: May 13, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (hereafter "Authority") is adopting amendments to N.J.A.C. 7:11-4. In accordance with N.J.A.C. 7:11-4.13(a)4, the Authority held a pre-public hearing meeting with the Authority's contractual water purchasers and interested parties to present and explain the proposed adjustment to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water purchasers and interested parties including Public Advocate's Office and the Board of Public Utilities. This meeting was held on January 15, 1991 at the Authority's Manasquan Reservoir System Administration Building, Wall, New Jersey, and was attended by two parties. No representative from the Public Advocate, Division of Rate Counsel or the Board of Public Utilities attended.

Notice of the proposed rate adjustments and public hearing was legally advertised in the Trenton Times, Newark Star Ledger, Asbury Park Press, the Hunterdon County Democrat, the Courier-News and the Herald. A news release covering the proposed rate adjustments was also distributed to newspapers of general circulation in the water customers' service area. In addition, a direct mailing of the Notice of Public Hearing was made to all water customers and approximately 280 interested parties on the Authority's mailing list.

A public hearing concerning this rule was held on February 13, 1991 to provide interested persons the opportunity to present testimony. Six individuals attended the hearing and one party presented comments. The Authority received one letter during the public comment period which closed on March 25, 1991. The comments received at the public hearing and during the comment period are summarized below.

The following person made both oral and written comments related to the proposed rule:

William H. Pearce, New Jersey—American Water Company

STAFFING

COMMENT: The New Jersey American Water Company stated that one Assistant Plant Operator position included in the FY91 budget has not been filled and experience to date indicates that the position may be eliminated without affecting the system's operation in order to reduce the O & M component by approximately $12.00 per million gallons.

RESPONSE: A net reduction of $15,323 in the originally projected FY92 salaries expenses is anticipated. This net reduction is a result of the proposed elimination of one Assistant Plant Operator position and an increase in the amount of estimated FY92 overtime expenses.

ALLOCATION OF LABOR COSTS

COMMENT: The New Jersey American Water Company maintained that the allocation of labor costs between the Manasquan Reservoir System and the Water Treatment Plant/Transmission System is unfair to the Reservoir System customers.

RESPONSE: The allocation of salaries for FY92 employs the same judgmental factors as were used in the FY91 budget. It is the Authority's considered judgment that insufficient observed and recorded data exists at this time to warrant any changes in the percentages used to allocate the salaries. Coopers and Lybrand, consultants to the Authority, have recommended and the Authority has implemented procedures for maintaining appropriate records to more precisely allocate employee salaries between the Manasquan Reservoir and the Treatment Plant operations. Coopers and Lybrand is reviewing this data on a quarterly basis and their audit report with recommendations will be available in September of 1991 following the end of FY91. This report will provide the basis for any adjustments to the salary allocation percentages for Fiscal Year 1993 (July 1, 1992-June 30, 1993).

PUMPING ENERGY BUDGET

COMMENT: The New Jersey American Water Company estimated that the FY91 electrical energy expenses for pumping will be $100,000 less than budgeted and petitioned the Authority to apply these savings to the proposed FY92 budget in order to reduce the O & M component by approximately $17.00 per million gallons.

RESPONSE: While the actual cost of electricity for pumping is lower than originally projected for FY91, the cost of electricity for other service is considerably above the amount originally budgeted for FY91. A more recent review of all direct operation and maintenance costs projected for FY92, since the rate adjustment was originally proposed, indicates that an increase in the projected FY92 budget for direct operation and maintenance expenses from $747,220 to $794,990 will be needed.

RESIDUALS BUDGET

COMMENT: The New Jersey American Water Company estimated that the FY91 residual removal expenses will be $50,000 to $100,000 under budget and petitioned the Authority to apply $50,000 to reduce FY92 expenses in order to reduce the O & M component by approximately $8.00 per million gallons.

RESPONSE: The Authority anticipates that the projected FY92 budget for residuals management may be reduced by approximately $40,000. However, as stated above, the overall budget for direct operations and maintenance expenses is now expected to exceed the original FY92 budget estimate by approximately $47,770.

Summary of Hearing Officers' Recommendations and Agency Response:

Authority Board Members Peggy Haskin and Charles Moeller, Jr. served as Hearing Officers at the February 13, 1991 public hearing. After reviewing the testimony presented at the public hearing, Hearing Officers Haskin and Moeller have made the following recommendations:

1. Due to balances in the budget year ending June 30, 1991 an amount of $130,000 is available for appropriation into the General Fund (Rate Stabilization Fund). This amount is recommended for appropriation into the Rate Stabilization Fund to be applied to the Fiscal Year 1992 revenue

stream for the purpose of offsetting additional projected FY92 operational expenses.

2. The Operations and Maintenance Expense and Debt Service Assessment Components should be adopted as originally proposed to become effective on July 1, 1991.

3. The adjustments to the text of the Rate Schedule should be adopted as originally proposed to become effective on July 1, 1991.

The Authority accepts these recommendations.

Full text of the adoption follows.

7:11-4.3 Operations and Maintenance Expense Component

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

(c) Operations and Maintenance Expense Component:

Effective Date	Rate/Million Gallons (based upon a 16.097 mg per day sales base)
July 1, 1991	$314.75

7:11-4.4 Debt Service Cost Component

(a) (No change.)

(b) The following Debt Service rates based on a sales base of 16.097 million gallons per day, apply to all water purchasers who entered into a water purchase contract before July 1, 1990, the date upon which the Authority commenced operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and began to make uninterruptible service available to the purchasers ("System Operation Date").

Period	Rate/Million Gallons
7/1/91 to 1/31/92 (Coverage 105 percent)	$686.11
2/1/92 to 1/31/93 (Coverage 110 percent)	$718.78
2/1/93 to 1/31/94 (Coverage 115 percent)	$751.61
2/1/94 (Coverage 120 percent)	$784.35

(c) A delayed water purchase surcharge will be assessed to all water purchasers who enter into a water purchase contract for an uninterruptible service commencing subsequent to the system operation date (delayed water purchase contract). This includes a purchaser under an initial water purchase contract which provides for an increase in the amount of uninterruptible service effective subsequent to the system operation date.

(d) (No change.)

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of the purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700) GPM) or fraction thereof.	$314.75 plus annual debt service assessment rate established in N.J.A.C. 7:11-4.4.

(a)

DIVISION OF COASTAL RESOURCES

Dam Restoration Grant Regulations

Readoption With Amendments: N.J.A.C. 7:24

Proposed: March 4, 1991 at 23 N.J.R. 650(a).

Adopted: April 18, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: April 22, 1991 as R.1991 d.256, **without change.**

Authority: N.J.S.A. 13:1D-9, 13:1D-15, 58:4-1 et seq. and P.L. 1980, c.70.

DEP Docket Number: 007-91-01.

Effective Date: April 22, 1991, Readoption;
May 20, 1991, Amendments.

Expiration Date: April 22, 1996.

Summary of Public Comments and Agency Responses:

This readoption with amendments was proposed on March 4, 1991 at 23 N.J.R. 650(a). Notice of the proposal was also made on March 4, 1991, in the Asbury Park Press, The Record, Courier-Post, Trenton Times, Bridgeton Evening News, The Star Ledger and The Press of Atlantic City.

Written comments from the public were solicited at that time.

No comments were received.

Full text of the readoption can be found at N.J.A.C. 7:24.

Full text of the amendments follows.

7:24-2.4 Pre-application procedure

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

(c) Questions concerning the grant program and requests for a preapplication conference should be directed to:

Chief
Dam Safety Section
Division of Coastal Resources
CN 401
Trenton, N.J. 08625

7:24-2.5 Application procedures

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

(f) Applications shall be sent to:

Chief
Dam Safety Section
Division of Coastal Resources
CN 401
Trenton, N.J. 08625

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

7:24-2.11 Project Development Phase of Dam Restoration Program

(a) Each applicant receiving a Notice of Conditional Grant Award shall arrange to have a pre-design conference, within 30 days after receipt of the notice, with personnel of the Department and shall submit all materials required by this section to the Department within six months after receipt of the notice or within the time limits of any extension granted pursuant to (g) below.

(b) During the pre-design conference the Department shall identify and explain the requirements of this section including design criteria and review the requirements of the Environmental Assessment specified in (d) below.

(c)-(g) (No change.)

7:24-2.18 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The grantee shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The grantee shall notify the Department immediately when such allegation or evidence comes to its attention and shall periodically advise the Department of the status and ultimate disposition of any matter.

HEALTH

(b)

DIVISION OF EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Youth Camp Safety Act Standards

Adopted Amendments: N.J.A.C. 8:25

Proposed: March 4, 1991 at 23 N.J.R. 651(a).

Adopted: April 29, 1991, by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Filed: April 29, 1991, as R.1991 d.269 **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. 26:12-1 et seq., specifically N.J.S.A. 26:12-5.

Effective Date: May 20, 1991.
Operative Date: January 1, 1992, for N.J.A.C. 8:25-6.11 only.
Expiration Date: May 19, 1993.

Summary of Public Comments and Agency Responses:

The proposed amendments appeared in the March 4, 1991 New Jersey Register at 23 N.J.R. 651(a). A notice of publication regarding proposed amendments to the youth camp rules was sent to all provisional and certified youth camps with the 1991 applications to operate a youth camp on February 28, 1991. In addition, the Department participated in three workshops: one conducted at Stockton State College in Pomona on March 20, 1991, and two at the Tri-State Camping Conference in New Brunswick on March 21 and 22, 1991. Approximately 175 camp directors participated in these workshops, which were conducted to inform and to discuss implementation of the revised State standards. In an additional attempt to elicit comments from the public prior to the closing of the public comment period on April 3, 1991, the Department also mailed the proposed amendments to the 115 local health agencies and approximately 60 members of the youth camp rule revision committee, comprised of representatives of various local and State agencies, professional camping associations, academic authorities on aquatics programs, and national professional health organizations. The Department of Health received written comments from eight individuals:

Frank A. Sica, Supervisor
Irvington Board of Education
Department of Outdoor Education

Dea Daspin
Willow Lake Day Camp

Ira Fish
Jefferson Lakes Camp

Ron Leiser
Ivy League Day Camp

Gary T. Larson
Department of Human Services
Commission for the Blind and Visually Impaired

Jo Bruno
A. Harry Moore Laboratory School
Jersey City State College

Nicholas R. Scalera
Acting Director
Office of Legal and Regulatory Liaison
Department of Human Services

Harold Breene
Camp River Bend, Inc.

The Department of Health (hereafter, the Department), with input from the Advisory Council on Youth Camp Safety, considered all of the comments offered and has modified the rules in several areas to accommodate the concerns raised during the public comment period.

The written comments and the Department's responses follow:

COMMENT: One comment was received suggesting that there should be specific rules for camps that serve children with physical handicaps, emotional disturbances, retardation, blindness, deafness and diabetes, and other medically needy children.

RESPONSE: The Department evaluated the existing standards and feels that the needs of all children are adequately addressed. However, in response to this comment, the Department will further research and monitor this issue and, as necessary and appropriate, propose revisions at a later date.

Where the commenter cited specific sections of the proposed rules and made specific recommendations, the Department has addressed these comments individually under the appropriate rule citation as follows:

COMMENT: N.J.A.C. 8:25-2.4(c) and (d). One commenter suggested that a statement be added to recommend that youth camps consult with the Department of Human Services, Division of Youth and Family Services, for staff training on issues related to child abuse and neglect.

RESPONSE: The Department agrees that this recommendation would be beneficial for youth camp operators in developing a meaningful training program on child abuse and neglect for staff members during preseason orientation. Therefore the Department has revised N.J.A.C. 8:25-2.4(d) on adoption.

COMMENT: N.J.A.C. 8:25-3.1(c). One comment was received suggesting that the medical log should also list the incident that led up to the injury or ailment, the outcome of the incident, and the time of day.

RESPONSE: The medical log is intended to provide minimum information regarding injuries and illnesses. N.J.A.C. 8:25-3.2(e) and (f) require the camp operator to document accidents on forms supplied by the Department which fully describe the incident, actions taken, location of incident, names of campers involved, and the date. In addition, the camp must report all deaths, head, neck, or spinal cord injuries, and any injury which renders a camper unconscious to the Department within 24 hours. The Department will investigate and document the causes of these reported incidents. The Department does not believe that further documentation is necessary.

COMMENT: N.J.A.C. 8:25-3.2(b). A comment was received suggesting that medications should not be accessible to staff members under the age of 18.

REPONSE: These concerns are addressed in N.J.A.C. 8:25-3.2(b)5, which stipulates that only the health director or a designated adult can dispense medications. N.J.A.C. 8:25-1.4 also defines an adult as a person aged 18 years or older. Therefore, staff members under 18 years old would not be permitted to handle or dispense medications.

COMMENT: N.J.A.C. 8:25-3.2(b)1 and 2. One comment was received suggesting that the term "directing physician" be defined.

RESPONSE: The term directing physician is adequately addressed in N.J.A.C. 8:25-3.1, which requires a camp's medical program to be under the direction of a physician. Therefore, implementation of this recommendation would be redundant and, therefore, not necessary.

COMMENT: N.J.A.C. 8:25-3.2(b)7. One commenter suggested that a reference should be added regarding medications that need to be refrigerated.

RESPONSE: This concern is addressed in N.J.A.C. 8:25-3.2, which requires all medication to be properly stored. However, since storage requirements vary for medications (for example, refrigeration, light sensitivity, etc.), the Department has revised the requirement to require compliance with the label instructions for storage of medication.

COMMENT: N.J.A.C. 8:25-3.2(c). One comment was received suggesting that the Department expand the recordkeeping requirements for administering medications to include: name and address of the pharmacy, name of pharmacist, prescription file number, dispensing date, prescribing physician's name, strength of the medication, quantity dispensed, and any cautionary information specific to the medication.

RESPONSE: Prescriptions are required to be labelled in conformance with N.J.S.A. 45:14-15 and the Board of Pharmacy rules, N.J.A.C. 13:39, which include the basic information that was requested in this comment. Therefore, since camps will be required to accept only the original prescription container, this information will be readily available to the camp medical director while the child is in camp. The only labeling information that is not required by law is cautionary information specific to the medication. The Department agrees that this information is necessary and has revised the rule accordingly to address this concern.

COMMENT: N.J.A.C. 8:25-3.3. One commenter suggested that camp counselors be tested for tuberculosis.

RESPONSE: The Department does not support the need for testing camp counselors for tuberculosis. A majority of camp counselors are college students, who are not at high risk for active tuberculosis. Should a counselor demonstrate signs and symptoms of illness, he or she would be immediately referred to the camp health director for the appropriate medical attention. Also, since the daily activities of a youth camp are conducted outdoors, the risks associated with transmission are further reduced. Thus, the need for routine testing of camp staff for tuberculosis is not warranted.

COMMENT: N.J.A.C. 8:25-4.8(c)5. A comment was received objecting to a rule which stipulates that nonambulatory children are to be transported in a wheelchair that is properly secured.

RESPONSE: This concern is adequately addressed in N.J.A.C. 8:25-4.8(c)5, which permits children to be taken out of their wheelchairs and placed within the vehicle, provided that seat belts or other restraints are used and are approved by the Division of Motor Vehicles.

COMMENT: N.J.A.C. 8:25-5.3(a). Five comments were received from representatives of the New Jersey Association of Private Day Camps indicating that if the camp employs a certified American Red Cross or YMCA water safety instructor, the deep water swim test as specified in N.J.A.C. 8:25-5.3(a) should be left to the discretion of an aquatics professional. This opinion is based upon the premise that it is incumbent upon individual camps with qualified waterfront personnel to institute a swimming test appropriate to its individual needs, rather than have a broad based test mandated Statewide.

RESPONSE: The swim test is intended to establish minimum skills that must be possessed by all campers prior to deep water swimming during a free swim period. Due to the various types of bathing facilities, such as ocean bathing, lake bathing, and swimming pool bathing, the aquatics director may develop a more stringent swim test that is appropriate to the individual needs of the camp. Additionally, the Department has consulted with the American Red Cross, YMCA, and the Boy Scouts of America and has determined that this swim test is equivalent and consistent with existing aquatic programs. Therefore, the Department has not revised this requirement in response to the comment.

COMMENT: N.J.A.C. 8:25-5.4(a). One comment was received indicating opposition to restricting nonswimmers from canoes unless accompanied by a lifeguard. This standard would deprive children opportunities of learning to paddle a canoe or the experience to be in one.

RESPONSE: The Department has researched this issue and has determined the following: N.J.A.C. 8:25-5.4(a) stipulates that children in canoes would be required to wear a Type I, II, or III foam filled personal flotation device approved by the United States Coast Guard. N.J.A.C. 8:25-5.4(b)1 stipulates that canoe activities would be patrolled by a lifeguard using a boat or paddleboard and supervised by an adult from a vantage point to oversee the entire activity. Therefore, the Department agrees that the proposed amendment to restrict nonswimmers from canoes is excessive and has revised this rule. However, the Department's position regarding restricting nonswimmers from sailboats unless accompanied by a lifeguard will remain, based on the premise that the hazards associated with sailboats are greater than canoes. Sailboats can move out of the range of patrolling lifeguards at faster speeds than canoes.

COMMENT: N.J.A.C. 8:25-5.4(b)2. One comment was received requesting that the rules should be further clarified to indicate that children participating in boating activities should be under constant supervision.

RESPONSE: The Department agrees with this recommendation and has revised the rule to clarify that all boating activities are patrolled and supervised by at least one lifeguard and one adult.

Summary of Agency-Initiated Changes:

The Department has reconsidered the requirement which would only permit the health director to administer medication. Since health directors do not always accompany campers on off site trips, the health director may not always be available to administer medications, some of which are required to treat life-threatening, emergency conditions, such as inhalers and bee sting medication. The designation of an adult to administer medications under certain conditions will ensure that the child will receive the proper medication in a timely fashion. Therefore, the Department has amended N.J.A.C. 8:25-3.2(b)5 accordingly.

After further review of N.J.A.C. 8:25-5.3(a)1, the Department has determined that the chest deep restriction of those campers who fail the prescribed swim test is not appropriate, since N.J.A.C. 8:25-5.3(a) already requires children to be confined to an area commensurate with the limits of their swimming ability or an area requiring lesser skills. Since this language is not necessary, the Department has amended this section accordingly.

Summary of Changes Made between Proposal and Adoption:

The Department has made several changes between the proposal and adoption in response to the public comment and departmental initiatives, which are summarized as follows:

N.J.A.C. 8:25-3.1(b)1 was revised to recommend that the camp contact the Department of Human Services for guidance in the development of staff training programs on child abuse and neglect.

N.J.A.C. 8:25-3.2(b)5 was revised to include a provision to permit the health director to designate an adult to administer medications during off site trips and under life threatening conditions.

N.J.A.C. 8:25-3.2(b)7 was revised to require compliance with the label instructions for storage of medication.

N.J.A.C. 8:25-3.2(c)3 was revised to include a provision for recording cautionary information for medications administered to campers.

N.J.A.C. 8:25-5.3(a)1 was revised to restrict nonswimmers to areas commensurate with their swimming abilities.

N.J.A.C. 8:25-5.4(a)1 was revised to permit nonswimmers in a canoe without being accompanied by a lifeguard.

N.J.A.C. 8:25-5.4(b)1 was revised for the purpose of clarifying the responsibilities of lifeguards in supervising boating activities. This amendment has also been incorporated in N.J.A.C. 8:25-5.4(b)2.

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

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

8:25-1.1 Purpose

The purpose of this chapter is to promote, protect, and safeguard the health and well-being of the youth of the state attending day and resident youth camps as provided for in N.J.S.A. 26:12-1 et seq.

8:25-1.2 Scope

These rules shall govern all day and resident youth camps in the State of New Jersey as defined in N.J.A.C. 8:25-1.4. The provisions are enforceable by the Commissioner of Health or any of the Commissioner's authorized deputies, representatives, agents or employees.

8:25-1.3 Separability

If any provision or applications of any provision of this chapter is held invalid, that invalidity shall not affect other provisions or applications of this chapter.

8:25-1.4 Definitions

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

...

"Lifeguard" means a person aged 16 years or older on duty at a waterfront for guarding or rescue purposes.

"Lifeguard supervisor" means adult in charge at a waterfront, supervising swimming, watercraft activities, and related staff.

...

"Passenger vehicle" means a vehicle that has a capacity of nine or fewer persons.

"Type I school bus" means a bus with a capacity of 17 to 58 passengers, as indicated by the vehicle manufacturer.

"Type II school bus" means a bus with a capacity of 10 to 16 passengers, as indicated by the vehicle manufacturer.

8:25-2.2 Site, plans, facilities, and equipment:

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

(e) A room, tent, or building to serve as a health center shall be maintained on the campsite for the temporary isolation and treatment of sick or injured members of the camp community. This facility shall be protected from flies and insects; be located to insure privacy and quiet; not located in or directly off the kitchen; and shall include medical equipment and supplies deemed necessary by the directing physician for the health and welfare of the camp. Hot water shall be available at this location.

(f) (No change.)

8:25-2.4 General care of children

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

(c) Any person who has reasonable cause to believe that a child has been or is being subjected to any form of hitting, corporal punishment, abusive language or ridicule; or harsh, humiliating, or frightening treatment; or any kind of child abuse or neglect by any person is required by State law to immediately report such allegations to the Department of Human Services, Division of Youth and Family Services, Office of Child Abuse Control at 1-800-792-8610 or 1-609-292-0617.

(d) The camp shall conduct and document pre-season orientation and training for the staff which shall include verbal and printed materials on policies and procedures required in this chapter, including, but not limited to: personnel policies and practices, job descriptions, disciplinary policies, emergency procedures, daily health surveillance procedures, lost camper policies, lost swimmer policies, and, if appropriate, any other expectations of the camp director.

1. *It is recommended that the camp's director consult with the Department of Human Services, Division of Youth and Family Services for guidance in the development of staff training on issues related to child abuse and neglect.*

(e) It shall be the responsibility of the youth camp operator to verify a prospective staff's background and character through reasonable inquiries including, but not limited to, character reference, personal or phone interviews, and prior employment records. Documentation shall be available to verify staff's background and character checks.

8:25-3.1 Health records and supervision:

(a) (No change.)

(b) Rules concerning health staff include:

1. A resident camp shall have on duty in residence an adult health director who is a licensed physician; or a registered nurse or licensed practical nurse complying with the rules of the State Board of Nursing; or an adult health director certified as a Paramedic or Emergency Medical Technician or First Responder/C.I.M. accredited by the State Department of Health or by the American Red Cross in Advanced First Aid; or an athletic trainer accredited by the National Athletic Trainers' Association or an equivalent certification approved by the Department.

2. (No change.)

3. All camp health directors, in both day and resident camps, shall be certified by the American Red Cross or American Heart Association in cardiopulmonary resuscitation (CPR).

4. (No change.)

(c) A bound medical log listing date, name of patient, ailment, treatment and the name of the person who administered treatment shall be maintained at the health center. If an injury or illness is serious, the camp physician shall be consulted immediately, and the parents or guardians shall be notified as soon as possible.

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

(f) All deaths; head, neck, or spinal cord injuries; and any injury which renders a person unconscious shall be reported to the Department within 24 hours.

8:25-3.2 Medications and supplies

(a) Youth camps that do not administer medication shall inform the parents or guardians of this policy prior to the time of the enrollment.

(b) Youth camps that administer medication to a child shall adhere to the following:

1. Prescription medication shall be administered only after receipt of written authorization from the child's parent, guardian, or the directing physician.

2. Prescription medication shall be stored in the original prescription container.

3. Nonprescription medication shall be administered only after receipt of written authorization from the child's parent or guardian, or in accordance with the camp's standing orders. The standing order shall be established by the directing physician.

4. All nonprescription medication shall be labeled and stored in the original container.

5. The health director shall only administer medications authorized by parents, guardians, the attending physician, or the camp physician in the case of standing orders. ***The health director may designate an adult to administer medications for life threatening conditions and to children participating in off site trips.***

6. The health director shall insure that the staff members are informed as to the medication needs of each child under their direct supervision, and any limitations commonly associated with the medication.

7. All medications shall be properly stored ***as specified on the label*** in a secured area that is inaccessible to the children.

8. Whenever practical, unused personal medication shall be returned to the parents or guardians when no longer being administered. Within three days after the campers stay at camp, any unclaimed medication shall be destroyed.

(c) When any medications are administered to a child, the camp shall maintain on file a record of:

1. The child's name and parental authorization;

2. The name of the medication administered;

3. The condition for which the medication is being used ***and any cautionary information specific to the medication***;

4. The instruction for administration, including the dosage and frequency; and

5. The date, time, and name of the person administering the medication to a child.

(d) First aid equipment shall be available at all times and shall be fully restocked within 24 hours of use. The minimum content for the first aid equipment shall include the following items or equivalent items:

1. 48—one inch adhesive compress;
2. 24—two inch adhesive compress;
3. 24—three inch adhesive compress;
4. 12—four inch adhesive compress;
5. 24—three inch by three inch plain sterile gauze pads;
6. Two—two inch gauze roller bandages;
7. Six triangular bandages;
8. Two—one inch rolls adhesive tape;
9. Two sterile eye dressing packets; and
10. One scissors and tweezers.

(e) First aid kits shall be available for all camp trips and shall be supplied with the appropriate contents deemed necessary by the health director or directing physician for the activities of that trip.

8:25-3.3 Health history records

(a) A written health history for campers, which specifies all known physical and mental conditions, shall be completed and submitted by a parent, guardian or physician at the time of admission to a day or resident camp.

(b) A written health history for staff members, which specifies all known physical and mental conditions, shall be submitted at the time of employment. Staff members under the age of 18 shall have the health history completed by a parent, or legal guardian.

(c) The written health history documents shall be maintained on file at the camp when in session.

(d) All campers shall be immunized, according to the immunization schedule specified in N.J.A.C. 8:57-4, against diphtheria, tetanus, poliomyelitis, measles, pertussis, mumps, and rubella or shall provide a statement from a physician that immunization is in progress.

1. If there is a religious objection to immunization of a child, a written statement shall be signed and submitted by the parents or guardians, and kept by the camp, which states that the child is in good health and that the parents or guardians assume the health responsibility for the child while in camp, with the understanding that they will be notified immediately if anything unforeseen occurs.

2. If an immunization of a child is contraindicated for medical reasons, the parent or guardian shall submit to the camp, and the camp shall keep on file, a written statement signed by a licensed physician, indicating both the reason and length of the medical contraindication, pursuant to N.J.A.C. 8:57-4.3.

8:25-3.4 Nutrition and meal service

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

(e) Facilities shall be provided to maintain potentially hazardous food, as defined in N.J.A.C. 8:24-1.3, at or below 45 degrees Fahrenheit for storage when foods are brought into camp by a child or staff member. If such facilities are not provided, notification shall be made to the parents or guardian to limit the child's meal to exclude potentially hazardous foods.

8:25-4.3 Fire-fighting equipment

Regularly serviced fire extinguishers meeting the requirements of the Fire Underwriters Association shall be strategically placed and easily accessible. Each fire extinguisher shall be inspected prior to the opening of camp and at periodic intervals thereafter for proper care and maintenance.

8:25-4.4 Fire safety

(a) (No change.)

(b) The camp shall also conform to the Forest Fire Laws of New Jersey, N.J.S.A. 13:9-19, which states:

"In any district for which firewardens have been appointed under provisions of this chapter, no person shall set fire to or cause to be set on fire in any manner whatsoever; or to start fires anywhere and permit them to spread to forests, thereby causing damage to or threat to life or property, either accidentally or otherwise, directly or indirectly, in person or by agent, or cause to be burned, waste, fallows, stumps, logs, brush, dry grass, fallen timber or any property, material, or vegetation being grown thereon, or anything that may cause a forest fire, without first obtaining the written permission of the department (New Jersey Department of Environmental Protection, Division of Parks and Forestry). Within the designated protection area this requirement supersedes any law, rule, regulation or ordinance inconsistent therewith. No such permission shall be granted if, in the department's opinion, any forest will be endangered thereby; or if it violates the air pollution statutes; nor shall any such permission, if granted, relieve or exonerate any person from any penalties provided by this chapter, if by reason of such wildfire, any forest be burned."

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

8:25-4.5 Vehicle transportation

(a) Any youth camp that provides, or arranges for the provision of, transportation for children to or from their homes and other prearranged sites and the youth camp; and/or in connection with an activity (such as a field trip) conducted by or through the auspices of the youth camp; and any person or agency other than the youth camp that provides or arranges for the provision of transporting children to or from their homes and a youth camp for compensation shall adhere to the following provisions:

1. All vehicles used for the transportation of children shall be registered in accordance with the applicable rules of the New Jersey Division of Motor Vehicles (DMV) and shall be capable of passing the appropriate motor vehicle inspection. Operators of motor vehicles shall be properly licensed for the type of vehicle being operated.

2. Any youth camp, person, or agency, as defined in (a) above, also shall comply with all applicable provisions of the New Jersey Division of Motor Vehicles (DMV) law, N.J.S.A. 39:1-1 et seq. and the rules promulgated thereunder, as specified in N.J.A.C. 13.

3. The youth camp may authorize staff members and/or parents of enrolled children to utilize their own private passenger vehicles to transport children from the youth camp to and from scheduled field trips, outings, or any off site trips; however, staff members and/or parents may be authorized to do so only if:

i. The driver possesses a valid automobile driver's license recognized by DMV;

ii. The vehicle has a valid motor vehicle inspection sticker recognized by DMV;

iii. The vehicle owner possesses vehicle liability insurance at least at the minimum amounts required by New Jersey State insurance laws and rules, specifically, N.J.A.C. 8:25-4.7;

iv. The youth camp maintains transportation records on every vehicle utilized for the above, as specified in N.J.A.C. 8:25-4.7; and

v. The youth camp ensures that the driver and/or additional adults comply with established safety practices, as specified in N.J.A.C. 8:25-4.6.

4. Type I school buses shall meet specifications prescribed by New Jersey Department of Education rules, as specified in N.J.A.C. 6:21-5, and that were applicable at the time the bus was manufactured.

5. Type II school buses manufactured prior to April 1, 1977 shall meet the specifications prescribed by New Jersey Department of Human Services rules that were applicable at the time the bus was manufactured.

6. Type II school buses manufactured after April 1, 1977 shall be painted in the color of uniform national school bus yellow and meet the specifications prescribed by New Jersey Department of Education rules, as specified in N.J.A.C. 6:21-5.

(b) Exemption: Buses or any vehicle with a seating capacity of 15 or less, including the driver, which is solely used to transport children to or from summer camp from May 15 to September 15 of any year, are exempt from the "S2" designated license plates, color of uniform national school bus yellow, and warning lights, pursuant to N.J.A.C. 39:3-19.3.

8:25-4.6 Vehicle-related safety practices

(a) Any vehicle used in the transportation of children as specified in N.J.S.A. 8:25-4.5 shall be maintained and operated as follows:

1. Children shall never be left unattended in a vehicle.

2. Children shall be accepted and discharged from the curbside of the vehicle.

3. The interior and exterior of each vehicle shall be maintained in a clean and safe condition, with clear passage to operable doors.

4. All vehicles that are utilized to transport children under 18 months of age shall be equipped with car seats (child passenger restraint systems) that meet Federal motor vehicle safety standards, in accordance with provisions of DMV, pursuant to N.J.S.A. 39:3-76.2a, and shall be secured in the restraint system when the vehicle is in motion.

5. The driver shall not transport more persons, including children and adults, than the designed occupancy of the vehicle as indicated by the manufacturer.

6. All passengers shall be seated and shall remain seated when the bus or vehicle is in motion.

7. All passengers shall be secured in an operable seat belt, if provided, or proper restraint system, as specified in 5 above, when the vehicle is in motion.

8. At least one adult in addition to the driver shall ride with the 10 or more children being transported in any one vehicle to and from off site trips. At least one adult or counselor in addition to the driver shall ride with seven or more children under the age of six.

9. The driver shall conduct a daily check of the vehicle, which shall include all safety equipment, to ensure that the vehicle is in sound operating condition.

10. The driver shall conduct a check of the vehicle, after each run is complete, to ensure that no child remains in the vehicle.

11. A written policy between the parents or guardians and the youth camp shall be established to ensure that preschool children are discharged from the vehicle to a parent, guardian, or a designated person.

12. Emergency evacuation drills for Type I and Type II school buses shall be conducted at least once during each camping session.

8:25-4.7 Vehicle insurance and records

(a) Each youth camp or person providing transportation services, as specified in N.J.A.C. 8:25-4.5, shall secure and maintain vehicle liability insurance for bodily injury or death in minimum amounts of $300,000 per person and $500,000 per accident except for private vehicle specified in 8:25-4.5.

(b) The youth camp shall establish and maintain on file records of transportation routes to include the names of children transported, the name and address of each driver, a photostatic copy of his or her valid school bus driver's license, and also the name of contractor, if applicable.

(c) The youth camp shall maintain on file the name and address of the person(s) designated as the additional adult(s) and the license numbers of the school bus or vehicles(s) to which they are assigned.

(d) Documentation of emergency evacuation drills for all passengers who ride the Type I or Type II school buses shall be maintained in a log book containing the following information:

1. The date of the drill;
2. The number of passengers;
3. The time to evacuate the bus and
4. The signature of the person conducting the drill.

8:25-4.8 Special requirements for physically handicapped, nonambulatory children

(a) For youth camps providing or arranging for transportation services for physically handicapped children who are nonambulatory, the following additional vehicle requirements shall be met:

1. A ramp device or a hydraulic lift shall be provided with a lift minimum pay load of 600 pounds.

2. Wheelchairs shall be securely fastened and face forward.

3. The arrangements of the wheelchairs shall not impede access to the emergency or exit door.

4. If a ramp device is installed, it shall have a nonskid surface, be securely stored and protected from the elements when not in use, and have at least three feet of length for each foot of incline.

5. Seat belts or other restraints approved by DMV shall be installed for each passenger, including those seated in wheelchairs.

6. Any aisle leading from a wheelchair position to the emergency or exit door shall be a minimum width of 30 inches.

SUBCHAPTER 5. WATERFRONT SAFETY

8:25-5.1 Swimming areas

(a) Swimming pools and bathing beaches shall conform to municipal ordinances, state statutes, and Chapter IX of the State Sanitary Code, entitled, "Public Recreational Bathing" (N.J.A.C. 8:26), except as where otherwise specified in this subchapter.

(b) (No change.)

8:25-5.2 Waterfront staff

(a) The lifeguard supervisor in any camp or any place where camp activities are conducted, who supervise swimming or watercraft programs shall be currently certified in American Red Cross Lifeguard training or in YMCA Lifeguarding or Boy Scouts of America Lifeguarding or its equivalent.

(b) The lifeguard in any camp or in any place where camp activities are conducted who supervise wading, swimming or watercraft programs shall be currently certified in American Red Cross lifeguard training or in YMCA lifeguarding or in Boy Scouts of America lifeguarding or its equivalent.

(c) When non-instructional swimming activities are in progress, the lifeguard supervisor shall be in attendance supervising the program. Watercraft activities shall be supervised in accordance with the provisions of N.J.A.C. 8:25-5.4(b).

(d) The lifeguard supervisor and one lifeguard shall be on duty for 30 or fewer children in the water. One additional lifeguard shall be on duty for every additional 30 children or fraction thereof.

(e) During instructional swim, one lifeguard shall be on the deck for every 2,000 square feet of surface area of the pool in use at all times. One additional guard shall be on deck for every additional 2,000 square feet of surface area or fraction thereof.

(f) Swimming pools having a maximum depth of 36 inches and having a maximum swimming area of 500 square feet shall be supervised by one lifeguard with the assistance of two adult leaders for 20 or less campers in the water. One additional lifeguard and one additional adult leader shall be on duty for each additional 20 campers or fraction thereof.

(g) Off site swimming activities shall only be permitted at designated public bathing facilities provided that prior notification is given to the operator of the designated bathing facility. Upon arrival, the camp shall notify the waterfront supervisors of the facility as to the size of the group, age range, and any physical handicaps of the campers.

1. If lifeguards are provided at the designated public bathing facility, the camp shall provide one adult lifeguard for the first 30 children in the water. One additional lifeguard shall be on duty for every additional 30 children in the water or portion thereof.

2. If lifeguards are not provided at the designated public bathing facility, the camp shall provide all lifesaving personnel as specified in (d) above.

8:25-5.3 Swimming procedures

(a) Each camp shall develop a classification system to determine the swimming ability of each child arriving in camp as a nonswimmer, beginner or swimmer. Children shall be confined to the areas commensurate with the limits of their swimming ability or an area requiring lesser skills for which they have been classified. As a minimum, a child shall not be classified a swimmer unless the following skills are demonstrated:

1. Child is to jump in feet first, in water over the head, come to the surface, swim a distance of 25 feet, change directions, using different strokes, swim a distance of 25 feet, stop and float or tread water for one minute. *[Any child who fails to meet this requirement must be restricted to chest deep water.]* This requirement does not apply during swim instructional session.

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

8:25-5.4 Watercraft

(a) Watercraft activities shall be conducted during daylight hours. A Type I, II or III foam-filled Personal Flotation Device (PFD) approved by the United States Coast Guard shall be provided for and worn by each occupant of a watercraft.

1. A nonswimmer shall not be permitted in a sailboat or canoe unless accompanied by a lifeguard.

(b) Watercraft activities shall be supervised as follows:

1. For camp boating on lakes, tidal waters and ponds, a lifeguard shall patrol ***and supervise*** the areas on a paddle-board capable of supporting two adults or in a lifeboat equipped with a ring buoy or similar device with a minimum of 25 feet of rope that shall be attached. An adult shall observe the activity from a vantage point on the shore or on the water.

2. Boating activities on rivers and streams shall be supervised by an adult with demonstrated boating experience. A lifeguard shall also patrol ***and supervise*** the trip in a boat equipped with ring buoy or similar device with a minimum of 25 feet of rope that shall be attached.

SUBCHAPTER 6. SANITATION

8:25-6.7 Food service, milk supply and water supply:

(a) Rules concerning food service, milk and water supply include:

1. (No change.)

2. The water supply shall comply with the provisions of the New Jersey Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.)

(b) (No change.)

8:25-6.9 (No change in text.)

8:25-6.10 Maintenance

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

(f) Recreational equipment, including playground devices, shall be inspected not less than once per week during the use season for defects and a permanent record of the inspection shall be maintained. Equipment shall be maintained in safe operating condition at all times.

8:25-6.11 Certification fees

Under the authority of N.J.S.A. 26:12-6, the Commissioner of Health hereby establishes the annual certificate fee of youth camps at $50.00 for a day camp and $100.00 for a resident camp. Upon receipt of the appropriate fee, a provisional certificate or certificate of approval shall be issued by the Commissioner which shall be valid for a period of one year.

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

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

Proposed: January 22, 1991 at 23 N.J.R. 178(a).

Adopted: April 22, 1991 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: April 22, 1991 as R.1991 d.255, **with portions of the proposal not adopted but still pending and with portions of the proposal not adopted.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 20, 1991.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: Regarding lactulose syrup by Inalco, a pharmacist, Jay Langellotti, expressed opposition to the proposed product, noting that the applicant is an Italian firm without an NDA or ANDA for lactulose. He asked questions about marketing of the product and asked how the Council will know if Inalco fails to meet manufacturing standards.

RESPONSE: The Council relies on the Federal Food and Drug Administration to inspect manufacturers, including those in foreign countries, and determined that being a foreign manufacturer is not, in and of itself, an impediment to being listed in the Formulary.

COMMENT: Regarding "belladonna alk w/belladonna tabs," Rexar, its manufacturer, pointed out that the proposal should state belladonna alk w/**phenobarbital** tabs. (The proposal has a typographical error.)

RESPONSE: The Council agrees and will add the product to the Formulary under its corrected name, "belladonna alkaloids with phenobarbital" tablets. In accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the corrected name will be added to proposed additions to N.J.A.C. 8:71, published elsewhere in this issue of the New Jersey Register.

COMMENT: In opposition to G&W's morphine sulfate suppositories, Upsher-Smith stated that their RMS brand is the standard, that RMS's price will meet that of the competition, that wholesalers usually only stock RMS, and that a study has established equivalency of rectal morphine to oral morphine.

RESPONSE: The Council decided that morphine suppositories need not demonstrate bioequivalency to the brand for which they are to be substituted (since the FDA does not require such data), and that the savings, even if small, should be allowed to accrue to patients. Also, wholesalers will begin to stock this generic once it is added to the Formulary.

COMMENT: In support of Penn Labs' Dyazide "substitute," Rugby stated that this product and Dyazide are essentially identical. Rugby asks that Penn Labs be listed in the Formulary and notes that Rugby's attorney has contacted the Department of Health's Deputy Attorney General, who should comment verbally or in writing on the inclusion of Penn Labs' product.

Rugby maintained that the Council is to decide based on therapeutic equivalency, which is unquestionable. Rugby asks that Penn labs be listed in the Formulary, so that pharmacists will feel it is "legal" to substitute.

RESPONSE: The Council agrees and has added the product to the Formulary. However, there is no need to contact the Deputy Attorney General because the action taken is solely the province of the Council.

COMMENT: In opposition to Copley's substitute for Stuartnatal 1+1, ICI, the manufacturer of the brand, opposes this generic, based on previous Council actions which sought comparative dissolution data, sources of iron and calcium, and comments on biostudies to establish serum iron levels.

ICI reiterated their earlier comments, claiming clinical evidence that different prenatal vitamins deliver iron differently to the patient, especially if the calcium is obtained from calcium carbonate. (Copies of two studies were also submitted.)

ICI argues that a simple matching of ingredients does not mean that prenatal vitamins are equivalent; bioequivalency studies may be needed.

ICI asks that the Council again defer action on Copley's proposed substitute until Copley furnishes data satisfying dissolution, calcium source, and possible biostudy questions. Further, ICI asks the Council to ask Copley to refrain from re-applying until the data are received.

RESPONSE: The Council agrees and has deferred action until the generic manufacturer has furnished the needed data.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on February 13, 1991. Thomas T. Culkin, Pharm D., M.P.H., served as hearing officer. Six persons attended the hearing. Five comments were offered, as summarized above. The hearing officer recommended that the decisions made be based upon the available biodata, and that, in regard to Copley's substitute for Stuartnatal 1+1, further data on bioequivalency be supplied. The Council adopted the products specified as "adopted," declined to adopt the products specified as "not adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturer were **adopted:**

Amantadine HCl syrup 50 mg/5 ml	**Barre-National**
Atropine sulf opht sol 1%	**Akorn**
Benzoyl peroxide gel 5%, 10%	**Thames**
Carbinoxamine Pseudoephedrine syr 4/60	**Cenci**
Carbinoxamine/pseudoephendrine/DM syr	**Cenci**
Chloral hydrate liq 500 mg	**Cenci**
Chloramphenicol opht sol 0.5%	**Akorn**
Chlorzoxazone tabs 500 mg	**Mutual**
Dexamethasone opht sol 0.1%	**Akorn**
Erythromycin EC/ER tabs 333 mg	**Abbott**
Erythromycin ER caps 250 mg	**Abbott**
Fluocinonide soln 0.05%	**Copley**
Fluocinolone cr 0.01, 0.025%	**G & W**
Rondec DM drops, syrup substitute	**LuChem**
Rynatan tabs substitute	**LuChem**
Sulfacetamide opht sol	**Akorn**
Triamterene/HCTZ caps 50/25	**Penn Labs**
Triple vitamin drops/fluoride 0.25 mg	**Cenci**

The following products were **not adopted**:

Calcium inj	Steris
Carbachol ophth. sol 3%	Steris
Cyclopentolate HCl opht sol 1%	Akorn
Dexamethasone sod. phosphate inj 4 mg/ml	Steris
Dexpanthenol inj. 250 mg/ml	Steris
Homatropine HBr opht sol 5%	Akorn
Hydrocortisone suppos 25 mg	G & W
Hydrocortisone/Neomycin opht sol	Akorn
Levorphanol tartrate tab 2 mg	Roxane
Naphazaoline/Pheniramine 0.025/0.3%	Optopics
Naphazoline opht sol 0.1%	Akorn
Phenylephrine HCl opht sol 2.5%, 10%	Akorn
Tropicamide ophth. sol 1%	Akorn

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Watson
Benzonatate caps 100 mg	Chase
CDP/Amitriptyline tabs 5/12.5, 10/25	PBI
Carisoprodol 350 mg	Mutual
Chlorzoxazone tabs 250, 500 mg	Ohm
Clemastine fumarate syrup 0.67 mg/5 ml	Lemmon
Clemastine fumarate tabs 1.34, 2.68 mg	Cord
Clofibrate caps 500 mg	Novopharm
Clonidine 0.1, 0.2, 0.3/chlorthal. 15 tabs	Cord
Dipyridamole tabs 25, 50, 75 mg	Purepac
Doxycycline caps 100 mg	Sidmak
Erythromycin EC/ER tabs 250, 500 mg	Abbott
Ethosuximide caps 100 mg	Chase
Fluocinolone oint 0.025%	G & W
Gentamicin Sulf opht sol	Akorn
Hydrocodone/PPM 2.5/12.5 liq	Cenci
Hydrocodone/PPM 5/25 mg liq	Cenci
Hydrocodone/phenylpropanolamine 2.5/12.5	Halsey
Hydrocodone/phenylpropanolamine 5/25 syr	Halsey
Hydrocodone/pseudoephedrine liquid	Cenci
Hydrocodone/pseudoephedrine/guiafenesin	Cenci
Hydromorphone HCl tabs 2, 4 mg	Roxane
Iodinated glycerol/DM 30 mg/10 mg	Halsey
Iodinated glycerol/codeine liquid	Cenci
Iodinated glycerol elixir	Cenci, Silarx
Iodinated glycerol tabs 30 mg	Copley
Iodinated glycerol/DM liquid	Cenci
Iodinated glycerol/cod 30 mg/10 mg	Halsey
Lactulose syrup 10 g/15 ml	Inalco
Loperamide caps 2 mg	Cord
Loxapine succ. caps 5, 10, 25, 50 mg	Cord
Metaproterenol tabs 10, 20 mg	Biocraft
Methocarbamol tabs 500, 750 mg	Mutual
Methyclothiazide tab 2.5 mg	Zenith
Midrin caps substitute	Interpharm
Minocycline caps 50, 100 mg	W-C
Minoxidil tabs 2.5, 10 mg	Mutual
Morphine sulf supp 5, 10, 20, 30 mg	G & W
Naldecon Ped. drops substitute	LuChem
Natalins RX substitute	Copley
Nifedipine caps 10 mg	Novopharm
Nifedipine caps 20 mg	Chase
Oxazepam caps 10, 15, 30 mg	Danbury
Pediotic/Cortisporin Otic substitute	Bausch/Lomb
Phenylephrine, PPM, guiafenesin liq	Halsey
Pilocarpine HCl opht sol 1%, 2%, 4%	Akorn
Poly Vitamin drops with fluoride 0.25 mg	Cenci
Poly-vitamins/Fluoride 0.25 mg, 0.5 mg	Esquire
Prednisolone sod phos opht sol 0.125%, 1%	Akorn
Propoxyphene naps/APAP 50/325, 100/650	Mutual
Propoxyphene naps/APAP tabs 100/650	LuChem
Stuartnatal 1+1 formula	Copley
Sulfacetamide/Prednisolone sol 100/5 mg	Akorn
Sulindac tabs 150, 200 mg	Lemmon, Mutual
Theophylline CR tabs 450 mg	Sidmak
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Tolmetin tabs 200 mg, caps 400 mg	Mutual
Tolmetin sodium caps 400 mg	Purepac
Trazodone tabs 50, 100, 150 mg	Mutual

(a)

DRUG UTILIZATION REVIEW COUNCIL
Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: August 20, 1990 at 22 N.J.R. 2501(a).
Adopted: April 22, 1991 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: April 22, 1991 as R.1991 d.254, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: May 20, 1991.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on September 11, 1990. Thomas T. Culkin, Pharm D., M.P.H., served as hearing officer. Sixteen persons attended the hearing. No comments were offered. The hearing officer recommended that the decisions made be based upon the available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products were **adopted**:

Carbamazepine 100 mg chewable tabs	**W-C**
Methyldopa tabs 125, 250, 500 mg	**Roxane**
Propranolol HCTZ 40/25, 80/25 tabs	**W-C**
Sulindac tabs 150, 200 mg	**W-C**

The following products were **not adopted but are still pending**:

Albuterol Sulf tabs 2, 4 mg	Purepac
Albuterol Sulf 2, 4 mg tabs	W-C
Amiloride/HCTZ tabs 5/50	Cord
Chlorpropamide tabs 100, 250 mg	Lederle
Digoxin tabs 0.125, 0.25 mg	Zenith Labs
Digoxin tabs 0.125, 0.5 mg	Pioneer
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Erythromycin ER tabs 250, 333 mg	Abbott Labs
Erythromycin ethylsuccinate tabs 400 mg	Abbott Labs
Fenoprofen caps 200, 300 mg	W-C
Fenoprofen tabs 600 mg	W-C
Leucovorin 2 mg tab	W-C
Loperamide 2 mg caps	Lemmon, W-C
Methyldopa/HCTZ tabs 250/15, 250/25	W-C
Sulindac tabs 150, 200 mg	Purepac
Tetracycline 250, 500 mg caps	W-C
Timolol maleate tabs 5, 10, 20 mg	W-C
Tolmetin sodium caps 400 mg	Cord, W-C
Tolmetin tabs 200 mg	W-C
Verapamil HCl tab 40 mg	Cord, Purepac

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 22 N.J.R. 3582(a), 23 N.J.R. 206(a) and 23 N.J.R. 907(a).

CORRECTIONS

(b)

THE COMMISSIONER
Security and Control
Introduction; Keep Separate Status
Adopted Amendments: N.J.A.C. 10A:3-1.1 and 1.4
Adopted New Rules: N.J.A.C. 10A:3-2

Proposed: February 19, 1991 at 23 N.J.R. 383(a).
Adopted: April 12, 1991 by William H. Fauver, Commissioner, Department of Corrections.
Filed: April 16, 1991 as R.1991 d.250, **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. 30:1B-6 and 30:1B-10.
Effective Date: May 20, 1991.
Expiration Date: October 6, 1991.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Corrections received one comment in response to the proposed amendments and new rules. A summary of the comment and the Department of Corrections' response follows:

COMMENT: William Cashel, Assistant Chief, Bureau of Correctional Information and Classification Services, of the New Jersey Department of Corrections, suggested that N.J.A.C. 10A:3-2.2(c) should read: "A 'Keep Separate' notation should be prominently placed on the outside cover of the inmate's institutional classification folder and in the appropriate files within the computerized inmate information record keeping system."

RESPONSE: The New Jersey Department of Corrections agrees and the modification is being made as suggested in order to clarify the original intention of this subsection which was to prominently display the "Keep Separate" notation on the inmate's institutional classification folder and in the appropriate files within the computerized inmate information record keeping system.

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

10A:3-1.1 Purpose

(a) The purpose of this chapter is to:

1.-4. (No change.)

5. Establish procedures for fingerprinting and photographing juvenile inmates;

6. Establish policies and procedures regarding the transportation of inmates outside the correctional facility and from one jurisdiction to another; and

7. Establish procedures for placing inmates in and removing inmates from keep separate status.

10A:3-1.2 Scope

(a) Subchapters 2, 3, 5, 6 and 7 shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services.

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

10A:3-1.3 Definitions

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

. . .

"Keep separate status" means the intentional assignment of certain inmates to different correctional facilities or different units within a correctional facility so as to maintain a separation between these inmates in order to prevent the possibility of retaliation because of a previous act or occurrence.

. . .

10A:3-1.4 Forms

(a) The following forms related to Security and Control shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1.-5. (No change.)

6. 173-I Placement In Keep Separate Status

7. 173-II Removal From Keep Separate Status

8. 285-I Request for Polygraph Examination.

SUBCHAPTER 2. KEEP SEPARATE STATUS

10A:3-2.1 Recommending placement of an inmate in keep separate status

(a) Any staff person may recommend that an inmate be placed in keep separate status.

(b) The staff person recommending that an inmate be placed in keep separate status shall complete the recommendation section of Form 173-I, PLACEMENT IN KEEP SEPARATE STATUS, and submit Form 173-I to the Superintendent giving the reason(s) for the recommendation.

(c) The Superintendent may order an immediate Internal Affairs investigation and written report to determine whether the information received is accurate and placement of the inmate in keep separate status is warranted.

10A:3-2.2 Authorization of placement of inmate in keep separate status

(a) The Superintendent shall authorize the placement of an inmate in keep separate status in instances when the Superintendent determines that such placement is warranted for the maintenance of security and the orderly operation of the correctional facility.

(b) If the Superintendent authorizes that an inmate be placed in keep separate status, the completed Form 173-I, along with the supporting documents shall be forwarded to:

1. The Senior Classification Officer to be filed in the inmate's classification folder; and

2. The correctional facility housing the other inmate(s) involved in this assignment of keep separate status.

(c) A "Keep Separate" notation should be prominently placed *[in the inmate's disciplinary, assignment and transfer notes]* ***on the outside cover of the inmate's institutional classification folder and in the appropriate files within the computerized inmate information record keeping system***.

10A:3-2.3 Recommending removal from keep separate status

(a) Any staff person may recommend that an inmate be removed from keep separate status.

(b) Any staff person recommending that an inmate be removed from keep separate status shall complete the removal recommendation section of Form 173-II REMOVAL FROM KEEP SEPARATE STATUS and submit FORM 173-II to the Superintendent, giving the reason(s) for the recommendation.

(c) The Superintendent may order an Internal Affairs investigation and written report to determine whether the information received is accurate and removal of the inmate from keep separate status is warranted.

10A:3-2.4 Authorization for removal from keep separate status

(a) The Superintendent may authorize the removal of an inmate from keep separate status when a review of the factors in the inmate's case indicates that the keep separate status is no longer appropriate.

(b) Whenever a decision is made to remove an inmate from keep separate status, the original FORM 173-II along with the supporting documents shall be forwarded to the Senior Classification Officer to be filed in the inmate's classification folder.

(c) A copy of the removal notice Form 173-II shall be sent to the Classification Department of the correctional facility at which the other inmate(s) involved in the keep separate status is housed.

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATION
Orderly Withdrawal of Insurance Business
Adopted New Rules: N.J.A.C. 11:2-29

Proposed: January 7, 1991 at 23 N.J.R. 15(b).

Adopted: April 23, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: April 24, 1990 as R.1991 d.262, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: May 20, 1991.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

Fifteen public comments were received from insurance companies (Prudential Property and Casualty Insurance Company of New Jersey, Prudential Property and Casualty Insurance Company, State Farm Insurance Companies, Twin City Fire Insurance Company, Allstate Insurance Company, Chubb Group of Insurance Companies, Liberty Mutual Insurance Company, Kemper National Insurance Companies, Selective Insurance Company of America and Newark Insurance Company), insurer trade associations (American Insurance Association, The Alliance of American Insurers and the National Association of Indepedent Insurers) and a producer trade association (Professional Insurance Agents of New Jersey).

COMMENT: One commenter noted that the Commissioner relied upon the Fair Automobile Insurance Reform Act of 1990, P.L. 1990. c.8 (N.J.S.A. 17:33B-1 et seq., N.J.S.A. 17:33B-10, N.J.S.A. 17:17-10) (FAIR Act) for statutory authority to implement these new rules. The commenter stated that since the constitutionality of these statutes is presently being challenged in the courts, that there exists a potential that the statutory basis of these new rules will be eliminated.

RESPONSE: While the Department recognizes that the FAIR Act is being challenged in pending litigation, it notes that there is a presumption of validity to the current law. Moreover, the Department notes that the FAIR Act does not provide the sole statutory authority for these rules, which the Department believes are necessary and desirable even without the more specific statutory basis in the FAIR Act.

COMMENT: Many commenters objected generally to the promulgation of these rules in that they serve as a restriction on the ability of an insurer to exit the New Jersey market. These commenters asserted that these restrictions will have an adverse affect on New Jersey insurance markets over time, as they create a new factor for an insurer to consider prior to entering the market.

RESPONSE: The Department notes the commenter objections. Historically, however, the New Jersey Insurance Commissioner has always exercised some degree of control over exit from the market, particularly when an insurer's exit would impact availability of one or more lines when the market was constrained. There are several examples of the exercise of this authority in past years. These new rules will formalize the process.

These rules do not prevent an insurer from exiting the State; rather they require that the withdrawal be done under the general supervision of the Commissioner in an orderly manner, in accordance with an approved plan so as not to adversely affect the market, that is, the public who purchase insurance and the insurers which remain.

COMMENT: Three commenters objected to the definition of "insurer" as overly broad in that it includes reinsurers, eligible surplus lines insurers, risk retention groups and any insurance affiliates. Two commenters noted that there are a few statutory controls over reinsurers, and further noted that State regulation of risk retention groups may be preempted by Federal law. Additionally, the commenter asserted that including "affiliates" is contrary to several statutory definitions of "insurer."

RESPONSE: The Department agrees that reinsurers and risk retention groups should not be included, and has deleted them upon adoption. In order to effect the various provisions of the rules, however, it is necessary that "insurer" include eligible surplus lines insurers and insurance affiliates.

COMMENT: Many commenters objected to the definition of "withdrawal" or "withdraw" as overly broad. These commenters stated that many of the acts defined as constituting withdrawal, such as the nonrenewal, cancellation or termination of policies, are activities authorized by law which occur on a daily basis. These functions are a necessary component of conducting insurance business. Some commenters stated that restrictions on agency commissions, solicitation or binding authority are part of management prerogatives. One commenter stated that the definition was so broad as to include "practically every business decision and insurer may make" and objected to providing no *de minimis* standard. One commenter specifically requested that the inclusion of assumption agreements and portfolio reinsurance agreements be deleted. This commenter also objected to the authority of the Commissioner to make a determination whether an act constituted withdrawal on a case-by-case basis without any standard. One commenter asserted that there is no statutory or constitutional authority to apply sections 71 and 72 of the FAIR Act so broadly. Another commenter noted that many of the activities included in the definition are undertaken for valid business reasons, and not as part of a plan to withdraw. Another commenter cited examples of activities that may be construed as constituting a withdrawal: a company that writes large commercial accounts with few insureds in each state, which may undertake to terminate a policy; a company that implements a new, low-commission, low-expense, low-cost product; a company that establishes new underwriting standards in order to achieve financial stability; and a foreign insurer that declares a corporate dividend in accordance with the proper regulatory interests of its home state.

A producer trade association stated it particularly supports the broadly drawn definition of "withdraw" and "withdrawal;" it noted that companies can employ a wide variety of means to the same end, and noted that the effect on the market is the same regardless of the method chosen.

RESPONSE: The Department agrees that the definition of "withdraw" and "withdrawal" as proposed is broad and could be construed to include certain activities that were not intended to be regulated as a withdrawal when they occur in the ordinary course of business. For example, agents are terminated in the ordinary course of business for poor production, failure to adhere to underwriting standards and many other proper reasons. Nevertheless, the Department also is aware that many ordinary activities executed in concert may be used cumulatively to effect a withdrawal or may be so severe in degree to be tantamount to a withdrawal. A narrow definition of withdrawal may be readily circumvented in these and other ways, and thus would not be consistent with the public interest and statutory objectives. To address the commenter's concerns about overbreadth, however, the Department has amended the definition to clarify that certain specified activities occurring in the normal course of business are not intended to be regulated by these rules.

COMMENT: Several commenters objected to N.J.A.C. 11:2-29.3(a), the general provision which requires insurers to notify the Commissioner and to file a plan of orderly withdrawal unless waived by the Commissioner. Many of the commenters stated objections based upon the definition of "withdrawal," asserting that this provision would require the Commissioner's approval for many daily transactions. One commenter stated that the requirement was an unconstitutional restriction on the right to conduct business free of the operation of onerous State laws.

RESPONSE: This general requirement is specifically authorized by sections 71 and 72 of the FAIR Act; it sets forth the general rule that withdrawal must be preceded by the filing and approval of a plan of orderly withdrawal. The Department believes that it is an appropriate restriction on the ability of a regulated industry to conduct business and it is necessary to avoid marketplace disruptions.

COMMENT: Two commenters requested that N.J.A.C. 11:2-29.3(a) include a time limit within which the Commissioner must act to determine whether a contemplated activity constitutes a withdrawal, and therefore must be preceded by filing a plan.

RESPONSE: The Department is unwilling to include a time limit. It notes that the statute requires a withdrawal to be preceded by the filing and approval of a plan of orderly withdrawal. A withdrawing insurer should be aware of its intention to do so, and is required by this section to clearly state that intention and the method by which it proposes to accomplish it. Nevertheless, this provision also authorizes the Commissioner to waive or modify the requirements in appropriate circumstances when the comprehensive requirements of this subchapter are found to be unnecessary to protect the marketplace or the public generally.

COMMENT: One commenter stated there was no reason for the rule to provide for a substitute procedure if the activities did not constitute a "withdrawal."

RESPONSE: The Department believes that under certain circumstances an action that would clearly constitute a withdrawal may not require the filing and approval of a comprehensive plan. For example, an insurer may wish to withdraw a rating system for a line of business that it no longer transacts. While the action is clearly a withdrawal from that line, the preparation, review and approval of a plan containing all of the elements set forth in N.J.A.C. 11:2-29.4 would not appear to be necessary. Although notice is required, the Commissioner could either waive the filing of the plan or establish a substitute procedure commensurate with the nature of the withdrawal.

COMMENT: One commenter inquired about the effective date of these rules.

RESPONSE: The Department notes that sections 71 and 72 of the FAIR Act apply the statutory requirements of the filing and approval of a plan of orderly withdrawal under standards recited therein to all requests for withdrawal, surrender or discontinuance filed on or after January 25, 1990. These rules clarify the Department's procedures to implement those requirements, and are effective upon publication of this notice of adoption. The Department recognizes that it had to rule, at the insistence of the applicant, on withdrawal applications on an expedited basis pending the publication and adoption of these rules. The Department believes, however, that its rulings on these applications have been consistent with these rules. The Department further notes that these rules are largely consistent with, and are a refinement of, proposed rules published in the New Jersey Register on November 20, 1989 (see 21 N.J.R. 3622(a)) prior to the passage of the FAIR Act.

COMMENT: The Department received three comments regarding N.J.A.C. 11:2-29.3(b), which provides for the Department's procedure to review a proposal of orderly withdrawal. One commenter noted that the time frames set forth in paragraph (b)1 were stated in terms of business days, and requested that the word "business" be deleted. Another commenter requested that the time for approval be shortened to 30 days.

RESPONSE: The rule as stated sets forth the amount of time the Department has found to be necessary for the analysis, review and approval of a comprehensive plan of orderly withdrawal. In order to make the calculation of dates easier, the Department has changed "business day" to "day." This, however, requires increasing the number of days to provide for weekends and holidays.

COMMENT: One commenter suggested that N.J.A.C. 11:2-29.3(b)1 be amended to read ". . . the failure of which **shall** allow the applicant to treat the filing as complete."

RESPONSE: The Department agrees and has made this change upon adoption to clarify this rule's meaning.

COMMENT: Three commenters addressed N.J.A.C. 11:2-29.3(b)2, which prohibits applicants from commencing actions in furtherance of a withdrawal prior to the Commissioner's approval. The section excepts, however, non-binding oral or written communications between an insurer/applicant and another insurer in negotiating for the replacement of the insurer/applicant's insurance business. In expressing concern about the potential "deal-killing" effect of delay, one commenter suggested additional language that permits a "final" agreement between the insurer/applicant and the replacement carrier conditional upon the Commissioner's approval of the plan. Another commenter suggested that the entire provision be deleted as it could be read to prohibit any action whatsoever. A third commenter noted a necessary editorial change.

RESPONSE: The Department believes that this provision is necessary to prohibit marketplace activities prior to the approval of a plan, but to permit insurers to take necessary preparatory action to determine whether transfer of its business to a replacement carrier is feasible. The suggested change to permit an agreement subject to approval of the Commissioner and conditioned on approval of the plan is reasonable and consistent with this goal, and has been made upon adoption.

COMMENT: Several commenters objected to N.J.A.C. 11:2-29.3(b)5, which sets forth special deposit requirements. Two commenters asserted that there is no statutory authority to require foreign insurers to make a deposit or furnish a bond in excess of the requirements of N.J.S.A. 17:32-3 and 17:32-13. Another commenter stated that solvent, non-resident insurers which remain in business are still subject to the jurisdiction of the courts, and that the Department retains plenary control over the assets of domestic insurers. Another commenter stated that such deposits are duplicative of existing deposits made by a company when it enters the State initially. One commenter stated that it believed the deposit requirements to be punitive.

RESPONSE: The Department notes that of the statutes cited by the commenters, N.J.S.A. 17:32-3 sets forth the deposit requirements for admission of an insurer organized under the laws of a foreign country, and N.J.S.A. 17:32-13 sets forth the deposit requirements for a surety bond writer that surrenders its certificates. Neither statute is applicable or controlling with respect to withdrawals generally. The deposits required by N.J.A.C. 11:2-29.3(b)5 are consistent with the objectives of sections 71 and 72 of the FAIR Act, to assure an "orderly withdrawal from the market and a minimization of the impact of the surrender or discontinuance on the public generally and on the company's policyholders in the State." Furthermore, although New Jersey courts may have jurisdiction and the Commissioner may have authority over foreign or domestic insurers, the purpose of the deposits is not to secure jurisdiction, but to ensure payment of obligations. Maintaining jurisdiction over the insurer is not always sufficient to guarantee payment of obligations. The Department further notes that these deposit requirements have not proved to be onerous in practice, as an applicant may provide a substitute as set forth in N.J.A.C. 11:2-29.3(b)6.

COMMENT: Several commenters stated that the deposit required to secure payment of the applicant's current and potential liabilities was not sufficiently defined in the rule, and appears to be subject to arbitrary determination by the Commissioner. One insurer inquired whether the "potential liabilities" were the sum of the maximum limits of liability under each policy issued, the sum of the unearned premium and most reserves, or the amount by which the insurer is "underreserved."

RESPONSE: Calculation of the deposit to secure current and potential liabilities is one of the processes that comprise the Department's review of the plan. While the term "liabilities" includes loss and loss adjustment expense reserves for known claims and incurred but not reported losses, the term "potential liabilities" also is required because of potential changes in an insured's business arising between the filing of the plan and the ultimate withdrawal. For example, current liabilities would not reflect reserves required to be established to support the growth of business from an insurer satisfying its automobile residual market depopulation obligation during the time the plan was being effected.

The rule as stated also provides for the Department's review of the amount of these liabilities and potential liabilities, in order to determine that they have been properly calculated and are adequate.

COMMENT: Two commenters also objected to the language of this rule regarding payment or forfeiture. One commenter stated that there is no statutory authority to forfeit deposits or bonds for breach of agreement, and that the forfeiture would constitute a fine or civil penalty in excess of any fine or penalty provision otherwise established by statutes. A second commenter stated that the rule did not contain any standard addressing how long the deposit would be required to be maintained.

RESPONSE: The Department agrees that some additional language is necessary to clarify that a breach resulting in forfeiture must be a material breach of the conditions of approval, and that forfeiture should not occur without notice to the insurer. The Department believes, however, that it has authority to require the use of a deposit or bond as set forth in N.J.A.C. 11:2-29.3(b)5ii to secure performance of the substantial conditions required of a withdrawing insurer, which are required to be executed over an extended period of time. Because the circumstances of each withdrawing insurer may differ substantially, no definite time frame can be established by rule. The discharge of the performance deposit will be entirely dependent upon the amount of time necessary to meet all conditions of the withdrawal. Discharge of the deposit securing payment of liabilities will depend upon the nature of the liabilities being secured; for example, "long-tail" lines will require the deposit be maintained for a longer period than other coverages.

COMMENT: A commenter stated that N.J.A.C. 11:2-29.3(b)7, which provides that the Commissioner may waive deposits or substitutes for good cause shown based upon a consideration of certain factors, is impermissibly vague and relies on an extremely subjective standard.

RESPONSE: While the standards are subjective, this is necessarily so. This provision authorizes the Commissioner in appropriate circumstances to waive the requirement of a special deposit or substitute when the public interest does not require they be made, but in fact militates in favor of a waiver. To delete this section would preclude a waiver in those circumstances. The Department further notes that the commenter did not suggest other, less subjective standards that could be added.

The Department has, however, broadened the scope of the factors that may be considered by deleting the limiting reference to life-health assumption agreements to include also property-liability replacement agreements.

COMMENT: Many commenters objected strenuously to N.J.A.C. 11:2-29.3(c) which provides that the Commissioner may require as a condition of approval of the plan the surrender of some or all certificates of authority issued pursuant to Chapters 17 or 32 of Title 17 of the Revised Statutes, held by the applicant or by other companies within same insurance holding system. Some commenters asserted that this requirement was an unconstitutional restriction on the ability of a company to do business. Another commenter stated the proposal will have a "chilling effect" on the insurance climate in New Jersey and will discourage innovation and experimentation by New Jersey licensed companies and new entrants to the New Jersey insurance market. The commenter asserted that the provision discriminates against multi-line companies. Several commenters asserted that this provision is contrary to the purpose of ensuring orderly withdrawals, in that a requirement for all affiliates to withdraw from all lines would increase the market disruption. Two commenters stated that this proposed rule would violate the well established common law principle that the "corporate veil" may be pierced only for good cause or fraud; transacting insurance business in accordance with the Holding Company Act through separate insurance affiliates is entirely legal and proper. Other commenters stated that the result would require insurers to operate inefficiently, in an unprofitable line, and require efficient, profitable subsidiaries and lines to subsidize those which were not. One commenter stated that such a provision would cause domestic stock companies to breach the financial and fiduciary obligations owed to their shareholders.

RESPONSE: Initially, the Department notes that this provision only authorizes, but does not require, the surrender of affiliates' certificates of authority. The Department notes that sections 71 and 72 of the FAIR Act provide that the Commissioner "**shall** consider, and may require as a condition of approval, whether some or all other certificates of authority issued pursuant to Chapter 17 or 32 of Title 17 of the Revised Statutes held by the company or by other companies within the same holding company system as the company submitting the plan shall be required to be surrendered." This proposed rule provides only for exercise of the Commissioner's statutory duty to consider whether surrender of affiliates' certificates should be a condition of approval of the plan.

The Department does not believe that the rule impermissibly discriminates against multi-line companies. It notes that multi-line companies have presumably enjoyed the benefits and synergistic effect of conducting business in more than one line (for example, through pooling of risks, reinsurance agreements and cross-sales techniques), and that any disadvantage is simply the consequence of the previous advantage. The Department expects that this rule will discourage the selective abandonment of specific lines of insurance and thus avoid further disruption, particularly where the market for the line sought to be withdrawn may be temporarily troubled or involve a compelling public need. This rule will also prevent or discourage intra-corporate siphoning of certain "more desirable" business to certain affiliates (that is, where better risks are insured in one corporate affiliate, and worse risks in another) followed by an application to withdraw from the affiliate with the less desirable risks, which are than dumped onto the market.

The Department believes that this rule will enhance the risk climate for those companies with a long-term commitment to write business in this State. To the extent that the rule deters or minimizes withdrawals generally from a fragile market, the Department believes that delay or postponement of widespread withdrawals will ensure a stable insurance market when the need is most critical. The rule provides an economic incentive to remain in the market for the longer term.

With respect to the affiliates themselves, these rules provide that the withdrawing affiliate must likewise file its own plan for orderly withdrawal, which is intended to minimize any adverse impacts on markets served by the affiliate. Moreover, the Department believes that the rule is necessary in order to effect the appropriate degree of control over the larger, multi-line companies that comprise a holding company group. The Department does not believe that, on balance, the affiliate surrender rule or its application will discourage innovation or experimentation, or new market entrants. Indeed, the Department notes that since the adoption of the FAIR Act there have been some new entrants to the private passenger automobile insurance market in New Jersey. Further, these adopted rules still enable the Department to take into account the special characteristics of experimental or innovative coverage in assessing the overall public interest and market impact of a proposed withdrawal from such unique lines. There may well be instances, distinguishable from the private passenger automobile insurance context, where affiliate surrender is not necessary to advance the public interest. Additionally, the availability of more lucrative business written by the withdrawing insurer or its affiliates may serve as an inducement to market entry and expansion into new lines. As stated above, this authority to require that affiliates also surrender their certificates of authority is an option and is not required in every instance. The Department expects that the authority will be exercised prudently and perspicaciously, with a due regard for the resulting impact on other markets. Finally, any final determination by the Commissioner to require the surrender of affiliates' certificates is subject to judicial review.

COMMENT: One commenter suggested that N.J.A.C. 11:2-29.3(c) be amended to require, rather than permit, the Commissioner to grant a waiver when there exists one or more of the mitigating circumstances to the surrender of affiliates' certificates. The commenter suggested that the phrase ". . . the Commissioner **may** grant the waiver . . ." be amended to state that ". . . the Commissioner **shall** grant the waiver . . . ."

RESPONSE: After careful consideration, the Department has determined not to make the change. As written, the word "may" more accurately states the intent of the rule, which is to require the Commissioner to balance all relevant factors including those enumerated in the rule. To require that a waiver be given would appear to preclude such balancing and consideration of all other factors. The rule merely requires the consideration of certain factors and does not require that a waiver be granted.

COMMENT: Two commenters objected to the provisions of N.J.A.C. 11:2-29.3(f), which prohibit a withdrawing insurer and its affiliates from acquiring control of a New Jersey licensed insurer for five years, except with the approval of the Commissioner. One commenter stated that this prohibition was not in the public interest and served no real purpose. A second commenter suggested that the rule include the conditions under which the Commissioner may grant approval.

RESPONSE: The Department believes that this rule is necessary to avoid circumvention of the provisions of N.J.A.C. 11:2-29.3(c), which authorizes the Commissioner to require surrender of the certificate of authority of the applicant and its affiliates. In the absence of this provision, the withdrawing insurer could immediately return to selective markets by acquiring a controlling interest in another licensed insurer. The Department is not willing at this time to attempt to catalogue all of the considerations that would govern approval by the Commissioner to waive this provision. The Department notes that the commenter did not suggest appropriate standards for approval.

The Department has, however, upon adoption clarified that the restriction is not automatically fixed, but may be imposed for a period of "up to" five years.

COMMENT: One commenter objected generally to the provisions of N.J.A.C. 11:2-29.4(a), which sets forth the elements of a proposed plan of orderly withdrawal as being "... so detailed, cumbersome, trivial, irrelevant, and unwieldy ..." as to make compliance impossible.

RESPONSE: While the Department acknowledges that the filing requirements are extensive, it believes that the information set forth in this rule is required for a proper review and evaluation of the plan and its impact on the public, other insurers, producers and the marketplace. In practice, several insurers have filed complete plans that have satisfied these standards. This indicates that compliance is not "impossible." The Department further notes that N.J.A.C. 11:2-29.3(a) authorizes the Commissioner to waive the filing of a complete plan in appropriate circumstances and to provide a reasonable substitute withdrawal procedure.

COMMENT: Two commenters addressed N.J.A.C. 11:2-29.4(a)1. One commenter suggested that an experience exhibit provided on a direct basis would be more precise and useful. A second commenter objected to the lack of certainty resulting from the requirement to provide financial data "... for the last three years or such other period as the Commissioner considers appropriate. ..."

RESPONSE: The rule is so phrased to permit insurer flexibility in responding with the reasons and financial data it relied upon in deciding to withdraw. To set forth all of the specific data to cover all circumstances would require an unnecessarily voluminous filing by each applicant. The only requirement is that such data be submitted for at least three years. If additional years are required, they will be specifically requested within the response period set forth in N.J.A.C. 11:2-29.3(b)1i.

COMMENT: Two commenters objected to N.J.A.C. 11:2-29.4(a)3, which requires certain information about the applicant and its affiliates in all jurisdictions. These commenters asserted that this information is irrelevant to a plan for withdrawal from New Jersey.

RESPONSE: The Department believes that this information is relevant to its review of the activities of the applicant and its affiliates regarding the conduct of their business, and their other activities to withdraw or surrender certificates in other states or for certain lines, in connection with its application to withdraw from New Jersey.

COMMENT: Several commenters objected to N.J.A.C. 11:2-29.4(a)5, which requests information concerning the impact of the withdrawal on the market and on the applicant's producers and employees. One commenter stated that the Commissioner has no authority to regulate activities with respect to employees. Two commenters noted that the provision regarding surrender of affiliates' certificates may result in the termination of a larger number of employees. Another commenter stated that requiring this information for the past three years is burdensome and that the latest year's information should be sufficient.

RESPONSE: The information requested in this provision is required to evaluate the impact of the withdrawal on the market and on insurance producers and employees in this State. It may be of particular importance in determining whether surrender of affiliates' certificates should be required. Three years of information is necessary to evaluate trends or recent changes.

COMMENT: One commenter stated that the reference in N.J.A.C. 11:2-29.4(a)8 to withdrawal of life, health, or annuity business is beyond the scope of sections 71 and 72 of the FAIR Act.

RESPONSE: As noted above, the Department does not believe that the FAIR Act provides the sole statutory basis for these rules.

COMMENT: Several commenters addressed N.J.A.C. 11:2-29.4(a)11, which requires copies of correspondence and notices to various statutory entities. Some commenters stated that this section is in conflict with N.J.A.C. 11:2-29.3(a)2, which prohibits actions in contemplation of withdrawal, which the commenters stated precludes the applicant from contact with these entities. Another commenter stated that the requirements were "overly broad." Additionally, three commenters addressed the provision by which the Commissioner may require the applicant to deposit with the entities amounts sufficient to meet the applicant's obligation to them. One commenter stated that this requirement was redundant since N.J.A.C. 11:2-29.3(b)5 provides for a deposit to the Commissioner. Another commenter stated that there was no authority to require deposits other than those set forth in the statute regarding admission. A third commenter said that the amount of any deposit should not be determined by the Commissioner, but by the entity involved.

RESPONSE: While the Department does not believe that communication with such entities is the kind of action prohibited by N.J.A.C. 11:2-29.3(a)2, it has added clarifying language to that section specifically to permit such exploratory communication. It further notes that the rule would require proposed notices or correspondence should this communication have not already begun. The Department does not believe that the language is overly broad; the correspondence and notices are clearly those relating to its contemplated withdrawal and resulting discharge of financial and reporting obligations to those entities. This provision does not require a duplicate deposit for financial obligations to these entities; any deposit made to such entities would reduce the liabilities or potential liabilities of the applicant and thus the deposit required under N.J.A.C. 11:2-29.3(b)5i. The amount of the deposit would, of course, be based upon the recommendation of, or the applicant's agreement with, the entity itself. As stated above in response to a previous comment, the Department does not believe that the statutes cited by the commenter preclude deposits for the purposes set forth in these rules.

COMMENT: Two commenters objected to N.J.A.C. 11:2-29.4(a)12, which requires a statement of the applicant's current liabilities as of a date not earlier than 90 days prior to the submission of the plan. One commenter stated that this requirement places an untenable burden on the applicant since it is virtually impossible to construct this data not earlier than 90 days prior to the submission of the plan. Another commenter stated that this provision seeks unnecessary information.

RESPONSE: The Department believes that this information is not only relevant, but absolutely necessary in order to determine the applicant's liabilities and potential liabilities to policy holders. The Department further disagrees that this places an impossible burden on an applicant, noting that applicants have in fact submitted plans including this data.

COMMENT: One commenter suggested the addition of certain language to N.J.A.C. 11:2-29.4(a)12i, ii and iii to clarify the requirement and to cover situations when an insurer does not have five mature accident years of data.

RESPONSE: The commenter's suggestions are well taken and have been incorporated in the adopted rules.

COMMENT: One commenter objected to the requirements of N.J.A.C. 11:2-29.4(a)15, which requires information concerning reinsurance assumed and ceded by the applicant. The commenter stated that this information may have no connection to the New Jersey market.

RESPONSE: The Department believes that information concerning reinsurance assumed and ceded certainly has a connection with the New Jersey market; the Department further notes that the information affects the Department's evaluation of the financial health of the withdrawing insurer.

COMMENT: A commenter stated that N.J.A.C. 11:2-29.4(a)16, which seeks a description of multi-state accounts, is vague in that the regulation does not define the term "multi-state account." The commenter further stated that the rule requires the insurer to speculate on the impact of its withdrawal on these risks.

RESPONSE: The Department has added a definition of "multi-state account" for clarification. An explanation of the impact of withdrawal on these risks may include information about any adverse market impact if the applicant proposes in its plan to continue to transact the line of business.

COMMENT: Three commenters addressed N.J.A.C. 11:2-29.4(a)17, which directs the applicant to state the proposed amount of special deposits to be maintained in accordance with N.J.A.C. 11:2-29.3(a)5. Two commenters stated that the money deposited should be earmarked for a payment of those liabilities; a third commenter interpreted the provision to require "... verification that the applicant has established special deposit accounts ...." The commenters further objected to the indefiniteness of the time frame for which the special deposits need to be maintained.

RESPONSE: This provision requires the applicant to propose an amount of deposit in accordance with the cited rule. The substantive comments concerning the requirements of special deposits were addressed above.

COMMENT: One commenter stated that "surety lines of credit" as used in N.J.A.C. 11:2-29.4(a)18ii do not represent outstanding obligations and in practice such lines of credit are frequently withdrawn or modified in the normal course of business; it suggested this language be deleted.

RESPONSE: This provision requires an authorized officer of the applicant to certify that the company will continue to fulfill its obligations. The Department acknowledges the point made by the commenter and has clarified this provision by substituting "surety obligations" for surety lines of credit.

COMMENT: Two commenters stated that the requirement to process all "usual and customary endorsements" requested by insureds during the term of policy conflicted with the provisions of N.J.A.C. 11:2-29.4(a)18v, which prohibits accepting new business. The commenters state that some endorsements might constitute impermissible "new business."

REPONSE: The Department does perceive any conflict between subparagraphs (a)18ii and (a)18v. To the extent of any perceived conflict, subparagraph (a)18v specifically provides that new business should not be accepted "unless authorized or required by the Commissioner. . . ."

COMMENT: One commenter objected to the requirement in N.J.A.C. 11:2-29.4(a)18iii that annual reports be submitted ". . . for as long as the applicant has any unearned premium or any unpaid or incurred losses in this State. . . ." It noted that N.J.S.A. 17:23-1 only requires the filing of an Annual Statement when "transacting business." The commenter stated that an insurer which has withdrawn is no longer "transacting business" as defined in N.J.S.A. 17:32-19, and that administrative rules cannot override statutes.

RESPONSE: Until the withdrawal is effected, the insurer will continue to be transacting business in this State.

The Department notes that N.J.S.A. 17:23-1 requires an Annual Statement to be filed by all companies transacting business; it does not prohibit filing Annual Statements by companies that have ceased writing new business. The Department further notes that N.J.S.A. 17:32-19, which sets forth acts that constitute transacting business, is the statute that requires companies transacting business to obtain authority to do so. N.J.S.A. 17:32-19 lists several activities after stating "and without limiting the generality of the forgoing. . .", and concludes that performing "any other act normally incident to the transaction of the business of insurance . . ." constitutes "transacting business." The Department believes that the servicing of ongoing business and the settling of claims are sui generis to the specific acts set forth in N.J.S.A. 17:32-19, if not specifically included as acts ". . . normally incident to the transaction of the business of insurance. . . ."

COMMENT: Two commenters objected to N.J.A.C. 11:2-29.4(a)19, which requires the plan to include a method acceptable to the Commissioner to verify the applicant's compliance with its obligations. The commenters stated that this paragraph was too vague.

RESPONSE: The Department does not believe that the requirement is vague. It notes that the usual method of verification—quarterly financial reports of progress under the plan—is included in the rule. Nevertheless, the rule also permits the applicant to suggest alternate methods, and permits the Commissioner to approve a plan that contains additional methods that may be required by an applicant's special circumstances.

COMMENT: One commenter objected to N.J.A.C. 11:2-29.4(b), which permits the Commissioner to require other information relevant to the evaluation of the request to withdraw. The commenter stated that this provison does not state how it fits with the deadlines contained in N.J.A.C. 11:2-29.3(b)1, that is, whether a request for additional information and its submission restart the approval process. The commenter stated that requests for more information could delay final consideration indefinitely.

RESPONSE: First, the Department believes that this provision is necessary when the information supplied does not provide a sufficient basis for examination and approval of a particular element of the plan. Secondly, the Department notes that the time for approval begins to run when all information is submitted; therefore a request for additional information would extend the time provided by N.J.A.C. 11:2-29.3(b)1. The Department notes, however, that pursuant to N.J.A.C. 11:2-29.3(b)1i plans are treated as complete if a request for additional information is not made within 30 days of filing. The Department does not believe that there is any real potential that decisions will be delayed indefinitely.

The Department has included additional language in N.J.A.C. 11:2-29.3(b)1 to clarify the rule's intent.

COMMENT: Two commenters addressed N.J.A.C. 11:2-29.5(a), which requires a withdrawing insurer that writes private passenger automobile insurance to seek to place its business with a voluntary market replacement carrier or carriers for a period of not less than one or more than five years. One commenter stated that a replacement carrier should not be required to assume the withdrawing insurer's depopulation quota, nor should a withdrawing insurer accept those quotas or write other new business. The commenter further stated that the maximum five year period was too long; it should be no longer than one full year of policy renewals. The second commenter also objected to the five year period during which an automobile insurer may be required to continue to write that line of business.

RESPONSE: The Department believes that the requirement to continue to write private passenger automobile insurance for up to five years is appropriate and reasonable considering the especially fragile conditions in the private passenger automobile insurance market. First, the requirement that the withdrawing insurer must accept the responsibility for the depopulation of the residual market is set forth in N.J.A.C. 11:2-29.4(a)4. This is consistent with Section 72 of the FAIR Act, which states that the authority of the withdrawing insurer to transact business "shall be deemed to continue in effect until the provisions of the approved plan have been carried out." The Department further notes that the obligation to accept additional insureds to depopulate the residual market arose when an applicant was transacting private passenger automobile business in this market. Any relief from the depopulation quota would necessarily have to be assumed by other insurers remaining in the market; the Department does not desire to increase further the burden on those insurers. Furthermore, the Department believes that the requirement to continue to insure private passenger automobiles for up to five years is not unreasonable, considering the current volatile state of that market. Much of the present market difficulties is attributable to the growth of the residual market and the dislocations required to depopulate it. These problems took at least five years to develop (from 1984 to 1988) and it is not unreasonable to believe that a return to market stability will likewise take up to five years. Furthermore, it is likely that the FAIR Act reforms to the market structure, some of which are just now being implemented, will similarly take more than a single year to be absorbed by the market. The Department also notes that should conditions improve markedly within a shorter time, the withdrawing insurer could more easily find replacement carriers to fulfill its obligations regarding its remaining business.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:2-29.5(a)2 and 3, which restrict an insurer's ability to nonrenew policies in accordance with N.J.S.A. 17:29C-7.1. Those statutory provisions permit the territorial nonrenewal of two percent of an insurer's voluntary market policies and additionally one automobile for every two newly insured automobiles voluntarily written. The commenters stated that restrictions on these nonrenewals were contrary to statute and should be deleted.

RESPONSE: The Department believes that control of the ability to nonrenew private passenger automobile insurance policies is necessarily incident to the ability of the Commissioner to provide for the orderly withdrawal of an insurer by regulating the rate of disposition of the withdrawing insurer's current business. The Department notes that the discretion to nonrenew an accordance with N.J.S.A. 17:29C-7.1 is not absolute, but is restricted to insurers that have satisfied their residual market depopulation quotas, and is further subject to reasonable regulation set forth at N.J.A.C. 11:3-8.5. Nevertheless, the Department agrees further restrictions in these rules are not necessary, and has deleted the two paragraphs referenced.

COMMENT: One commenter objected to N.J.A.C. 11:2-29.5(a)4, which provides that an applicant shall be required to accept residual market quotas unless specifically waived. The commenter stated acceptance of such business would be contrary to statutes which prohibit negotiating or effecting contracts of insurance without a certificate of authority. Secondly, the commenter stated that it is bad public policy to place residual market policies with an insurer which will be nonrenewing them in a short time and which is currently winding down its business.

The commenter noted that when an applicant has made an agreement to transfer its automobile insurance business to a replacement carrier, it would be better to allow the withdrawing insurer and replacement carrier to agree how such quotas are to be handled, and suggested replacement language that would so provide.

RESPONSE: The Department disagrees that a withdrawing insurer would have no statutory authority to write insurance for its depopulation quota; it notes that section 72 of the FAIR Act states that the authority of the withdrawing insurer to transact business "shall be deemed to continue in effect until the provisions of the approved plan have been carried out." The Department further notes that the provisions of the certificate of authority are appropriately amended to conform with the provisions of an approved plan of orderly withdrawal. The Department agrees with the commenter in that it is preferable to place residual market policies with a stable voluntary market insurer which not planning to withdraw; nevertheless, as stated above the Department has chosen not to impose additional depopulation requirements on those insurers that remain. Finally, the Department notes that the rules do not prohibit the applicant from contracting with a replacement carrier to accept its residual market depopulation obligation. In fact, some withdrawal plans have been approved by the Department with such provisions. The purpose of this rule is to emphasize the applicant's obligation to provide for the discharge of this obligation, which it may do by itself or by a replacement carrier. The language suggested by the commenter is not necessary and may imply inappropriate restrictions on the ability of insurers and replacement carriers to resolve these obligations by agreement.

COMMENT: Several commenters addressed N.J.A.C. 11:2-29.6, which provides for the confidentiality of all data or information contained in the plan except certain specific items. One commenter stated that this rule would allow disclosure of proprietary and confidential information, particularly: the actuarial opinion, the insurance agency relationships and the names and addresses of its insurance producers. Another commenter suggested that the organization chart, agency relationships of affiliates, names and addresses of producers, and policyholder nonrenewal and producer termination notices should be protected. A third commenter stated that the section was poorly drafted and is unclear. It suggested that if agency information is subject to inspection and review by non-related third parties that safeguards should be included such as notice to the insurer and an opportunity to be heard.

RESPONSE: The Department included this section in response to insurers' requests to protect the confidentiality of information included in a plan of orderly withdrawal. N.J.S.A. 47:1A-1 et seq., the "Right-to-Know" Law, provides generally that information required to be filed or maintained by any public agency shall be subject to public inspection and copying unless access is specifically proscribed by statute or rule. Rules restricting public access, however, must protect legitimate privacy interests. An important factor in developing a proper rule protecting confidentiality is whether the information sought to be protected is generally available to the public from other sources. The several items or documents set forth in N.J.A.C. 11:2-29.6 as subject to public disclosure are those items included in the plan which are obtainable from other sources. The actuarial opinion certifying current incurred liabilities and reserves is required to be filed as an addendum to the insurer's filed Annual Statement, which is a document subject to public inspection. An organization chart of the applicant and its affiliates is information commonly available from other public sources, including Best's annual publications. Names and addresses of New Jersey licensed insurance producers, and their agency relationships with companies, are available through the Department's records of its licensees, pursuant to N.J.A.C. 11:17-2.5. With respect to availability of licensee records however, the Department recognizes that those records are not compiled in the form required by these rules, and therefore has included appropriate language limiting such disclosure to the extent available through licensee records. The forms of policyholder, nonrenewal and producer termination notices, which are subject to widespread dissemination, cannot be reasonably found to include a legitimate privacy interest.

The Department has, nevertheless, accepted the suggestion of one commenter and added upon adoption language that provides notice to the insurer of a request for those public records set forth in N.J.A.C. 11:2-29.6 which are subject to public disclosure. If desired, the insurer can take appropriate action to seek an injunction against disclosure of the information requested.

COMMENT: One commenter suggested that the Department establish a committee that includes public representatives and insurance producers to advise the Department on the practical effects of plans submitted for approval. The commenter stated that such a committee could alleviate some of the administrative burden on the Department.

RESPONSE: The Department disagrees that such a committee is necessary or desirable. It notes that it has established an internal review committee which includes representatives from the various operating divisions of the Department including financial, actuarial and consumer protection. The internal committee functions as advisory to the Commissioner. Adding another level of review and advice will more likely increase, rather than decrease, the administrative burden of reviewing and approving these plans. Additionally, the Department recognizes the legitimate privacy interest in certain of the information that is included in the plan and would not be able to provide adequate protection if such information were disseminated outside the Department.

The Department has made the following technical editorial changes upon adoption:

1. At N.J.A.C. 11:2-29.3(a), ". . . or she . . ." was added.
2. At N.J.A.C. 11:2-29.3(b)2, "An" was substituted for "All."
3. At N.J.A.C. 11:2-29.3(b)6, (a)5i was specifically referenced.
4. At N.J.A.C. 11:2-29.3(c), the word "company" was added to conform with N.J.S.A. 17:27A-1 et seq.
5. At N.J.A.C. 11:2-29.4(a)12iii, (b)12ii was specifically referenced.
6. At N.J.A.C. 11:2-29.4(a)17, a correct reference to N.J.A.C. 11:2-29.3(b)5 was added.
7. At N.J.A.C. 11:2-29.6(a)8, a correct reference to N.J.A.C. 11:2-29.4(a)9 was added.
8. At N.J.A.C. 11:2-29.6(a)11, language was revised to conform with N.J.S.A. 17:20-1 et seq.

Additionally, the Department has reduced the filing requirements from 15 copies to five in N.J.A.C. 11:2-29.3(b). This change reduces the burden on the filer and may be made without additional notice and publication. The Department has also added an additional provision to N.J.A.C. 11:2-29.3(c). This provision expands the list of mitigating circumstances that are relevant in determining whether an insurer must surrender certificates of authority for other lines or affiliates.

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

SUBCHAPTER 29. ORDERLY WITHDRAWAL OF INSURANCE BUSINESS

11:2-29.1 Purpose and scope

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

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

11:2-29.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

"Department" means the New Jersey Department of Insurance.

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

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

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

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

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

Multi-state account" means a single contract or policy of commercial lines insurance as defined in N.J.S.A. 17:29AA-3 which covers risks or locations in both New Jersey and at least one other state; any group policy in which covered members of the group reside in New Jersey and at least one other state; and any plan approved for the mass marketing of insurance pursuant to N.J.A.C. 11:2-12 in which policyholders of the plan reside in New Jersey and at least one other state.

...

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

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

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

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

"State" means the State of New Jersey.

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

...

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

11:2-29.3 General provisions

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

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

1. The Commissioner shall not begin his or her evaluation of the proposed plan until the applicant has complied with the requirements contained herein for its submission, ***including the submission of any additional information specifically required pursuant to N.J.A.C. 11:2-29.4(b),*** after which the Commissioner shall approve the plan within *[90 business]* ***120*** days, subject to the terms and conditions which he or she may consider appropriate.

i. The Commissioner shall acknowledge to the applicant the receipt of any filing ***and request any additional information required for review pursuant to N.J.A.C. 11:2-29.4(b)*** within *[20 business]* ***30*** days thereafter, the failure of which *[may]* ***shall*** allow the applicant to treat the filing as complete.

ii. The Commissioner may extend the *[90 business]* ***120*** day time frame for approval of the plan an additional *[30 business]* ***40*** days for good cause and shall provide notice to the applicant of such extension.

2. *[All]* ***An*** applicant shall not commence any action in furtherance of a withdrawal as defined herein prior to the Commissioner's approval thereof. For the purposes of this paragraph, commencing an action in furtherance of a withdrawal does not include the non-binding oral or written communication between an insurer/applicant and another insurer in negotiating a replacement of the insurer/applicant's insurance business by the other insurer***, the negotiation of an agreement with a replacement carrier subject to approval of the Commissioner and conditioned on approval of the plan, or non-binding oral or written communications with any of the entities set forth at N.J.A.C. 11:2-29.4(a)11***.

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

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

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

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

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

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

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

ii. A letter of credit;

iii. A trust agreement; or

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

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

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

1. The withdrawal will not cause a market availability problem or an undue disruption in the marketplace;
2. The applicant will enter into an agreement with a proposed replacement carrier to assume the applicant's existing book of business conditioned, however, upon an approved plan;
3. The withdrawal will not adversely affect competition;
4. The withdrawal is due to specified problems affecting the solvency of the applicant; *[or]*

5. The withdrawal is consistent with the insurer's overall plan of withdrawal in other jurisdictions as part of a corporate restructuring; or

*[5.]****6.*** The public interest is best served by such a waiver.

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

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

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

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

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

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

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

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

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

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

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

ii. The management relationships;

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

iv. The marketing relationships;

v. The agency relationships;

vi. The claims handling relationships; and

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

5. A description, by line of insurance written in New Jersey, of the applicant's and its insurer affiliates' business (both property/casualty and life/health) during the last three years, including for each year the corresponding premium volume, number of current policyholders, number of exposures, approximate market share and the number of insurance producers and employees servicing the business. If employees of the applicant or any of its affiliates will be terminated in this State as a result of the applicant's withdrawal, a description of the method of termination, a description of the termination benefits, and any other financial or nonfinancial accommodations made on the employees' behalf shall be included;
6. The address of each of the applicant's offices in this State;
7. Copies of the proposed cancellation and nonrenewal notices, and termination notices, the applicant intends to send to its policyholders and insurance producers, respectively, as well as any other withdrawal-related correspondence, including the proposed dates of such notices or correspondence. Producer termination notices shall comply with the requirements contained in N.J.S.A. 17:22-6.14a;
8. In the case of a proposed withdrawal of life, health or annuity business to be effected through one or more assumption agreements, the proposed certificate(s) of assumption and letters of notification (where appropriate) to policyholders informing them of the transfer of their policies to another insurer. In the case of a proposed withdrawal of other than life, health or annuity business to be effected through one or more portfolio reinsurance agreements, the reinsurance agreement(s) and letters of notification (where appropriate) to policyholders informing them of the reinsurance of their risks with another insurer;
9. The name and address of each insurance producer, as well as the number of policies sold and premium volume produced by each producer, by line of insurance, for a 12 month period prior to the filing of the proposed plan;
10. A specimen copy of each current producer contract;
11. Copies of all correspondence and notices to be sent to the following entities or their statutory successors, as well as a description of all agreements (which need not be in final form) reached with such entities or their statutory successors as to the applicant's financial and reporting obligations to them, as applicable; if not applicable, an explanation why. The following list is not intended to be exhaustive. It is the responsibility of the applicant to furnish the information required under this paragraph for any other statutorily created or authorized entity to which it owes or may owe a financial or reporting obligation. The Commissioner may require the applicant to deposit with any of the below-listed entities (or their statutory successors) an amount sufficient to meet the applicant's obligations thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. A statement, by line of insurance written in this State, of all of the applicant's current incurred liabilities and reserves, including those incurred but not reported, as developed and certified by a "qualified actuary" as defined in N.J.A.C. 11:1-21.1 for property and casualty lines and by a Fellow of the Society of Actuaries for life and health lines, as of a date not earlier than 90 days prior to the submission of the proposed plan and which shall include the following in the case of insurance other than life:

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

ii. Copies of all underlying statistics ***used by the actuary***; *[and]*

iii. If not included in (b)***12ii*** above, development triangles, New Jersey only and countrywide for the following. Triangles shall be constructed as of December 31 for as many accident years and as many development years as necessary to display at least five mature accident years. For the purpose of this requirement, a mature accident year is defined as one for which paid losses equal at least 99 percent of incurred losses including IBNR. Such data shall be supplied both in hard copy and as their ASCII equivalent. Any narrative necessary for proper interpretation of the data supplied shall be provided.

(1) Paid losses;

(2) Incurred losses; and

(3) Claim counts:

(A) Reported; and

(B) Closed; ***and***

iv. If the insurer does not have five mature accident years as required in (b)12iii above, then it shall display five accident years which are the closest to being mature, and if the insurer does not have five accident years of data, then it shall display the accident years it has.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11:2-29.5 Replacement; non-renewal

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

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

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

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

*[2. At the specific request of the applicant, and upon good cause shown, the Commissioner may exercise his or her discretion to permit

the applicant to nonrenew two percent of the voluntary market policies that are in force in each territory at the end of a calendar year pursuant to N.J.S.A. 17:29C-7.1b, in addition to the nonrenewals permitted by N.J.A.C. 11:3-8.4.

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

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

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

11:2-29.6 Confidentiality of plan of orderly withdrawal

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

1. N.J.A.C. 11:2-29.4(a)3i—Description of current and prior authority to do business by jurisdiction;
2. N.J.A.C. 11:2-29.4(a)4—Organizational chart;
3. N.J.A.C. 11:2-29.4(a)4i—Lines of insurance written by each affiliate;
4. N.J.A.C. 11:2-29.4(a)4v—Agency relationships of affiliates by agent name***, to the extent available through the Department's licensing system***;
5. N.J.A.C. 11:2-29.4(a)5—Premium volume, number of current policyholders, market share and number of producers by line of business;
6. N.J.A.C. 11:2-29.4(a)6—Address of applicant's offices in this State;
7. N.J.A.C. 11:2-29.4(a)7—Policyholder nonrenewal and producer termination notices;
8. N.J.A.C. 11:2-29.4(a)*[8]* ***9***—Name and address of each insurance producer ***to the extent available through the Department's licensing system***;
9. N.J.A.C. 11:2-29.4(a)11—Copies of all correspondence and notices sent to various entities, as approved, to which the applicant owes a financial obligation;
10. N.J.A.C. 11:2-29.4(a)12—Certified statement of New Jersey incurred liabilities and reserves;
11. N.J.A.C. 11:2-29.4(a)14—Deposits held by *[State Treasurer]* ***a custodian on behalf of the Commissioner***; and
12. N.J.A.C. 11:2-29.4(a)17—Establishment of special deposits or equivalent performance bonds as approved.

11:2-29.7 Fines and penalties

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

11:2-29.8 Severability

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

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY URBAN DEVELOPMENT CORPORATION

Public and Nonpublic Information

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

Proposed: January 7, 1991 at 23 N.J.R. 20(a).
Adopted: April 23, 1991 by the New Jersey Urban Development Corporation, Philip P. Rowan, Executive Director and Secretary.
Filed: April 24, 1991 as R.1991 d.257, **without change.**
Authority: N.J.S.A. 55:19-6(d).
Effective Date: May 20, 1991.
Expiration Date: July 2, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 2. INFORMATION

12A:80-2.1 Public information

(a) All records of the Corporation such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as nonpublic information shall be deemed public information and will be made available to the public for inspection, examination and copying upon request.

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

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

12A:80-2.2 Nonpublic information

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

1. All confidential reports, executive memoranda and evaluations submitted to the Corporation, the directors, or to any other state agency or instrumentality;
2. All personnel records except those deemed public as required by an Executive Order;
3. All records concerning applications for employment with the Corporation;
4. All records concerning financial or proprietary information submitted by applicants for Corporation assistance;
5. All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Corporation;
6. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the Board of Directors, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this section; and
7. Any other reports, correspondence or other documents or data where the Corporation finds that nondisclosure is necessary for the protection of the public interest.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Notice of Administrative Correction
Private Inspection Center Licensing
Adopted New Rule: N.J.A.C. 13:20-31.1

Take notice that the Division of Motor Vehicles has discovered an error in the text of adopted new rule N.J.A.C. 13:20-31.1, in subsection (a), as published in the May 6, 1991 New Jersey Register at 23 N.J.R. 1417(b). As stated in the notice of adoption's Summary of Agency-Initiated Changes, the proposed phrase, "more than 10 days after the effective date of this rule" should have been replaced upon adoption by "after May 16, 1991." Through typographic error, the published phrase appeared as, "more than 10 days after May 16, 1991."

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 (deletions indicated in brackets [thus]):

13:20-31.1 Restriction of initial licensing

(a) Notwithstanding any other provision of this chapter to the contrary, no initial private inspection center license authorizing such licensee to initially inspect and reinspect motor vehicles in this State pursuant to N.J.S.A. 39:8-1 et seq. shall be issued by the Division of Motor Vehicles to any person or business applying for same *[more than 10 days]* after May 16, 1991, with the following exception:

1. (No change.)

(b) (No change.)

(b)

BOARD OF ARCHITECTS AND CERTIFIED LANDSCAPE ARCHITECTS

Licensing Examinations; Fees
Adopted Amendment: N.J.A.C. 13:27-5.8

Proposed: March 4, 1991 at 23 N.J.R. 671(a).

Adopted: April 11, 1991 by the State Board of Architects, Joseph Filippone, President.

Filed: April 24, 1991 as R.1991 d.258, **without change.**

Authority: N.J.S.A. 45:3-3.

Effective Date: May 20, 1991.

Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:27-5.8 Fees

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

(c) The fees for the licensing examination are as follows:

1. Entire Architectural Registration Examination	$545.00
i. Division A: Pre-Design	55.00
ii. Division B: Site Design, Graphic	85.00
Site Design, Written	40.00
iii. Division C: Building Design	115.00
iv. Division D/F: Structural General and Long Span	50.00
v. Division E: Structural Lateral Forces	35.00
vi. Division G: Mechanical, Plumbing, Electrical and Life Safety Systems	55.00
vii. Division H: Materials and Methods	55.00
viii. Division I: Construction Documents and Services	55.00

ix. The fee for retake of any part of the exam is the same as listed above.

2. (No change.)

(d)-(l) (No change.)

(c)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Suspension Pending Outcome of Indictment
Adopted New Rule: N.J.A.C. 13:70-14.17

Proposed: March 4, 1991 at 23 N.J.R. 673(a).

Adopted: April 18, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: April 25, 1991 as R.1991 d.266, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: May 20, 1991.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-14.17 Suspension pending outcome of indictment

(a) A licensee may be suspended immediately when the licensee is indicted in this State for a crime of the first, second, third or fourth degree or is indicted for a similar crime under Federal law or the law of another state, or Province of Canada law if:

1. The charge or charges arise from activity or activities occurring on the grounds of a race association or a licensed farm or;

2. The charge or charges are directly related to the racing industry whether in this State or another jurisdiction.

(b) Prior to a suspension under (a) above becoming effective, the licensee must first be apprised in writing of why an immediate suspension is sought, the charges and the general evidence in support of the charges. This notice may be given by personal service or by regular mail or by certified mail, return receipt requested, to the last address for the licensee on record with the Commission.

(c) The licensee may request a hearing with a representative of the Commission within 10 days of the date of the written notice of suspension. If no request is made within this time, or such additional time as agreed to by a representative of the Commission or as provided in a negotiated agreement, the suspension issued pursuant to this section shall continue until disposition of the criminal indictment.

(d) A suspension pursuant to this section shall not extend beyond the disposition of the criminal complaint or indictment; provided, that where a licensee is convicted of a charge described in (a) above, such suspension shall remain in effect pending further disciplinary action by the Commission.

(e) Where any licensee is suspended pursuant to this section, said penalty may be appealed to the Commission and a hearing requested.

(f) The hearings before both the Commission's representative and the Commission itself shall be *de novo* proceedings.

(g) Where the suspension is immediate under (a) above, the licensee may seek a stay of said suspension pending a resolution of the charge or charges and/or the Final Decision of the Commission. Any such request shall be in writing and shall be addressed to the Executive Director (or his or her designee) and the Commission.

1. Such a request may be denied by the Commission, Executive Director, or his or her designee, where to grant the same would be adverse to the best interests of racing or inimical to the public in preserving the integrity of the sport and in preserving public confidence in the sport.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Administering Medication to Respiratory Bleeders
Time on Respiratory List
Adopted Amendment: N.J.A.C. 13:70-14A.9

Proposed: March 4, 1991 at 23 N.J.R. 674(a).
Adopted: April 18, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: April 25, 1991 as R.1991 d.263, **without change.**
Authority: N.J.S.A. 5:5-30.
Effective Date: May 20, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-14A.9 Administering medication to respiratory bleeders
(a)-(c) (No change.)
(d) A horse placed on the veterinarian's list for bleeding must remain on the list for 10 calendar days; a second time bleeder must remain on the respiratory list for 30 days; and a third time bleeder must remain on the respiratory list for 90 days. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a fourth time is barred from further racing in New Jersey.
(e) (No change.)

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Veterinarians During Racing Hours
Adopted Amendment: N.J.A.C. 13:70-19.43

Proposed: March 4, 1991 at 23 N.J.R. 674(b).
Adopted: April 22, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: April 24, 1991 as R.1991 d.260, **without change.**
Authority: N.J.S.A. 5:5-30.
Effective Date: May 20, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
A comment received from Nancy G. Wright, Esq., of Bathgate, Megener, Mouters & Newmann, Lakewood, New Jersey, in support of emergency veterinarian services during racing hours.

Full text of the adoption follows.

13:70-19.43 Veterinarians during racing hours
The racing association will be responsible to provide the services of a licensed veterinary practitioner for the period of one-half hour prior to the post time of the first race until one-half hour after the conclusion of the last race on the racing program.

(c)

NEW JERSEY RACING COMMISSION

Harness Rules
Veterinarians (Practicing)
Adopted Amendment: N.J.A.C. 13:71-9.2

Proposed: March 4, 1991 at 23 N.J.R. 675(a).
Adopted: April 22, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: April 24, 1991 as R.1991 d.259, **without change.**
Authority: N.J.S.A. 5:5-30.
Effective Date: May 20, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
A comment received from Nancy G. Wright, Esq., of Bathgate, Megener, Mouters & Newmann, Lakewood, New Jersey, in support of veterinarians employed by an association be permitted, during their employment, to treat any horse.

Full text of the adoption follows.

13:71-9.2 Veterinarian (practicing)
(a)-(b) (No change.)
(c) No veterinarian employed by the Racing Commission shall be permitted, during the period of his employment, to treat or prescribe for any horse, for compensation or otherwise, except in case of emergency, in which case a full and complete report shall be made to the stewards.
(d) (No change.)

(d)

NEW JERSEY RACING COMMISSION

Harness Rules
Veterinarians During Racing Hours
Adopted Amendment: N.J.A.C. 13:71-9.4

Proposed: March 4, 1991 at 23 N.J.R. 675(b).
Adopted: April 22, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: April 24, 1991 as R.1991 d.261, **without change.**
Authority: N.J.S.A. 5:5-30.
Effective Date: May 20, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
A comment received from Nancy G. Wright, Esq., of Bathgate, Megener, Mouters & Newmann, Lakewood, New Jersey, in support of emergency veterinarian services during racing hours.

Full text of the adoption follows.

13:71-9.4 Veterinarians during racing hours
The racing association will be responsible to provide the services of a licensed veterinary practitioner for the period of one-half hour prior to the post time of the first race until one-half hour after the conclusion of the last race on the racing program.

(e)

NEW JERSEY RACING COMMISSION

Harness Rules
Administering Medication to Respiratory Bleeders
Adopted Amendment: N.J.A.C. 13:71-23.8

Proposed: March 4, 1991 at 23 N.J.R. 675(c).
Adopted: April 18, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: April 25, 1991 as R.1991 d.264, **without change.**
Authority: N.J.S.A. 5:5-30.
Effective Date: May 20, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:71-23.8 Administering medication to respiratory bleeders
(a)-(c) (No change.)
(d) A horse placed on the veterinarian's list for bleeding must remain on the list for 10 calendar days, a second time bleeder must

remain on the respiratory list for 30 days, and a third time bleeder must remain on the respiratory list for 90 days. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a fourth time is barred from further racing in New Jersey.

(e) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Suspension Pending Outcome of Indictment

Adopted New Rule: N.J.A.C. 13:71-26.9

Proposed: March 4, 1991 at 23 N.J.R. 676(a).

Adopted: April 18, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: April 25, 1991 as R.1991 d.265, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: May 20, 1991.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:71-26.9 Suspension pending outcome of indictment

(a) A licensee may be suspended immediately when the licensee is indicted in this State for a crime of the first, second, third or fourth degree or is indicted for a similar crime under Federal law or the law of another state, or Province of Canada law if:

1. The charge or charges arise from activity or activities occurring on the grounds of a race association or a licensed farm; or

2. The charge or charges are directly related to the racing industry whether in this State or another jurisdiction.

(b) Prior to a suspension under (a) above becoming effective, the licensee must first be apprised in writing of why an immediate suspension is sought, the charges and the general evidence in support of the charges. This notice may be given by personal service or by regular mail or by certified mail, return receipt requested, to the last address for the licensee on record with the Commission.

(c) The licensee may request a hearing with a representative of the Commission within 10 days of the date of the written notice of suspension. If no request is made within this time, or such additional time as agreed to by a representative of the Commission or as provided in a negotiated agreement, the suspension issued pursuant to this section shall continue until disposition of the criminal indictment.

(d) A suspension pursuant to this section shall not extend beyond the disposition of the criminal complaint or indictment; provided, that where a licensee is convicted of a charge described in (a) above, such suspension shall remain in effect pending further disciplinary action by the Commission.

(e) Where any licensee is suspended pursuant to this section, said penalty may be appealed to the Commission and a hearing requested.

(f) The hearings before both the Commission's representative and the Commission itself shall be *de novo* proceedings.

(g) Where the suspension is immediate under (a) above, the licensee may seek a stay of said suspension pending a resolution of the charge or charges and/or the Final Decision of the Commission. Any such request shall be in writing and shall be addressed to the Executive Director (or his or her designee) and the Commission.

1. Such a request may be denied by the Commission, Executive Director, or his or her designee, where to grant the same would be adverse to the best interests of racing or inimical to the public in preserving the integrity of the sport and in preserving public confidence in the sport.

OTHER AGENCIES

(b)

DELAWARE RIVER BASIN COMMISSION

Schedule of Project Review Filing Fees for Review of Water Resources Projects

Adopted: April 24, 1991 by the Delaware River Basin Commission, Michael F. Catania, Chairman pro tem.

Filed: April 26, 1991 as R.1991 d.267.

Effective Date: May 1, 1991.

Full text of the adoption follows:

NO. 91-3

A RESOLUTION revising the Commission's schedule of project review filing fees for review of water resources projects.

WHEREAS, on June 28, 1972, and April 23, 1975, the Commission adopted Resolution Nos. 72-7 and 75-3, respectively, requiring that a filing fee be paid to the Commission at the time of filing applications pursuant to Section 3.8 of the Delaware River Basin Compact; and

WHEREAS, revenues obtained from project review filing fees have amounted to substantially less than the cost of administering the Commission's project review program; and

WHEREAS, filing fees have not been increased since 1975; and

WHEREAS, it is the intention of the Commission that the schedule of project review filing fees should make the project review program less dependent upon signatory party contributions; and

WHEREAS, the Commission held a public hearing on December 12, 1990 regarding this proposed amendment and has revised its proposal in response to hearing testimony; and

WHEREAS, the Commission held a public hearing on April 24, 1991 regarding this revised proposed amendment and has considered testimony from water users and other interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. A filing fee shall be paid to the Commission, according to the schedule herein, at the time of filing each application for project review, pursuant to Section 3.8 and Article 10 of the Delaware River Basin Compact. Government agencies shall be exempt from such filing fees.

2. The project review filing fee is the greater of (a) or (b) as follows, and (c), if and as applicable:

(a) minimum fee: $250 for any project that requires Commission action;

(b) alternative fee:

(1) 1/10 of 1% of project cost to $10,000,000;

(2) 1/25 of 1% of remaining cost above $10,000,000 but not to exceed a maximum fee of $50,000 as to any one project.

(c) for any project that results in an out-of-basin diversion, the fee as described above is increased by 50%.

3. The project cost shall include the estimated costs of design, supervision of construction, legal services, contract administration, land, materials, equipment, construction and fabrication.

4. Revenues received pursuant to this regulation shall go into the Commission's general fund and be subject to specific appropriation by the Commission.

5. Each substantial project revision or modification following Commission action requires an additional filing fee.

6. These amendments become effective May 1, 1991.

/s/ Michael F. Catania
Michael F. Catania, Chairman pro tem

/s/Susan M. Weisman
Susan M. Weisman, Secretary

ADOPTED: April 24, 1991

I hereby certify that this is a true copy of Resolution No. 91-3 adopted by the Delaware River Basin Commission on April 24, 1991.

Susan M. Weisman, Secretary

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS
Interim Assistance Procedures Manual
Readoption with Amendments: N.J.A.C. 10:38

Proposed: February 4, 1991 at 23 N.J.R. 261(b).
Adopted: April 29, 1991, by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: April 29, 1991 as R.1991 d.268, **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. 30:4-27.19.
Effective Date: April 29, 1991 Readoption;
May 20, 1991 Amendments.
Expiration Date: April 29, 1996.

Summary of Public Comments and Agency Responses:

The Division of Mental Health and Hospitals (DMH&H) sent copies of the Interim Assistance Proposal to a list of over two dozen potentially interested parties. The Division received comments from five parties—two written from the community and three verbal from within the Division. Community commenters were: the New Jersey Association of Health Care Facilities and the Social Security Administration. All comments expressed concern over specific sections, as follows:

SUBCHAPTER 1. GENERAL PROVISIONS

COMMENT: The Family Care Program no longer exists. Eliminate "Family Care Home" from the definitions.

RESPONSE: The Department agrees and has made the deletion at N.J.A.C. 10:38-1.4.

COMMENT: The proposal should make reference to post-entitlement payments in the Program Description (N.J.A.C. 10:38-1.1) and as a separate definition (N.J.A.C. 10:38-1.4).

RESPONSE: After the Division discussed this further with the commenter, the commenter agrees that the State would never be able to recover a post-entitlement payment from an Interim Assistance recipient. Thus, there is no need for a reference.

SUBCHAPTER 2. INTERIM ASSISTANCE ELIGIBILITY

COMMENT: Include residential drug or alcohol rehabilitation programs as placement options.

RESPONSE: The Department agrees because the addition of such programs would increase the number of potential placement options and would benefit Interim Assistance recipients by offering more comprehensive services. The Department has expanded N.J.A.C. 10:38-2.1(a)3 to include residential or drug rehabilitation programs as placement options.

SUBCHAPTER 3. INTERIM ASSISTANCE PROCESSING

COMMENT: Since only a physician can sign form SSA-787, the form should be obtained from the treating psychiatrist or physician, not social services staff.

RESPONSE: The Department agrees that because only a physician can sign form SSA-787, N.J.A.C. 10:38-3.4(c)2 must be revised to replace "hospital Social Services staff" with "the treating psychiatrist or physician."

COMMENT: The Department should establish a timeframe to forward retroactive SSI checks and related forms to the hospital. This will enhance the hospital business office's ability to meet its responsibilities within established time limits.

RESPONSE: The Department agrees and has revised N.J.A.C. 10:38-3.5(a)3 to incorporate a three-day timeframe. This includes form SSA-8125, which has been added to N.J.A.C. 10:38-3.5(a)1-3, as well as the retroactive check. Both documents are needed in order to calculate the transaction.

COMMENT: The Department should require that form FS-9, "Business Manager's Statement to SSI Recipient," be completed in five days regardless of whether or not a refund is due.

RESPONSE: The Department agrees and has amended N.J.A.C. 10:38-3.6(a)10 to include the specific timeframe for all cases.

COMMENT: Rooming houses are an acceptable placement option. However, they do not provide food. This should not be a mandatory requirement of the housing provider.

RESPONSE: The Department agrees with the commenter. Language at N.J.A.C. 10:38-3.8(a)2 has been expanded accordingly by adding "if normally available at the facility" after the word "food."

COMMENT: The Contract for Interim Assistance should be clear that payments to the provider are made after the services are rendered.

RESPONSE: The Department agrees and has revised N.J.A.C. 10:38-3.8(a)3 and the Contract for Interim Assistance accordingly.

COMMENT: The placing hospital, not the designated screening center, should be the recipient of the provider's written notice of intent to terminate the contract.

RESPONSE: The Department agrees and has so amended Appendix C, Section 4. See also N.J.A.C. 10:38-3.8(a)5.

COMMENT: N.J.A.C. 10:38-3.8(a)5 requires the provider to give the State 30 days written notice of his or her intent to terminate the contract agreement. Fundamental fairness requires the State extend the same courtesy to the provider.

RESPONSE: The Department agrees and has inserted this requirement at N.J.A.C. 10:38-3.4(a)6. This requirement does not apply when issues of life/safety or patient welfare are involved or when the resident leaves the home of his or her own accord.

COMMENT: Because the provider is not always aware of duplicate payments being made to clients, the provider should not be required to return duplicate payments unless he or she actually receives them. Text at N.J.A.C. 10:38-3.8(a)7 should be revised to clarify that the requirement is to return only duplicate compensation received by the provider.

RESPONSE: The Department has evaluated the comment and has amended the text at N.J.A.C. 10:38-3.8(a)7 with language similar to that suggested by the commenter. The technical revision clarifies that the requirement is to return only duplicate compensation received by the provider. The related Contract for Interim Assistance (Appendix C) is is also amended accordingly.

SUBCHAPTER 4. INTERIM ASSISTANCE PAYMENT PROCEDURES

COMMENT: The Department should withdraw the amendment requiring payments to providers be simply processed rather than actually made by a certain date. This change may further delay payments.

RESPONSE: Due to the constraints and requirements of the State accounting system, it is almost physically impossible to make payments by the 10th day of the month following the month of service. This section as proposed and amended will assure that the paperwork is at least in motion within a reasonable timeframe (see N.J.A.C. 10:38-4.3(e)3).

COMMENT: The Department should eliminate the requirement that a client with other income must pay the provider directly. It would be administratively burdensome to keep an account of who has agreed to pay the operator directly and who has not. It could create an uncomfortable relationship between the provider and resident. Depending on where the other income checks are mailed, the client may not even have the other income immediately available. There could be numerous rates instead of one rate. Finally, this would complicate completing the Contract of Interim Assistance.

RESPONSE: The Department agrees and has not adopted N.J.A.C. 10:38-4.3(e)4. The Department has also amended N.J.A.C. 10:38-7.4(a) and (c) to require that the client continue to turn over additional income to the hospital rather than to the housing provider. This reflects current practice.

APPENDICES

COMMENT: There were several suggestions designed to clarify the Certification note on the Contract for Interim Assistance.

RESPONSE: The Department feels the Certification note is already clear, but did add the words "if such payment represents duplicate compensation" to item (2).

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:38.

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

10:38-1.1 Program description

(a) Interim Assistance (IA) is a payment procedure developed by the State of New Jersey and the Federal Department of Health and Human Services. It permits a client who has been released from a State psychiatric hospital and who has applied for Federal Supplemental Security Income (SSI) benefits to receive State funds while his or her SSI claim is being evaluated. Through this process, the client shall receive a Personal Needs Allowance and have his or her initial maintenance costs paid by the Division of Mental Health and Hospitals upon release from the hospital. The Division, in turn, may directly receive the client's retroactive SSI payment from the Social Security Administration, may recoup Interim Assistance expenditures made and shall deposit this reimbursement in the hospital Interim Assistance appropriation account.

10:38-1.4 Definitions

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

"Boarding home" means a building containing two or more units of dwelling space arranged or intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement. Such facilities shall be licensed by the State Department of Community Affairs, pursuant to P.L. 1979 c.496 (Rooming House/Boarding House Act of 1979).

...

["Family care home" means a private home or apartment in which the owner resides with up to three clients.]

"Financial Entitlement Unit or its equivalent" means that institutional unit within the Division of Mental Health and Hospitals which processes Interim Assistance, SSI and General Assistance applications for State psychiatric hospital clients who are being prepared for release.

...

"Representative payee" means a person selected by the client and appointed by the Social Security Administration. The representative payee receives a client's SSI payments and disburses them for the benefit of the client in accordance with Social Security Administration regulations.

...

"Retroactive SSI payment" means the initial payment following a client's SSI benefit approval. It includes the amount due for the current month plus payments retroactive to the day of the client's application or formal inquiry to the Social Security Administration.

...

"Supplemental Security Income (SSI)" means the Federal assistance program authorized under Title XVI of the Social Security Act.

...

10:38-2.1 Clients eligible for Interim Assistance

(a) To be determined eligible for Interim Assistance (IA), a client shall:

1.-2. (No change.)

3. Have been evaluated by the Interdisciplinary Treatment Team as ready for release to one of the following:

i. Residential health care facility;

ii. Boarding home;

iii. Residential drug or alcohol rehabilitation program;

*[iii.]***iv.*** Rooming house; or

*[iv.]***v.*** Transitional residence; and

4. Have applied for SSI benefits.

10:38-2.2 Clients ineligible for Interim Assistance

(a) A client in a State psychiatric hospital is not eligible for Interim Assistance when any of the following conditions exists:

1.-4. (No change.)

5. The client is on the active SSI rolls (receiving a monthly Federal PNA stipend).

10:38-2.3 Selection criteria

(a) (No change.)

(b) When choices must be made among Interim Assistance applicants, the following selection criteria shall be used:

1. (No change.)

2. The potential eligibility of the client for SSI. There should be evidence that the client meets SSI income, resource, citizenship and disability criteria.

10:38-3.3 The hospital social service staff or designee

(a) The Discharge Oriented Service Plan shall establish the client's need for assistance in financial planning and placement needs. If such a financial need is evident and the client appears to meet Interim Assistance eligibility criteria, the hospital social service staff or designee shall:

1. Whenever assigned client placement responsibility, provide the client or family with a description of the Interim Assistance Program, its requirements and the client's or family's rights and obligations under the program;

2. Whenever assigned client placement responsibility and the client expresses an interest in the program, obtain the client's signature on an Interim Assistance Statement and form MH-30 (Appendix B);

3.-7. (No change.)

10:38-3.4 Responsibilities of the Discharge and/or Financial Unit

(a) The Discharge or Financial Unit shall play a major role in several areas, specifically:

1.-2. (No change.)

3. Assemble the necessary information and documents for SSI applications, forward this material to the Social Security Administration, and monitor the SSI application process;

4.-7. (No change.)

8. Notify the business manager to terminate Interim Assistance payments when eligibility or ineligibility for SSI benefits is established.

(b) The Discharge or Financial Unit shall maintain a record of each referral received and processed. This record shall contain the dates when:

1.-5. (No change.)

6. Give the housing provider 30 days' notice of the State's intent to terminate the Contract for Interim Assistance. This requirement does not apply when issues of life/safety or client welfare are involved, or when the resident leaves the home of his or her own accord.

*[6.]***7.*** An SSI application is forwarded to the Social Security Administration District Office;

*[7.]***8.*** An approval or denial of the SSI application is received; and

*[8.]***9.*** (No change.)

(c) The Financial Entitlement Unit shall, within five working days of receipt of a referral:

1. (No change.)

2. Obtain from *[hospital social service staff]* ***the treating psychiatrist or physician*** form SSA-787, Medical Officer's Statement (Appendix K);

3. Make an assessment of the client's potential SSI eligibility based on available documents and information. This evaluation shall result in one of the following decisions:

i. The client is eligible for Interim Assistance payments because he or she meets the eligibility criteria of the Interim Assistance Program and appears to be potentially eligible for SSI benefits; or

ii. The client is ineligible for Interim Assistance payments because he or she does not meet Interim Assistance eligibility criteria and/or does not appear to be potentially eligible for SSI benefits.

(d) The Financial Entitlement Unit shall, for a client assessed as eligible for Interim Assistance:

1. Obtain from the client a signed SSI application and a Payee Agreement (Appendix E);

2.-4. (No change.)

5. For clients not on the active SSI rolls (within the past year), forward a completed SSI referral packet. This packet shall contain all required hospital forms and reports, necessary SSI application and supporting documents, and a copy of the court order of discharge,

if applicable. The packet should be forwarded to the Social Security Administration District Office within 15 calendar days of submission of the signed form MH-30 to the Financial Entitlement Unit; and

6. (No change.)

(e) The Discharge Unit shall:

1. (No change.)

2. The placement social worker shall visit the selected site with the client and, if the client finds it acceptable:

i.-iii. (No change.)

(f) The financial coordinator shall:

1.-3. (No change.)

4. Notify the hospital business manager of the client's SSI approval;

5. Notify the client and the hospital business manager in writing when Interim Assistance payments are terminated; and

6. (No change.)

(g) For a client who has been found eligible for Interim Assistance and is subsequently denied SSI benefits the Financial Entitlement Unit shall:

1. If the client files an appeal with the Social Security Administration, continue Interim Assistance payments upon authorization by the Financial Coordinator during the period of the SSI reconsideration and the hearing at the Administrative Law level;

2. (No change.)

3. Assist the client in obtaining legal representation from the Community Health Law Project or local legal services corporation, as appropriate;

4. Continue Interim Assistance until the SSI retroactive check is received in cases where the appeal to the Social Security Administration is successful;

5. (No change.)

6. Monitor the processing of the General Assistance application and notify the hospital business manager when the initial general assistance payment is received by the client; and

7. (No change.)

(h) The Financial Entitlement Unit shall, for a client assessed as ineligible for Interim Assistance:

1. Notify the client and the hospital social worker in writing of the client's ineligibility for Interim Assistance;

2.-4. (No change.)

10:38-3.5 The Office of Fiscal and Management Operations of the Division of Mental Health and Hospitals

(a) The role of the Office of Fiscal and Management Operations of the Division of Mental Health and Hospitals shall be to:

1. Receive from the Social Security Administration retroactive SSI checks ***and form SSA-8125, "Notice of Interim Assistance Reimbursement,"*** for Interim Assistance clients;

2. Maintain a record showing the check dates, amounts, dates received, check numbers, and the dates checks ***and forms SSA-8125*** are forwarded to the appropriate hospital business offices;

3. Forward recorded checks ***and forms SSA-8125*** to the appropriate hospital business office ***within three working days***; and

4. (No change.)

10:38-3.6 Responsibilities of the hospital business office

(a) The hospital business office shall be responsible for all fiscal matters relating to the Interim Assistance program other than those described in previous and succeeding sections. Business office staff's specific responsibilities shall be to:

1.-7. (No change.)

8. Receive a client's initial retroactive SSI check from the Office of Fiscal and Management Operations and deposit it into the client's account, and notify the Financial Entitlement Unit that the check has been received;

9. Compute the amount due from the client's initial retroactive SSI check as reimbursement for Interim Assistance expenditures using approved methodology as outlined in the Interim Assistance Reimbursement State Handbook, withdraw this sum from the client's account and deposit it into the Interim Assistance account;

10. *[Issue a check to the client for the balance, if any is due him or her, together with a completed form FS-9, Business Manager's Statement to SSI Recipient,]* ***Issue a completed form FS-9, Business Manager's Statement to SSI Recipient,*** within five working days of receipt of the retroactive check, ***and include a refund check to the client if any is due him or her;***

11.-14. (No change.)

15. Terminate Interim Assistance as of the day following the last day of the period covered by the client's retroactive SSI check.

10:38-3.7 Action by the Social Security Administration

(a) The Social Security Administration should:

1.-2. (No change.)

3. Direct retroactive SSI checks to the Division of Mental Health and Hospitals in accordance with the Interim Assistance agreement;

4. Notify the Financial Entitlement Unit of approvals and denials of SSI applications;

5. (No change.)

6. Notify clients and/or representative payees that initial SSI retroactive checks shall be forwarded to the Division of Mental Health and Hospitals; and

7. Hear client appeals regarding the amount of SSI payments and other adverse (financial and medical) actions.

10:38-3.8 Responsibilities of the congregate housing provider

(a) The congregate housing provider shall sign a contract for Interim Assistance agreeing to:

1. Accept the client for placement;

2. Furnish the client with food***, if normally available at the facility,*** lodging, and necessary incidentals;

3. Accept an agreed-upon per diem as compensation ***after services are rendered***;

4. Contact the hospital and designated emergency screening service in the event the client needs emergency medical or psychiatric care. The provider shall furnish details as to the patient's condition and shall abide by such directions as are given. In the event of a serious medical or psychiatric emergency, the provider shall arrange for immediate care and then notify the hospital and emergency screening service;

5. Provide ***the placing hospital with*** 30 calendar days' written notice of his of her intent to terminate the contract agreement;

6. Notify the hospital should the provider become aware that the client directly received the initial retroactive SSI check;

7. Refund to the hospital any Interim Assistance ***or other*** payments received *[after the initial SSI check or any payments]* which represent duplicate compensation to the provider for the time period beginning with the placement and ending with receipt of the initial SSI check; and

8. Notify the hospital immediately in the event the client terminates residence at the home.

10:38-4.3 Business office payment procedures

(a) (No change.)

(b) The client's initial Personal Needs Allowance payment shall be issued in the following manner:

1.-2. (No change.)

3. If the client has other income, such funds shall be utilized instead of Interim Assistance; and

4. (No change.)

(c) (No change.)

(d) The business manager, or his or her designee, shall mail Personal Needs Allowance checks, at the per diem rate and covering a full calendar month, to the client at the community placement address no later than the first working day of each month.

(e) The client's Interim Assistance maintenance payment shall be calculated and disbursed as follows:

1. (No change.)

2. The invoice shall be compared for accuracy with the signed Contract for Interim Assistance and the Financial Entitlement Unit's Interim Assistance maintenance report, if utilized;

3. Validated payments to the housing provider from the Interim Assistance account shall be processed by the 10th calendar day of the following month at the established maintenance rate. This is a per diem rate based on the current SSI payment; and

[4. If the client has other Federal annuity income in addition to SSI, the housing provider shall collect payments directly from the client. If so, this shall be noted on the invoice. The hospital shall reduce its payment to the provider accordingly.]

10:38-4.4 Termination of payments

(a) Interim Assistance payments shall be terminated for an eligible client:

1. As of the day after the last day of the period covered by a retroactive SSI check received by the hospital business manager; or

2. When a client has been formally determined to be ineligible for SSI benefits by the Social Security Administration. This shall be interpreted to mean that Interim Assistance payments may continue through the SSI reconsideration and the hearing at the Administrative Law level if approved by the Financial Coordinator.

(b) Retroactive county billing shall be pursued by the hospital business office utilizing form 1113, Billing Classification Report (Appendix I), in a case where a client is denied SSI benefits, or when the initial SSI check is less than the amount of recoverable Interim Assistance advanced.

(c) The Financial Entitlement Unit shall notify the client of Interim Assistance termination.

10:38-5.1 Institutional Medicaid Coverage

An Interim Assistance recipient shall be eligible for institutional Medicaid coverage until his or her SSI application is processed and he or she is discharged.

10:38-5.2 Procedures

(a) To ensure continued institutional Medicaid coverage for an Interim Assistance client, the following procedures shall be followed:

1. (No change.)

2. Form FD-34, Medicaid validation, shall be completed by the designated hospital representative on the date of placement and on the first of each month thereafter. The representative shall forward the form to the appropriate congregate facility including, but not limited to, boarding homes and group homes; and

3. (No change.)

10:38-5.3 Termination of institutional Medicaid coverage

(a) Upon notification by the Financial Entitlement Unit of the client's approval for SSI benefits and community Medicaid, the hospital shall list the client as "Discharged" on the daily population movement report.

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

10:38-6.1 Right to appeal

(a) An Interim Assistance client shall have the right to appeal an adverse eligibility decision in the following situations:

1. The client has been denied Interim Assistance by the Financial Entitlement Unit and he or she has filed an application for SSI benefits; or

2. The client has been found eligible for Interim Assistance but has subsequently been terminated from the Interim Assistance program for reasons other than the receipt of SSI benefits.

10:38-6.2 Notice of decision and right of appeal

(a) The Financial Entitlement Unit shall, within five working days of an adverse eligibility decision, notify the client in writing of such decision and shall furnish him or her with a summary statement giving the factual and/or legal basis upon which such decision was based.

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

10:38-6.3 Procedure for filing appeal

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

(d) A request for appeal received after the time period specified shall be denied unless an unusual situation, such as client illness, exists. In such a case an additional 10 calendar days may be allowed by the Financial Coordinator for providing notice of intention to appeal.

(e) (No change.)

10:38-6.5 Financial Entitlement Unit's review

(a) The review shall be conducted by an employee at the supervisory level or above designated as a reviewing officer, other than the person who made the original eligibility determination. Such reviewing officer shall be thoroughly familiar with the requirements of the Interim Assistance program and relevant Social Security Administration regulations.

(b) The review shall be conducted in an informal manner and shall be limited to the development of facts relating to the appeal.

(c)-(g) (No change.)

10:38-6.6 Results of the Financial Entitlement Unit's review

(a) If the reviewing officer concludes after hearing all the evidence that the client is eligible for Interim Assistance, he or she shall within five calendar days of the review notify the client and his or her representative to that effect. The reviewing officer shall also advise the Financial Entitlement Unit's staff person who made the original eligibility determination that Interim Assistance must be provided to the client effective the date of his or her placement in a community setting.

(b) If the reviewing officer concludes after hearing all the evidence that the client is ineligible for Interim Assistance, he or she shall within five calendar days of the review notify the client, his or her representative and the Financial Entitlement Unit of the decision. The reviewing officer shall advise the client and his or her representative of the client's right to have the decision reviewed at the Division level.

(c) Based on the evidence presented the reviewing officer shall prepare a written report of his or her findings summarizing what transpired at the review. Copies of this report shall be provided to the client, his or her representative, the Financial Entitlement Unit, the Chief Executive Officer of the hospital, and to the Assistant Director, Office of Fiscal and Management Operations, within five calendar days of the review.

(d) (No change.)

10:38-6.7 Effect of determination by the Social Security Administration

(a) If prior to the review date the Social Security Administration determines that the client is eligible for SSI benefits, then the client, if he or she meets all eligibility requirements, shall be eligible for Interim Assistance from the date of his or her placement in a community setting until he or she begins to receive SSI benefits.

(b) If, prior to the review date the Social Security Administration determines that the client is ineligible for SSI benefits, then the client's sole recourse shall be through the Social Security Administration and his or her Interim Assistance appeal shall be denied.

10:38-6.8 Divisional review

(a) (No change.)

(b) A divisional review must be requested in writing within 10 calendar days of issuance of the Financial Entitlement Unit's reviewing officer's decision. It must be submitted to the Assistant Director, Office of Fiscal and Management Operations, Division of Mental Health and Hospitals.

(c) In an unusual situation, for example, client illness, the Assistant Director, Office of Fiscal and Management Operations, may grant an extension of time not to exceed 10 calendar days for submitting a request for divisional review.

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

10:38-6.9 Results of divisional review

(a) (No change.)

(b) The Assistant Director, Office of Fiscal and Management Operations, shall within 10 calendar days of receipt of the client's request for review notify the client, his or her representative and the Financial Entitlement Unit of the results of the divisional review.

(c) If the Financial Entitlement Unit's reviewing officer's decision is affirmed, such decision shall be treated and recognized as the final divisional determination of the client's claim for Interim Assistance. The client, his or her representative and the Financial Entitlement Unit shall be so advised.

(d) The client shall have the right to request a hearing before an Administrative Law Judge if he/she is dissatisfied with the Assistant Director's decision. Such request must be submitted to the Assistant Director within 10 calendar days of issuance of the Assistant Director's decision. Upon receipt of such request, the Assistant Director shall immediately refer the matter to the Office of Administrative Law for a hearing before an Administrative Law Judge, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.

(e) If the Financial Entitlement Unit's reviewing officer's decision is rejected the client shall be declared eligible for Interim Assistance benefits from the date of his or her community placement. The client, his or her representative and the Financial Entitlement Unit shall be so advised.

10:38-6.10 Appeal to the hospital business manager of computation of net payment

(a) The Interim Assistance client shall have the right to appeal to the hospital business manager regarding procedures used to compute the net payment from his or her retroactive SSI check.

(b) Within five working days of receipt of the retroactive SSI check by the hospital, the business manager or designee shall provide the client with a statement detailing the manner in which the net payment was computed. The client shall also be provided with a written statement regarding his or her right to appeal such computation.

(c) The client shall within 20 calendar days of mailing of the above statement be required to serve written or oral notice upon the hospital business manager of his or her dissatisfaction with the computation and of his or her intention to appeal.

(d) (No change.)

10:38-6.11 Business manager's review

(a) (No change.)

(b) The business manager, or his or her designee, shall meet with the client as scheduled and explain to him or her the procedures used to compute the net payment from the client's retroactive SSI check.

(c) The business manager, or his or her designee, shall recheck computation of the amount of the net payment.

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

10:38-6.12 Results of business manager's review

(a) The business manager shall advise the client and the client's representative of his or her decision in writing within five calendar days of the review. Copies of this notice shall also be provided to the Discharge or Financial Entitlement Unit, the Chief Executive Officer of the hospital, and the Assistant Director, Office of Fiscal and Management Operations.

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

10:38-6.13 Divisional review

(a) The client shall have the right to a divisional review of the procedures used by the business manager in computing the client's net payment from his or her retroactive SSI check.

(b) A divisional review must be requested in writing within 10 calendar days of issuance of the business manager's decision and must be submitted to the Assistant Director, Office of Fiscal and Management Operations.

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

10:38-6.14 Results of divisional review

(a) (No change.)

(b) The Assistant Director, Office of Fiscal and Management Operations shall within 10 calendar days of receipt of the client's request for a review notify the client, his or her representative, the business manager and the Financial Entitlement Unit of the results of the divisional review.

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

(e) If the business manager's computation is rejected the Assistant Director, Office of Fiscal and Management Operations shall direct the business manager to issue a corrected payment to the client. Such payment shall be issued within five calendar days of issuance of the Assistant Director's decision.

10:38-7.2 Responsibilities of the hospital business manager

(a) The hospital business manager shall be responsible for recouping Interim Assistance payments made, first from the client's retroactive SSI check, then from the client's personal funds and finally from the client's other resources.

(b) The net balance of the client's Federal annuity funds controlled by the hospital shall be directed with SSA approval to the client upon his or her discharge.

10:38-7.3 Chief Executive Officer as representative payee for client income

(a) (No change.)

(b) The business manager shall notify the client in writing that recoveries may be made in this manner.

10:38-7.4 Client or non-institutional agent as payee for available client income

(a) When an Interim Assistance client receives or has available income directed to a payee other than the Chief Executive Officer of the hospital, the business manager shall bill the client and/or the payee on a monthly basis or at the end of placement, in accordance with the Payee Agreement. *[If the client has made payments directly to the housing provider, such billing shall be reduced or eliminated accordingly.]*

(b) (No change.)

(c) When the Financial Inquiry form is returned to the hospital business manager showing additional available Federal annuity income, the business manager shall direct the client and/or payee in writing to make payments from the additional income *[directly]* to the *[housing provider]* ***hospital*** in accordance with the Payee Agreement. *[Should the client agree to pay the provider directly and then fail to do so, the business manager shall calculate and disburse the maintenance payment in accordance with N.J.A.C. 10:38-4.3(e).]*

10:38-7.5 Client or non-institutional agent as payee for anticipated income

(a) (No change.)

(b) When the Financial Inquiry form indicating available income is returned to the business manager, he or she shall direct the client and/or payee to make payments to the hospital in accordance with the Payee Agreement, or directly to the housing provider at the provider's option.

10:38-7.6 Refusal to honor payee agreement—client

(a) When an Interim Assistance client refuses to honor the Payee Agreement, the following procedures shall be followed:

1. (No change.)

2. A representative of the Discharge or Financial Entitlement Unit shall within five working days visit the client and review the Payee Agreement with him or her;

3.-4. (No change.)

10:38-7.7 Refusal to honor payee agreement—representative payee

(a) When a representative payee refuses to honor the Payee Agreement or questions any of its stipulations, the following procedures shall be followed:

1. (No change.)

2. The Financial Entitlement Unit shall within 10 working days contact the representative payee, clarify the situation and encourage him or her to comply with the Payee Agreement;

3.-5. (No change.)

10:38-7.8 Termination of Interim Assistance

(a) When notified by the Financial Entitlement Unit that the client's Interim Assistance has been terminated, the business manager shall:

1. (No change.)

2. Refer to the Discharge or Financial Entitlement Unit within 30 calendar days after mailing of the bill instances of failure by the client and/or representative payee to make payment of any outstanding balance to the hospital;

3.-4. (No change.)

APPENDIX A

INTERIM ASSISTANCE STATEMENT

I have been made aware of the Interim Assistance Program and its requirements, and understand my rights and responsibilities as a recipient of Interim Assistance.

I am _____ am not _____ interested in applying for Interim Assistance.

Signature: ____

Witness: ________________________________

Date: ________________________________

Sample Form
Distribution:
Financial Coordinator (original)
Client
Hospital Social Worker

FORM MH-30
(Rev. 1/90)

APPENDIX B

AUTHORIZATION FOR REIMBURSEMENT OF INITIAL SUPPLEMENTAL SECURITY INCOME (SSI) PAYMENT OR INITIAL SSI POSTELIGIBILITY PAYMENT (MH-30)—COMMUNITY PLACEMENTS

GR CODE

(APPLICANT'S NAME)	(SOCIAL SECURITY NUMBER)
(MAILING ADDRESS)	(HOSPITAL)

I understand and authorize that:

For Interim Assistance to be granted to me, and upon the approval for Supplemental Security Income benefits, the Secretary of Health and Human Services will forward to the New Jersey Division of Mental Health and Hospitals my (check one):

__________ initial SSI(payment.

__________ initial SSI posteligibility payment.

A check in the same amount will be sent to the Business Manager of the hospital specified above. I further authorize said Business Manager to deduct from my (check one):

__________ initial SSI payment as reimbursement an amount equal to the total amount of Interim Assistance which I received from this hospital (not including assistance payments financed wholly or partially with federal funds) from the date I filed an application for SSI and became eligible for benefits through the month in which my SSI benefits begin.

__________ initial posteligibility payment as reimbursement an amount equal to the total amount of Interim Assistance I received from this hospital (not including assistance payments financed wholly or partially with federal funds) from the date my SSI benefits are subsequently reinstated after a period of suspense or termination and ending with and including the month my SSI benefits resume.

However, if the hospital has prepared and cannot stop delivery of its last assistance payment when it receives my retroactive SSI benefit payment from the Social Security Administration, that payment is included as Interim Assistance to be reimbursed.

I understand that the payment to me and a written explanation showing how the balance was calculated will be made within five working days after the Business Manager receives the Supplemental Security Income check.

I further understand that if I disagree with the amount of the deduction made by the Business Manager, I have the right to an administrative review by the NJ Division of Mental Health and Hospitals. I must make the request for a review through the Department of Human Services, Division of Mental Health and Hospitals, CN-727, Trenton, NJ 08625.

I understand that this signed authorization is effective for (1) one year from the date it is received by the above Agency and it will cease to have effect at the end of one year unless:

- I file for SSI on or before that time, or my case is completely decided, or the above Agency and I mutually agree to terminate this authorization, or
- I appeal my suspension or termination on or before that time, or my SSI case is completely decided, or the above Agency and I mutually agree to terminate this authorization.

In addition, I understand that signing this authorization form means I want to file for SSI benefits. I also understand that I must file an SSI application with a social security office for the Social Security Administration to decide if I am eligible for SSI benefits. I understand that if I am found eligible for SSI benefits that my eligibility for SSI can begin as early as the date the Hospital receives this signed authorization, but only if I file the SSI application within 60 days from the date the above agency receives this signed authorization.

DATE ____________________ SIGNED ____________________

ADDRESS ____________________

____

NEW JERSEY DEPARTMENT OF HUMAN SERVICES, DIVISION OF MENTAL HEALTH AND HOSPITALS

Form MH-30
(Reverse Side)

NEW JERSEY DEPARTMENT OF HUMAN SERVICES, DIVISION OF MENTAL HEALTH AND HOSPITALS

STATEMENT BY HOSPITAL BUSINESS MANAGER

(Name of Business Manager)	(Hospital)

As Business Manager of the above Hospital, I agree to provide necessary assistance to or on behalf of the stated individual who is a bonafide SSI applicant for those goods and services required during the period while the application for SSI is being investigated.

The original copy of this completed form will be sent within 24 hours to the local Social Security District Office.

If a check is received from the Social Security Administration via the Treasurer, State of New Jersey on behalf of the applicant, I will make certain that I will deduct from such check an amount equal to the total assistance granted during this period, and I will pay the balance, if any, within five working days of receipt of the check to the applicant with a completed copy of the Form FS-9 explaining how the amount was computed.

All accounts and records dealing with this activity will be available for examination by duly authorized State and/or Federal representatives.

The retroactive SSI check, payable to "Treasurer, State of New Jersey", is to be mailed to the Division of Mental Health and Hospitals at the following address:

NJ Division of Mental Health and Hospitals
Fiscal and Management Operations
Capital Center CN-727
Trenton, NJ 08625

Hospital Business Manager's Signature	Date

Distribution
SSA (original)
Business Manager
Client
Financial Coordinator

APPENDIX C

NEW JERSEY DEPARTMENT OF HUMAN SERVICES
Division of Mental Health and Hospitals

CONTRACT FOR INTERIM ASSISTANCE

THIS AGREEMENT made on this ______ day of ____________ in the year *[of one thousand nine hundred and]* ________________:

WITNESSETH, that I, ____________________

the undersigned, for and in consideration of payments to be made to me as provided herein, do hereby covenant and agree as follows:

1. I AGREE to accept into my home ____________________

from the ____________________
(Hospital Name)

New Jersey and agree to furnish said individual with food, lodging, and other usual and necessary incidentals for the proper maintenance of the said individual and his ***or her*** well being.

2. I AGREE to accept the sum of $ ______ (Rate) per day from the ____________________ (Hospital) at ____________________ (Location)

as full compensation for maintenance that I shall furnish the said individual. I further understand that the above agreed upon daily compensation rate is established at rates determined by the Social Security Administration in conjunction with the Commissioner of the Department of Human Services *[(hereafter known as the Commissioner)]* ***and is payable after the services have been provided***.

3. I AGREE to immediately contact the ____________________
(Designated Emergency Screening Service)

by telephone in the event of need for emergency medical or psychiatric care, notifying them of the full details of the said individual's condition and to abide by such directions as shall be given. In the event of serious emergency medical or psychiatric care, I will

contact the ____________________
(Designated Emergency Screening Service)

immediately by telephone, after care has been given, notifying them of the full details.

4. I AGREE to give the ____________________
[(Designated Emergency Screening Service)] ***(Hospital)***

at ____________________
(Location)

thirty (30) calendar days notice in writing of my intention to terminate this contract; otherwise it shall continue in full force and effect as long as the said individual is under my care, or ***is*** subject to termination notice if standards are not maintained.

IN WITNESS WHEREOF, I have hereunto set my hand the year and day first written above.

____
(Signature of Home Operator and/or
Responsible Family Member)

Signed and delivered
in the presence of

____
Witness

CERTIFICATION NOTE:
An Interim Assistance Payee is not entitled to receive dual payments for care provided. A sponsor must, therefore: (1) notify the hospital *[as soon as]* ***upon learning that*** a resident received his or her first SSI or other payment and also provide the effective date of such payment; (2) refund the hospital the amount of Interim Assistance payments received after the first SSI or other payment is received ***if such payment represents duplicate compensation***; (3) refund the hospital the amount of Interim Assistance funds from the retroactive SSI payment, which represents a duplicate payment ***to me*** for the time period from SSI application to receipt of funds; and (4) notify the hospital immediately should the client terminate residence at the home.

APPENDIX D

STATEMENT OF BUSINESS MANAGER
STATE PSYCHIATRIC HOSPITAL

_______________________ (Hospital)	_______________________ (Client Name)
_______________________ (Business Manager)	_______________________ (Client Social Security #)

As Business Manager of the above-named State Psychiatric Hospital, I agree to authorize commitment of funds for Interim Assistance to, or on behalf of, the stated client. The client must be a bonafide SSI applicant for those goods and services required during the period while the application for SSI is being investigated.

The original copy of this completed form will be sent to the local Social Security Administration (SSA) District Office. One copy will go to the Discharge/Financial Coordinator or equivalent at the above-noted hospital.

If an SSI check is received from the SSA on behalf of the applicant (client), I will arrange to deposit it into the client's patient trust account. I will arrange to pay to the hospital's Interim Assistance account an amount equal to the total recoverable assistance granted during this period. The hospital will pay to the applicant the balance, if any, within five (5) business days from the date of receipt of the check by the office cited below. The payment will be accompanied by a completed copy of Form FS-9, explaining how the hospital computed the amount.

All accounts and records dealing with this activity shall be available for examination by duly authorized State and/or Federal representatives.

Under the Interim Assistance Placement procedure funded through the Division of Mental Health and Hospitals, recipient's first check should go to:

Treasurer, State of New Jersey
Division of Mental Health and Hospitals
c/o Robert P. Immordino, Assistant Director
Fiscal and Management Operations
CN 727
Trenton, New Jersey 08625-0727

_______________________ (Date)	_______________________ (Signature of Business Manager)

Distribution:

SSA/DO—Original Discharge/Financial Coordinator
Business Manager

Form FS-10 (Revised—January, 1991)

APPENDIX E

PAYEE AGREEMENT

I understand that I, as an Interim Assistance recipient, will have my community maintenance paid in full by the Division of Mental Health and Hospitals until a determination of my SSI claim is made. The Division will also supplement my personal needs expenses, when necessary.

I also understand that income available to me or my representative payee while I am an Interim Assistance recipient must be forwarded as received to the Business Manager, ________________ Psychiatric Hospital, as partial reimbursement of Interim Assistance expenditures.

I therefore agree:

1. To notify the Business Manager, ________________ Psychiatric Hospital, when income or resources from any source becomes available to me or my representative payee; and
2. To send all income or resources received by me (but not exceeding my Interim Assistance indebtedness) to the Business Manager, ________________ Psychiatric Hospital, until Interim Assistance is terminated.
3. That, if there are insufficient funds available from the initial SSI retroactive check for full reimbursement of Interim Assistance funds granted, the balance owing may be recovered by the hospital business office from other sources of funds available to me.

In the event that a representative payee selected by me fails to abide by the terms of this agreement, I will take the necessary steps to have a new representative payee appointed.

Witness: ____________________ Signature: ____________________ Date: __________

Address: ______________________________

____

I, ____________________, agree to the terms stated above and will send, when billed, all funds received by me on behalf of ________________ (client) to the Business Manager, ____________________ ________________ Psychiatric Hospital.

I understand that these funds will be used as partial reimbursement for Interim Assistance granted to ________________ (client).

This agreement will remain in effect until such time as I am notified by the Business Manager, Psychiatric Hospital, to redirect these payments.

Witness: ____________________ Signature: ____________________ Date: __________

Address: ______________________________

____

Sample Form
Distribution:

Business Manager—original
Client
Representative Payee
Financial Coordinator

APPENDIX F

TRANS CODE
50 - PA
54 - UA

(1) TRANSACTION CODE S/C	(2) BATCH NUMBER	(3) NEW/MATCH	(4) FISCAL YEAR	(5) TRANSACTION DATE	(6) DOC TYP	(7) DOCUMENT NUMBER	(8) REJECT INDICATOR
O							

INVOICE

STATE OF NEW JERSEY

(9) VENDOR STATUS

BLANK - NO CHANGE
1 - NEW VENDOR
2 - ADDRESS CHANGE
3 - LOCATION CODE
4 - NEW VENDOR AND LOCATION
5 - VENDOR NO. CORRECTION

(10) ACCOUNT NUMBER ORGANIZATION	FUND	PROGRAM	OBJECT	(11) COST CENTER	(12) PROJECT ACTIVITY	(13) EXTENDED NUMBER	Ⓐ (14) TOTAL AMOUNT	(15) AGENCY ORDER NO	(16)	(17) OBLIGATION NUMBER

Ⓑ **PAYEE NAME AND ADDRESS**

(18) NAME (19) (20) STREET (21) CITY (22) STATE (23) ZIP CODE

Ⓒ DEPARTMENT/AGENCY

Ⓓ **PAYEE DECLARATION:**

I certify that the within invoice is correct in all its particulars, that the described goods or services have been furnished or rendered, and that no bonus has been given or received on account of said invoice.

PAYEE SIGNATURE

TITLE

Ⓔ BILLING DATE

MONTH	DAY	YEAR

PROMPT PAYMENT EXEMPT CODE

(24) COMMODITY CODE	(25) 1099 INDICATOR	Ⓕ (26) PAYEE REFERENCE-(LIMIT 34 CHARACTERS)	Ⓖ (27)	(28) PAYEE IDENTIFICATION NUMBER	(29)	(30)	(31) CONTRACT NUMBER

(32) LAST INVOICE	(33) PROMPT PAYMENT START DATE MONTH	DAY	YEAR	(34) CHECK SERIES	(35) NUMBER	ACCOUNTING USE ONLY (36) ERROR SUSPENSE NUMBER	(37) DEL REPL	Ⓗ TERMS	PAYMENT DUE DATE MONTH	DAY	YEAR

PAYEE-SEE INSTRUCTIONS ON REVERSE SIDE

ITEM NO.	QUANTITY	UNIT	DELIVERY IS ☐ F.O.B. DESTINATION ☐ F.O.B. SHIPPING POINT DESCRIPTION	UNIT PRICE	AMOUNT
				TOTAL	

CERTIFICATION BY RECEIVING AGENCY

I CERTIFY THAT THE ABOVE ARTICLES HAVE BEEN RECEIVED OR SERVICES RENDERED AS STATED HEREIN.

SIGNATURE

TITLE DATE

CERTIFICATION BY APPROVAL OFFICER

I CERTIFY THAT THIS INVOICE IS CORRECT AND JUST, AND PAYMENT IS APPROVED.

AUTHORIZED SIGNATURE

TITLE DATE

AR 50/54 (9/87)

ORIGINAL

Sample form distribution: Business manager—original

APPENDIX G

BUSINESS MANAGER'S FINANCIAL INQUIRY

re: ______________________________ *(Client)*

Dear ______________________________

Please respond to the following questions and return this form to me within 5 days of receipt.

Has the above named client received:

	YES	NO
Supplemental Security Income payment?	☐	☐
A Social Security benefit?	☐	☐
Any other type of payment *(specify)* ______________	☐	☐

If your answer is "yes" to any of these questions, please provide the following information:

Date Payment was received ______________________________

Type of Payment ______________________________

Amount of Check(s) ______________________________

Check issued to *(name)* ______________________________

Sample Form
Distribution:
Client—Original
Housing Provider
Business Manager

____
Business Manager

APPENDIX H

BUSINESS MANAGER'S STATEMENT TO SSI RECIPIENT

____________________ (Client's Name)

____________________ (Date)

____________________ (Hospital)

____

____________________ (Client's Address)

The Social Security Administration has sent us a check representing your retroactive and initial benefits from the SSI Program.

According to the authorization you gave us on Form MH-30 (Payee Agreement), we have applied to that check an amount equal to the amount of recoverable assistance we gave you while your application for SSI was being processed or your SSI payment was suspended or terminated, as follows:

1. Amount of Interim Assistance provided $__________
2. Amount of SSI check $__________
3. Patient Trust Fund balance $__________
4. Total available resources (2 + 3) $__________
5. Amount of assistance hospital can recover $__________
6. Amount of assistance given to you by county/local welfare agencies $__________
7. Amount of assistance recovered from PTF balance $__________
8. Net amount due you (4-5-6-7) (check enclosed) $__________
9. Net amount due State Treasurer (1-5-7) (bill enclosed) $__________

If you disagree with this computation, you have the right to come to this office to discuss the matter. If after such discussion you are not satisfied, you may contact the State Division of Mental Health and Hospitals to request an administrative review. You should make the request through the Department of Human Services, Division of Mental Health and Hospitals, CN 727, Trenton, New Jersey 08625-0727.

____________________ (Hospital)

____________________ (Name, Title)

Distribution:

Client—Original
Business Manager
Division Fiscal Officer
Social Service Director
Placement/Financial Coordinator

Form FS-9 (Revised—January, 1991)

APPENDIX I

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

BILLING CLASSIFICATION REPORT

INSTITUTION ______________________

EFFECTIVE DATE ______________________

PART I NAME OF PATIENT	LAST	FIRST	MIDDLE	SERIAL NO.	SEX

A— Type of Entry

1 __ By court order
2 __ In residence over 90 days
3 __ Amended court order
4 __ Other
5 __ Certification (M.A.A.)
6 __ Amended certification (M.A.A.)
7 __ Certification M.A. (MEDICAID)
8 __ Amended certification M.A. (MEDICAID)
9 __ Certification M.A. (MEDICAID UNDER 21)
0 __ Amended certification M.A. (MEDICAID UNDER 21)

B— Type of Billing Status

1 __ County regular
2 __ County regular with contributions
3 __ County criminal
4 __ County criminal with contributions
5 __ Private
6 __ State indigent
7 __ State indigent with contributions
8 __ Sex offender
9 __ No charge, special cases or other
0 __ M.A.A. (Medical Assistance to the Aged)
X __ M.A. (MEDICAID)
Y __ Excess contributions
Z __ M.A. (MEDICAID UNDER 21)

C— For Patients With Contributions Only
Rates Per Court Order

1 $______________ Daily
2 $______________ Weekly
3 $______________ Monthly

D— County of Charge ______________

County of Commitment ______________

PART II Prior Month or Prior Year Charges (see instructions)

	DESCRIPTION	NO. OF DAYS	RATE	AMOUNT
X	Prior month charges—M.A. (MEDICAID)			
Y	Prior month charges—Excess contributions			
Z	Prior month charges—M.A. (MEDICAID UNDER 21)			
0	Prior month charges—M.A.A.			
1	Prior month charges—County regular billing			
2	Prior year charges—County separate billing			
5	Prior charges—Private			
6	Prior charges—State contributing			

PART III Payer's Name and Address for Private or State Contributory Accounts

First Line ______________ Fourth Line ______________

Second Line ______________ Fifth Line ______________

Third Line ______________ Sixth Line ______________

FORM 1113 Number ______________

APPENDIX J

SOCIAL SECURITY ADMINISTRATION
Supplemental Security Income
Notice of Interim Assistance Reimbursement

229

Date: ______________________

Social Security Number: ______________________

GR Code: ______________________

ACTION REQUIRED BY THE STATE

Complete the State's Accountability Report using the information in the "PAYMENT SUMMARY". Return all but this page of the notice to the Social Security Administration within 30 days of receipt of the Interim Assistance Reimbursement check.

THINGS TO REMEMBER WHEN DETERMINING YOUR AMOUNT OF REIMBURSEMENT

- Federally Reimbursable IA is assistance from State or local funds to an individual for meeting basic needs either during the period beginning with the first day for which such individual was eligible for SSI benefits; or, beginning with the first day for which the individual's benefits were suspended or terminated, if the individual was subsequently found to have been eligible for such benefits, and ending with (and including) the month payment is made.

- You may recoup interim assistance you paid for any month in a period as defined above. You may not recoup for any months prior to the month for which you began paying interim assistance in this period. If a month is not listed in the "Payment Summary" you cannot recoup the assistance you paid for that month.

- In cases where SSI payments were prorated, you must prorate the amount you recover for that month. You cannot recover the difference you paid for a prorated month from any other month. You can determine that a month's payment was prorated if the day is other than the first of the month.

- Assistance payments financed in whole or part from Federal funds (e.g., AFDC) do not come within the meaning of interim assistance.

- Excess IAR payments are to be made to the individual within 10 working days of receipt of the reimbursement check.

SSA-L8125

CLAIMANT INFORMATION

Initial Claim

Date of SSI Eligibility: ______________________________

Amount of SSI Retroactive Payment: ______________________

Amount and Month of Recurring SSI Payment: _________________

STATE'S ACCOUNTABILITY REPORT

	AMOUNT	DATE RECEIVED	DATE SENT
1. Amount of reimbursement check the State received from SSA			
2. Amount of interim assistance paid to the individual			
3. Amount of the reimbursement check retained by the State			
4. Amount of the reimbursement check forwarded to the individual			
5. Amount of reimbursement check returned to SSA			

DATE NOTICE RECEIVED	FIRST MONTH FOR WHICH YOU PAID IA THIS PERIOD	NOTE: Total of items 3, 4, and 5 should equal the amount shown in item 1

CERTIFICATION STATEMENT

I certify that the above is a true statement of receipts and disbursements under our agreement with the Secretary of Health and Human Services for the purpose of furnishing interim assistance to individuals as established by P.L. 93-368, as amended.

______________________ ______________________ ______________

Signature Title and Agency Date

PAYMENT SUMMARY

FROM	THROUGH	AMOUNT PAID EACH MONTH

SSA-L8125

APPENDIX K

Social Security Administration

Form Approved
OMB No. 0960

PHYSICIAN'S/MEDICAL OFFICER'S STATEMENT OF PATIENT'S CAPABILITY TO MANAGE BENEFITS

This report is authorized by sections 205(a) and 205(j) of the Social Security Act, as amended (42 U.S.C. 405(a) and 405(j)). While you are not required to respond, your cooperation will help us decide whether any Social Security benefits that may be due should be paid directly to the patient or to someone else on the patient's behalf. Your cooperation in completing and returning this statement will be appreciated. TIME IT TAKES TO COMPLETE THIS FORM We estimated that it will take you about 5 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have comments or suggestions on this estimate, or on any other aspect of this form, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1-A-21 Operations Bldg., Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0880 0024), Washington, D.C. 20503. Do not send complete form or information concerning any claim to these offices.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it. These and other reasons why information about you may be used or given out are explained in the Federal Register. If you want to learn more about this, contact any Social Security Office.

In replying, use this address:
SOCIAL SECURITY ADMINISTRATION

TELEPHONE NUMBER (Include Area Code)
(____)- ____ - ________

DATE

SSA CONTACT

IDENTIFYING INFORMATION (SSA Only)

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

SOCIAL SECURITY NUMBER
______ - _____ - _____

Your Help Is Needed

The patient shown on the back of this form has filed for or is receiving Social Security or Supplemental Security Income checks. We need you to complete this form and return it to us in the enclosed envelope to help us decide if we should pay this person directly or if he or she needs a representative payee to handle the funds. Please Note: This determination affects how benefits are paid and has no bearing on disability determinations. Thank you for your help.

Who Is A Representative Payee

A representative payee is someone who manages the patient's money to make sure that his or her needs are met. The payee has a strong and continuing interest in the patient's well-being and is usually a family member or close friend.

Who Needs A Representative Payee

Some individuals age 18 or older are not capable of handling their funds or directing others how to handle them to meet their basic needs, so we select a representative payee to receive their checks. People may be incapable because of impairments such as senility, severe brain damage or chronic schizophrenia. People who have physical impairments or mental impairments may need help with bill paying, etc., but that does not necessarily mean they are incapable of managing their own money.

PLEASE COMPLETE THE INFORMATION ON THE REVERSE OF THIS FORM

FORM SSA-787 (9-89) Destroy Prior Editions

PATIENT'S NAME *(If different from wage earner or self-employed person)*		PATIENT'S ADDRESS *(Number and street, City, State, and ZIP code)*
PATIENT'S SOCIAL SECURITY NUMBER ____ / ____ / ____	PATIENT'S DATE OF BIRTH	

1. Date you last examined the patient ____________.

2. Do you believe the patient is able to manage or direct the management of benefits in his or her own best interest?

   By this we mean:

   - Can the patient understand and act on the ordinary affairs of life, such as providing for own adequate food, housing, clothing, etc.?
   - Does the patient have severe physical impairments that prevent him or her from not only managing funds, but also directing others as to how to manage them?

☐ Yes ☐ No ☐ Unsure

Note: If "Yes", please omit question 3, but be sure to sign and date the form. If "No", please provide a brief summary of the findings that led to this conclusion. Also, complete question 3. If "unsure", please explain.

3. Do you expect the patient to be able to manage funds in the future (for example, if the patient is temporarily unconscious)?

☐ Yes ☐ No

If yes, please explain.

I HEREBY CERTIFY THAT THE ABOVE STATEMENTS AND ANSWERS ARE TRUE TO THE BEST OF MY KNOWLEDGE.

NAME OF PHYSICIAN/MEDICAL OFFICER *(Please Print)*	TITLE
ADDRESS *(Number and street, City, State and ZIP code)*	TELEPHONE NUMBER *(Include Area Code)* (____)- ____ - ______
SIGNATURE OF PHYSICIAN/MEDICAL OFFICER	DATE

FORM SSA-787 (9-89)

*U.S. GPO: 1989-261-237/00016

(a)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Administrative Change
Public Assistance Manual
Verification; State Employment Service Registration (AFDC)
N.J.A.C. 10:81-2.17 and 2.18

Take notice that the Division of Economic Assistance, Department of Human Services, has discovered that references in N.J.A.C. 10:81-2.17(e) and 2.18(a)1 through 3 to forms utilized by the Division of Employment Security, Department of Labor, need to be changed to reflect the current form used. References to Form NJES-511F, and its predecessor Form NJES-511B, are replaced by superseding Form NJES-1A. Existing references to Form NJES-1A rendered redundant by these changes are eliminated. This notice of administrative change is published pursuant to N.J.A.C. 1:30-2.7(c).

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

10:81-2.17 Verification

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

(e) For AFDC-N cases, if the condition of insufficient income is the result of the applicant having left a job within 90 days of the date of application, the IM worker will verify with the employer that the termination was not voluntary or will ask the applicant to demonstrate good cause for leaving. The IM worker will also verify that the applicant has registered with the Division of Employment Services. If the client does not have evidence of having registered, registration Form NJES[-511F]**-1A** (Job Service Self-Registration Application) shall be completed at initial application and [Form NJES-1A] for subsequent registration renewals and redeterminations (see N.J.A.C. 10:81-2.18). If the termination was voluntary, without good cause (see N.J.A.C. 10:81-14.8(e)), then both parents shall not be eligible for assistance for a period of 90 days beginning with the date of termination of employment.

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

10:81-2.18 State Employment Service registration (AFDC)

(a) AFDC applicants/recipients required to register with the State Employment Service: AFDC-F or -N principal earners exempt from REACH participation due to remoteness shall register with the State Employment service.

1. Form NJES[-511B]**-1A** (Job Service Self-Registration Application) must be completed for the initial registration of appropriate AFDC clients and [Form NJES-1A] for renewals.

i. Submittal of Form[s NJES-511B and] NJES-1A to the local ES office will constitute verification of work registration and renewals, respectively.

ii. Applicants and/or recipients currently receiving unemployment benefits are not required to complete the registration form. However, upon termination of such benefits, such individuals must be registered through Form NJES[-511B]**-1A**.

iii. Employment registration shall be renewed every 90 days through Form NJES-1A.

iv. Form NJES-1A will also be used by the Job Service office to notify the CWA of action taken with regard to active registrants (e.g., refusal to cooperate in job referrals). The CWA will be required to then complete and return the yellow copy of the NJES-1A form indicating current status.

2. The client will be required to complete **Form** NJES[-511B]**-1A** in duplicate; one copy shall be retained in the client's case record and the other transmittal to the Job Service office.

3. Where an AFDC recipient is terminated from assistance and subsequently reapplies after the Job Service office has been notified of the termination through form NJES-1A, a new **Form** NJES-[511B] **1A** must be completed.

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

THE COMMISSIONER

Availability of Grants

Directory of Department of Community Affairs Grant Programs

Take notice that, in compliance with N.J.S.A. 52:14-34.4 through 34.6, the Department of Community Affairs hereby publishes notice of grant availability in the Directory of Department of Community Affairs Grant Programs. Copies of the Directory may be obtained by writing the Publications Office at Community Affairs, CN-800, Trenton, New Jersey 08625-0800.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Notice of Effective Date of Model Codes

Take notice that the 1990 and 1991 amendments to the CABO One and Two Family Dwelling Code/1989 and the 1991 Supplement to the National Standard Plumbing Code/1990 are now available. The effective date for the use of these model codes in New Jersey is hereby set at May 20, 1991, pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-123b) which provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." Proposed amendments containing all necessary technical and editorial changes will be published in the New Jersey Register.

EDUCATION

(c)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session

June 19, 1991

Take notice that the following agenda items are scheduled for Notice of Proposal in the June 17, 1991 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, June 19, 1991 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak, call the State Board Office at (609) 292-0739 by 12:00 noon Friday, June 14, 1991.

Rule Proposals: N.J.A.C. 6:20-2, 4 and 5, Business Services Code amendments; and N.J.A.C. 6:21, Pupil Transportation Code amendments.

Please note: Publication of the above items is subject to change depending upon the actions taken by the State Board of Education at the May 1, 1991 monthly public meeting.

ENVIRONMENTAL PROTECTION

(d)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on April 16, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment proposes to amend the Ringwood Borough Wastewater Management Plan (WMP) in the following manner: 1. The limits of the "future developed areas—on site treatment/subsurface disposal or individual septic systems" service area will be amended to include the Waterview at Ringwood development, a proposed industrial and commercial development, and additional areas in the Borough zoned residential, commercial and industrial; 2. The proposed 30,000 gallon per day sewage treatment plant for the Ringwood Care Center will be deleted from the Ringwood WMP although this area will remain as a "future developed area—on site treatment/subsurface disposal or individual septic system" service area. This amendment also corrects the "Existing Sewered and Septic Disposal Areas" map to delineate the "existing septic absorption system areas" and the "Wetlands and Flood Hazard" and "Parks and Preserved Lands" maps to delineate current boundaries.

(e)

DIVISION OF WATER RESOURCES

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that on April 22, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department. This amendment identifies a discharge to groundwater treatment facility proposed to serve the Trap Rock Industries administration facilities in Franklin Township, Somerset County.

(f)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan for Sussex Borough dated February 1991. The WMP proposes the expansion of the Sussex Borough sewage treatment plant to treat a 20 year projected wastewater flow of 0.9 million gallons per day. The WMP delineates the sewer service area for this expanded facility.

This notice is being given to inform the public that a plan and 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 Water Resource Management Program, 55-57 High Street, Newton, New Jersey 07860; and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 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 Bureau of Water Quality Planning at (609) 633-7026 or the Sussex County Water Resource Management Program 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 June 20, 1991 at 2:45 P.M. in the Freeholder meeting room, County Administration Building, Potts Road, Newton, New Jersey. **Interested persons** may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Water Resource Management Program address cited above, with a copy sent to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP 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 NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

LABOR

(a)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Notice of Availability of Grant Funds Establishment of Advisory Board and Office of Assistive Technology

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Labor, Division of Vocational Rehabilitation Services, hereby announces the availability of the following State funds:

Name of program: Establishment of the Advisory Board and the Office of Assistive Technology.

Purpose: To establish an Office of Assistive Technology (OAT) within a non-profit agency that will administer, organize and support the development and implementation of assistive technology for persons with severe disabilities and ensure access to these services on a Statewide basis.

It is the intent of the Department of Labor to utilize State funds for the initial establishment of the Advisory Board and the Office of Assistive Technology. The successful bidder will provide for the staffing, housing and operation of this Office in accordance with the requirements expressed in this R.F.P.

Organizations which may apply for funding under this program: Eligible applicants would include any non-profit agency who possess a 501-3C charter that enables them to operate in New Jersey.

Amount of money to be awarded: This project will have $60,000 available for the initial start up period "Phase One" June 29, 1991 to December 31, 1991. Bidders should anticipate potential funding in the amount of $520,000 for up to five years to implement "Phase Two" of this project subject to the New Jersey Department of Labor's (NJDOL) success in its application for funding under P.L. 100-407 as well as the terms and conditions attached to that proposal.

Qualifications needed by an applicant to be considered for funding: Applications will be evaluated and funds awarded to that applicant, submitting a plan, who:

1. Has an adequate number of appropriately trained and experienced staff with excellent working knowledge of the New Jersey program objectives as delineated within the grant application;
2. Provides the Department of Labor with proven managerial experienced resources to implement the project consistent with State and Federal guidelines;
3. Possesses a non profit 501-3C charter that will enable them to operate in New Jersey;
4. Has no contract with any entity to which it is financially affiliated for the provision of direct services; this limitation shall not preclude such contracts when the Advisory Board on Assistive Technology recommends approval of such a contract and NJDOL concurs;
5. Presents an internal management plan clearly explaining its resources, administrative structure and progress monitoring abilities; and
6. Presents a realistic and reasonable timeline for initiation and completion of project activities to ensure accomplishment of project goal and objectives.

Procedure for eligible organizations to apply: Any questions regarding this RFP or the preparation of this proposal should be addressed in writing to: N.J. Department of Labor, Division of Vocational Rehabilitation Services, Proposal Evaluation Committee, Project Request Number 91:S.OAT1, CN 398, Trenton, NJ 08625-0398. An application kit can be obtained by writing to the above address or calling 609-292-5987.

Persons to whom questions and applications must be addressed: Questions on the application procedure should be addressed to Louis Klein, Administrative Analyst I, New Jersey Division of Vocational Rehabilitation Services, Department of Labor or by calling (609) 292-3604.

Deadline by which applications must be submitted: The deadline for submission of applications is June 7, 1991. The decision on the awarding of the grant shall be June 29, 1991.

Date by which applicant shall be notified of approval or disapproval: Applicants will be notified by June 29, 1991.

ATTORNEY GENERAL'S OPINIONS

(a)

ATTORNEY GENERAL

Formal Opinion No. 1(1991)

Scope of the Local Finance Board's Authority to Grant Additional Exceptions under N.J.S.A. 40A:4-45.3(d) of the Local Government Cap Law

February 19, 1991

Barry Skokowski, Sr.
Deputy Commissioner and
Chairman, Local Finance Board
Department of Community Affairs
101 South Broad Street
Trenton, New Jersey 08625

RE: FORMAL OPINION NO. 1(1991):

Scope of the Local Finance Board's authority to grant additional exceptions under N.J.S.A. 40A:4-45.3(d) of the Local Government Cap Law.

Dear Mr. Skokowski:

You have requested advice regarding the authority of the Local Finance Board to grant additional exceptions to the spending limitation imposed upon annual increases in municipal spending as a result of recent amendments which were made to the Local Government Cap Law by virtue of the enactment of L. 1990, c.89. For the reasons set forth below, you are advised that the Board's authority in this regard is limited to granting exemptions only for unanticipated and extraordinary expenses.

The Local Government Cap Law was initially enacted in 1976, L. 1976, c.68 (C.40A:4-45.1 et seq.), to control increases in the costs of local government and consequently limit the property tax burdens on the homeowners of the State. N.J.S.A. 40A:4-45.1; N.J. State P.B.A., Local 29 v. Town of Irvington, 80 N.J. 271, 283 (1979). At the same time, the Legislature recognized that local government could not be constrained to the point that it would be impossible to provide necessary services to its residents. N.J.S.A. 40A:4-45.1; N.J. State P.B.A. Local 29 v. Town of Irvington, 80 N.J. at 283. In light of these two conflicting policies, the Legislature initially enacted the Cap Law on an experimental basis, N.J.S.A. 40A:4-45.1, and further provided for exceptions to the overall limitation upon increases in local government spending imposed by the Law. N.J.S.A. 40A:4-45.3; N.J.S.A. 40A:4-45.4. The Law has been re-enacted on a number of occasions, L. 1978, c.155; L. 1982, c.225; L. 1986, c.203; L. 1989, c.338, and has also been amended several times to provide for various additional exceptions to the overall spending limitation which the Law imposes upon municipal and county spending. See, for example, L. 1980, c.66; L. 1981, c.56; L. 1983, c.49; L. 1985, c.22.

The Cap Law was most recently amended in June of 1990. L. 1990, c.89. In its amendments, the Legislature eliminated a significant number of the exceptions which had been established to the statute's overall spending limitation since the Law first went into effect in 1977. Among the exceptions which the Legislature eliminated were exemptions for appropriations for solid waste purposes, for insurance purposes and for the purchase of certain types of police equipment. The Legislature balanced the deletion of these exceptions with the enactment of a limited number of new exceptions to the spending limitation imposed under the Law. Your request for advice pertains to a particular exception enacted by the Legislature in this regard—N.J.S.A. 40A:4-45.3d.

N.J.S.A. 40A:4-45.3d provides as follows:

> In addition to the exceptions to the limit on increases in final appropriations for any budget year, listed in section 3 of P.L. 1976, c.68 (C.40A:4-45.3), the Local Finance Board shall have the authority to grant additional exceptions, applicable to all municipalities and only effective for the local budget year in which the exception is granted, upon a finding of extraordinary circumstances that result in an unanticipated increase in expenditures for a service essential to the health, safety and welfare of the residents of the State. (Emphasis supplied).

You have requested advice as to the nature and extent of the authority of the Local Finance Board to grant additional exceptions under this provision. In providing such advice, it is necessary to consider both the specific language utilized by the Legislature in enacting N.J.S.A. 40A:4-45.3d and the overall purpose which the Local Government Cap Law is intended to serve. In reviewing any legislative enactment, the primary focus must be to give proper effect to the specific language which the Legislature has chosen to employ in enacting such legislation. State v. Butler, 89 N.J. 220 (1982). In the absence of an explicit indication that statutory language is intended to have a special meaning, such language must be construed and given effect in accordance with its plain and commonly understood meaning. Levin v. Parsippany-Troy Hills, 82 N.J. 174, 182 (1980). Additionally, statutory language must be read in light of the overall statutory context in which it appears, State v. Brown, 22 N.J. 405 (1956); Petition of Sheffield Farms Co., 22 N.J. 548 (1956), and in a manner which will further the overall purpose of the legislation of which it is a part. Central Const. Co. v. Horn, 179 N.J. Super. 95 (App. Div. 1981).

As noted above, the primary purpose of the Law is to control annual increases in local government spending. N.J.S.A. 40A:4-45.1; N.J. State P.B.A., Local 29 v. Town of Irvington, 80 N.J. at 283. Accordingly, to the extent that the Local Finance Board may grant additional exceptions under N.J.S.A. 40A:4-45.3d, it must, in doing so, be mindful of this overall purpose of the Law. Moreover, the specific language which the Legislature has chosen to employ in enacting N.J.S.A. 40A:4-45.3d also reflects a legislative intent to circumscribe the Board's authority to grant additional exceptions to the statute's overall spending limitation. The provision explicitly requires that the Board grant such additional exceptions only upon "a finding of extraordinary circumstances that result in an unanticipated increase in expenditures for a service essential to the health, safety and welfare of the residents of the State." (Emphasis supplied). N.J.S.A. 40A:4-45.3d further provides that any additional exceptions which the Board may authorize pursuant thereto shall only be effective for one budget year. It is accordingly clear that the Legislature intended to limit the extent to which additional exceptions to the Cap Law's overall spending limitation could be authorized under N.J.S.A. 40A:4-45.3d to situations which were unusual in nature and not likely to recur.

Consideration of the specific terms utilized by the Legislature in enacting N.J.S.A. 40A:4-45.3d—"extraordinary circumstances" and "unanticipated increases"—supports this conclusion. The Legislature has not defined these terms for the purposes of the Local Government Cap Law. In the absence of any indication that such terms are intended to have a special meaning, they must accordingly be afforded their plain, ordinary and commonly understood meaning. Levin v. Parsippany-Troy Hills, 82 N.J. at 182. In ascertaining such meaning, reference may appropriately be made to the commonly accepted definition of the term "extraordinary". This term is defined to mean "more than ordinary: not of the ordinary order or pattern . . . going beyond what is usual, regular, common, or customary: not following the general pattern or norm . . . exceptional to a very marked extent: most unusual: far from common. . . ." Webster's Third New International Dictionary, Unabridged, 1976. Therefore, in utilizing the term "extraordinary", it is apparent that the Legislature intended that the "circumstances" to which N.J.S.A. 40A:4-45.3d refers are to be unusual or uncommon circumstances which differ significantly from the types of circumstances with which municipal governments are normally accustomed to dealing.

Similarly, in affording the term "unanticipated increase" its common and well understood meaning, it is also appropriate to refer to the accepted definition of this term. The term "unanticipated" is defined to mean "not anticipated; unexpected; unforeseen". Webster's Third New International Dictionary, Unabridged, 1976. Giving effect to the commonly understood meaning of this term, it is accordingly evident that the Legislature intended that exceptions should only be granted under N.J.S.A. 40A:4-45.3d where unusual circumstances, i.e., circumstances with which local governments are ordinarily not required to deal and which they ordinarily would not be able to foresee or anticipate, create a need to increase expenditures for essential public services.

The legislative history of the provision, as well as the manner in which courts have construed the term "extraordinary" for other purposes, also support such a construction of N.J.S.A. 40A:4-45.3d. Both the Statement of the Sponsor of Assembly Bill No. 3601, the bill eventually enacted as L. 1989, c.89, and the Statement of the Assembly County Government Committee with regard to that bill state that the authority of the Local Finance Board to grant additional exceptions under the bill was to be conditioned upon the Board making "a finding of extraordinary circumstances causing an unanticipated rise in expenses for services necessary to the health, safety and welfare of the State's residents". These Statements reinforce the notion that the authority of the Board to act under N.J.S.A. 40A:4-45.3d is to be limited to instances in which "extraordinary circumstances" exist which have caused an "unanticipated" rise or increase in the cost of providing certain services to the residents of the State.

Moreover, in considering what would constitute "extraordinary" circumstances or occurrences, the courts have also indicated that the term "extraordinary" contemplates circumstances or occurrences which do not exist or arise in the normal or ordinary course of affairs. By way of example, the United States Supreme Court, in considering what constituted "extraordinary circumstances," indicated that "extraordinary circumstances" are, by their very nature, impossible to anticipate. Kugler v. Helfant, 421 U.S. 117, 124, 95 S.Ct. 1524, 1531, 44 L.Ed.2d 15 (1975). Similarly, in Lauter v. Hedden Const. Co., 83 N.J.L. 617, 619 (E. & A. 1912), the court, in considering whether certain circumstances would constitute an "extraordinary occurrence", indicated that an "extraordinary occurrence" would be something which would not occur under normal conditions or be expected or anticipated to occur in the normal course of affairs.

Accordingly, in considering the type of finding which the Local Finance Board must make under N.J.S.A. 40A:4-45.3d in order to grant an additional exception to the Cap Law's spending limitation, it is evident that the Board must first determine that circumstances have arisen which are uncommon, unusual and exceptional in character and, second, that the existence of such circumstances has caused an increase in the need to incur expenditures which could not have reasonably been anticipated by municipal governing bodies and municipal officials. Such determinations are essentially administrative and factual, rather than legal, in nature. It is the Board's responsibility, utilizing its recognized expertise in the financial affairs of local government, Morris Cty. v. Skokowski, 86 N.J. 419, 424 (1981); City of Atlantic City v. Laezza, 80 N.J. 255, 265 (1979), to determine whether a particular set of circumstances would be "extraordinary," and, further, whether such circumstances would have caused the need for an "unanticipated" increase in municipal expenditures for a particular public service. The determinations to be made by the Board in this regard will, of course, have to be made on a case-by-case basis upon consideration of the particular facts and circumstances before the Board.

By way of example, however, it would be unreasonable under the statute to exempt regular increases in solid waste costs or health insurance premiums which have been, or could forseeably have been, anticipated. On the other hand, dramatic increases in spot oil market prices due to unanticipated events which are passed on to municipal governments would, as a general matter, meet the standard set forth in the statute for an additional exemption. Between these two extremes, a wide variety of situations may arise; each particular set of circumstances will have to be reviewed to determine whether, in light of the principles set forth in this opinion, an additional exception should be granted.

In sum, it is therefore clear, for the reasons set forth above, that the Legislature did not intend to authorize the Local Finance Board to grant exceptions merely because the spending limitation imposed by the Law would require local governing bodies to make difficult choices in the formulation of their annual budgets. Rather, giving proper effect to the words "extraordinary circumstances" and "unanticipated increase", it is evident that the Legislature intended that the Board would be able to afford some measure of relief to local governing bodies only when unusual or "extraordinary" circumstances arose in such a manner as to create a need for "unanticipated" increases in local government spending, and then only if the Board is satisfied that the increase in expenditures for public services is essential to the public health, safety and welfare.

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ATTORNEY GENERAL

Formal Opinion No. 2(1991)
Voter Registration of Homeless Persons

April 17, 1991

County Superintendents of Elections
and County Boards of Elections

RE: FORMAL OPINION NO. 2(1991):
Voter Registration of Homeless Persons.

Dear Superintendents and Board Members:

A question has arisen concerning whether homeless persons may register to vote and, if so, under what conditions. Implicit in this question is the issue of whether such people are entitled to vote if they lack a permanent home. The circumstances surrounding the voting rights of homeless or others without a permanent residence apparently were not originally contemplated by the Legislature and therefore do not fall neatly within any governing statutory provisions. The changing social circumstances which have given rise to increased numbers of homeless individuals compel government to give due accommodation to their right to vote. Accordingly, for the reasons set forth below, you are advised that homeless persons may register and vote, notwithstanding their lack of a permanent place of residence, so long as they satisfy the constitutional requirements of age and of residence within the State, and a given county and election district. Whether these factors are satisfied is a fact-based assessment to be made in the cases of individual voters in the judgment of, and subject to verification by, the Superintendent or County Board of Elections, as appropriate.

Our analysis begins with the recognition that the right to vote is "precious and fundamental" to our notions of a democratic society. Worden v. Mercer Cty. Bd. of Elections, 61 N.J. 325, 346 (1972). Election regulations affecting the electoral process are subject to "close constitutional scrutiny," Matthews v. Atlantic City, 84 N.J. 153, 160 (1980), and are to be liberally construed to further and to protect voters' rights. Gangemi v. Berry, 25 N.J. 1, 12 (1957). This review is designed to ensure each citizen's "constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." Dunn v. Blumstein, 405 U.S. 330, 336, 92 S.Ct. 995, 1000, 31 L.Ed.2d 274, 280 (1972).

Under our State Constitution the right to vote has been granted to all citizens, 18 years of age, who have resided within this State and within the county in which the right is claimed, for 30 days prior to the election at which their votes are to be cast. N.J. Const. (1947), Art. II, ¶3. Implementing legislation enacted in furtherance of this provision, N.J.S.A. 19:4-1, provides that every person satisfying the constitutional requirements, not otherwise disqualified by law "and being duly registered . . . shall have the right of suffrage and be entitled to vote in the polling place assigned to the election district in which he actually resides, and not elsewhere." (Emphasis supplied). N.J.S.A. 19:31-5 and 19:31-6.3 also provide for registration in the district in which a voter resides.

Nowhere in the State Constitution or in Title 19 (Elections) is there any requirement that a person have a home or even a permanent address an an absolute prerequisite to the exercise of the franchise based on actual residence in an election district. In fulfilling the constitutional and statutory mandates in the context of more traditional disputes over proper voter registration, courts will often turn to an examination of concepts of residence and domicile. State v. Benny, 20 N.J. 238 (1955). "Residence" has been defined as being synonymous with "domicile" when viewed in the context of the voter registration laws. Worden v. Mercer Cty. Bd. of Elections, supra. "Domicile" in turn has been seen as depending on two major elements: a physical presence plus the intent to call that place home. Ibid.; Michaud v. Yeomans, 115 N.J. Super. 200 (Law Div. 1971).

When dealing with a homeless person, the above definitions are not entirely helpful since such persons lack the traditional permanent structure or "home" that most others consider a "residence." Determining whether an individual "actually resides" in a certain election district requires an assessment of whether the person maintains a relationship with "the place or premises so selected as will entitle him at his will to occupy that place or premises." Perri v. Kisselbach, 34 N.J. 84, 88 (1961). Bearing in mind also the guiding principle that voter enfranchisement is favored, Afran v. County of Somerset, 244 N.J. Super. 229 (App. Div. 1990), it must be concluded that if such persons actually reside within a given county, they satisfy the constitutional residency requirement; and if they reside within a given election district, they satisfy the statutory requirement as well, even if in an individual case the homeless individual may move about within the district, provided that such a presence is a preserve within the election district which may fairly be regarded as what the applicant for registration calls or thinks of as home.

As with all voters, the commissioner of registration in each county has the duty to verify the continued voter qualifications of registrants. See N.J.S.A. 19:31-15 and 19:32-5. This is usually done by mailings to the residence address or contact point shown on the registration. In this vein this Office has previously advised County Boards and Superintendents of Elections that homeless individuals can be registered, so long as they provide one or more contact points by which their continued presence in the county can be verified and where they can be sent sample ballots. See N.J.S.A. 19:14-21 et seq. and N.J.S.A. 19:23-30 et seq. Examples of contact points which have been used elsewhere by homeless voters in the past include homeless shelters, churches and municipal buildings where the homeless may physically reside from time to time or where mail for them will be received. Registration of the homeless from such locations is consistent with the principle that persons have a right to vote to further their political interest where they reside, even if lacking a single permanent physical structure to call home. These principles would also apply if the contact point were a public park or a street location.

While New Jersey has no reported cases involving these precise situations, litigation has occurred in other states where the lack of a permanent residence was used, initially, to justify the government's refusal to allow the homeless to register to vote. Such attempts were found to have violated various constitutional rights of the applicants, and courts have been forceful in criticizing attempts to disenfranchise the homeless in this way. Pitts v. Black, 608 F. Supp. 696 (S.D.N.Y. 1984); Collier v. Menzel, 221 Cal. Reptr. 110 (Ct. App. 1985); see also, Committee for Dignity & Fairness for the Homeless v. Tartaglione, (U.S. District Court, E.D. Pa. 1984) (unreported slip opinion, Dkt. No. 84-3447) (recognizing that a homeless shelter may constitute a residence for voting purposes). See also Worden, supra, 61 N.J. 325 (right of bona fide resident college students to register and vote in their university communities); Tp. of New Hanover v. Kelly, 121 N.J. Super. 245 (Law Div. 1972) (military personnel stationed on a federal reservation must be allowed to participate in State and local elections).

Accordingly, the literal and strict application of some election law requirements must give way and be tailored to the particular circumstances of homeless individuals, even as we recognize that the homeless exhibit different attributes (some may move from shelter to shelter, others from park bench to park bench). For example, despite the additional administrative burden which may ensue from the acceptance of a voter registration from a homeless applicant who resides in one district but has a mailing address in another, we feel that such action is mandated by law. N.J.S.A. 19:4-1 and 19:31-5 (registrants shall vote in the district in which they actually reside). The portions of other statutes designed to implement the right to vote and to guard against voter fraud, such as those which require a street address for each applicant, or the provisions of N.J.S.A. 19:31-11 which call for notice of a change of address, must be applied in a manner which does not unduly frustrate the voting rights of the homeless. Obviously, for those who can supply statutorily required data, the law requires that it be obtained. However, where such statutory requirements may erect unreasonable barriers to voting, their particular provisions must be harmonized with the right to vote guaranteed by the State and federal constitutions.

Thus, in another example, "street address" must be liberally construed to meet the constitutional mandate of suffrage and can be deemed the streets of an election district if necessary to accommodate the mobile nature of a homeless individual. With respect to street address, we note that N.J.A.C. 15:10-1.5(c)3 allows an investigation of a rural address to determine "the proper information" for completion of mail-in voter registration forms submitted pursuant to N.J.S.A. 19:31-6.1 et seq. We believe that there is analogous authority to investigate with respect to a voter's registration supplied in person by a homeless individual pursuant to N.J.S.A. 19:31-5. Although the Secretary of State's regulations do not allow acceptance of an application giving only a rural address or post office box and lacking a street address, N.J.A.C. 15:10-1.5(c)2, the underlying constitutional and statutory mandate, particularly with respect to an in-person registration, is to procure "such additional information . . . as may be deemed necessary to give the exact location of the applicant's place of residence." N.J.S.A. 19:31-3b(2). Should problems arise with respect to the house-to-house canvass called for by such statutes as N.J.S.A. 19:31-15, or should use of the mails prove problematical as a means of verifying continued residence (as called for by the same statute), methods should be developed to supply alternative confirmation as to whether the registrants continue to be entitled to vote. In this regard, protecting the integrity of the electoral process is balanced by the equal right of a homeless citizen to have fair access to the voting booth. These practical approaches to supervising voter registration procedures for the homeless will accommodate and preserve the State's interest in preventing fraudulent or multiple voting. Worden, 61 N.J. at 346-347.

In sum, you are advised that the status of being a homeless person is not, and cannot be, a basis to deny an individual's right to vote so long as the constitutional and statutory benchmarks of age and State, county and district residence are met. The verification of these elements in an individual case falls within the realm of day-to-day elections administration. And in some instances it may not be necessary to tailor specific statutory requirements for voter registration to the particular circumstances of homeless individuals on a case-by-case basis. While homeless voters must therefore be properly subject to the verification of the neutral criteria for voting, they may not be singled out as a class and be required to overcome greater barriers than other voters to gain entrance to the voting booth.

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 April 1, 1991 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.1991 d.1 means the first rule adopted in 1991.

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 MARCH 18, 1991

NEXT UPDATE: SUPPLEMENT APRIL 15, 1991

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	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 1409 and 1648	May 21, 1990	22 N.J.R. 3607 and 3666	December 3, 1990
22 N.J.R. 1649 and 1806	June 4, 1990	22 N.J.R. 3667 and 3896	December 17, 1990
22 N.J.R. 1807 and 1964	June 18, 1990	23 N.J.R. 1 and 144	January 7, 1991
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22 N.J.R. 2063 and 2202	July 16, 1990	23 N.J.R. 249 and 332	February 4, 1991
22 N.J.R. 2203 and 2386	August 6, 1990	23 N.J.R. 333 and 636	February 19, 1991
22 N.J.R. 2387 and 2622	August 20, 1990	23 N.J.R. 637 and 798	March 4, 1991
22 N.J.R. 2623 and 2860	September 4, 1990	23 N.J.R. 799 and 924	March 18, 1991
22 N.J.R. 2861 and 3072	September 17, 1990	23 N.J.R. 925 and 1048	April 1, 1991
22 N.J.R. 3073 and 3182	October 1, 1990	23 N.J.R. 1049 and 1226	April 15, 1991
22 N.J.R. 3183 and 3274	October 15, 1990	23 N.J.R. 1227 and 1482	May 6, 1991
22 N.J.R. 3275 and 3420	November 5, 1990	23 N.J.R. 1483 and 1722	May 20, 1991
22 N.J.R. 3421 and 3606	November 19, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3, 14.4, 14.14	Return of cases; failure to appear; sanctions	23 N.J.R. 639(a)		
1:1-5.4	Representation by non-lawyers	23 N.J.R. 1053(a)		
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
1:13-1.1, 4.1	Division of Motor Vehicle cases	23 N.J.R. 928(a)		
1:13-14.4	Motor Vehicle cases: failure to appear	23 N.J.R. 639(a)		
1:13A-14.1	Lemon Law hearings: failure to appear	23 N.J.R. 639(a)		
1:14	Board of Public Utility hearings	23 N.J.R. 640(a)		
1:14	Board of Public Utility hearings: extension of comment period	23 N.J.R. 1230(a)		
	Most recent update to Title 1: TRANSMITTAL 1991-2 (supplement February 19, 1991)			
AGRICULTURE—TITLE 2				
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
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3:1-2.25, 2.26, 17	Automated teller machines	23 N.J.R. 642(a)	R.1991 d.244	23 N.J.R. 1408(b)
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)	R.1991 d.186	23 N.J.R. 997(a)
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3:6-14.2	License fees, assessments, examination charges	23 N.J.R. 254(a)	R.1991 d.195	23 N.J.R. 1125(a)
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3:17	Consumer Loan Act rules	23 N.J.R. 1234(a)		
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:17-1.1, 1.4	Consumer loan licensees: check solicitations	23 N.J.R. 931(a)		
3:17-3.4	Location of consumer loan records	23 N.J.R. 803(a)		
3:18-2.1	Location of secondary mortgage loan records	23 N.J.R. 803(a)		
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3:18-10.5	Surety bonding of secondary mortgage loan licensees	23 N.J.R. 802(a)	R.1991 d.272	23 N.J.R. 1661(a)
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3:23-2.1	License fees for motor vehicle installment sellers and home repair contractors	23 N.J.R. 1073(b)		
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3:38-1.1	License fees, assessments, examination charges	23 N.J.R. 254(a)	R.1991 d.195	23 N.J.R. 1125(a)
3:38-1.2, 1.4, 1.9	Mortgage banker and broker net worth standards	23 N.J.R. 643(a)		
3:38-1.5	Surety bonding of mortgage loan licensees	23 N.J.R. 802(a)	R.1991 d.272	23 N.J.R. 1661(a)
3:38-2.1	Location of mortgage loan records	23 N.J.R. 803(a)		
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5:10-1.12	Hotels and multiple dwellings: administrative correction regarding Uniform Fire Code inspections	———	———	23 N.J.R. 1410(b)
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5:18-1.5	Fire official and fire inspector certification	23 N.J.R. 1235(a)		
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)		
5:18A-1.4, 2.3, 3.3, 4.3–4.7, 4.9, 4.10	Fire official and fire inspector certification	23 N.J.R. 1235(a)		
5:19-3.1	Continuing care retirement communities: financial feasibility study for proposed facility	23 N.J.R. 3(b)	R.1991 d.175	23 N.J.R. 1028(a)
5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.19, 5.20, 5.23, 12	Elevator Safety Subcode	23 N.J.R. 805(a)		
5:23-2.23	Uniform Construction Code: certificate of occupancy requirements	23 N.J.R. 257(a)	R.1991 d.180	23 N.J.R. 1028(b)
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5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-2.3, 2.5	Dwelling unit conversions: senior citizens and disabled protected tenancy	23 N.J.R. 645(a)	R.1991 d.252	23 N.J.R. 1662(a)
5:27-1.3	Rooming and boarding houses: proof of fire code compliance	23 N.J.R. 932(b)		
5:34-7.1–7.4, 7.7	Cooperative pricing and joint purchasing systems by local governmental units	23 N.J.R. 933(a)		
5:38	Intergovernmental review of Federal programs and direct development activities	Exempt	R.1991 d.211	23 N.J.R. 1128(a)
5:70-6.3	Congregate Housing Services Program: service subsidies	23 N.J.R. 934(a)		
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
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5:91-4.1, 4.5	Council on Affordable Housing: petition for substantive certification; municipal/developer incentives	23 N.J.R. 1088(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
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6:39-1.3, 1.4	Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests	23 N.J.R. 1244(a)		
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6:49	Repeal Occupational Research Development	23 N.J.R. 1244(b)		
6:50	Repeal Urban Education and Manpower Training	23 N.J.R. 1244(b)		
6:51	Vocational and technical education: administration and organization	23 N.J.R. 1250(a)		
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7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)		
7:6-1.31, 1.37, 1.42, 6.2, 6.3, 6.4	Boating rules	23 N.J.R. 392(a)	R.1991 d.225	23 N.J.R. 1192(a)
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7:10-1.3, 5.1	Safe Drinking Water rules: applicability of national regulations	________	________	23 N.J.R. 1150(b)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)	R.1991 d.270	23 N.J.R. 1662(c)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)	R.1991 d.271	23 N.J.R. 1664(a)
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
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7:18-6.6	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:24	Dam Restoration Grant Program	23 N.J.R. 650(a)	R.1991 d.256	23 N.J.R. 1665(a)
7:24	Dam Restoration Grant Program: administrative correction to proposal	23 N.J.R. 935(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
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7:25-22.1–22.4	Menhaden fishing in Delaware Bay: notice of rule invalidation	————	————	23 N.J.R. 1432(a)
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7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
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7:26-8.2, 8.8, 8.12	Hazardous waste management: reopening of comment period regarding Toxicity Characteristic of waste	23 N.J.R. 1401(a)		
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7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
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8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
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8:24	Retail food establishments	23 N.J.R. 168(b)		
8:25	Youth Camp Safety Act standards	23 N.J.R. 651(a)	R.1991 d.269	23 N.J.R. 1665(a)
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8:65	Controlled dangerous substances: reopening of comment period	23 N.J.R. 823(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a); 23 N.J.R. 206(a), 907(a))	22 N.J.R. 2501(a)	R.1991 d.254	23 N.J.R. 1672(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
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10:51-1.2, 1.13, 1.14, 1.20, App. B, C, D, E	Pharmaceutical services under Medicaid program	23 N.J.R. 1310(b)		
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.6, 1.14	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		

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10:53-1.5, 1.13	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:68	Manual of Chiropractic Services	23 N.J.R. 1327(a)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:70	Medically Needy Manual	23 N.J.R. 964(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: new eligibility computation amounts	23 N.J.R. 233(a)	R.1991 d.169	23 N.J.R. 1007(a)
10:72-1.1, 3.4, 4.1, 4.3, 4.5	Medicaid eligibility: pregnant women and children	Emergency (expires 5-27-91)	R.1991 d.223	23 N.J.R. 1200(a)
10:73	Medicaid program case management services	23 N.J.R. 1328(a)		
10:81-2.17, 2.18	Public Assistance Manual: administrative changes	________	________	23 N.J.R. 1705(a)
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)		
10:83-1	Special Payments Handbook: administrative changes	________	________	23 N.J.R. 1411(a)
10:83-1.11	Supplemental security income payment levels	23 N.J.R. 234(a)	R.1991 d.168	23 N.J.R. 1008(a)
10:85-3.2, 10.2	General Assistance: administrative changes	________	________	23 N.J.R. 1412(a)
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)	R.1991 d.174	23 N.J.R. 1177(a)
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-2.3, 2.6, 2.23, 2.30, 2.31, 3.6, 4.8, 5.5, 5.6, 5.9, 5.10, 7.14, 9.5, 9.7, 10.3, 10.9, 10.10, 10.21, 10.24, 11.23, App. A	Food Stamp Program: miscellaneous requirements	23 N.J.R. 179(a)	R.1991 d.247	23 N.J.R. 1412(b)
10:123-3	Social Services Program: personal needs allowance for residents of health care facilities and boarding houses	23 N.J.R. 382(a)	R.1991 d.215	23 N.J.R. 1191(a)
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		

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10A:2-3	Expenditure of inmate welfare funds	23 N.J.R. 155(a)	R.1991 d.188	23 N.J.R. 1008(b)
10A:3	Security and control	23 N.J.R. 1259(a)		
10A:3-1.1–1.4, 2	Inmate "keep separate status"	23 N.J.R. 383(a)	R.1991 d.250	23 N.J.R. 1672(b)
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10A:9-5.5	Restoration of forfeited commutation time	23 N.J.R. 1261(a)		
10A:16-7.4	Distribution of money and personal belongings of deceased inmates	23 N.J.R. 156(a)	R.1991 d.187	23 N.J.R. 1009(a)
10A:31-13.9, 13.10, 13.18	Adult county facilities: pregnant inmates; dental care	23 N.J.R. 15(a)	R.1991 d.190	23 N.J.R. 1128(b)
10A:34-3	Processing and housing juveniles in municipal detention facilities	23 N.J.R. 935(c)		
10A:35	Alternatives to Juvenile Incarceration Grant Program	23 N.J.R. 156(b)	R.1991 d.192	23 N.J.R. 1129(a)

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11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-29	Orderly withdrawal of insurance business	23 N.J.R. 15(b)	R.1991 d.262	23 N.J.R. 1673(a)
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11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-24.4	Automobile insurance coverage: policy constants	22 N.J.R. 3441(a)	R.1991 d.216	23 N.J.R. 1132(a)
11:3-25.4	Automobile insurance coverage: residual market equalization charges	22 N.J.R. 3442(a)	R.1991 d.217	23 N.J.R. 1132(b)
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11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-36	Automobile physical damage coverage inspection procedures: delay of operative date	________	________	23 N.J.R. 1132(c)
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)		
11:3-39	Automobile physical damage coverage: rate reductions for anti-theft devices and safety features	23 N.J.R. 384(a)		
11:4-16.6, 16.8, 23	Medicare supplement coverage: minimum standards	23 N.J.R. 1264(a)		
11:10-1.4	Dental plan organization: certificate of authority renewal fee	23 N.J.R. 825(a)		
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)		
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17-3.4	Producer licensing: continuing education	23 N.J.R. 287(a)	R.1991 d.218	23 N.J.R. 1133(a)
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
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11:18-1.4, 1.5, 1.7, App. A, B, C	Medical Malpractice Reinsurance Recovery Fund surcharge	23 N.J.R. 938(a)		

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12:45-3	Vehicle modification requirements for mobility impaired: administrative correction	________	________	23 N.J.R. 1416(b)
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)	R.1991 d.189	23 N.J.R. 1133(b)
12:56-5.6	Wage and hour compliance: administrative correction regarding on-call time	________	________	23 N.J.R. 1416(c)
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12A:31-2	Development Authority: loan guarantee program	23 N.J.R. 830(a)		
12A:31-3	Development Authority: direct loans	23 N.J.R. 832(a)		
12A:80-2	Urban Development Corporation: public and nonpublic information	23 N.J.R. 20(a)	R.1991 d.257	23 N.J.R. 1682(a)

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13:20-10.1	Automatic vehicle identification systems: traffic management	23 N.J.R. 21(a)	R.1991 d.249	23 N.J.R. 1417(a)
13:20-31.1	Motor vehicle inspection: private center licensing	23 N.J.R. 387(a)	R.1991 d.253	23 N.J.R. 1417(b)
13:20-31.1	Private motor vehicle inspection center licensing: administrative correction	________	________	23 N.J.R. 1683(a)
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13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)	R.1991 d.205	23 N.J.R. 1197(a)
13:27-5.8	Architectural Registration Examination fees	23 N.J.R. 671(a)	R.1991 d.258	23 N.J.R. 1683(b)
13:27-5.8, 8.15	Licensure of architects and certification of landscape architects: fee schedules	23 N.J.R. 1059(a)		
13:27-6.2–6.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		
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13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)	R.1991 d.170	23 N.J.R. 1009(b)
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13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.13	Board of Medical Examiners: biennial registration fees	23 N.J.R. 833(a)		
13:36-1.6	Board of Mortuary Science: fee schedule	23 N.J.R. 1063(b)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:37-12.1	Certification of homemaker-home health aide: application fee	23 N.J.R. 24(a)	R.1991 d.193	23 N.J.R. 1199(b)
13:37-12.1	Board of Nursing fees	23 N.J.R. 672(a)		
13:38-3.6, 5.1	Board of Optometrists: fee schedule	23 N.J.R. 1064(a)		
13:38-3.6, 5.1	Board of Optometrists fee schedule: correction to comments submission address	23 N.J.R. 1279(a)		
13:38-3.11	Practice of optometry: application for licensure	23 N.J.R. 166(a)	R.1991 d.228	23 N.J.R. 1418(b)
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39A	Board of Physical Therapy rules	23 N.J.R. 1065(a)		
13:39A-1.4	Board of Physical Therapy: fees and charges	23 N.J.R. 388(a)	R.1991 d.240	23 N.J.R. 1418(c)
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)	R.1991 d.185	23 N.J.R. 1011(a)
13:40-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)		
13:40-7.2–7.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		
13:41-4.2–4.5	Certified landscape architects; site planning services	23 N.J.R. 21(b)		
13:42-1.2	Board of Psychological Examiners: fee schedule	23 N.J.R. 980(a)		
13:44-4.1	Board of Veterinary Medical Examiners: fee schedule	23 N.J.R. 1066(a)		
13:44C-5.3	Audiology and speech-language pathology: clinical internship licensure	23 N.J.R. 167(a)	R.1991 d.227	23 N.J.R. 1419(a)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: fee schedule	23 N.J.R. 1066(b)		
13:44E-2.1	Advertising of chiropractic services	23 N.J.R. 389(a)		
13:44E-2.2	Chiropractic patient records	23 N.J.R. 391(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.4	Chiropractor of record: responsibility for patient care	23 N.J.R. 1280(a)		
13:44E-2.5	Board of Chiropractic Examiners: fee schedule	23 N.J.R. 1067(a)		
13:63	Combat Auto Theft Program	23 N.J.R. 981(a)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-12.37	Thoroughbred racing: open claiming	23 N.J.R. 1068(a)		
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13:70-14.17	Thoroughbred racing: suspension of licensee pending disposition of racing-related indictment	23 N.J.R. 673(a)	R.1991 d.266	23 N.J.R. 1683(c)
13:70-14A.9	Thoroughbred racing: time on respiratory list	23 N.J.R. 674(a)	R.1991 d.263	23 N.J.R. 1684(a)
13:70-19.43	Thoroughbred racing: presence of veterinarian throughout racing program	23 N.J.R. 674(b)	R.1991 d.260	23 N.J.R. 1684(b)
13:71-3	Harness racing: hearings regarding license suspensions	23 N.J.R. 1282(a)		
13:71-9.2	Harness racing: association of veterinarians	23 N.J.R. 675(a)	R.1991 d.259	23 N.J.R. 1684(c)
13:71-9.4	Harness racing: presence of veterinarian throughout racing program	23 N.J.R. 675(b)	R.1991 d.261	23 N.J.R. 1684(d)
13:71-14.36	Harness racing: open claiming	23 N.J.R. 1068(b)		
13:71-16.3	Harness racing: error in declaration of horse	23 N.J.R. 1069(a)		
13:71-23.8	Harness racing: time on respiratory list	23 N.J.R. 675(c)	R.1991 d.264	23 N.J.R. 1684(e)
13:71-26.9	Harness racing: suspension of licensee pending disposition of racing-related indictment	23 N.J.R. 676(a)	R.1991 d.265	23 N.J.R. 1685(a)

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14:3	All utilities	22 N.J.R. 1112(a)	R.1991 d.221	23 N.J.R. 1439(b)
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
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14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)	R.1991 d.145	23 N.J.R. 1446(a)
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14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)	R.1991 d.147	23 N.J.R. 1449(a)
14:3-5.1	Closure or relocation of utility office	22 N.J.R. 2404(a)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)	R.1991 d.148	23 N.J.R. 1450(a)
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14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)	R.1991 d.147	23 N.J.R. 1449(a)
14:10-5	InterLATA telecommunications carriers	22 N.J.R. 2887(a)		
14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		
14:10-6, 7, 8	Alternate operator service; resale of telecommunications services; customer provided pay telephone service: public hearings on preproposal rules	23 N.J.R. 946(a)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
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14:12	Demand side management	23 N.J.R. 1283(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
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14:18-3.13	Cable television: prompt restoration standards	23 N.J.R. 682(a)		
14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)		
14:38	Home Energy Savings Program	22 N.J.R. 2956(a)	R.1991 d.165	23 N.J.R. 1013(a)
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)		

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14A:21	Home Energy Savings Program (recodified to 14:38)	22 N.J.R. 2956(a)	R.1991 d.165	23 N.J.R. 1013(a)

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15:10	Election rules	23 N.J.R. 288(b)	R.1991 d.191	23 N.J.R. 1145(a)

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16:27	Traffic engineering and safety programs	23 N.J.R. 395(a)	R.1991 d.234	23 N.J.R. 1419(b)
16:28-1.7, 1.49	Speed limit zones along Route 161 in Clifton and Route 35 in Brielle	23 N.J.R. 683(a)	R.1991 d.235	23 N.J.R. 1419(c)
16:28-1.10, 1.81	Speed limit zones along U.S. 46, 1 and 9 in Dover and Route 49 in Bridgeton	23 N.J.R. 950(a)		
16:28-1.38	Speed limit zones along Route 57 in Mansfield	23 N.J.R. 1291(a)		

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16:28-1.43	Speed limit zones along Route 143 in Camden County	23 N.J.R. 184(a)	R.1991 d.196	23 N.J.R. 1145(b)
16:28-1.45, 1.60, 1.93, 1.107	Speed limit zones along Routes 324 and 44 in Gloucester County, Route 79 in Monmouth, and Route 48 in Salem County	23 N.J.R. 1291(b)		
16:28-1.67, 1.76, 1.129	Speed limit zones along U.S. 202 in Somerset and Morris counties, Route 15 in Morris County, and Route 12 in Hunterdon County	23 N.J.R. 1293(a)		
16:28-1.69	Speed limit zones along U.S. 130 in Mercer County	23 N.J.R. 184(b)	R.1991 d.197	23 N.J.R. 1146(a)
16:28-1.83	Speed limit zone along Route 71 in Brielle and Manasquan	23 N.J.R. 684(a)	R.1991 d.237	23 N.J.R. 1420(a)
16:28-1.120	Speed limit zones along Route 38 in Camden and Burlington Counties	23 N.J.R. 185(a)	R.1991 d.198	23 N.J.R. 1146(b)
16:28-1.150, 1.151	Speed limit zones along U.S. 1 Business and U.S. 1 in Mercer and Middlesex Counties	23 N.J.R. 1072(a)		
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16:28A-1.21	Handicapped parking space on U.S. 30 in Haddon Township	23 N.J.R. 1295(a)		
16:28A-1.57	No stopping or standing zones along U.S. 206 in Princeton	23 N.J.R. 53(a)	R.1991 d.201	23 N.J.R. 1147(a)
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