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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 22 NUMBER 7
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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 16, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT FEBRUARY 20, 1990

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **May 2, 1990.** 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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR

Governor James J. Florio
Executive Order Number 6(1990)
Role of the Attorney General

Issued: March 14, 1990.
Effective: March 14, 1990.
Expiration: Indefinite.

WHEREAS, the Attorney General is generally charged by law to be the sole legal adviser, attorney or counsel for all officers, departments, boards, bodies, commissions and instrumentalities of State Government, except as specifically provided by statute, and to represent them in all proceedings or actions of any kind which may be brought for or against them in any court in this State and to interpret for them all constitutions, statutes, laws and legal documents, to inspect and approve contracts and titles and otherwise control their legal activities, to act as their exclusive legal representative, and to attend generally to all legal matters in which the State or any officer, department, board, body, commission or instrumentality of the State Government is a party or in which its rights or interests are involved; and

WHEREAS, all officers, departments, boards, bodies, commissions and instrumentalities of State Government are expressly prohibited by law from employing any person to act as attorney, counsel, solicitor, legal assistant or other legal adviser or for the purpose of giving legal advice or rendering legal services, except as specifically authorized by statute; and

WHEREAS, the Attorney General has the discretionary authority to assign an attorney to serve in any legal capacity for any officer, or in any department or instrumentality of the State Government whenever, in the judgment of the Attorney General, such an assignment will contribute to the efficiency and effective provision of legal services; and

WHEREAS, no special counsel shall be employed for the State or by any officer, department, board, body, commission, or instrumentality of the State Government, except by authority of the Attorney General, and then only with the approval of the Governor; and

WHEREAS, these requirements are intended to provide competent, objective legal advice and representation to all of State Government subject to the supervision and coordination of the Attorney General, and to ensure the attainment of a consistent and uniform legal position in furtherance of implementing the policies of the Governor; and

WHEREAS, despite these requirements, numerous attorneys have been employed outside of the Department of Law and Public Safety, many of whom may provide legal advice and representation which, by law, is required to be provided by the Attorney General; and

WHEREAS, I have determined that it is in the public interest to reaffirm, unequivocally, the role of the Attorney General as the chief legal adviser for the State of New Jersey and to require strict adherence to the requirements outlined above;

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

1. At no time shall any person employed by any officer, department, board, body, commission or instrumentality of State Government ("State entity"), including "in but not of" agencies, act as, or cause any person to believe he or she is acting as, an attorney, counsel, solicitor, legal assistant or other legal adviser to any State entity unless that person is an assistant or deputy attorney general or other attorney authorized to do so by the Attorney General; nor shall any such person, other than an assistant or deputy attorney general or other attorney authorized to do so by the Attorney General, utilize or be denominated by any title such as "attorney," "counsel," "solicitor," "legal assistant" or "legal adviser."

2. In addition, without in any way limiting the provisions of Paragraph 1 hereof, the following shall apply:

a. The Attorney General shall have the sole authority to provide legal advice of any nature whatsoever to any State entity;

b. The Attorney General shall have the sole authority to provide advice as to the legality of all regulations or legislation, or amendments hereto;

c. The Attorney General shall be solely responsible for and shall have exclusive control over the conduct of all judicial and administrative litigation involving any State entity.

3. Consistent with the requirements of law and the intent and spirit of this Executive Order, attorneys may be employed by State entities, but they may not perform any function assigned to the Attorney General by law or by this Executive Order. Such attorneys may do the following:

a. provide guidance as to the nature and substance of the various statutes and regulations governing the responsibilities of the employing State entity, but only as said statutes and regulations are interpreted by the Attorney General;

b. participate in negotiations on behalf of the employing entity, but only to the extent that any non-lawyer employee may so participate and not in a manner which could cause any other person to believe that he or she is acting as an attorney for such entity;

c. appear for the employing entity in any proceeding in which an attorney is not required, but not in a manner which would cause any other person to believe that he or she is acting as an attorney for such entity, provided, however, that such attorneys may represent a State entity in a matter before the Office of Administrative Law but only with the prior written consent of the Attorney General;

d. draft proposed regulations and proposed legislation, and amendments thereto, in accordance with the policy objectives of the employing entity, subject to the provisions of Paragraph 2b above, and reduce to writing interim and final agency orders, subject to the review of the Attorney General;

e. provide such litigation support as may be requested by the Attorney General, subject to the supervision of the Attorney General.

4. On and after the effective date of this Executive Order, no State entity shall create or fill any position or employ any person for the purpose of performing any duty assigned to the Attorney General by law or by this Executive Order.

5. The Attorney General shall promptly undertake an assessment of those persons and/or positions outside the Department of Law and Public Safety who are or have been performing duties assigned to the Attorney General by law or by this Executive Order, and shall take whatever remedial action the Attorney General deems necessary or desirable, including, without limitation, steps (1) to designate such persons and/or positions for transfer to the Department of Law and Public Safety or (2), with regard to those persons and/or positions not designated for transfer, to require the employing State entity to restrict their duties to comply with the terms of this Executive Order. Such actions need not all be made simultaneously. Within a reasonable period of time from the date of each such transfer designation, the persons and/or positions so designated shall be transferred, along with the concomitant resources, clerical and support staff and the funding associated therewith, to the Department of Law and Public Safety, where they shall serve in such capacity and perform such duties as may be designated by the Attorney General.

6. At any time in the future, whenever the Attorney General determines that any person and/or position employed by any State entity is performing duties assigned to the Attorney General by law or by this Executive Order, the Attorney General shall take such action as is necessary to ensure compliance with this Executive Order.

7. The Commissioner of the Department of Personnel and the Director of the Division of Budget and Accounting in the Department of the Treasury are directed to effectuate the prompt transfer of positions, resources and funding required by this Executive Order as identified by the Attorney General.

8. The purpose of this Executive Order is the consolidation within the Department of Law and Public Safety of all attorneys giving legal advice and representation to State entities and the resources necessary to support them. An attorney and/or position shall be subject to transfer under this Executive Order if a portion of the duties performed are among those assigned to the Attorney General by law or by this Executive Order. Any person or position performing the duties of a paralegal or legal assistant, and appropriate support personnel, shall be subject to the provisions of this Executive Order, as appropriate, and shall be subject to transfer in accordance with the procedures set forth herein, if so determined by the Attorney General.

9. All State entities are hereby directed to cooperate with and to support fully the Attorney General in the discharge of the responsibilities

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and obligations conferred by law and this Executive Order, including the duty to respond to requests for documents or information requested by the Attorney General.

10. The provisions of this Executive Order shall not apply to attorneys employed by the Legislative or Judicial Branches of State Government, the Office of the Governor or any State entity which has the specific statutory authority to employ separate legal advisers, but only to the extent so permitted.

11. Within 12 months from the date of this Executive Order, the Attorney General shall report to the Governor on the status of the implementation of this Executive Order and whether any further action is needed to assist in the implementation thereof.

12. This Order shall take effect immediately.

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RULE PROPOSALS

BANKING

(a)

DIVISION OF EXAMINATIONS

Pawnbrokers
Sale at Public Auction
Proposed Amendment: N.J.A.C. 3:16-2.3

Authorized By: Robert M. Jaworski, Acting Commissioner, Department of Banking.
Authority: N.J.S.A. 45:22-11 and 45:22-26.
Proposal Number: PRN 1990-152.

Submit comments by May 2, 1990 to:
Robert M. Jaworski
Acting Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend its rule regarding the sale of unredeemed pledges at public auction. Pursuant to N.J.S.A. 45:22-26, a licensed pawnbroker may sell all unredeemed pledges at public auction. At least 20 days prior to the auction, notice must be mailed to the last known address of the pledgor. Notice must also be published in three consecutive issues of a daily or weekly newspaper published in the city or county where the pawnbroker's business is conducted.

The Department proposes to amend this rule regarding the auction to require that the auction be conducted in a commercially reasonable manner. This is consistent with N.J.S.A. 12A:9-504(3), which sets requirements for the sale of secured collateral by any secured party after default. In addition, the proposed amendment requires that a licensee allow public inspection of all unredeemed pledges for at least five days after the last date of publication of the notice of auction. It is the Department's view that any sale of collateral by auction without allowance for inspection is not commercially reasonable.

Social Impact

It is not anticipated that the proposed amendment will have a social impact. Instead, it makes minor changes in the rules governing the manner in which pawnbrokers may sell unredeemed pledges at auction.

Economic Impact

Requiring the sale of unredeemed pledges in a commercially reasonable manner and requiring the licensee to allow for public inspection will tend to maximize the sales price of the pledges sold at auction. When the property is sold for greater than the amount due plus expenses, the surplus is paid to the debtor (see N.J.S.A. 45:22-27). Accordingly, the proposed amendment will have the economic impact of providing this additional return to debtors. Pawnbrokers will be adversely affected to the extent that they are less able to purchase pledged goods at less than fair market value.

Regulatory Flexibility Statement

Most licensed pawnbrokers affected by this proposed amendment are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed amendment does not impose any new recordkeeping or reporting requirements. Compliance requirements are imposed on the manner in which auctions may be conducted by allowing for public inspection of items, but no cost is involved in that requirement. Since maximizing the return on these sales can only be obtained by imposing these requirements upon all pawnbrokers, no differentiation is made for small businesses.

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

3:16-2.3 Auction

(a) When an unredeemed pledge is sold at public auction, the pledge book shall show in the column provided for redemption date, the words "sold at auction" and the date of such sale.

(b) All auctions of unredeemed pledges shall be conducted in a commercially reasonable manner.

(c) A licensee shall allow public inspection of all unredeemed pledges for at least five days after the last date of publication of the notice of auction of the pledges.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Appeals, Discipline and Separations
General Causes; Misuse of State Property
Proposed Amendment: N.J.A.C. 4A:2-2.3

Authorized By: Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:2-20; Executive Order No. 4(1990).
Proposal Number: PRN 1990-159.

A **public hearing** concerning this proposal will be held on:
Thursday, April 19, 1990 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, New Jersey

Please contact the Legislative/Rules Unit at (609) 984-0118 if you plan to speak at the public hearing.

Submit written comments by May 2, 1990 to:
Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 4A:2-2.3 is prompted by the recently issued Executive Order No. 4(1990). The Executive Order provides for the closer regulation of State car use by State employees and requires the promulgation of rules which may be necessary concerning discipline for State car misuse. Therefore, in compliance with the Executive Order's objective and in recognition of this issue of public concern, the Board proposes that another specific cause for discipline be added to N.J.A.C. 4A:2-2.3, applicable to both State and local service, for the misuse of public property, including motor vehicles.

Social Impact

The proposed amendment would not change the disciplinary process; misuse of public property has been "other sufficient cause" for discipline, as set forth in N.J.A.C. 4A:2-2.3(a)8. However, a specific referral in the rule to the misuse of public property would help to clearly indicate that such conduct is a basis for discipline and eliminate any misunderstanding in this area.

Economic Impact

The proposed amendment should have a positive economic impact on State and local governments by encouraging more efficient and proper use of public property, including motor vehicles.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposal will have no effect on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment affects State employees.

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

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1.-6. (No change.)

7. Neglect of duty; [and]

8. Misuse of public property, including motor vehicles; and

[8.] **9.** Other sufficient cause.

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COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Public Hearing
Uniform Construction Code
Code Change Proposals

Take notice that the Construction Code Element of the Department of Community Affairs has scheduled its annual code change proposal hearing, pursuant to N.J.S.A. 52:27D-123c, on May 11, 1990, to commence at 9:30 A.M. or thereabout, in the first floor conference room of Building 3 of 3131 Princeton Pike, Lawrenceville, New Jersey. Those wishing to present code change proposals for the national model codes, **other than** the National Standard Plumbing Subcode, adopted by reference as subcodes of the New Jersey Uniform Construction Code, or those in need of further information, may telephone the Element at (609) 530-8789.

Because of changes in the schedule of the National Standard Plumbing Subcode Committees, proposals for state sponsored **plumbing** subcode changes must be submitted to the Department by April 16, 1990. These will be voted upon by the Code Advisory Board at its meeting of May 11, 1990. Because of the shortened review period allotted to the Board, it shall be an applicant's option to submit proposals upon which no action can be taken on May 11th directly to the National Standard Plumbing Code at P.O. Box 6808, Falls Church, VA 22046.

Submit proposals to:

"Code Changes"
Department of Community Affairs
Bureau of Technical Services
CN 816
3131 Princeton Pike, Bldg. 3
Trenton, New Jersey 08625-0816
tel: (609) 530-8789
fax: (609) 588-8838

(b)

DIVISION ON AGING

County Offices on Aging
Proposed New Rules: N.J.A.C. 5:71

Authorized By: Joan Mintz, Acting Director, Division on Aging, Department of Community Affairs.
Authority: N.J.S.A. 40:23-6.44.
Proposal Number: PRN 1990-153.

Submit written comments by May 2, 1990 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

Summary

Pursuant to Executive Order No. 66(1978), the Rules and Regulations for County Offices on Aging, N.J.A.C. 5:71, expired on March 1, 1990. The Department has reviewed these rules and finds that they continue to be necessary for the orderly and uniform administration of the offices on aging that have been established in the 21 counties of this State. The Department, therefore, proposes to adopt these expired rules as new rules.

N.J.A.C. 5:71 contains rules concerning designation of grantees, functions of county offices on aging, responsibilities and rights of the executive directors of the agencies, advisory councils, responsibilities of the Division on Aging, requirements for cost sharing between the Division and the county offices, and audit procedures.

Social Impact

Failure to readopt these rules as new would leave county offices on aging without necessary guidelines to prepare, develop and carry out an effective and efficient delivery of services to senior citizens. The mission of area agencies on aging is to: secure and maintain maximum independence and dignity in a home environment for older individuals capable of self-care with appropriate supportive services; remove individual and social barriers to economic and personal independence for older individuals; and provide a continuum of care for the vulnerable elderly. Each Area Agency on Aging must develop an area plan contract which enables the area agencies to serve as the visible focal point for advocacy, coordination, monitoring and evaluation of programs for older adults in the county. These programs include, but are not limited to, housekeeping, homemaker/home health aide, transportation, congregate nutrition, home delivered meals and case management.

There are over 1,227,000 persons aged 60 and over in the State of New Jersey. During 1989, over 430,000 elderly persons received services through the efforts of the area agencies on aging. In addition, congregate meals were served to over 36,000 individuals for a total of 1,197,642 meals served and 1,111,680 meals delivered to approximately 18,000 homebound elderly.

Economic Impact

There is a positive economic impact on persons aged 60 and over in the State of New Jersey, in that through these programs seniors are able to receive services to help them to remain in their own homes. The more costly alternative of institutional care, therefore, becomes an alternative of last resort. Persons receiving services may make a voluntary contribution towards the cost of these services. The impact upon the individual cannot be determined, due to the variety of individual service needs.

Failure to readopt these rules as new would leave county offices on aging without guidance as to what extent of State reimbursement for annual allowable costs they may expect to receive. In 1989, Federal Title III allocations totalled over $20,621,000. An additional $1,256,887 was provided through State funds.

Regulatory Flexibility Statement

The rules concern State and county agencies and do not impose reporting, recordkeeping or compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the expired rules proposed as new can be found in the New Jersey Administrative Code at N.J.A.C. 5:71.

(c)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure: Public Notice Requirements
Reproposed Repeal and New Rules: N.J.A.C. 5:100

Authorized By: William R. Abrams, Acting Ombudsman for the Institutionalized Elderly.
Authority: N.J.S.A. 52:27G-1 et seq.
Proposal Number: PRN 1990-161.

Submit comments by May 2, 1990 to:

Steele R. Chadwell, General Counsel
Office of the Ombudsman for the Institutionalized Elderly
28 West State Street, Room 305
CN 808
Trenton, NJ 08625-0808

The agency proposal follows:

Summary

The Office of the Ombudsman for the Institutionalized Elderly (the "Office") has been in existence since shortly after September 29, 1977, the effective date of its enabling legislation, N.J.S.A. 52:27G-1 to 16. The Office was established to receive, investigate and resolve complaints concerning long-term healthcare facilities serving the elderly and to initiate actions to secure, preserve and promote the health, safety and welfare, and civil and human rights of the elderly residents, patients and clients of such healthcare facilities.

On January 27, 1983, the Legislature charged the Office of the Ombudsman for the Institutionalized Elderly (the "Office") with the responsibility of administering N.J.S.A. 52:27G-7.1 et seq. This statute requires, in part, that persons employed as healthcare providers in facilities within the Office's jurisdiction report abuse and exploitation of elderly patients, residents and clients of such facilities to the Office.

In 1985 and again in 1987, the New Jersey Supreme Court interpreted N.J.S.A. 52:27G-7.1 et seq. to establish an oversight and consultative role

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for the Office regarding decisions to forego life-sustaining treatment for institutionalized patients, residents and clients age 60 and older.

In response to numerous inquiries during the ensuing years, the Office has used a variety of public information media to advise the public and healthcare providers about its role and about the obligation to make related reports to the Office. However, despite its efforts, the Office's role and the duty to report certain information to the Office remained unclear to some members of the public. A more definitive statement by the Office was required to eliminate the remaining misunderstandings in these areas.

Accordingly, to clarify the law pertaining to the Office, on June 5, 1989, the Office proposed revised administrative rules to replace those now in effect (see 21 N.J.R. 1510(a)).

The resulting proposed repeal and new rules clarified when and how required reports must be made to the Office, in accordance with statute. The proposed new rules also clarified the Office's receipt, handling and disposition of optional reports and complaints, whether concerning abuse, exploitation or otherwise regarding the health, safety and welfare, and human or civil rights of elderly patients, residents and clients.

In order to ensure that the Office received and fully considered all interested persons' and organizations' comments on the June 5, 1989 repeal and new rules proposal, the Office extended the comment period from June 30, 1989 to September 5, 1989 (see 21 N.J.R. 1995(a)). The Office received comments from 41 commenters. Some of those comments were received after the extended deadline for comments had elapsed, but all were considered.

The comments received led the Office to revise its new rules proposal rather than adopt the proposal published June 5, 1989. The comments received were a highly valuable part of the rulemaking process. The Office has attempted to reflect in its reproposal many of the suggestions embodied in the comments received.

The Office believes that the following reproposal reflects many of the general goals and the specific suggestions made on the June 5, 1989 proposal by the commenters. Following are the Office's responses to each of the comments received:

General Comments

COMMENT: Many commenters expressed their concern that the definition of the term "fully informed" was confusing and needed clarification.

RESPONSE: The Office agrees that clarification of this concept would be helpful. The Office has therefore accepted the definition of "fully informed" formulated by the New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care.

COMMENT: A number of commenters stated that the term "competent" as employed in the Office's proposed rules is problematic and therefore unacceptable.

RESPONSE: The Office agrees and has instead employed the concept of "capacity to make healthcare decisions" in the Office's reproposed rules. The Office's formulation of this concept combined the recommendations of the New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care and the law firm of Cohen, Shapiro, Polisher, Shiekman & Cohen, which commented on behalf of the New Jersey Association of Nonprofit Homes for the Aged. While the reproposed rules make clear that the attending physician shall determine "capacity," it does not set forth the methods by which "capacity" is determined. Certainly, the attending physician can feel comfortable and be immune from civil and criminal liability by utilizing the procedure for verifying capacity which is set forth in the New Jersey Supreme Court's opinion in *Matter of Farrell,* 108 *N.J.* 335 (1987). However, this is not the only method by which "capacity" can be determined.

COMMENT: One commenter questioned whether the proposed rules indicated that a patient may be confused at times but should nevertheless still be considered competent.

RESPONSE: The Office has addressed this question in the reproposed rules by defining and using the term "capacity to make healthcare decisions," rather than "competency."

COMMENT: Several commenters requested that a definition of "life-sustaining treatment" be included in the proposed rules.

RESPONSE: The Office agrees and has utilized the definition of "life-sustaining treatment" formulated by The Hastings Center in the Center's "Guidelines on the Termination of Life-Sustaining Treatment and the Care of the Dying" (1987).

COMMENT: One commenter suggested that the Office provide a definition of "surrogate decisionmaker" for use in subchapter 2 of the rules.

RESPONSE: The Office agrees, and in the reproposed rules a definition of "surrogate decisionmaker" has been provided.

COMMENT: Two commenters questioned the provision in N.J.A.C. 5:100-1.4(c)5 regarding the Ombudsman's discretionary power to disclose information obtained in the Office's investigations.

RESPONSE: The provision reflects the Ombudsman's authority to do so pursuant to N.J.S.A. 52:27G-13.

COMMENT: One commenter suggested that N.J.A.C. 5:100-1.7(g) should be modified to make mandatory the collection of the fines enforced by the Office.

RESPONSE: The Office agrees with this suggestion which has been incorporated in the reproposed rules.

COMMENT: Several commenters stated that the proposed rules as presented appears to give to the Ombudsman absolute final authority to defer, or not to defer, to a proposal to withhold or withdraw life-sustaining treatment, even in circumstances where the Office's intent investigation has established that there is clear and convincing evidence of the elderly patient's preferences, and in the absence of conflict among the patient's family, physicians or other decisionmakers. This provision may be of interest to the State but hardly seems in the best interests of the patient.

RESPONSE: The Office agrees, and the rules are changed on reproposal to require the Office to defer where the guidelines established in *Matter of Conroy,* 98 *N.J.* 321 (1985) and *Matter of Peter,* 108 *N.J.* 365 (1987) are satisfied.

COMMENT: One commenter suggested that the Office should memorialize the procedure it follows when there is a proposal to withhold or withdraw life-sustaining treatment from an institutionalized elderly, incompetent patient or resident.

RESPONSE: The Office agrees that the rules should memorialize the procedure the Office follows when there is a proposal to withhold or withdraw life-sustaining treatment from an institutionalized elderly, incompetent patient or resident. The Office's reproposal therefore has been revised to incorporate this suggestion.

COMMENT: Several commenters stated that proposed N.J.A.C. 5:100-1.3(e) should be changed to require notification of the elderly person's family members and any visitors. They also stated that N.J.A.C. 5:100-1.7(b), which would require reports of abuse and exploitation to be made "in a timely manner," should be revised to set a more specific time limit for reporting after the persons required to report know or suspect an incident of abuse or exploitation.

RESPONSE: The Office agrees and accordingly has revised proposed N.J.A.C. 5:100-1.3(e) to include notification of patients', residents' and clients' next of kin by a facility administrator, where the patient, resident or client is unable to receive notification about the Office. The reproposed rules also dispense with proposed N.J.A.C. 5:100-1.7(b).

COMMENT: Several commenters suggested that the Office provide 24-hour, seven-day-a-week access to the Office.

RESPONSE: The Office has 24-hour, seven-day access to the Office. This is accomplished through the Office's toll-free hotline number for both 201 and 609 area codes.

COMMENT: One commenter stated that residents and/or other authorized representatives should be given an absolute right of access to the investigative files maintained by the Office regarding the subject incident(s).

RESPONSE: By statute, the Office is required to, and does, provide information to a complainant that reflects the findings and conclusions of Office investigations. The statutory provision of the Office's enabling legislation allowing the Ombudsman to release at his discretion pertinent information is in keeping with the sensitive nature of the information contained in the Office's files. The confidential nature of the Office's investigations is essential to the effective functioning of the Office and assures those individuals who would otherwise be reluctant to volunteer information to the Office, that their identities will be disclosed only if they permit the Office to do so.

COMMENT: One commenter recommended that the rules be modified to set forth those procedures to be followed when notice of intent to withhold or withdraw life-sustaining treatment is received by the Ombudsman concerning a previously competent adult who is now an incompetent patient but for whom there is clear and convincing evidence that the patient would not want to be sustained. The commenter believes that these procedures should be an abbreviation of those followed when abuse is suspected.

RESPONSE: In overseeing proposals to withhold or withdraw life-sustaining treatment, the Office has a duty to follow the guidelines established by the New Jersey Supreme Court. As such, the Office cannot

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establish an abbreviated procedure where there exists clear and convincing evidence of a patient's intent, but must follow the Court's direction in these cases.

COMMENT: Several commenters inquired whether cases involving patients who have been transferred from a facility under the Office's jurisdiction to an acute care hospital remain under the provisions of the Ombudsman rules.

RESPONSE: The Ombudsman's rules have not been extended to include elderly patients in acute care hospitals. The rules will not apply to an elderly resident or patient who no longer resides at a nursing home or other facility within the jurisdiction of the Office. In the reproposal, the definition of "facility" will reflect this exception.

COMMENT: Several commenters stated that the Office's administrative rules should regulate, define and provide guidelines for the issuance and implementation of "Do Not Resuscitate" or "No-Code" orders ("DNRs"), "Living Wills" ("LWs") and "Medical Powers of Attorney" ("MPOAs"), so that each become legally operative. The Office should also commence and complete investigation of cases involving DNRs, LWs and MPOAs within 24 hours, so as to make such healthcare planning instruments legally operative in facilities under the Office's jurisdiction.

RESPONSE: The Office supports the use of DNRs, which are a form of LW, where reasonable and appropriate, LWs and MPOAs, all of which are essential tools for long-term healthcare planning. The Office will always look to an advance directive as persuasive evidence of the intent of an institutionalized elderly patient's, resident's or client's medical treatment preferences where such individuals are no longer capable of making a given healthcare decision on their own behalf. However, the Office must also follow the procedures pronounced by the New Jersey Supreme Court and cannot rely solely on LWs or MPOAs in deciding whether to defer to the proposal made by a surrogate decisionmaker on behalf of a patient, resident or client lacking the capacity to make a life-sustaining treatment decision. The Office also lacks legal authority to fashion and enforce rules for the operation of LWs and MPOAs to ensure that healthcare providers act in accordance with such healthcare directives. The Office pledges to work with elderly patients, residents, their families and friends, the healthcare industry, the Legislature and the Executive Branch of State Government in a cooperative effort to craft legislation that would recognize and give statutory effect to such advance directives for healthcare.

COMMENT: Several commenters have suggested that Institutional Ethics Committees should be established in each institution or geographical locale.

RESPONSE: The Office supports the establishment of Institutional Ethics Committees, their presence in long-term healthcare facilities, and their participation in decisions to withhold or withdraw life-sustaining treatment. Unfortunately, the Office lacks jurisdiction to create these entities or to delegate all of the Office's responsibilities under *Peter* and *Conroy* to these entities. The Office is aware that Institutional Ethics Committees exist in some long-term healthcare facilities in the State. The Office pledges to cooperate and work with these entities. Additionally, the Office pledges to work with residents, their families, and friends, healthcare providers, the healthcare industry and the Legislature and Executive Branch of State Government to establish legislation that would, by statute, recognize and empower Institutional Ethics Committees and establish procedures for such bodies to address proposals to withhold or withdraw life-sustaining treatment from elderly nursing home patients.

COMMENT: Several commenters stated that the rules' requirement of a written report of abuse or exploitation within two business days after the oral report, including the identity of the complainant, is unrealistic and may even discourage those who would otherwise report from doing so.

RESPONSE: This comment was embodied in the Office's reproposal. The written requirement of a report has been eliminated and the reporting requirement has been revised as suggested.

COMMENT: Several commenters stated that the Office should set time frames in acknowledging all complaints and in notifying complainants of specific action taken by the Office.

RESPONSE: The Office receives a great number of complaints. The Office's extremely limited resources prevent the Office from setting specific time frames to respond to complaints. However, it is the Office's policy to respond to complaints as expeditiously as possible, given its resources and workload.

COMMENT: Several commenters stated that it was important that the Office provide facilities with a report of its findings following an investigation.

RESPONSE: It is the policy of the Office to provide facilities with the results and findings of an investigation. The proposed rules have been changed to include this policy to which the Office continues to adhere.

COMMENT: Several commenters stated that the term "medically necessary" as used in the proposed rules should be defined, or, in the alternative, should be replaced with the term "medically futile."

RESPONSE: The Office agrees. Accordingly, the reproposed rules utilize the term "medically indicated treatment" which is defined as "treatment that will improve the medical condition of the resident or is necessary to provide palliative care to the resident." "Palliative care" has also been defined in the rules.

COMMENT: Several commenters stated that the proposed rules' definition of the term "abuse" does not adequately define as abusive requiring an individual to be subjected to treatment when he or she does not want the treatment.

RESPONSE: The Office has set forth in its reproposed rules a definition of "abuse" that makes it clear that "abuse" can encompass the rendering of medical treatment which has been rejected by an institutionalized elderly individual.

COMMENT: One commenter requested clarification on whether the proposed rules were intended to require families or surrogate decisionmakers to report to the Office proposals to withhold or withdraw life-sustaining treatment from an institutionalized, incompetent elderly individual.

RESPONSE: The Office agrees that clarification is necessary. The reproposed rules clearly indicate that, unless an enumerated exception exists, families and surrogate decisionmakers also have a duty to report proposals to withhold or withdraw life-sustaining treatment from institutionalized, incompetent elderly individuals, where they believe that such a proposal would effectuate the elderly person's wishes, or be in the elderly person's best interests.

COMMENT: Two commenters suggested that proposed N.J.A.C. 5:100-2.2 should be amended to include that life-sustaining treatment is not medically indicated for a resident based on a physician's best medical judgment and that this should be documented by the physician on the patient's chart.

RESPONSE: The Office has incorporated this suggestion in its reproposed N.J.A.C. 5:100-2.3(d)3.

COMMENT: One commenter suggested that decisionmaking about withholding or withdrawing treatment of any kind must go beyond the immediate diagnosis and take into consideration the patient's overall prognosis, mental health, value systems, current and previously expressed wishes and the value system of a caring family.

RESPONSE: The Office agrees that decisionmaking about withholding or withdrawing life-sustaining treatment from an institutionalized, incompetent elderly individual must take into consideration the appropriate treatment for *the whole patient.* A determination of what treatment is in the best interests of that patient certainly can take into account *the patient's* prognosis, diagnosis and wishes, mental health and value system.

COMMENT: One commenter was concerned that the Office would reject out of hand as "old," complaints the reporting of which to the Office had been delayed.

RESPONSE: The Office does not dismiss as "old" complaints the reporting of which has been delayed. The Office reviews all complaints received, and will dismiss a complaint only after determining that the cause of the complaint no longer exists. The provision in the proposed rules giving the Office the flexibility to determine whether or not to investigate a complaint coincides with the Office's enabling statute.

COMMENT: Several commenters stated that seating the responsibility to report cases of abuse and exploitation in all caregivers of the institutionalized elderly, instead of one or two specific individuals, could impede the reporting process since each caregiver might depend on the other to report the abuse.

RESPONSE: Requiring *all* healthcare providers to report suspected cases of abuse to the Office should not present a problem. By law, each caregiver has an independent obligation to report all suspected cases of abuse and exploitation of an institutionalized, elderly patient or resident to the Office.

COMMENT: Two commenters stated that the proposed rules should be amended to specifically include a requirement that the Office, under the Rooming and Boarding Home Act of 1979, should report all complaints of abuse and exploitation against a resident of a residential healthcare facility, boarding home or rooming house to the appropriate county welfare agency or board of social services. Additionally, the rules should be amended to indicate clearly whether boarding homes are under the purview of the Office.

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RESPONSE: The Office respectfully disagrees that it is required to report all complaints of abuse and exploitation against a resident of a residential healthcare facility, boarding home or rooming house to the appropriate county welfare agency or board of social services. However, pursuant to N.J.S.A. 30:1A-2d, the Office is required to refer all pertinent complaints of abuse or exploitation against a resident of a residential healthcare facility or rooming or boarding home to the State Department of Human Services, the Department of Community Affairs, or the Department of Health, as appropriate. The Office has modified the proposed rules to include mandatory referrals to all appropriate regulatory agencies. The Office has also included in the reproposed rules an expanded definition of "facility" which clearly indicates that Class "C" and "D" boarding homes are under the purview of the Office.

COMMENT: One commenter questioned the provision in N.J.A.C. 5:100-1.6(a)3 regarding the Office's authority to enter the offices of a sister State agency, such as a professional board, and inspect its documents, including confidential investigation files.

RESPONSE: This provision reflects the Office's authority to do so pursuant to N.J.S.A. 52:27G-8d3.

COMMENT: Two commenters stated that an adversarial situation could develop when a resident's family or surrogate decisionmaker makes a proposal to withhold or withdraw life-sustaining treatment from an incompetent, institutionalized elderly patient; and that proposal has been reported as a potential "abuse" to the Office; and the Office neglects to inform the family or surrogate decisionmaker that it has been informed of the potential "abuse."

RESPONSE: The Office agrees and does not perceive a problem with notifying the family or surrogate decisionmaker when a third party notifies the Office of a proposal to withhold or withdraw life-sustaining treatment from an institutionalized, incompetent elderly patient. The Office's present policy is to inform family members or surrogate decisionmakers when such a report is made.

COMMENT: One commenter stated that proposed N.J.A.C. 5:100-1.7(a) failed to recognize the statutory exception for mandatory reporting which is set forth in N.J.S.A. 52:27G-7.1g. The exception in the statute covers privileged material, including statements protected by the attorney-client privilege under N.J.S.A. 2A:84A-20. The commenter suggested that the proposed rules should be changed to recognize this exception.

RESPONSE: The Office agrees with this suggestion. The reproposed rules recognize the exception as set forth in N.J.S.A. 52:27G-7.1g.

COMMENT: One commenter stated that a large number of institutionalized, incompetent elderly residents and their families are indigent and unable to afford the expense involved in having someone declared legally incompetent. The commenter also stated that it would be unfair for the nursing home industry to bear the expense of the legal proceedings to declare an individual incompetent.

RESPONSE: The Office acknowledges that the costs involved in declaring someone incompetent is indeed a serious concern. However, this problem cannot be resolved by the Office's administrative rules and will have to be addressed by the Legislature. The Office is currently taking steps in this regard.

COMMENT: One commenter stated that the investigative procedures outlined in proposed N.J.A.C. 5:100-1.6 may not be within the parameters of the Office's enabling legislation.

RESPONSE: The Office respectfully disagrees that the investigative procedures in the proposal are an expansion of power. These procedures are set forth in the Ombudsman's enabling statute, N.J.S.A. 52:27G-8d.

COMMENT: One commenter stated that the Office did not have rulemaking authority under the New Jersey Administrative Procedure Act.

RESPONSE: The Office respectfully disagrees. The Office has rather broad rulemaking authority under N.J.S.A. 52:27G-5a and d. The Office would also submit that rules are necessary in order to foster a better understanding by the public of the Office's procedures and policy in the area of exploitation and abuse investigation and inquiry into cases involving proposals to withhold or withdraw life-sustaining treatment from incompetent, institutionalized elderly individuals.

Given the Office's responses to these comments, the Office withdraws its original proposal and reproposes the repeal and new rules at N.J.A.C. 5:100.

Social Impact

The persons benefiting from the Office's advocacy function are the approximately 100,000 patients, residents and clients, aged 60 and older, of approximately 800 different healthcare facilities throughout New Jersey. These include, but are not limited to, nursing homes, psychiatric hospitals, residential healthcare facilities, class "C" and "D" boarding homes, and adult medical day care programs. These facilities are licensed by the New Jersey Department of Health, the New Jersey Department of Human Services and/or the New Jersey Department of Community Affairs. Some are public institutions; more are private.

The State of New Jersey has recognized that institutionalized elderly persons are particularly vulnerable, have special needs and problems and are generally isolated from other, non-institutionalized members of the community. The Office was created in response to such needs and problems, as an advocate for the State's institutionalized elderly patients, residents and clients. The Legislature declared as the public policy of the State that the Office secure, preserve and promote the health, safety and welfare of the State's institutionalized elderly and ensure that its institutionalized elderly are able to enjoy the same civil and human rights guaranteed to all New Jerseyans.

The reproposed new rules will assist the institutionalized elderly and others concerned with their welfare by facilitating access to and comprehension of the Office's advocacy mandate. The revised rules, therefore, elucidate means of contacting the Office, its investigative procedures and methods of taking action, and its availability for community service.

These new rules will assist the institutionalized elderly and others concerned for their welfare, particularly regarding the directives of the New Jersey Supreme Court. These directives are interpretations of the Office's advocacy mandate, in the area of withdrawing and withholding life-sustaining medical treatment.

The reproposed new rules are based on the Office's expertise and experience. Without being unduly burdensome, they eliminate some uncertainties about the Office's protective role for the institutionalized elderly and better specify how the Office functions.

The new rules place no new requirements upon the elderly themselves, their caregivers, physicians or facility administrators. Because the rules provide specific guidance in a difficult area, while at the same time providing comprehensive protection for New Jersey's institutionalized elderly, the rules should assist and benefit all those affected.

Economic Impact

The proposed new rules simply clarify what is already expressly provided by statute or court decision. Therefore, the rules themselves will not have an economic impact on affected parties.

There is no tax, fee, charge or other economic cost to the institutionalized elderly who are benefited by the Office's protective and advocacy role described and structured by these rules. Those who report or complain to the Office about any condition affecting the institutionalized elderly incur no cost if they use the Office's toll free "hotline" telephone number available within the 609 and 201 telephone area codes. Any cost of reporting or complaining to the Office is either voluntarily incurred—if the report or complaint is optional—or mandatorily incurred if the report is required under N.J.S.A. 52:27G-7.1. At most, any such economic cost would be that of a letter and postage or telephone toll charges. Any costs are likely to be minimal.

Any costs of the procedures described in the rules already exist as a result of N.J.S.A. 52:27G-1 et seq. and the requirements imposed by the New Jersey Supreme Court. In fact, because they clarify the reporting responsibility already interpreted by the New Jersey Supreme Court under the mandatory abuse and exploitation reporting statute (N.J.S.A. 52:27G-7.1 and 7.2), the new rules could reduce the economic costs associated with unnecessary over-reporting to the Office.

The extent—if any—to which the aggregate minimal costs of reporting as mandated by law increase as a result of the reduction in uncertainty about reporting cannot be reliably foreseen. One would expect that any such possible increase in reporting (and, hence, in the minimal associated direct costs) would be offset by a decline in the unnecessary over-reporting of cases to the Office.

Regulatory Flexibility Statement

Reporting to the Office allegations of elderly abuse, neglect or exploitation is, at times, mandatory and, at times, optional. Where reporting to the Office is mandatory, it is mandated by law (N.J.S.A. 52:27G-7.1). The mandatory reporting requirement—where it exists—makes reporting incumbent upon only natural persons, facility administrators, physicians, nurses, aides, physical therapists, speech therapists, social workers and other professional persons rendering care or employed to render care to the institutionalized elderly. Reporting is optional under the law for all other persons. Therefore, these rules have no impact—including capital expenditure impact—on any small business in New Jersey, as that term

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is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the reproposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:100.

Full text of the reproposed new rules follows:

CHAPTER 100
OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY PRACTICE AND PROCEDURE RULES

SUBCHAPTER 1. GENERAL PROVISIONS

5:100-1.1 Scope

The basic objective of the Office of the Ombudsman for the Institutionalized Elderly is of promoting, advocating and ensuring, as a whole and in particular cases, the adequacy of the care received, and the quality of life experienced, by elderly patients, residents and clients of facilities offering health or health-related services for the institutionalized elderly within New Jersey. The Office of the Ombudsman advocates for the health, safety and welfare, and the civil and human rights of the institutionalized elderly, age 60 or over, and takes such actions as are necessary, and within its jurisdiction, to secure same.

5:100-1.2 Definitions

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish; unreasonable confinement; or the willful deprivation of services which are necessary to maintain a resident's physical and mental health. "Abuse" shall also mean imposing treatment upon a resident who has the capacity to make healthcare decisions, after the resident has made a voluntary and informed choice regarding such treatment. "Abuse" shall also mean providing to a resident treatment that is not medically indicated. However, no resident shall be deemed to be abused for the sole reason that he or she is being furnished non-medical remedial treatment by spiritual means through prayer alone, in accordance with a recognized religious method of healing, in lieu of medical treatment, if it is shown through the Office's review that the resident subscribes to such religious method of healing. "Abuse" also shall not mean the withholding or withdrawal of life-sustaining treatment in accordance with the provisions of N.J.A.C. 5:100-2.

An "act" of any facility or government agency shall be deemed to include any unlawful failure or refusal to act by such facility or government agency.

"Administrator" means any person who is charged with the general administration or supervision of a facility, whether or not such person has an ownership interest in such facility, and whether or not such person's functions and duties are shared with one or more other persons.

"Caregiver" means a person employed to provide care or services to an elderly person, and includes, but is not limited to, the administrator of a facility.

"Exploitation" means the act or process of using a person or his or her resources for another person's profit or advantage without legal entitlement to do so.

"Facility" means any facility or institution, whether public or private, offering health or health-related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential healthcare facilities, class "C" and "D" boarding homes, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, and medical day care centers. "Facility" shall not mean an acute care hospital.

"Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the State or to which the State is a party, or by any county or municipality, which is responsible for the regulation, visitation, inspection or supervision of facilities, or which provides services to patients, residents or clients of facilities.

"Institutionalized elderly," "elderly" or "elderly person" means any person 60 years of age or older, who is a patient, resident or client of any facility.

"Office" means the Office of the Ombudsman for the Institutionalized Elderly.

"Ombudsman" means the administrator and chief executive officer of the Office of the Ombudsman for the Institutionalized Elderly.

"Resident" means any elderly person who is receiving treatment or care in any facility in all its aspects, including, but not limited to, admission, retention, confinement, commitment, period of residence, transfer, discharge and any instances directly related to such status. "Resident" shall also mean a patient or client who is receiving treatment or care in any facility.

5:100-1.3 Contact with the Office; information about rights and entitlements; communications

(a) Any person may contact the Office to report any complaints concerning the health, safety and welfare, and the civil and human rights of institutionalized elderly persons.

(b) The Office may be contacted by calling its toll-free telephone number (800-624-4262), 24 hours per day, any day of the year; or by writing to: The Office of the Ombudsman for the Institutionalized Elderly, CN 808, Trenton, New Jersey, 08625-0808.

(c) Any correspondence or written communication from any resident of a facility to the Office shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to the Office. Any correspondence or written communication from the Office to any resident of a facility shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to such resident.

(d) The Office shall prepare and distribute to each facility written notices which set forth the address and telephone number of the Office, a brief explanation of the function of the Office, the procedure to follow in filing a complaint, and other pertinent information.

(e) The administrator of each facility shall ensure that such written notice is given to every resident or his or her next of kin or guardian, as appropriate, upon admission to the facility and to every person already in residence or his or her next of kin or guardian, as appropriate. The administrator shall also post such written notice in a conspicuous, public place in the facility.

(f) The Office shall from time to time publicize its existence, function and activities by informing residents, their families and friends, facility staff and other caregivers, government agencies and representatives, private organizations and community groups, and the general public, about the Office and its function and activities, through "in-service training" presentations at facilities and elsewhere, participation in seminars or other informational programs, contact with the press and other media, and direct communication, in person or in writing, including the submission for publication of scholarly and informational articles and other materials concerning the Office, its functions and activities.

(g) The Office shall make itself available for the purpose of informing and educating interested individuals and groups about general issues of concern affecting the civil and human rights of the institutionalized elderly.

5:100-1.4 Complaint procedure

(a) The Office shall acknowledge all complaints. If the Office does not have jurisdiction, the Office shall so advise the person making the complaint and shall promptly refer the complaint to the appropriate government agency.

(b) Upon receiving and acknowledging a complaint, the Office shall investigate any act, practice, policy or procedure of any facility or government agency that does or may adversely affect the health, safety, welfare or civil or human rights of any resident of a facility.

(c) The Office need not investigate any complaint where it determines that:

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1. The complaint is trivial, frivolous, vexatious or not made in good faith;

2. The complaint has been too long delayed to justify present investigation;

3. The resources available, considering the Office's established priorities, are insufficient for an adequate investigation; or

4. The matter complained of is not within the investigatory authority of the Office.

(d) During the course of any investigation conducted by the Office, the Office may:

1. Make the necessary inquiries and obtain such information as it deems necessary;

2. Hold private hearings or public hearings;

3. Enter without notice and, after notifying the person in charge of its presence, inspect the premises of a facility or government agency and inspect there any books, files, medical records or other records that pertain to residents, which are required by law to be maintained by the facility or government agency;

4. Compel at a specific time and place, by subpoena, the appearance and sworn testimony of any person who the Office reasonably believes may be able to give information relating to a matter under investigation; and

5. Compel any person to produce at a specific time and place, by subpoena, any documents, books, records, papers, objects, or other evidence which the Office reasonably believes may relate to a matter under investigation.

(e) Upon completing an investigation of a complaint, the Office shall take one or more of the following courses of action, as appropriate:

1. If Office representatives are unable to substantiate a complaint, the Office shall so advise the complainant and the facility or government agency against whom the complaint was brought, as appropriate;

2. If Office representatives are able to substantiate a complaint, they may work with facility or government agency representatives, as appropriate, to remedy the problem(s) that exist.

3. In the event that a complaint of a resident or class of residents of a facility or facilities cannot be resolved satisfactorily through negotiation with the facility or the appropriate government agency, or that an act, practice, policy or procedure of a facility or government agency does or may adversely affect the health, safety, welfare or civil or human rights of a resident or class of residents of a facility or facilities, the Office may recommend to the appropriate authorities civil litigation on behalf of such resident or class of residents, as it deems appropriate. The Office may also institute such actions for injunctive relief or civil damages as it deems appropriate.

4. If the Office discovers a deficiency in compliance with State or Federal laws or regulations or rules administered by any government agency, the Office shall refer the matter directly to the appropriate government agency for action.

5. If the Office discovers facts which the Office determines warrant the institution of civil proceedings by a government agency against any person or governmental agency, the matter shall be referred to the government agency with authority to institute such proceedings.

6. If the Office discovers information in relation to the misconduct or breach of duty of any officer or employee of a facility or a government agency, the matter shall be referred to the appropriate authorities for such action as may be necessary.

7. If the Office discovers information or facts indicating the commission of criminal offenses or violations of standards of professional conduct, it shall refer the matter, as appropriate, to the Attorney General, county prosecutor, or any other law enforcement official who has jurisdiction to prosecute the crime, and to the relevant professional licensing board.

(f) The government agency, prosecuting agency or professional licensing board to whom a substantiated allegation has been referred shall report to the Office on its findings and actions with respect to all such referrals within 30 days after receipt thereof and every 30 days thereafter until final action on each such referral. The Office may make disclosure of such information as appropriate and as may be necessary to resolve the matter referred.

(g) Where the Office has substantiated the allegations set forth in a complaint, it shall notify the complainant and the facility or government agency concerning which the complaint was lodged, in writing, of its findings and action taken. Such notification to a facility or government agency concerning which a complaint was lodged shall not include the identity of the complainant, resident or witnesses, unless such persons authorize, in writing, such disclosure.

5:100-1.5 Reporting requirements and complaint procedures under the Mandatory Adult Abuse and Exploitation Reporting Law, N.J.S.A. 52:27G-7.1 et seq.

(a) Any caregiver, social worker, physician, registered or licensed practical nurse, or other professional, who, as a result of information obtained in the course of his or her employment, has reasonable cause to suspect or believe that an institutionalized elderly person is being or has been abused or exploited, shall report such information to the Office. Any other person having reasonable cause to suspect or to believe that an elderly person is being or has been abused or exploited may report such information to the Ombudsman or to the person designated by the Ombudsman to receive such report.

(b) Any report of actual or suspected elderly abuse or exploitation shall be made verbally or in writing and shall contain, if known:

1. The name, address and age of the elderly person who is the subject of the suspected abuse or exploitation;

2. The name of the person accused of committing the alleged abuse or exploitation;

3. The name and address of the facility involved;

4. A description of the nature of the suspected abuse or exploitation;

5. The date, time and specific location of the occurrence;

6. The name and address of any witness to the suspected abuse or exploitation; and

7. Any other information which might be helpful in an investigation of the case and the protection of such elderly person.

(c) The Office complaint procedure is as follows:

1. Within 24 hours of receipt of a report of abuse or exploitation, the Office shall notify the Commissioner of Human Services and any other government agency which regulates or operates the facility.

2. Whenever practicable, upon receiving such report, the Office shall advise the Administrator of the facility in which the victim is residing, or his or her designee, of a report of abuse or exploitation. Unless authorized under (e) below, the name of the person reporting the suspected abuse or exploitation shall not be disclosed.

3. The Office shall investigate a complaint alleging elderly abuse or exploitation by utilizing the procedure set forth in N.J.A.C. 5:100-1.4. In addition, an investigation shall include a visit with the elderly person who has allegedly been abused or exploited and consultation with others who have knowledge of the particular case.

(d) Upon completing its investigation, the Office shall report its findings, in writing, to:

1. The person who reported the suspected abuse or exploitation;

2. The Commissioner of Human Services;

3. The facility in which the elderly person who was allegedly abused or exploited is residing. Such notification shall contain a general description of the Office's investigation and its findings, but shall not include the identity of the complainant, the victim or witnesses, unless such persons authorize, in writing, such disclosure;

4. Where the Office has substantiated the allegations of the complaint, and where appropriate, the county prosecutor's office or any other appropriate prosecuting agency; and

5. Where the Office has substantiated the allegations of the complaint, and where appropriate, the government agency or agencies having regulatory or licensing authority over either the person accused of the abuse or exploitation or over the facility in which the elderly person is residing.

(e) The name of any person who reports suspected abuse or exploitation pursuant to this subchapter shall not be disclosed, unless:

1. The person who reported the abuse or exploitation specifically authorizes such disclosure; or

2. A judicial proceeding results from such report; or

3. Disclosure is authorized under N.J.A.C. 5:100-1.6(a).

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(f) Any person who reports suspected abuse or exploitation pursuant to this subchapter or who testifies in any administrative or judicial proceeding arising from such report or testimony shall have immunity from any civil or criminal liability on account of such report or testimony, unless such person has acted in bad faith or with malicious purpose.

(g) Pursuant to N.J.S.A. 52:27G-7.1(f), any person required to report suspected abuse or exploitation, as required herein, who fails to make the reports required by this section, may be fined up to $5,000. Such penalty will be collected and enforced by the Office in a summary proceeding brought pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. Each violation of this section shall constitute a separate offense.

(h) No provision of this section shall be deemed to require the disclosure of, or penalize the failure to disclose, any information which would be privileged pursuant to the provisions of Sections 18 through 23 inclusive of P.L.1960, c.52 (N.J.S.A. 2A:84A-18 through 2A:84A-23).

(i) The Office shall maintain a central registry of all reports of suspected abuse or exploitation and of all investigations, findings and recommended actions. No information received and compiled in such registries shall be construed as a public record.

(j) Where the report alleging elderly abuse or exploitation pertains to the withholding or withdrawal of life-sustaining treatment from an elderly incompetent institutionalized resident, reporting shall be governed by N.J.A.C. 5:100-2.

5:100-1.6 Confidentiality of information; privileged communications

(a) The Office shall maintain confidentiality with respect to all matters in relation to any complaint or investigation, together with the identities of the complainants, witnesses or residents involved, unless such persons authorize, in writing, the release of such information, except for such disclosures as the Ombudsman deems necessary to enable the Office to perform its duties and to support any opinions or recommendations that may result from a complaint or investigation. The investigatory files of the Office, including all complaints and responses of the Office to complaints, shall be maintained as confidential information. Release of pertinent records shall be at the discretion of the Ombudsman.

(b) Any statement or communication made by the Office relevant to a complaint received by, proceedings before, or investigative activities of, the Office, and any complaint or information made or provided in good faith by any person, shall be absolutely privileged and such privilege shall be a complete defense in any action which shall allege libel or slander.

5:100-1.7 Prohibition of discriminatory, disciplinary or retaliatory action

No discriminatory, disciplinary or retaliatory action shall be taken against any officer or employee of a facility or government agency by such facility or government agency, or against any resident of a facility or guardian or family member thereof, or independent contractor providing care or services to a resident, or volunteer, for any communication by him or her with the Office or for any information given or disclosed by him or her in good faith to aid the Office in carrying out its duties and responsibilities.

5:100-1.8 Hindrance of Office or refusal to comply; penalties

Any person who willfully hinders the lawful actions of the Office or willfully refuses to comply with any of its lawful demands, including the demand of immediate entry into and inspection of a facility or government agency or the demand of immediate access to a resident thereof, may be fined up to $5,000. Such penalty shall be collected and enforced by the Office in a summary proceeding brought pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq., upon complaint of the Office or any other person. Each violation of this section shall constitute a separate offense.

SUBCHAPTER 2. PROCEDURES REQUIRED PRIOR TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT FROM ELDERLY, INSTITUTIONALIZED RESIDENTS

5:100-2.1 Purpose

(a) The purpose of this subchapter is to clarify the Office's role in circumstances involving proposals to withhold or to withdraw life-sustaining treatment from nursing home patients, pursuant to guidelines set forth by the New Jersey Supreme Court in the cases of *Matter of Farrell,* 108 *N.J.* 335 (1987), *Matter of Peter,* 108 *N.J.* 365 (1987) and *Matter of Conroy,* 98 *N.J.* 321 (1985). The Office views its role as being twofold:

1. To oversee the processes established by the Court in *Peter* and in *Conroy;* and

2. To assist the institutionalized elderly, their families and friends, their healthcare providers and the facilities in which they reside in making life-sustaining treatment decisions that fully express the wishes of the resident.

5:100-2.2 Definitions

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

"Capacity to make a healthcare decision" means the ability to understand and appreciate the nature and consequences of a healthcare decision, including the resident's diagnosis and prognosis, the benefits and risks associated with the decision and alternatives to the decision, and having the ability to voluntarily reason and make judgments about that information.

"Fully informed" means being informed in language understandable to the resident of diagnosis and prognosis, the benefits, burdens and risks of the proposed treatment or non-treatment and its alternatives.

"Life-sustaining treatment" means any medical intervention that is administered to a resident in order to prolong life and delay death.

"Medically indicated treatment" means treatment that will improve the medical condition of the resident or is necessary to provide palliative care to the resident.

"Palliative care" means medical, surgical or other interventions designed to alleviate suffering and discomfort, but not to cure.

"Surrogate decisionmaker" means a guardian, a close and caring family member, or a person designated by the resident, who is willing and able to make a decision to withhold or to withdraw life-sustaining treatment on behalf of the resident.

5:100-2.3 Duty to report

(a) Any person who believes that withholding or withdrawing life-sustaining treatment from an elderly incompetent nursing home resident would effectuate the resident's wishes or would be in the resident's best interests shall notify the Office of the contemplated action.

(b) Any caregiver, social worker, physician, registered or licensed practical nurse or other professional who has reasonable cause to suspect that withholding or withdrawing life-sustaining treatment from an elderly, incompetent nursing home resident would be an abuse of that resident shall report such information to the Office.

(c) Any other person who has reasonable cause to suspect that withholding or withdrawing life-sustaining treatment from an elderly, incompetent nursing home resident would be an abuse of the resident may report such information to the Office.

(d) The reporting procedures set forth in this section shall not apply when:

1. The resident is under age 60; or

2. The resident, being fully informed and having the capacity to make a healthcare decision, chooses to withhold or withdraw life-sustaining treatment. The resident's attending physician shall make the determination of whether the resident is fully informed and has the capacity to make a healthcare decision. The physician's determination shall be based on the physician's reasonable medical judgment and shall be documented on the resident's chart; or

3. The life-sustaining treatment is not medically indicated for the resident. The resident's attending physician shall make this de-

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termination. Such determination shall be based on the physician's reasonable medical judgment and shall be documented on the resident's chart; or

4. The proposal to withhold or withdraw life-sustaining treatment is being reviewed by, or has been reviewed favorably by, a court of competent jurisdiction.

5:100-2.4 Procedure for residents incapable of making healthcare decisions, who are in a persistent vegetative state

(a) Unless one or more of the circumstances set forth in N.J.A.C. 5:100-2.3(d) apply, the surrogate decisionmaker for the resident shall notify the Office, in writing, of a contemplated decision to withhold or to withdraw life-sustaining treatment from the resident.

(b) The resident's attending physician shall provide to the Office, in writing, evidence of the resident's condition.

(c) The Office shall advise the facility administrator, in writing, of the proposal to withhold or to withdraw life-sustaining treatment.

(d) The Office shall then inquire into the resident's intent, if any, pertaining to the surrogate decisionmaker's proposal to withhold or to withdraw the life-sustaining treatment. In making its intent inquiry, the Office shall:

1. Inquire into whether there exists a written advance directive in the form of a Living Will or Durable Power of Attorney executed by the resident;

2. Inquire into whether there exists any other declaration or designation including an oral declaration or designation;

3. Interview the resident's family and friends, the attending physician, healthcare providers, employees of the facility at which the resident is residing, and others having knowledge of the resident's intent; and

4. Do anything that the Office, in its discretion, deems necessary to discover the resident's intent.

(e) Concurrent with its intent inquiry, the Office shall engage the services of two physicians who are not associated with the resident's case to examine the resident:

1. Prior to the examination, the Office shall provide to each physician, in writing, an explanation of the areas that must be covered in the report of the examination. The areas are:

i. The date(s) of the physician's examination(s) and the identity of anyone assisting or accompanying the physician;

ii. A synopsis of the physician's examination(s), the resident's medical history on which the physician bases his or her conclusions and any limitations on either, which the physician believes significant. The physician should also advise whether the medical history indicates whether the resident ever was competent during adult life;

iii. The resident's diagnosis and condition;

iv. The medical alternatives available including the various treatment options and the risks, side effects and benefits of each of those options;

v. The resident's prognosis for recovery, both with and without the life-sustaining treatment which has been proposed to now be withheld or withdrawn;

vi. Whether the resident is in a persistent vegetative state because there is no reasonable possibility of the resident's recovery to a cognitive, sapient state; and

vii. The likely outcome if treatment is discontinued or withheld.

2. The following areas shall also be addressed notwithstanding a determination that the resident is in a persistent vegetative state:

i. Whether the resident currently has the mental and communicative capacity to reasonably understand his or her own condition, the nature and effect of the medical treatment proposed to be withheld or withdrawn, the attendant risks in selecting such treatment, and to decide whether or not to submit to such treatment;

ii. A brief description of the resident and whether the resident was able to communicate anything about his or her own condition to the physician;

iii. The resident's present level of:

(1) Physical functioning;

(2) Sensory functioning;

(3) Emotional functioning; and

(4) Cognitive functioning;

iv. The degree of pain resulting from the resident's medical condition, the resident's medical treatment, and terminating or withholding treatment, including the degree, expected duration and constancy of pain (with and without treatment) and the possibility that the pain could be reduced by drugs or other means short of terminating or withdrawing the life-sustaining treatment;

v. The resident's life expectancy with and without the treatment in question. In particular, whether or not the resident, even with the life-sustaining treatment, probably will not live more than one year from the date of the physician's examination; and

vi. Whether the patient probably will regain competence.

3. After reviewing the Office's correspondence, each physician shall acknowledge, in writing, his or her agreement to perform the examination.

4. Each physician shall then travel to the facility and perform the examination. An Office representative shall be at the facility to assist each physician.

5. Upon completing the examination, each physician shall provide to the Office a written report of the examination.

6. The identity of each physician and the contents of each report shall be kept confidential.

7. Each physician shall be compensated by one or more of the following:

i. The resident's estate;

ii. The resident's family;

iii. The surrogate decisionmaker;

iv. Medicare or Medicaid; and/or

v. If the above sources are insufficient to compensate the physicians, the Office of the Ombudsman shall compensate the physicians, within the limitations of the Office's budget.

(f) Upon completion of the intent inquiry and the physicians' examinations, if both physicians conclude that the resident is in a persistent vegetative state, the surrogate decisionmaker may withhold or withdraw the life-sustaining treatment if:

1. There exists clear and convincing evidence that the resident would have refused the life-sustaining treatment in the circumstances involved; or

2. If there does not exist clear and convincing evidence regarding the resident's attitude toward life-sustaining treatment, the surrogate decisionmaker may withhold or withdraw the life-sustaining treatment if both physicians have also concluded that there is no reasonable possibility that the resident will recover to a cognitive, sapient state. Additionally, the attending physician must concur with the conclusion of both independent physicians.

(g) When either of (f)1 or (f)2 above is satisfied, the Ombudsman shall defer to the surrogate decisionmaker's decision. A surrogate decisionmaker may seek a determination in a court of competent jurisdiction where the Ombudsman does not defer.

(h) When (f)2 above is satisfied, the resident's family member must also concur with the surrogate decisionmaker's decision, unless the family member is also the surrogate decisionmaker. "Family member" shall mean, in order of priority, the resident's spouse, parents, children, or next of kin, if any. A surrogate decisionmaker may seek a determination in a court of competent jurisdiction where the resident's family member does not concur.

(i) In the absence of bad faith, no participant in the decisionmaking process shall be civilly or criminally liable.

5:100-2.5 Procedure for residents incapable of making healthcare decisions, who are not in a persistent vegetative state

(a) Unless one or more of the circumstances set forth in N.J.A.C. 5:100-2.3(d) apply, the surrogate decisionmaker for the resident shall notify the Office, in writing, of a contemplated decision to withhold or to withdraw life-sustaining treatment from the resident.

(b) The resident's attending physician shall provide to the Office, in writing, evidence of the resident's condition.

(c) The Office shall advise the facility administrator, in writing, of the proposal to withhold or to withdraw life-sustaining treatment.

(d) The Office shall then inquire into the resident's intent, if any, pertaining to the surrogate decisionmaker's proposal to withhold or to withdraw the life-sustaining treatment. In making its intent inquiry, the Office shall:

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1. Inquire into whether there exists a written advance directive in the form of a Living Will or Durable Power of Attorney executed by the resident;

2. Inquire into whether there exists any other declaration or designation including an oral declaration or designation;

3. Interview family and friends, the attending physician, healthcare providers, employees of the facility at which the resident is residing, and others with knowledge of the resident's intent; and

4. Do anything that the Office, in its discretion, deems is necessary to discover the resident's intent.

(e) Concurrent with its intent inquiry, the Office shall engage the services of two physicians who are not associated with the resident's case to examine the resident.

1. Prior to the examinations, the Office shall provide to each physician, in writing, an explanation of the areas that must be covered in the report of the examination. The areas are:

i. The date of the physician's examination(s) and the identity of anyone assisting or accompanying the physician;

ii. Whether the resident currently has the mental and communicative capacity to reasonably understand his or her own condition, the nature and effect of the medical treatment proposed to be withheld or withdrawn, the attendant risks in selecting such treatment, and to decide whether or not to submit to such treatment;

iii. A synopsis of the physician's examination(s), the resident's medical history on which the physician bases his or her conclusions and any limitations on either, which the physician believes significant. The physician should also advise whether the medical history indicates whether the resident ever was competent during adult life;

iv. A brief description of the resident and whether the resident was able to communicate anything about his or her own condition to the physician;

v. The resident's present level of:

(1) Physical functioning;

(2) Sensory functioning;

(3) Emotional functioning; and

(4) Cognitive functioning;

vi. The resident's diagnosis and condition;

vii. The degree of pain resulting from the resident's medical condition, the resident's medical treatment, and terminating or withholding treatment, including the degree, expected duration and constancy of pain (with and without treatment) and the possibility that the pain could be reduced by drugs or other means short of terminating or withdrawing the life-sustaining treatment;

viii. The medical alternatives available including the various treatment options and the risks, side effects and benefits of each of those options;

ix. The resident's life expectancy with and without the treatment in question. In particular, whether or not the resident, even with the life-sustaining treatment, probably will not live more than one year from the date of the physician's examination;

x. The resident's prognosis for recovery, both with and without the life-sustaining treatment which has been proposed to now be withheld or withdrawn;

xi. Whether the patient probably will regain competence; and

xii. The likely outcome if treatment is discontinued or withheld.

2. After reviewing the Office's correspondence, each physician shall acknowledge, in writing, his or her agreement to perform the examination.

3. Each physician shall then travel to the facility and perform the examination. An Office representative shall be at the facility to assist each physician.

4. Upon completing the examination, each physician shall provide to the Office a written report of the examination.

5. The identity of each physician and the contents of each report shall be kept confidential.

6. Each physician shall be compensated by one or more of the following:

i. The resident's estate;

ii. The resident's family;

iii. The surrogate decisionmaker;

iv. Medicare or Medicaid; and/or

v. If the above sources are insufficient to compensate the physicians, the Office of the Ombudsman shall compensate the physicians, within the limitations of the Office's budget.

(f) Upon completion of the intent inquiry and if both physicians find that: the resident is incapable of making a healthcare decision, the resident is suffering from severe and permanent mental and physical impairments, and the resident probably would have less than one year to live from the date of the examination with or without life-sustaining treatment, the surrogate decisionmaker, with the concurrence of the attending physician, may withhold or withdraw the life-sustaining treatment if:

1. There exists clear and convincing evidence that the resident would have refused the life-sustaining treatment in the circumstances involved; or

2. There exists some trustworthy evidence that the resident would have refused the life-sustaining treatment in the circumstances involved, and on the basis of the medical evidence, the surrogate decisionmaker is satisfied that it is clear that the burdens of the resident's continued life with the treatment outweighs the benefit of the resident's continued life; or

3. There exists no evidence of the resident's intent, but on the basis of the medical evidence, the net burdens of the resident's life with the treatment clearly and markedly outweigh the benefits that the resident would derive from life. Additionally, the recurring, unavoidable and severe pain of the resident's life with the treatment would be such that the effect of administering the life-sustaining treatment would be inhumane.

(g) When (f)1, f(2) or f(3) above is satisfied, the Ombudsman shall defer to the decision made by the surrogate decisionmaker. The surrogate decisionmaker may seek a determination in a court of competent jurisdiction where the Ombudsman does not defer.

(h) When either of f(2) or f(3) above is satisfied, the resident's family member must also concur with the decision made by the surrogate decisionmaker, unless the family member is also the surrogate decisionmaker. "Family member" shall mean, in order of priority, the resident's spouse, parents, children, or next of kin, if any. The surrogate decisionmaker may seek a determination in a court of competent jurisdiction where the resident's family member does not concur.

(i) In the absence of bad faith, no participant in the decisionmaking process shall be civilly or criminally liable.

HEALTH
(a)

DIVISION OF ALCOHOLISM AND DRUG ABUSE

Intoxicated Driving Program/Intoxicated Driver Resource Center

Proposed Amendment: N.J.A.C. 8:66-1.1

Authorized By: Leah Z. Ziskin, M.D., M.S.A., Acting Commissioner, Department of Health.

Authority: N.J.S.A. 39:4-50 et seq., specifically 39:4-50(F).

Proposal Number: PRN 1990-178.

Submit comments by May 2, 1990 to:
David G. Evans, Esq.
Chief, Intoxicated Driving Program
CN 365
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department has previously elected to not adopt the repeal of N.J.A.C. 8:66 and has recodified the proposed new rules on adoption as N.J.A.C. 8:66A (see 22 N.J.R. 848(a)). Changes were made on adoption to clarify the application of each of these chapters (see 22 N.J.R. 848(a)). N.J.S.A. 39:4-50 requires that all persons convicted under the statute must comply with the requirements of the Intoxicated Driver Resource Centers, found at N.J.A.C. 8:66A, and with the requirements of the Bureau of Alcohol Countermeasures in the Intoxicated Driving Program Unit in the Division of Alcoholism and Drug Abuse, which

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include N.J.A.C. 8:66 and N.J.A.C. 8:66A. Therefore, N.J.A.C. 8:66 must be continued in use and will apply to all persons convicted pursuant to N.J.S.A. 39:4-50, regardless of conviction date. The requirements of the Bureau of Alcohol Countermeasures which are found at N.J.A.C. 8:66 can continue to be useful in a variety of ways to ensure that persons who present a public danger can be evaluated, educated, and sent to treatment if necessary. The maintenance of both chapters allows for greater flexibility when the Intoxicated Driver Resource Center Program is not available or not applicable, and continues to provide standards for those individuals who were participating in the Intoxicated Driver Resource Center Program prior to the adoption of N.J.A.C. 8:66A. N.J.A.C. 8:66 can be applied to those offenders who were arrested before October 4, 1984 and after that date. N.J.A.C. 8:66A shall be applied to those offenders who were convicted after October 4, 1984. N.J.A.C. 8:66A will also be applied when there is a referral to the Intoxicated Driver Resource Center under N.J.A.C. 8:66. In 22 N.J.R. 853, the Department amended N.J.A.C. 8:66-1.1 to make it clear that N.J.A.C. 8:66A-1.1 only applied to convictions after October 4, 1984. Apparently this did not clarify the issue because a question was raised as to whether the Department then intended N.J.A.C. 8:66 to only apply before October 4, 1984. It is clear that the Department's intent was to have N.J.A.C. 8:66 apply to offenses prior to and after October 4, 1984 which was the implementation date of the Intoxicated Driver Resource Center Program. The Department stated this position in 22 N.J.R. 848-849. In order to prevent any further misunderstanding of its position, the Department is amending N.J.A.C. 8:66.

Social Impact

The proposed amendment is intended to clarify the Department's position regarding N.J.A.C. 8:66-1.1, to avoid misunderstanding in its application by the courts. This will insure that offenders are properly monitored by the court and sent to appropriate education and treatment. The amendment is intended to reduce recidivism in intoxicated driving.

Economic Impact

The evaluation and referral to treatment of persons convicted of driving under the influence reduces the societal cost of intoxicated driving. It reduces law enforcement costs, medical and disability costs, and insurance costs.

The Intoxicated Driving Program/Intoxicated Driver Resource Centers program is self-supporting, through mandated client fees.

The Department anticipates this amendment will have no economic impact, as it simply clarifies the application of N.J.A.C. 8:66-1.1.

Regulatory Flexibility Statement

This amendment will not directly affect small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq., because the determination of which program an individual will attend will be made by the Department.

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

8:66-1.1 Purpose and scope

The purpose of this chapter is to improve the driving behavior of individuals who have been identified as having some alcohol involvement in connection with the operation of a motor vehicle. This chapter shall apply to all persons convicted on or before October 4, 1984, pursuant to N.J.S.A. 39:4-50, and any other motor vehicle violation, who must complete a program of alcohol education, evaluation and treatment in connection with the offense. **This chapter may also be applied to all persons convicted on or after October 4, 1984, pursuant to N.J.S.A. 39:4-50 and any other motor vehicle violations, who must complete a program of alcohol education when required by the Bureau of Alcohol Countermeasures in the Intoxicated Driving Programs Unit and/or when the Intoxicated Driver Resources Center Program is not available or a court has determined that the Intoxicated Driver Resource Center Program is not applicable.**

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Reporting Financial Disclosure and Excess Profits

Proposed Amendment: N.J.A.C. 11:3-20.9

Authorized By: Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:29A-5.6 et seq., specifically 17:29A-5.16.

Proposal Number: PRN 1990-162.

Submit written comments by May 2, 1990 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN-325
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 17:29A-5.6 et seq. provides for the reporting and refund or credit of excess profits by automobile insurers. N.J.S.A. 17:29A-5.10 provides that in the event an excess profit is returned by an insurer and subsequent development demonstrates that an excess profit did not exist or was overstated, an "excess profit carry forward" credit in the amount refunded or overstated, whichever is less, shall be established. This credit shall be applied by the insurer against future determinations of excess profits until exhausted for as long as 15 years.

Previously the Commissioner adopted administrative rules concerning the reporting and crediting or refund of excess profits see (N.J.A.C. 11:3-20). N.J.A.C. 11:3-20.9 provides for the excess profit carry forward, but does not set forth the method by which an insurer can claim the credit when it submits an excess profit report. This proposed amendment provides that procedure.

The proposed amendment requires that an insurer which claims credit for an excess profit carry forward shall file a copy of the excess profit report which originally showed the existence of the excess profit, and Excess Profit Exhibits One through Six containing the data that shows the adverse development of the pertinent accident year or years. The amendment is added as a new subsection (c) to N.J.A.C. 11:3-20.9.

Social Impact

This proposed amendment carries out the provisions of N.J.S.A. 17:29A-5.10 to provide insurers with a credit for excess profits previously reported against future determinations of excess profits, when subsequent developments indicate the excess profits did not exist. It sets forth the method or procedure for doing so, and thus provides insurers which claim the credit a clear and straightforward method of doing so. It also provides the Department with a convenient and consistent method for receiving and reviewing this information.

Economic Impact

This proposed amendment simply sets forth the method by which an insurer claiming an excess profit carry forward should do so in connection with subsequent filings of excess profits reports. It will impact insurers which claim the credit and the Department. The cost of following the procedure is minimal. The amendment sets forth the documents that need to be filed to claim the credit, and thus benefits both insurers and the Department in that the method of claiming the credit is clear.

Regulatory Flexibility Analysis

The proposed amendment may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some automobile insurers may qualify as "small businesses."

These amendments impose reporting requirements on small businesses, in that they set forth the documents to be filed to claim a credit for excess profits carry forward pursuant to N.J.S.A. 17:29A-5.10. The proposed amendment does not provide any difference in reporting requirements for small businesses, since the purpose of the amendment is to provide a consistent procedure for insurers to claim the credit. The method, however, is a minimal requirement that simply provides the necessary data the Department needs to determine that the insurer is entitled to the credit. Since this credit is claimed in conjunction with future filings of excess profits reports, no additional professional services, capital costs

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or annual compliance costs can be expected, other than the minimal costs of developing and delivering these additional exhibits together with the annual excess profits report filing.

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

11:3-20.9 Excess profits carry forward

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

(c) In order to take credit in the form of an excess profits carry forward in any filing of an excess profits report, the filer shall file the following which shall be attached to the excess profits report in which the carry forward is to be taken:

1. A copy of the excess profit report which originally showed the existence of an excess profit; and

2. Excess Profits Exhibits One through Six containing the data that shows the adverse development of the pertinent accident year or years.

(a)

DIVISION OF ACTUARIAL SERVICES

Examination of the Financial Experience of Private Passenger Automobile Insurers

Proposed Amendments: N.J.A.C. 11:3-31.5 and Appendix

Authorized By: Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq., 17:29A-1 et seq. and 17:29B-1 et seq.

Proposal Number: PRN 1990-164.

Submit comments by May 2, 1990 to:

Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN-325
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Insurance (Department) adopted N.J.A.C. 11:3-31 on January 12, 1990 (see 22 N.J.R. 425(a)), which requires all private passenger automobile insurers to complete and file on or before July 1 of each year a Financial Data Report in the format of the exhibits contained in the Appendix to N.J.A.C. 11:3-31 reflecting such insurers' financial experience for the two years immediately preceding the date such report is due.

The Department, however, has determined that minor changes to these exhibits and accompanying instructions are necessary. These proposed changes impose no new reporting requirements on private passenger automobile insurers. Rather, these changes clarify the data to be reported in the Financial Data Report.

Additionally, since the exhibits currently reflect the calendar years for the Financial Data Report due July 1, 1989, the exhibits are proposed for change to reflect the calendar years for which data is to be reported for the Financial Data Report due July 1, 1990.

Finally, minor changes to N.J.A.C. 11:3-31.5 are proposed to ensure consistency with the proposed changes to the exhibits and accompanying instructions.

Social Impact

These proposed amendments will impose no negative impact on private passenger automobile insurers in that they only clarify the existing reporting requirements contained in N.J.A.C. 11:3-31 and thus impose no new reporting requirements on private passenger automobile insurers.

Insurers will benefit in that they will be fully apprised of these reporting requirements. This, in turn, will ensure that insurers will submit complete and accurate Financial Data Reports, thus benefiting the Department.

Economic Impact

These proposed amendments only clarify the data to be reported in the Financial Data Report required by N.J.A.C. 11:3-31 and impose no new reporting requirements. Thus, these proposed amendments will impose no negative economic impact on private passenger automobile insurers.

Regulatory Flexibility Analysis

Private passenger automobile insurers will be required to submit Financial Data Reports in the format of the exhibits as amended contained in the appendix to N.J.A.C. 11:3-31.

These proposed changes only clarify the existing reporting requirements contained in N.J.A.C. 11:3-31 and thus impose no new reporting requirements on private passenger automobile insurers. Since all private passenger automobile insurers are required to file a Financial Data Report pursuant to N.J.A.C. 11:3-31 regardless of insurer size and to ensure consistency and uniformity in the data submitted, no differentiation is provided in the current amendments based on insurer size.

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

11:3-31.5 Changes to financial data report prohibited; exceptions

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

(c) The exhibits appended to this subchapter are [1989] **1990** exhibits. Where exhibits for prior years or later years must be reported, an insurer shall submit exhibits which are substantially similar to the appended exhibits to report the prior years' or later years' data and which contain all information, including dates, adjusted accordingly.

(d) All references in the exhibits to the statutory annual statement and insurance expense exhibit are for [1988] **1989 unless otherwise noted**. For any year prior to [1988] **1989** an insurer shall use the corresponding source of data contained in that year's statutory annual statement or statutory insurance expense exhibit. If the data is not reported in the statutory annual statement or insurance expense exhibit, the insurer shall use its internal company data.

APPENDIX

Financial Data Report Instructions

One: General Instructions

1.-5. (No change.)

6. "AS" refers to the [1988] **1989** statutory annual statement, and "IEE" refers to the [1988] **1989** statutory insurance expense exhibit**, except where an alternative year is indicated**.

7. (No change.)

8. "UCJF Assessments" means amounts paid by insurers to the Unsatisfied Claim and Judgement Fund pursuant to N.J.S.A. 39:6-63 **for their private passenger automobile business and not for their commercial automobile business**, and "UCJF Reimbursements" means amounts received by an insurer from the Unsatisfied Claim and Judgement Fund as a result of excess medical expense benefit payments **on private passenger automobile claims** by the insurer pursuant to N.J.S.A. 39:6-73.1. In DOI Exhibit A, UCJF Reimbursements are referred to as "Excess Medical Benefits."

9. (No change.)

Two: DOI Exhibit A

1. (No change.)

2. The sources of data for Item 1 for [1988] **1989** follows:

Liability	AS New Jersey Page 14 Line 19.2
PIP	AS New Jersey Page 14 Line 19.1
Physical Damage	AS New Jersey Page 14 Line 21.1

For years prior to [1988] **1989**, see N.J.A.C. 11:3-31.5(d), herein.

3.-4. (No change.)

5. Premiums, losses, and dividends for private passenger type commercial vehicles are to be listed in Item 7 as a "write in," but only if they are contained in Item 1**B**, [for loss data or dividend data, or Item 1B, for premium data,] and then only the premiums, losses, and dividends not included in Items 2 through 6.

6.-7. (No change.)

Three: DOI Exhibit ONE

1.-3. (No change.)

Four: DOI Exhibit Three

1. (No change.)

Five: DOI Exhibit Five

1. DOI Exhibit Five Part Three contains [10] **20** Items which continue as Items 11 through 20 in DOI Exhibit Five Part Four.

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Six: DOI Exhibit Six

1. (No change.)

Financial Data Reports for New Jersey Private Passenger Auto

THESE EXHIBITS MUST BE SENT SO THAT THEY ARE RECEIVED BY THE DEPARTMENT OF INSURANCE BY 01 July [1989] **1990**

Group Name_____
Group NAIC Number_____
Company Name_____
Company NAIC Number_____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

DOI EXHIBIT A
Part One
Page 1 of 4

Please state:

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Coverage:

Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Year:

Calendar Year [1988] **1989**_____

Calendar Year [1987] **1988**_____

Sum of the two calendar years [1988] **1989** and [1987] **1988**_____

A separate DOI Exhibit A Part One is to be completed for each coverage and year listed above.

DOI EXHIBIT A
Part One
Page 2 of 4

Please state:

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____
Year _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Col. (1) Direct Premiums Written	Col. (2) Direct Premiums Earned	Col. (3) Direct Losses Paid
Item 1	Source: line ____ of Page 14	____	____	____
Item 1A	UCJF Assessments (**See DOI Exhibit A Part Three**)	____	____	x
Item 1B	Item 1 minus 1A	____	____	____ [x]

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM [ONE] 1.

Exclusions:

Item 2	Excess Medical Benefits (**on private passenger auto claims**)	x	x	____
Item 3	Motorcycles	____	____	____
Item 4	"Off Road" Vehicles	____	____	____
Item 5	JUA Business	____	____	____
Item 6	Excess/Umbrella Policies	____	____	____
	Other Exclusions (list):			
Item 7	_____	____	____	____
Item 8	_____	____	____	____
Item 9	_____	____	____	____
Item 10	_____	____	____	____
Item 10A	Finance and Service Charges **included in Item 1**	____	____	x
Item 11	Subtotal (Sum Items 2 through 10A)	____	____	____
Item 12	Financial Data (Item 1B minus Item 11)	____	____	____

DOI EXHIBIT A
Part One
Page 3 of 4

Please state:

Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____
Coverage _____
Year _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Col. (4) Direct Losses Incurred	Col. (5) Dividends on Direct Business	Col. (6) Direct Unearned Premium Reserves
Item 1	Source: line ____ of Page 14	____	____	____
Item 1A	UCJF Assessments	x	x	x [____]
Item 1B	Item 1 minus 1A	____ [x]	____ [x]	____

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NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM [ONE] 1.

	Exclusions:			
Item 2	Excess Medical Benefits (**on private passenger auto claims**)	____	x	x
Item 3	Motorcycles	____	____	____
Item 4	"Off Road" Vehicles	____	____	____
Item 5	JUA Business	____	____	____
Item 6	Excess/Umbrella Policies	____	____	____
	Other Exclusions (list):			
Item 7	_____	____	____	____
Item 8	_____	____	____	____
Item 9	_____	____	____	____
Item 10	_____	____	____	____
Item 10A	Finance and Service Charges **included in Item 1**	x	x	x [____]
Item 11	Subtotal (Sum Items 2 through 10A)	____	____	____
Item 12	Financial Data (Item 1B minus Item 11)	____	____	____
Item 12A	Refund of Excess Profits Included in Item 12, Col. (5)	x	____	x
Item 12B	All other Dividends Included in Item 12, Col. (5)	x	____	x

DOI EXHIBIT A
Part One
Page 4 of 4

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Coverage _____

Year _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Col. (7) Direct Losses Unpaid
Item 1	Source: line ____ of Page 14	____
Item 1A	UCJF Assessments	x
Item 1B	Item 1 minus 1A	____ [x]

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM [ONE] 1.

	Exclusions:	
Item 2	Excess Medical Benefits (**on private passenger auto claims**)	____
Item 3	Motorcycles	____
Item 4	"Off Road" Vehicles	____
Item 5	JUA Business	____
Item 6	Excess/Umbrella Policies	____
	Other Exclusions (list):	
Item 7	_____	____
Item 8	_____	____
Item 9	_____	____
Item 10	_____	____
Item 10A	Finance and Service Charges **included in Item 1**	x
Item 11	Subtotal (Sum Items 2 through 10A)	____
Item 12	Financial Data (Item 1B minus Item 11)	____

DOI EXHIBIT A
Part Two
Page 1 of 3

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Coverage:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

A separate DOI Exhibit A Part Two is to be completed for each coverage listed above.

DOI EXHIBIT A
Part Two
Page 2 of 3

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Coverage _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Calendar Year [1986] **1987**

		Col. (1) Direct Premiums Written	Col. (2) Direct Unearned Premium Reserve	Col. (3) Direct Losses Unpaid
Item 1	Source: line ____ of Page 14	____	____	____
Item 1A	UCJF Assessments (**See DOI Exhibit A Part Three**)	____	x [____]	x
Item 1B	Item 1 minus 1A	____	____	____ [x]

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NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM [ONE] **1**.

	Exclusions:			
Item 2	Excess Medical Benefits **(on private passenger auto claims)**	x	x	____
Item 3	Motorcycles	____	____	____
Item 4	"Off Road" Vehicles	____	____	____
Item 5	JUA Business	____	____	____
Item 6	Excess/Umbrella Policies	____	____	____
	Other Exclusions (list):			
Item 7	_____	____	____	____
Item 8	_____	____	____	____
Item 9	_____	____	____	____
Item 10	_____	____	____	____
Item 10A	Finance and Service Charges **included in Item 1**	____	x [____]	x
Item 11	Subtotal (Sum Items 2 through 10A)	____	____	____
Item 12	Financial Data (Item 1B minus Item 11)	____	____	____

DOI EXHIBIT A
Part Two
Page 3 of 3

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Coverage _____

Year _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Calendar Year [1985] **1986**

		Col. (1) Direct Premiums Written	Col. (2) Direct Unearned Premium Reserve	Col. (3) Direct Losses Unpaid
Item 1	Source: line ____ of Page 14	____	____	____
Item 1A	UCJF Assessments **(See DOI Exhibit A Part Three)**	____	x [____]	x
Item 1B	Item 1 minus 1A	____	____	____ [x]

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM [ONE] **1**.

	Exclusions:			
Item 2	Excess Medical Benefits **(on private passenger auto claims)**	x	x	____
Item 3	Motorcycles	____	____	____
Item 4	"Off Road" Vehicles	____	____	____
Item 5	JUA Business	____	____	____
Item 6	Excess/Umbrella Policies	____	____	____
	Other Exclusions (list):			
Item 7	_____	____	____	____
Item 8	_____	____	____	____
Item 9	_____	____	____	____
Item 10	_____	____	____	____
Item 10A	Finance and Service Charges **included in Item 1**	____	x [____]	x
Item 11	Subtotal (Sum Items 2 through 10A)	____	____	____
Item 12	Financial Data (Item 1B minus Item 11)	____	____	____

DOI EXHIBIT A
Part Three
Page [One] **1**
UCJF Assessments

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

		Calendar Year [1988] **1989**	Calendar Year [1987] **1988**	Calendar Year [1986] **1987**
Item 1	Assessed during the calendar year	____	____	____
Item 2	Assessed during the prior calendar year	____	____	____
Item 3	UCJF Assessments Incurred [(3 x Item 1) minus (2 x Item 2)]	____	____	____

Notes:

[Item 1 is the amount the insurer was informed by the UCJF that the insurer was assessed during the calendar year.]

Item 1 is the number of dollars of the UCJF assessment for the calendar year that is assessed on private passenger auto premiums and it excludes the amount of the UCJF assessment that is assessed on commercial auto premiums.

[Item 2 is the amount the insurer was informed by the UCJF that the insurer was assessed during the prior calendar year.]

Item 2 is the number of dollars of the UCJF assessment for the calendar year that is assessed on private passenger auto premiums and it excludes the amount of the UCJF assessment that is assessed on commercial auto premiums.

Item 3 is to be reported on DOI Exhibit A Parts One and Two.

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DOI EXHIBIT A
Part Three
Page [Two] **2**
UCJF Assessments

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

		Calendar Year [1985] **1986**
Item 1	Assessed during the calendar year	____
Item 2	Assessed during the prior calendar year	____
Item 3	UCJF Assessments Incurred [(3 x Item 1) minus (2 x Item 2)]	____

Notes:

[Item 1 is the amount the insurer was informed by the UCJF that the insurer was assessed during the calendar year.]

Item 1 is the number of dollars of the UCJF assessment for the calendar year that is assessed on private passenger auto premiums and it excludes the amount of the UCJF assessment that is assessed on commercial auto premiums.

[Item 2 is the amount the insurer was informed by the UCJF that the insurer was assessed during the prior calendar year.]

Item 2 is the number of dollars of the UCJF assessment for the calendar year that is assessed on private passenger auto premiums and it excludes the amount of the UCJF assessment that is assessed on commercial auto premiums.

Item 3 is to be reported on DOI Exhibit A Parts One and Two.

DOI EXHIBIT A
Part Four
Physical Damage Rating
Questionnaire

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Does the filer use model year rating in its physical damage rating system?

Check one:

Yes_____

No_____

DOI EXHIBIT ONE
Part One

A separate DOI Exhibit ONE Part One is to be completed containing data for each of the calendar years [1988] **1989** and [1987] **1988**, and also for the sum of the two years' data, for a total of three DOI Exhibits.

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.

Notes:
Columns (1) and (3) show dollars in thousands.
Columns (2) and (4) show ratios to Net Earned Premium.

Data is from the statutory Insurance Expense Exhibit ("IEE"), column 19.1, 19.2 (for liability) and column 21.1 (for physical damage).

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Calendar Year [1988] **1989** _____

Calendar Year [1987] **1988** _____

Sum of the two calendar years _____

	Private Passenger Auto Liability		Private Passenger Auto Physical Damage	
	Col. (1)	Col. (2)	Col. (3)	Col. (4)
Net Earned Premium (IEE Line 2)	____	1.00	____	1.00
Other Acquisition (IEE Line 6)	____	____	____	____
General Expenses (IEE Line 7)	____	____	____	____
Commission and Brokerage (IEE Line 5)	____	____	____	____
Taxes, Licenses, Fees (IEE Line 8)	____	____	____	____
Losses Incurred (IEE Line 3)	____	____	____	____
Loss Adjustment Expenses Incurred (IEE Line 4)	____	____	____	____

DOI EXHIBIT ONE
Part Two
Section One Page 1

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING
THE EXHIBITS,
PLEASE READ THE
INSTRUCTIONS.

		Direct General Expenses Col. (1) Calendar Year [1988] **1989**	Col. (2) Calendar Year [1987] **1988**
Item 1	Direct Premiums Earned (DOI Exhibit A, Part One, Page 2, Item 12, Col. (2)).	____	____
Item 2	Direct General Expenses paid during calendar year	____	____
Item 3	Direct General Expenses unpaid as of 31 December of the calendar year	____	____
Item 4	Direct General Expenses unpaid as of 31 December of the prior calendar year	____	____
Item 5	Direct General Expenses Incurred (Item 2 + Item 3 – Item 4)	____	____
Item 6	Ratio Item 5 divided by Item 1	____	____

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DOI EXHIBIT ONE
Part Two
Section One Page 2

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Direct General Expenses

		Calendar Year [1986] **1987**
Item 1	Direct Premiums Earned (DOI Exhibit A, Part Two, Page 2 of 3, Col. (1), Item 12 MINUS DOI Exhibit A, Part Two, Page 2 of 3, Col. (2), Item 12 PLUS DOI Exhibit A Part Two, Page 3 of 3, Col. (2), Item 12)	____
Item 2	Direct General Expenses paid during calendar year	____
Item 3	Direct General Expenses unpaid as of 31 December of the calendar year	____
Item 4	Direct General Expenses unpaid as of 31 December of the prior calendar year	____
Item 5	Direct General Expenses Incurred (Item 2 + Item 3 - Item 4)	____
Item 6	Ratio Item 5 divided by Item 1	____

DOI EXHIBIT ONE
Part Two
Section Two Page 1

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Direct Other Acquisition Expenses

		Col. (1) Calendar Year [1988] **1989**	Col. (2) Calendar Year [1987] **1988**
Item 1	Direct Premiums Earned (DOI Exhibit A, Part One, Page 2, Item 12).	____	____
Item 2	Direct Other Acquisition paid during calendar year	____	____
Item 3	Direct Other Acquisition unpaid as of 31 December of the calendar year	____	____
Item 4	Direct Other Acquisition unpaid as of 31 December of the prior calendar year	____	____
Item 5	Direct Other Acquisition Incurred (Item 2 + Item 3 - Item 4)	____	____
Item 6	Ratio Item 5 divided by Item 1	____	____

DOI EXHIBIT ONE
Part Two
Section Two Page 2

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

Direct Other Acquisition Expenses

		Calendar Year [1986] **1987**
Item 1	Direct Premiums Earned (DOI Exhibit One, Part Two, Section One, Page 2, Item 1).	____
Item 2	Direct Other Acquisition paid during calendar year	____
Item 3	Direct Other Acquisition unpaid as of 31 December of the calendar year	____
Item 4	Direct Other Acquisition unpaid as of 31 December of the prior calendar year	____
Item 5	Direct Other Acquisition Incurred (Item 2 + Item 3 - Item 4)	____
Item 6	Ratio Item 5 divided by Item 1	____

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DOI EXHIBIT ONE
Part Two
Section Three

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Commission and Brokerage Fees Incurred Calendar Year [1988] **1989**
Item 1	[1988] **1989** Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	____
Item 2	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	____
Item 3	Dollars of [1988] **1989** Direct Written Premium (**as stated in Item 1**) that are earned in [1988] **1989**	____
Item 4	Ratio Item 3 divided by Item 1	____
Item 5	Item 2 x Item 4	____
Item 6	[1987] **1988** Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	____
Item 7	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	____
Item 8	Dollars of [1987] **1988** Direct Written Premium (**as stated in Item 6**) that are earned in [1988] **1989**	____
Item 9	Ratio Item 8 divided by Item 6	____
Item 10	Item 9 x Item 7	____
Item 11	[1988] **1989** Commission and Brokerage Incurred (Item 10 + Item 5)	____

DOI EXHIBIT ONE
Part Two
Section Four-A

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Commission and Brokerage Fees Incurred Calendar Year [1987] **1988**
Item 1	[1987] **1988** Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	____
Item 2	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	____
Item 3	Dollars of [1987] **1988** Direct Written Premium (**as stated in Item 1**) that are earned in [1987] **1988**	____
Item 4	Ratio Item 3 divided by Item 1	____
Item 5	Item 2 x Item 4	____
Item 6	[1986] **1987** Direct Written Premium (DOI Exhibit A, Part Two, Page 2, Item 12, Col. (1))	____
Item 7	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	____
Item 8	Dollars of [1986] **1987** Direct Written Premium (**as stated in Item 6**) that are earned in [1987] **1988**	____
Item 9	Ratio Item 8 divided by Item 6	____
Item 10	Item 9 x Item 7	____
Item 11	[1987] **1988** Commission and Brokerage Incurred (Item 10 + Item 5)	____

DOI EXHIBIT ONE
Part Two
Section Four-B

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Commission and Brokerage Fees Incurred Calendar Year [1986] **1987**
Item 1	[1986] **1987** Direct Written Premium (DOI Exhibit A, Part Two, Page 2, Item 12, Col. (1))	____
Item 2	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	____
Item 3	Dollars of [1986] **1987** Direct Written Premium (**as stated in Item 1**) that are earned in [1986] **1987**	____
Item 4	Ratio Item 3 divided by Item 1	____
Item 5	Item 2 x Item 4	____
Item 6	[1985] **1986** Direct Written Premium (DOI Exhibit A, Part Two, Page 3 [of 3], Item 12, Col. (1))	____

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Item 7	Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	____
Item 8	Dollars of [1985] **1986** Direct Written Premium (**as stated in Item 6**) that are earned in [1986] **1987**	____
Item 9	Ratio Item 8 divided by Item 6	____
Item 10	Item 9 x Item 7	____
Item 11	[1986] **1987** Commission and Brokerage Incurred (Item 10 + Item 5)	____

DOI EXHIBIT ONE
Part Two
Section Five

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Taxes, Licenses, Fees Incurred Calendar Year [1988] **1989**
Item 1	[1988] **1989** Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	____
Item 2	Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 1	____
Item 3	Dollars of [1988] **1989** Direct Written Premium (**as stated in Item 1**) that are earned in [1988] **1989**	____
Item 4	Ratio Item 3 divided by Item 1	____
Item 5	Item 2 x Item 4	____
Item 6	[1987] **1988** Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	____
Item 7	Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 6	____
Item 8	Dollars of [1987] **1988** Direct Written Premium (**as stated in Item 6**) that are earned in [1988] **1989**	____
Item 9	Ratio Item 8 divided by Item 6	____
Item 10	Item 9 x Item 7	____
Item 11	[1988] **1989** Taxes, Licenses, and Fees Incurred (Item 10 + Item 5)	____

DOI EXHIBIT ONE
Part Two
Section Six

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Taxes, Licenses, Fees Incurred Calendar Year [1987] **1988**
Item 1	[1987] **1988** Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	____
Item 2	Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 1	____
Item 3	Dollars of [1987] **1988** Direct Written Premium (**as stated in Item 1**) that are earned in [1987] **1988**	____
Item 4	Ratio Item 3 divided by Item 1	____
Item 5	Item 2 x Item 4	____
Item 6	[1986] **1987** Direct Written Premium (DOI Exhibit A, Part Two, Page 2, Item 12, Col. (1))	____
Item 7	Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 6	____
Item 8	Dollars of [1986] **1987** Direct Written Premium (**as stated in Item 6**) that are earned in [1987] **1988**	____
Item 9	Ratio Item 8 divided by Item 6	____
Item 10	Item 9 x Item 7	____
Item 11	[1987] **1988** Taxes, Licenses, and Fees Incurred (Item 10 + Item 5)	____

DOI EXHIBIT ONE
Part Two
Section Seven

Please state:
Group Name _____
Group NAIC Number _____
Company Name _____
Company NAIC Number _____

Check one:
Liability _____
PIP _____
Physical Damage _____
Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

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		Taxes, Licenses, Fees Incurred Calendar Year [1986] **1987**
Item 1	[1986] **1987** Direct Written Premium (DOI Exhibit A, Part Two, Page 2, Item 12, Col. (1))	____
Item 2	Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 1	____
Item 3	Dollars of [1986] **1987** Direct Written Premium (**as stated in Item 1**) that are earned in [1986] **1987**	____
Item 4	Ratio Item 3 divided by Item 1	____
Item 5	Item 2 x Item 4	____
Item 6	[1985] **1986** Direct Written Premium (DOI Exhibit A, Part Two, Page 3, Item 12, Col. (1))	____
Item 7	Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 6	____
Item 8	Dollars of [1985] **1986** Direct Written Premium (**as stated in Item 6**) that are earned in [1986] **1987**	____
Item 9	Ratio Item 8 divided by Item 6	____
Item 10	Item 9 x Item 7	____
Item 11	[1986] **1987** Taxes, Licenses, and Fees Incurred (Item 10 + Item 5)	____

DOI EXHIBIT TWO
New Jersey Expenses

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

Check one:

Calendar Year [1987] **1989** _____

Calendar Year 1988 _____

Sum of the two calendar years _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Col. (1) (Dollars)	Col. (2) (**Ratio to Direct Earned Premium**)
1)	Direct Earned Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (2))	____	[100.0%] **1.000**
2)	Direct Commission and Brokerage Fees Incurred (DOI Exhibit One, Part Two, Section Three, **Item 11** for [1988] **1989** and Section Four-A, **Item 11** for [1987] **1988**)	____	____
3)	Direct Other Acquisition, Field Supervision, Collection Fees Incurred (DOI Exhibit One, Part Two, Section Two, Page 1, Col. (1), **Item 5** for [1988] **1989** and Col. (2), **Item 5** for [1987] **1988**)	____	____
4)	Direct General Expenses Incurred (DOI Exhibit One, Part Two, Section One, Page 1, Col. (1), **Item 5** for [1988] **1989** and Col. (2), **Item 5** for [1987] **1988**)	____	____
5)	Direct Taxes, Licenses, Fees Incurred (DOI Exhibit One, Part Two, Section Five, **Item 11** for [1988] **1989** and **Section** Six, **Item 11** for [1987] **1988**)	____	____
6)	Direct Losses Incurred (DOI Exhibit A, Part One, Page 3, Item 12, Col. (4))	____	____
7)	Direct Loss Adjustment Expenses Incurred (DOI Exhibit Three, Part One, **Col. (1), Item 9** for [1988] **1989** and Part Two, **Col. (1), Item 9** for [1987 Item 9] **1988**)	____	____

DOI EXHIBIT THREE
Part One
Premiums, Losses, Expenses
Calendar Year [1988] **1989**

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

		Col. (1) [1988] **1989**	Col. (2) [1987] **1988**	Col. (3) Difference (Col. (1) - Col. (2))
1)	Direct Written Premiums (DOI Exhibit A, Part One, Page 2, Item 12, **Col. (1)**)	____	x	x
2)	Direct Unearned Premium Reserve as 12/31 (DOI Exhibit A, Part One, Page 3, Item 12, Col. [(1)] **(6)**)	____	____	____
3)	Direct Earned Premiums [Item 1 minus Item 2, Col. 3] (**DOI Exhibit A, Part One, Page 2, Item 12, Col. (2)**)	____	x	x
4)	Direct Paid Losses (DOI Exhibit A, Part One, Page 2, Item 12, Col. (3))	____	x	x
5)	Direct Unpaid Losses at 12/31 (DOI Exhibit A, Part One, Page 4, Item 12)	____	____	____
6)	Direct Incurred Losses [Item 4 plus Item 5 Col. (3)] (**DOI Exhibit A, Part One, Page 3, Item 12, Col. (4)**)	____	x	x
7)	Direct Paid Loss Adjustment Expenses	____	x	x
8)	Direct Unpaid Loss Adjustment Expenses at 12/31	____	____	____
9)	Direct Incurred Loss Adjustment Expense (**DOI Exhibit Two, Item 7, Col. (1)**)	____	x	x

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DOI EXHIBIT THREE
Part Two
Premiums, Losses, Expenses
Calendar Year [1987] **1988**

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1987] **1988**	Col. (2) [1986] **1987**	Col. (3) Difference (Col. (1) - Col. (2))
1) Direct Written Premiums (DOI Exhibit A, Part One, Page 2, Item 12, **Col. (1)**)	____	x	x
2) Direct Unearned Premium Reserve as 12/31 (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6) for [1987] **1988**, and Part Two, Page 2, Item 12, Col. (2) for [1986] **1987**)	____	____	____
3) Direct Earned Premiums [Item 1 minus Item 2, Col. 3] (**DOI Exhibit A, Part One, Page 2, Item 12, Col. (2)**)	____	x	x
4) Direct Paid Losses (DOI Exhibit A, Part One, Page 2, Item 12, Col. (3))	____	x	x
5) Direct Unpaid Losses at 12/31 (DOI Exhibit A, Part One, Page 4, Item 12 for [1987] **1988** and Part Two, Page 2, Item 12, Col. (3) for [1986] **1987**)	____	____	____
6) Direct Incurred Losses [Item 4 plus Item 5 Col. (3)] (**DOI Exhibit A, Part One, Page 3, Item 12, Col. (4)**)	____	x	x
7) Direct Paid Loss Adjustment Expenses	____	x	x
8) Direct Unpaid Loss Adjustment Expenses at 12/31	____	____	____
9) Direct Incurred Loss Adjustment Expense (**DOI Exhibit Two, Item 7, Col. (1)**)	____	x	x

DOI EXHIBIT FOUR
Equity in Unearned Premium Reserve

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1988] **1989**	Col. (2) [1987] **1988**	Col. (3) [1986] **1987**
1) Direct Unearned Premium Reserve at 12/31 (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6) for [1988] **1989** and [1987] **1988**, and Part Two, Page 2, Item 12, Col. (2) for [1986] **1987**)	____	____	____
2) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1) for [1988] **1989** and [1987] **1988** and Part Two, Page 2, Item 12, Col. (1) for [1986] **1987**)	____	____	____
3) Direct Commission and Brokerage Fees Incurred (DOI Exhibit One, Part Two, Item 11, Sections Three, Four-A and Four-B for [1988] **1989**, [1987] **1988** and [1986] **1987**, respectively)	____	____	____
4) Direct Other Acquisition Expenses Incurred (DOI Exhibit One, Part Two, Section Two, Page 1, Item 5, for [1988] **1989** and [1987] **1988**, and Page 2, Item 5, for [1986] **1987**)	____	____	____
5) Direct General Expenses Incurred (DOI Exhibit One, Part Two, Section One, Page 1, Item 5 for [1988] **1989** and [1987] **1988**, and Page 2, Item 5 for [1986] **1987**)	____	____	____
6) Direct Taxes, Licenses, Fees Incurred (DOI Exhibit One, Part Two, Section Five, Item 11, for [1988] **1989**, Section Six, Item 11 for [1987] **1988** and Section Seven, Item 11 for [1986] **1987**)	____	____	____
7) Prepaid Expenses (1/2 x (Item 4 + Item 5)) + (Item 6 + Item 5)	____	____	____
8) Ratio, Item 7 divided by Item 2	____	____	____
Note: Limit Item 8 to a maximum of 1.000			
9) Equity at 12/31 (Item 8 x Item 1)	____	____	____
10) Change [1987] **1988** to [1988] **1989** (Item 9, Col. (1) minus Item 9, Col. (2))	____	x	x
11) Change [1986] **1987** to [1987] **1988** (Item 9, Col. (2) minus Item 9, Col. (3))	____	x	x

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DOI EXHIBIT FIVE
Part One
Investment Income Data
Countrywide Data

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1988] **1989**	Col. (2) [1987] **1988**	Col. (3)
1) Interest, Dividends, Real Estate Income (AS, page 6, part 1, col. 8, line 15)	____	x	x
2) Realized Capital Gains (AS, page 6, part 1A, col. 7, line 11)	____	x	x
3) Total, Item 1 plus Item 2	____	x	x
4) Invested Assets (AS, page 2, line 8A, col. 1 for [1988] **1989**, col. 2 for [1987] **1988**)	____	____	x
5) Average [1/2 x (Item 4 Col. (1) + Item 4 Col. (2))]	x	x	____
6) Rate of Return (Ratio Item 3, Col. (1) divided by Item 5, Col. (3))	x	x	____
7) Agents Balances (AS, page 2, col. 1, line 9.1 plus line 9.2 plus line 9.3 plus line 10 plus line 11)	____	x	x
8) Unearned Premium Reserve (AS, page 3, line 9, col. 1)	____	x	x
9) Ratio Item 7 divided by Item 8	x	x	____

DOI EXHIBIT FIVE
Part Two
New Jersey Data

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1988] **1989**	Col. (2) [1987] **1988**	Col. (3)
10) Direct Prepaid Expenses (DOI Exhibit Four, Item 7, Col. (1))	____	x	x
11) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col. (1))	____	x	x
12) Ratio Item 10 divided by Item 11	x	x	____
13) Direct Unearned Premium Reserve (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6))	____	____	x
14) Average **Direct Unearned Premium Reserve** [1/2 x (Item 13 Col. (1) + Item 13 Col. (2))]	x	x	____
15) Investable Unearned Premiums [(1.000 – Item 9 – Item 12) x Item 14 [)]] Limit to a minimum of zero	x	x	____
16) Average Direct Unpaid Losses [(1/2 x (DOI Exhibit Three Part One, Item 5, Col. (1) + Col. (2))]	x	x	____
17) Average Direct Unpaid Loss Adjustment Expenses [(1/2 x (DOI Exhibit Three Part One, Item 8, Col. (1) + Col. (2))]	x	x	____
18) Subtotal (Item 16 plus Item 17)	x	x	____
19) Investable Reserves (Item 18 plus Item 15)	x	x	____
20) Investment Income **Estimate** (Item 19 x Item 6)	x	x	____

DOI EXHIBIT FIVE
Part Three
Investment Income Data
Countrywide Data

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

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	Col. (1) [1987] **1988**	Col. (2) [1986] **1987**	Col. (3)
1) Interest, Dividends, Real Estate Income (AS, page 6, part 1, col. 8, line 15)	____	x	x
2) Realized Capital Gains (AS, page 6, part 1A, col. 7, line 11)	____	x	x
3) Total, Item 1 plus Item 2	____	x	x
4) Invested Assets (AS, page 2, line 8A, col. 1 for [1987] **1988**, col. 2 for [1986] **1987**)	____	____	x
5) Average [1/2 x (Item 4 Col. (1) + Item 4 Col. (2))]	x	x	____
6) Rate of Return (Ratio Item 3, Col. (1) divided by Item 5, Col. (3))	x	x	____
7) Agents Balances (AS, page 2, col. 1, line 9.1 plus line 9.2 **plus line 9.3** plus line 10 plus line 11)	____	x	x
8) Unearned Premium Reserve (AS, page 3, line 9, col. 1)	____	x	x
9) Ratio Item 7 divided by Item 8	x	x	____

Note: Sources cited for DOI Exhibit Five Part Three are for the 1988 Statutory Annual Statement.

DOI EXHIBIT FIVE
Part Four
New Jersey Data

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1987] **1988**	Col. (2) [1986] **1987**	Col. (3)
10) Direct Prepaid Expenses (DOI Exhibit Four, Item 7, Col. (2))	____	x	x
11) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, [and Part Two, Page 2, Item 12,] **Col. (1)**)	____	x	x
12) Ratio Item 10 divided by Item 11	x	x	____
13) Direct Unearned Premium Reserve (DOI Exhibit A, Part One, Page 3, Item 12, Col. (6) for [1987] **1988** and Part Two, Page 2, Item 12, Col. (2) for [1986] **1987**)	____	____	x
14) Average [1/2 x (Item 13 Col. (1) + Item 13 Col. (2))]	x	x	____
15) Investable Unearned Premiums [(1.000 – Item 9 – Item 12) x Item 14] Limit to a minimum of zero	x	x	____
16) Average Direct Unpaid Losses [1/2 x (DOI Exhibit Three Part Two, Item 5, Col. (1) + Col. (2))]	x	x	____
17) Average Direct Unpaid Loss Adjustment Expenses [1/2 x (DOI Exhibit Three Part Two, Item 8, Col. (1) + Col. (2))]	x	x	____
18) Subtotal (Item 16 plus Item 17)	x	x	____
19) Investable Reserves (Item 18 plus Item 15)	x	x	____
20) Investment Income **Estimate** (Item 19 x Item 6)	x	x	____

DOI EXHIBIT SIX
Part One
Other Income

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1988] **1989**	Col. (2)
1) Total Other Income (AS, page 4, line 13, col. 1)	____	x
2) Aggregate Write-In Deductions (AS, page 4, line 5, col. 1)	____	x
3) Item 1 minus Item 2	____	x
4) Direct Earned Premiums (DOI Exhibit Three Part One, Item 3, Col. (1))	____	x
5) Net Earned Premiums (AS, page 4, line 1, col. 1)	____	x
6) Item 4 x Item 3	x	____
7) Other Income (Item 6 divided by Item 5)	____	x

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DOI EXHIBIT SIX
Part Two
Other Income

Please state:	Check one:
Group Name _____	Liability _____
Group NAIC Number _____	PIP _____
Company Name _____	Physical Damage _____
Company NAIC Number _____	Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1987] 1988	Col. (2)
1) Total Other Income (AS, page 4, line 13, col. 2)	____	x
2) Aggregate Write-In Deductions (AS, page 4, line 5, col. 2)	____	x
3) Item 1 minus Item 2	____	x
4) Direct Earned Premiums (DOI Exhibit Three Part Two, Item 3, Col. (1))	____	x
5) Net Earned Premiums (AS, page 4, line 1, col. 2)	____	x
6) Item 4 x Item 3	x	____
7) Other Income (Item 6 divided by Item 5)	____	x

DOI EXHIBIT SEVEN
Financial Result

Please state:	Check one:
Group Name _____	Liability _____
Group NAIC Number _____	PIP _____
Company Name _____	Physical Damage _____
Company NAIC Number _____	Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1988] 1989	Col. (2) [1987] 1988	Col. (3) Col. (1) plus Col. (2)
1) Direct Written Premiums (DOI Exhibit Three Part One, Item 1 for [1988] 1989 and Part Two, Item 1 for [1987] 1988)	____	____	____
2) Direct Earned Premiums (DOI Exhibit Three Part One, Item 3 for [1988] 1989 and Part Two, Item 3 for [1987] 1988)	____	____	____
3) Direct Losses Incurred (DOI Exhibit Three Part One, Item 6 for [1988] 1989 and Part Two, Item 6 for [1987] 1988)	____	____	____
4) Direct Loss Adjustment Expenses Incurred (DOI Exhibit Three Part One, Item 9 for [1988] 1989 and Part Two, Item 9 for [1987] 1988)	____	____	____
4A) Item 3 plus Item 4	____	____	____
4B) Ratio Item 4A divided by Item 2	____	____	x
5) Direct Underwriting Expense Incurred (DOI Exhibit Four, Item 3 plus Item 4 plus Item 5 plus Item 6, all Col. (1) for [1988] 1989 and Col. (2) for [1987] 1988)	____	____	____
6) Change in Equity in the UEPR (DOI Exhibit Four, Item 10 for [1988] 1989 and Item 11 for [1987] 1988)	____	____	____

[DOI EXHIBIT SEVEN—continued]

6A) Item 5 minus Item 6	____	____	____
6B) Ratio Item 6A divided by Item 2	____	____	x
7) Excess Profit Credit or Refund Incurred (DOI Exhibit A Part One, Page 3, Col. (5), Item 12A [for the appropriate year])	____	____	____

DOI EXHIBIT SEVEN—continued

7A) Dividends Other Than Excess Profit Credit or Refund (DOI Exhibit A Part One, Page 3, Col. (5), Item 12B [for the appropriate year])	____	____	____
7B) AIRE Charges	____	____	____
7C) AIRE Compensation	____	____	____
8) Underwriting Result (Item 2 minus Item 3 minus Item 4 minus Item 5 plus Item 6 minus Item 7 minus Item 7A minus Item 7B plus Item 7C)	____	____	____
9) Ratio Item 8 divided by Item 2	____	____	x
10) Other Income (DOI Exhibit Six Part One, Item 7 for [1988] 1989, DOI Exhibit Six Part Two, Item 7 for [1987] 1988)	____	____	____
11) Total (Item 8 plus Item 10)	____	____	____
12) Ratio Item 11 divided by Item 2	____	____	x
13) Item 7 plus Item 7A	____	____	____

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DOI EXHIBIT EIGHT
Equity in the Unearned Premium Reserve
ALL Lines Combined

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1988] **1989**	Col. (2) [1987] **1988**
1) Net Written Premiums ALL Lines (IEE, Col. (34), line 1)	____	____
2) Commission and Brokerage ALL Lines (IEE, Col. (34), line 5)	____	____
3) Other Acquisition ALL Lines (IEE, Col. (34), line 6)	____	____
4) General Expenses ALL Lines (IEE, Col. (34), line 7)	____	____
5) Taxes, Licenses, Fees ALL Lines (IEE, Col. (34), line 8)	____	____
6) Prepaid Expenses [1/2 x [Item 3 + Item 4]) + (Item 2 + Item 5)]	____	____
7) Item 6 as a ratio to Item 1 Limit Item 7 to a maximum of 1.000	____	____
8) Unearned Premium Reserve ALL Lines (AS, page 3, line 9, Col. (1) for [1988] **1989** and Col. (2) for [1987] **1988**)	____	____
9) Equity in the Unearned Premium Reserve (Item 7 x Item 8)	____	____
10) Average (1/2 x [Item 9, Col. (1) + Item 9, Col. (2)])	____	x

DOI EXHIBIT NINE
Restated Surplus

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1988] **1989**	Col. (2) [1987] **1988**
1) Stated Surplus (AS, page 3, line 26, col. 1 for [1988] **1989** and col. 2 for [1987] **1988**)	____	____
2) Excess of Statutory Over Statement Reserves (AS, page 3, line 15, col. 1 for [1988] **1989** and col. 2 for [1987] **1988**)	____	____
3) Reinsurance From Unauthorized Companies (AS, page 3, line 14, col. 1 for [1988] **1989** and col. 2 for [1987] **1988**; include only amounts deemed sound)	____	____
4) Non-Admitted Assets (AS, page 12, Exhibit 2, Col. 2, sum of lines 22 through 30; include only amounts deemed sound)	____	____
5) Equity in the Unearned Premium Reserve (DOI Exhibit Eight, Item 9, Col. (1) for [1988] **1989**, Col. (2) for [1987] **1988**)	____	____
6) Total of Items 1, 2, 3, 4 and 5	____	____
7) (Item 6, Col. (1) + Item 6, Col. (2)) x 1/2	____	x

DOI EXHIBIT TEN
Allocation of Surplus

Please state:

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

Check one:

Liability _____

PIP _____

Physical Damage _____

Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

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	Col. (1) [1988] **1989**	Col. (2) [1987] **1988**	Col. (3) Average
1) Average Direct Loss and Loss Adjustment Expenses Reserves (DOI Exhibit Five Part Two, Item 18)	x	x	____
2) Direct Unpaid Losses All Lines Countrywide (AS, Schedule T, line 98, col. 7)	____	____	____
3) Direct Unpaid Loss Adjustment Expenses (loss expense reserves that correspond to Item 2)	____	____	____
4) Subtotal (Item 2 plus Item 3)	x	x	____
5) Ratio Item 1 divided by Item 4	x	x	____
6) Surplus (DOI Exhibit Nine, Item 6, Col. (1) for [1988] **1989** and Col. (2) for [1987] **1988**)	____	____	____
7) First Surplus (Item 6, Col. (3) x Item 5)	x	x	____
8) Direct Earned Premium (DOI Exhibit Three Part One, Item 3 for [1988] **1989**)	____	x	x
9) Direct Earned Premium All Lines Countrywide (AS, Schedule T, Line 98, Col. 3)	____	x	x
10) Ratio Item 8 divided by Item 9	x	x	____
11) Second Surplus (Item 10 x Item 6, Col. (3))	x	x	____
12) Average (1/2 x (Item 7 + Item 11))	x	x	____
[13) Ratio Item 8 divided by Item 12]	[x	x	____]

Note: Col. (3) is the average of Cols. (1) and (2), except for Items 1, 4, 5, 7, 8, 9, 10, 11, 12.

DOI EXHIBIT ELEVEN

Please state:	Check one:
Group Name _____	Liability _____
Group NAIC Number _____	PIP _____
Company Name _____	Physical Damage _____
Company NAIC Number _____	Total of above three coverages _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS.

	Col. (1) [1987] **1989**	Col. (2) 1988	Col. (3) [Total] Col. (1) **plus** Col. (2)
1) Direct Earned Premium (DOI Exhibit Seven, Item 2)	____	____	____
2) Total Underwriting and Other (DOI Exhibit Seven, Item 11)	____	____	____
3) Excess Profit Refund (DOI Exhibit Seven, Item 7)	____	____	____
4) Other Dividends (DOI Exhibit Seven, Item 7A)	____	____	____
5) Direct Unpaid Losses (DOI Exhibit Three Part One, Item 5)	____	____	____
6) Direct Unpaid Loss Adjustment Expenses (DOI Exhibit Three Part One, Item 8)	____	____	____
7) Subtotal (Item 5 plus Item 6)	____	____	____
8) Item 7 x 0.090	____	____	____
9) Subtotal (Item 2 plus Item 8)	____	____	____
10) Ratio Item 9 divided by Item 1	____	____	____
11) Subtotal (Item 2 plus Item 3 plus Item 4)	____	____	____
12) Subtotal (Item 11 plus Item 8)	____	____	____
13) Ratio Item 12 divided by Item 1	____	____	____
14) Item 2 plus Item 4	____	____	____
15) Subtotal (Item 14 plus Item 8)	____	____	____
16) Ratio Item 15 divided by Item 1	____	____	____

(a)

DIVISION OF PROPERTY AND LIABILITY

Certification of Compliance: Mandatory Liability Coverages

Proposed New Rules: N.J.A.C. 11:3-32

Authorized By: Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1c-6(e) and N.J.S.A. 17:28-1.4.

Proposal Number: PRN 1990-163.

Submit comments by May 2, 1990 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The Department of Insurance ("Department") proposes new rules in accordance with N.J.S.A. 17:28-1.4, which requires all insurers authorized to transact automobile or motor vehicle insurance in New Jersey to certify that all insurers under common management or control shall include in each automobile or motor vehicle liability insurance policy, coverages to satisfy New Jersey's mandatory insurance requirements. A certification must be provided by the insurer to the Department regarding such cov-

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erage applying whenever the automobile or motor vehicle insured under the policy is used or operated in this State.

Applicable to such circumstances, N.J.S.A. 17:28-1.4 requires automobile insurance policies to at least satisfy the liability coverages of N.J.S.A. 39:6A-3, the personal injury protection benefit coverages of N.J.S.A. 39:6A-3 and the uninsured motorist coverages of N.J.S.A. 17:28-1.1.

N.J.S.A. 17:28-1.4 also requires that motor vehicle insurance policies must at least satisfy the liability coverages of N.J.S.A. 39:6B-1; the personal injury protection benefit coverages of N.J.S.A. 17:28-1.3; and the uninsured motorist coverages of N.J.S.A. 17:28-1.1.

The proposed new rules are needed to ensure that insurers include in each automobile or motor vehicle insurance policy the mandatory insurance coverages for out-of-State vehicles that are used or operated in this State. The proposed new rules establish procedures which require insurers to provide the Department with written certification of compliance with the requirements of N.J.S.A. 17:28-1.4.

A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 11:3-32.1 states the purpose and scope of the proposed new rules.

N.J.A.C. 11:3-32.2 provides the definitions for the terms that are used in the proposed new rules.

N.J.A.C. 11:3-32.3 provides the certification of compliance requirements. The rule states which insurers must file a certification of compliance and what information must be included in that filing.

N.J.A.C. 11:3-32.4 states how requests for certifications are to be filed and where these requests are to be sent.

Social Impact

The proposed new rules provide insurers with a standard method for filing a written certification of compliance, with N.J.S.A. 17:28-1.4, which provides that the mandatory New Jersey insurance coverages be included in policies covering out-of-State automobiles and motor vehicles when operated in this State. The rules also provide a method for interested parties to discover if a certification has been filed. The statute provides out-of-State motorists with New Jersey personal injury protection benefits, and subjects them to the lawsuit threshold. The purpose of the proposed new rules is to ensure that out-of-State motorists with insurance purchased in another state, generally subject to different laws and rules, have appropriate coverage mandated by law when the vehicle is driven in New Jersey.

Economic Impact

Insurers which are not authorized in New Jersey for automobile or motor vehicle insurance but under common management with insurers authorized in New Jersey, are required by N.J.S.A. 17:28-1.4 to provide the minimum amount of New Jersey coverage for automobiles or motor vehicles used or operated in this State. N.J.S.A. 17:28-1.4 also requires authorized insurers to file and maintain with the Department written certification of compliance with the statutory provision. As a result of this statutory requirement, the Department will have to maintain files and respond to requests for these certifications.

The requirement that insurers file with the Department a written certification of compliance with N.J.S.A. 17:28-1.4 is a minimal burden. By requiring such certification, the economic interests of New Jersey insureds are protected in relation to out-of-State motorists insured by insurers subject to these rules.

Regulatory Flexibility Statement

Some insurers affected by the proposed new rules may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-17. The Department has determined that in order to provide for uniform and consistent applicability of these rules in accordance with N.J.S.A. 17:28-1.4, no differential treatment is accorded small businesses by the proposed new rules. The Department anticipates minimal impact on insurers affected by the proposed new rules, in that these new rules will only require insurers to submit the certification initially and whenever there are changes in companies under common management or control. The proposed new rules will not require small businesses to use any other kinds of professional services to comply with the rules. The requirement to file a written certification of compliance with N.J.S.A. 17:28-1.4 is a minimal burden and is imposed by statute.

Full text of the proposed new rules follows:

SUBCHAPTER 32. CERTIFICATION OF COMPLIANCE: MANDATORY LIABILITY COVERAGES

11:3-32.1 Purpose and scope

(a) This subchapter establishes the procedures and requirements for automobile or motor vehicle insurers to certify that automobile or motor vehicle insurance liability policies issued outside of New Jersey provide the coverage required pursuant to N.J.S.A. 39:6A-3, N.J.S.A. 39:6A-4, N.J.S.A. 39:6B-1, N.J.S.A. 17:28-1.3, and N.J.S.A. 17:28-1, whenever the automobile or motor vehicle insured under a policy is used or operated in this State.

(b) This subchapter applies to each insurer authorized to transact automobile or motor vehicle insurance business in the State pursuant to N.J.S.A. 17:28-1.4.

11:3-32.2 Definitions

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

"Certification" means a written statement certified or sworn to be true and signed by a duly authorized officer of the insurer.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Control" (including the terms "controlling", "controlled by" and "under common control") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of this subchapter.

"NAIC" means the National Association of Insurance Commissioners.

11:3-32.3 Certification compliance requirements

(a) Each insurer authorized to transact automobile or motor vehicle insurance business in this State pursuant to N.J.S.A. 17:28-1.4 shall file a certification of compliance with the Department on its own behalf and on behalf of:

1. Any insurer that is controlled by the insurer authorized to transact insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage;

2. Any insurer that controls the insurer authorized to transact automobile or motor vehicle liability insurance in this State, which sells a policy providing autombile or motor vehicle liability insurance coverage;

3. Any insurer under common control by or with the insurer authorized to transact automobile or motor vehicle liability insurance in this State; and

4. Any insurer under common control by or with the insurer authorized to transact automobile or motor vehicle liability insurance in this State.

(b) The certification insurers are required to file in accordance with (a) above shall include the following information:

1. The name of the insurance company authorized to transact automobile or motor vehicle insurance in New Jersey;

2. The names of insurance companies that transact automobile or motor vehicle insurance in other states or provinces of Canada, that are controlling or controlled by, or are under common control by, or with, the insurer named in (b)1 above;

3. The NAIC group and company number for each insurer named in (b)1 and 2 above;

4. The name, signature, title and telephone number of the company officer authorized to complete the certification; and

5. A statement that the company will provide the coverages required in N.J.S.A. 39:6B-1, N.J.S.A. 39:6A-3, N.J.S.A. 39:6A-4, N.J.S.A. 17:28-1.1 and N.J.S.A. 17:28-1.3 whenever the automobile

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or motor vehicle insured under the policy is used or operated in this State.

(c) Each insurer required to file a certification shall do so within 30 days of the effective date of this rule.

(d) Any insurer that acquires control, or is acquired by another insurer or comes under common control, shall file the required certification within 30 days of the change in management and include the following information:

1. A certification that contains the information provided in (b)1 through 4 above; and

2. The effective date of the management change.

(e) All certifications shall be submitted to the Department at the following address:

New Jersey Department of Insurance
Property/Liability Division
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

11:3-32.4 Requests for copies of certifications

(a) Any person requesting a copy of a certification on file with the Department shall make the request in writing and contain the complete name of the company or companies.

(b) Requests for copies of certification on file with the Department shall be directed to:

New Jersey Department of Insurance
Property/Liability Division
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

LAW AND PUBLIC SAFETY

(a)

BOARD OF ACCOUNTANCY

New Jersey State Board of Accountancy Rules

Proposed Readoption: N.J.A.C. 13:29

Authorized By: State Board of Accountancy, John J. Meade, Executive Director.

Authority: N.J.S.A. 45:2B-6(g) and 45:2B-17.

Proposal Number: PRN 1990-160.

Submit comments by May 2, 1990 to:
John J. Meade, Executive Director
Board of Accountancy, Room 507A
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:29 is scheduled to expire on June 3, 1990. The Board of Accountancy has reviewed the current rules and has found them to be necessary and effective for the purposes for which they were originally promulgated. The current rules proposed for readoption have had an advantageous impact on the regulation of the accounting profession by enabling the Board to have in place procedures which maintain high standards of practice, thus serving and protecting the public's best interests. The Board anticipates proposing some rule changes in the near future; however, because of time constraints it is presently proposing the readoption of its rules without change.

This chapter contains six subchapters. Subchapter 1, entitled General Rules and Regulations, sets forth rules regarding Board meetings; applications for examination, reexamination and certificate by endorsement; change of address requirements; acceptance of chartered accounting experience; examinations; license renewal requirements; Public School Accountant's license requirements; fees; and reporting requirements upon conviction of any crime. Subchapter 2 lists application, examination and licensure requirements for a Registered Municipal Accountant's license. Subchapter 3 sets forth rules of professional conduct. Subchapter 4 states that the Uniform Penalty Letter appears in Chapter 27, Section 5.1. (Note: The Board realizes the reference in this rule is no longer correct, and it will be revised in the near future.) Subchapter 5 establishes and describes procedures governing the Quality Enhancement Program, a program which reviews reports of selected sole practitioners or firms in order to improve the quality of financial reporting and to promote the fairness of presentation and the dependability of information on which the public relies for guidance in financial transactions. Subchapter 6 lists continuing education requirements.

Social Impact

The readopted rules will have a positive effect on the consumer; the rules will enable the Board to have in place various procedures for the orderly operation of the Board and the conduct of examinations in order to ensure that truly qualified individuals are licensed to practice accounting. The Board of Accountancy endeavors to maintain the highest possible level of professionalism for the benefit and protection of the public. To that end, the Quality Enhancement Program and the Continuing Professional Education requirements will continue to benefit the public and the accounting profession by improving the quality of financial reporting.

Economic Impact

Since this chapter is proposed for readoption without change, there will be no increased adverse economic impact on the public or on candidates or licensees as a result of this proposal. While compliance with this chapter does entail certain costs for candidates and licensees, such as examination, continuing education and licensure fees, such costs are reasonable and necessary to preserve and promote the public welfare. Because funding of the Board's operation is partially attained by the fee structure, these rules will have a positive economic impact on the Board; failure to readopt would place such operation in jeopardy.

Regulatory Flexibility Analysis

The Board of Accountancy currently licenses 1,184 accounting entities, 15,761 Certified Public Accountants, 2,036 public accountants, 309 municipal accountants and 815 school accountants. It is estimated that the majority of the 1,184 accounting entites are small businesses under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption do contain reporting, record keeping and compliance requirements relating to licensure and practice which may affect licensees who practice as small businesses. However, because these rules seek to promote and protect the public welfare through sound financial reporting, they must be uniformly and consistently applied; no differential treatment can be accorded to small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:29.

TREASURY-GENERAL

(b)

STATE INVESTMENT COUNCIL

Corporate Obligations—Legal for Savings Banks Pension and Annuity Group; Static Group; Trust Group

Proposed Amendment: N.J.A.C. 17:16-7.2

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1990-165.

Submit comments by May 2, 1990 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 17:16-7.2 would permit a slight increase in the amount of debt permitted by corporate issuers of securities to be eligible for purchase by the Division. The modification does not affect the debt rating standard required of the Division's investments.

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Social Impact

Social impact is limited, if any. Slightly better returns might be realized on some of the State's investments.

Economic Impact

Any improvement in returns to the pension funds would increase pension fund assets, which in turn would benefit New Jersey taxpayers.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules would not impose reporting, record keeping 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 rules govern State investments.

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

17:16-7.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity or trust group fund in corporate obligations provided that:

1.-3. (No change.)

4. The obligor has a stockholders' equity, (consisting of the sum of equity accounts, capital surplus and earned surplus) of at least $50 million; and furthermore the long term debt ratio (defined as the ratio of long term debt to the sum of stockholders' equity and long term debt) of the obligor shall be less than [50 percent] **60 percent**, except that in the case of telephone utilities the debt ratio shall be less than [55 percent] **60 percent**.

(a)

STATE INVESTMENT COUNCIL

Mortgage Backed Securities—Private Passthrough

Proposed Repeal and New Rules: N.J.A.C. 17:16-43

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1990-166.

Submit comments by May 2, 1990 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The State Investment Council proposes to repeal and replace N.J.A.C. 17:16-43 with new rules on mortgage backed securities. The new rules set standards for the purchase by the Division of securities which are collateralized by conventional residential mortgages which meet certain quality standards.

Social Impact

The proposed new rules will have the effect of broadening the types of mortgage securities purchased by the Division, which will help broaden the support for markets for residential housing.

Economic Impact

The proposed new rules will provide another investment option for the Division, which in turn may provide an opportunity to increase pension fund earnings. Increased earnings benefit the taxpayers and beneficiaries.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules would 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 rules govern State investments.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 17:16-43.

Full text of the proposed new rules follows:

SUBCHAPTER 43. MORTGAGE BACKED SECURITIES—PRIVATE PASSTHROUGH

17:16-43.1 Permissible investments

The Director may invest and reinvest the moneys of any fund in senior debt securities which are fully collateralized by mortgage securities. Not more than 25 percent of any one issue, which must be $50 million or more in size, may be purchased at the time of issue, except that this requirement may be waived by the State Investment Council.

17:16-43.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity or trust group fund in mortgage backed passthrough securities provided that:

1. The issue has been registered with the Securities and Exchange Commission, except that this requirement may be waived by the State Investment Council;

2. The sponsor is incorporated under the laws of the United States or any state thereof, or of the District of Columbia;

3. The sponsor is not in default as to the payment of principal or interest upon any of its outstanding obligations;

4. The individual mortgage loans serving as collateral have an average loan-to-value ratio of 75 percent or less; the collateral is at least 90 percent single-family detached residential property and at least 95 percent owner-occupied residential property; and

5. The issue has a credit rating of Aa or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available.

17:16-43.3 Legal papers

Prior to any commitment to purchase obligations of the type described in this article, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this subchapter.

(b)

STATE INVESTMENT COUNCIL

U.S. Treasury Futures Contracts

Proposed New Rules: N.J.A.C. 17:16-50

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1990-167.

Submit comments by May 2, 1990 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed regulation would permit the Division of Investment to buy and sell U.S. Treasury futures as a proxy for Treasury Bonds. Futures can be bought or sold quickly in changing markets to increase or decrease exposure in the bond market. The use of futures is strictly defined in the proposed subchapter.

Social Impact

The use of futures by the Division of Investment will have little or no social impact, other than to add some flexibility to the pension fund investment program.

Economic Impact

The use of Treasury futures may help increase pension fund assets, which in turn benefits New Jersey taxpayers.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules would not impose reporting, record keeping or other compliance

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requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules govern State investments.

Full text of the proposal follows:

SUBCHAPTER 50. U.S. TREASURY FUTURES CONTRACTS

17:16-50.1 Definition of U.S. Treasury Futures Contract

As used in this subchapter, a "U.S. Treasury Futures Contract" is a legal agreement between a buyer and a seller in which the seller agrees to deliver and the buyer agrees to take delivery of a specified quantity of Treasury securities at a specified price (futures price) at a stated time in the future (delivery date). Prices are determined by competitive bids on the floor of the Chicago Board of Exchange. The terms of the contract are standardized and the Chicago Board of Exchange Clearinghouse takes the opposite side to each cleared transaction.

17:16-50.2 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may purchase and sell U.S. Treasury Futures Contracts for the purpose of hedging U.S. Treasury Securities held in Common Pension Fund B.

(b) Any U.S. Treasury Futures Contract purchased or sold shall be listed on the Chicago Board of Trade.

(c) The Director may deliver U.S. Treasury Securities to satisfy contractual obligations pursuant to the Division of Investment's purchase and sale of U.S. Treasury Futures Contracts.

17:16-50.3 Limitations

(a) Net purchases of U.S. Treasury Futures Contracts shall not exceed the amount equal to 10 percent of the book value of Common Pension Fund B's underlying U.S. Treasury Bond holdings.

(b) Only Primary Government Securities Dealers may be used for executing transactions in U.S. Treasury Futures Contracts.

(a)

STATE INVESTMENT COUNCIL

Guaranteed Income Contracts

Proposed New Rules: N.J.A.C. 17:16-51

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1990-168.

Submit comments by May 2, 1990 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules would permit the Division of Investment to invest in guaranteed income contracts backed by eligible insurance companies and banks. Such contracts provide high quality fixed income investments which can provide fair market returns with limited risk.

Social Impact

The use of guaranteed income contracts by the Division will have limited social impact, if any. Any incremental return realized on such contracts could ultimately benefit the taxpayers of New Jersey.

Economic Impact

Guaranteed income contracts can provide attractive rates of return to the pension funds, which in turn could increase pension fund assets and thereby benefit New Jersey taxpayers.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules would not impose reporting, record keeping 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 rules govern State investments.

Full text of the proposal follows:

SUBCHAPTER 51. GUARANTEED INCOME CONTRACTS

17:16-51.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest the assets of any fund in guaranteed income contracts, provided that:

1. The issuer of the guaranteed income contract is incorporated in the United States;

2. The issuer is not in default as to the payment of any of its outstanding obligations; and

3. The issuer, in the case of an insurance company, had a total combined capital stock and surplus reserve for contingencies equal to at least $200,000,000 at the date of its last published financial statement and a credit rating of at least A+ from A.M. Best Company; or

4. The issuer, in the case of a commercial bank, meets all capital requirements as defined by the Federal Reserve Board at the date of its last published financial statement and has a short term debt rating of at least P1 from Moody's Investor Service.

17:16-51.2 Other limitations

The investment in a guaranteed income contract is limited to a term of 10 years or less.

17:16-51.3 Legal papers

Prior to any commitment to purchase a guaranteed income contract, it shall be ascertained that the issuer is included on a list of companies which has been certified by the Director as having met the requirements of this subchapter.

(b)

STATE INVESTMENT COUNCIL

Covered Put Options

Proposed New Rules: N.J.A.C. 17:16-52

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1990-169.

Submit comments by May 2, 1990 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules would permit the use of "puts" in the management of the stocks held in State accounts, including the State pension funds. Puts can be purchased as a hedge against down markets, which could protect pension fund values.

Social Impact

The proposed new rules will have limited social impact, if any. The use of puts is a device for hedging portfolios which could protect pension fund assets in down markets.

Economic Impact

The use of puts could provide a hedge for the value of pension fund assets in down markets. Any savings could benefit the taxpayers and pension fund beneficiaries.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules would not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory

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Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules govern State investments.

Full text of the proposal follows:

SUBCHAPTER 52. COVERED PUT OPTIONS

17:16-52.1 Definition of covered put options

As used in this subchapter, "covered put options" means puts for common stocks held in the pertinent portfolio.

17:16-52.2 Permissible transactions

(a) Puts may be purchased only for stocks held in the pertinent portfolio.

(b) Any put purchased or sold shall be listed on the Chicago Board Option Exchange, the American Stock Exchange, the Philadelphia Stock Exchange or the Pacific Stock Exchange.

17:16-52.3 Applicable funds

(a) The following funds are applicable for the purchase of puts:

1. Common Pension Fund A; and
2. The Supplemental Annuity Collective Trust.

17:16-52.4 Limitations

Purchases of covered put options shall not exceed 10 percent of any one common stock holding, except in the case of holdings subject to divestment under the provisions of P.L. 1985, c.308 (N.J.S.A. 52:18A-89.1 through 89.3).

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Estimated Tax
Proposed Amendment: N.J.A.C. 18:7-3.13

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1990-156.

Submit comments by May 2, 1990 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 18:7-3.13(f) will give the public a clear understanding of the Division's position on the time of application of a prior year's overpayment to current year estimated tax installments. The operation of the amendment is summarized in the following example:

The taxpayer files a calendar year return and extends its 1989 due date to September 1990 or later. The taxpayer has an overpayment of its 1989 tax when it timely files the 1989 CBT-100 at the extended due date. This overpayment was created by estimated tax payments made during 1989. The taxpayer elects to credit such overpayment to its 1990 estimated tax. The 1989 overpayment, applied to 1990, will be considered to be a payment on the first installment of estimated tax for 1990 and thereby will be considered to be a 1990 estimated tax payment made on or before April 15, 1990, unless the taxpayer designates otherwise on the face of the return.

Installment payments of current year's tax are required under the New Jersey Corporation Business Tax Act. This approach is in accordance with the Internal Revenue Service approach under Rev. Rul. 84-58.

Social Impact

The proposed amendment will allow the public to be aware of the Division's position on the timing of application of a prior year's overpayment to current year estimated tax installments. From a practical perspective, taxpayers may deliberately overpay their installments on tentative returns to cover any possible tax liability for the current year plus the estimated amount due for their quarterly installments.

Economic Impact

The proposed amendment is not expected to result in increased costs to the public or to the Division of Taxation. The Division believes that the method proposed in the rule, paralleling the Federal approach, is the proper manner for calculating liabilities and overpayments of estimated taxes and is in the best interest of proper tax administration.

Regulatory Flexibility Analysis

The proposed amendment does not impose reporting, record keeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. The amendment is intended to clarify the Division's method of calculating overpayments and underpayments, for the benefit of large and small taxpayers alike.

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

18:7-3.13 Estimated tax

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

(f) Any amount overpaid and appearing on the face of the return for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due under this section where the taxpayer indicates on the face of such return that it elects to have such overpayment so applied. **Such amount will be considered to be a payment of the first installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made.**

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Comment Period Extension
Noise Control
Proposed Readoption: N.J.A.C. 7:29

Take notice that the Department of Environmental Protection is extending the public comment period for the proposed readoption of N.J.A.C. 7:29, Noise Control (see 22 N.J.R. 307(a)), from March 7, 1990, to April 6, 1990.

Submit written comments by April 6, 1990 to:
Stephen Tarnowski
Department of Environmental Protection
Division of Regulatory Affairs
CN 402
Trenton, New Jersey 08625

LABOR

(c)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Procedures and Standards
Proposed Repeals: N.J.A.C. 12:45-1 and 3 and 12:46 through 12:49
Proposed New Rules: N.J.A.C. 12:45-1

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:16-20 et seq., 29 U.S.C.A. §701 et seq., and 34 CFR §361.1 et seq.

Proposal Number: PRN 1990-147.

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Public hearings on these proposed new rules will be held on the following dates at the following locations:

Wednesday, April 18, 1990, from
3:00 P.M. to 5:30 P.M. and from
6:30 P.M. to 8:00 P.M.
Norman A. Bleshman School, Cafeteria
333 East Ridgewood Avenue
Paramus, New Jersey

Thursday, April 19, 1990, from
3:00 P.M. to 5:30 P.M. and from
6:30 P.M. to 8:00 P.M.
Labor and Education Center, Room 133
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey

Friday, April 20, 1990, from
3:00 P.M. to 5:30 P.M. and from
6:30 P.M. to 8:00 P.M.
Stockton State College, Auditorium
Jimmy Leeds Road
Pomona, New Jersey

Submit testimony in writing three days before the date of the appropriate public hearing to:

Tom Jennings, Chief
Rehabilitation Services
New Jersey Department of Labor
Office of the Commissioner
CN 110
Trenton, New Jersey 08625-0110

Submit written comments by May 2, 1990 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
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The agency proposal follows:

Summary

On December 19, 1988, the Department of Labor (Department) proposed a repeal of existing rules and proposed new rules concerning the procedures and standards used by the Division of Vocational Rehabilitation Services (Division). The purpose of the 1988 proposed repeal and new rules was to more closely follow the language and intent of the Federal law and regulations and State law governing vocational rehabilitation services (see 20 N.J.R. 3107(a)).

The Department received four comments on the 1988 proposal. These comments were helpful in pinpointing some editorial and substantive changes which had to be made to the rules.

Due to a reorganization in the management of the Division, the Department did not act upon the 1988 proposal within the one-year period for adoption. Consequently, the 1988 proposal expired on December 19, 1989.

The Department is proposing a repeal of N.J.A.C. 12:45-1 and 3 and 12:46 through 12:49 and proposing new rules concerning the procedures and standards used by the Division. N.J.A.C. 12:45-2 concerning transportation costs for individuals with handicaps is being retained. The purpose of the proposed repeal and new rules is the same as the 1988 proposal. This proposal reflects some of the changes suggested by the commenters on the 1988 proposal. The changes from the 1988 proposal are noted below.

N.J.A.C. 12:45-1.1 sets forth the purpose and scope of the rules. The purpose has been changed from the 1988 proposal to reflect the concerns of the Public Advocate.

N.J.A.C. 12:45-1.2 sets forth definitions. This section is substantially similar to 34 CFR §361.1. This section also contains a definition of "disabled public safety officer" to reflect 20 CFR §361.36.

N.J.A.C. 12:45-1.3 sets forth the State's standards and procedures which assure expeditious and equitable handling of applications and referrals for vocational rehabilitation services. This section is required by 34 CFR §361.30. Reference to the "general basic medical" that appeared in N.J.A.C. 12:45-1.3(b) of the 1988 proposal has been deleted to reflect the concerns of the Public Advocate.

N.J.A.C. 12:45-1.4 sets forth the eligibility requirements for vocational rehabilitation services. This section is substantially similar to 34 CFR §361.31. Reference to "aliens" in subsection (f) and "illegal aliens" in subsection (g) of the 1988 proposal have been deleted to reflect the concerns of the Public Advocate. Also, N.J.A.C. 12:45-1.4(d)1 of the 1988 proposal has been deleted because it conflicted with subsection (d).

N.J.A.C. 12:45-1.5 sets forth the standards and procedures used during the preliminary diagnostic study. This section is substantially similar to 34 CFR §361.32.

N.J.A.C. 12:45-1.6 sets forth the standards and procedures used during the thorough diagnostic study. This section is substantially similar to 34 CFR §361.33.

N.J.A.C. 12:45-1.7 sets forth the standards and procedures used during an extended evaluation to determine vocational rehabilitation potential. This section is substantially similar to 34 CFR §361.34.

N.J.A.C. 12:45-1.8 sets forth the standards and procedures used to certify eligibility for vocational rehabilitation services. This section is substantially similar to 34 CFR §361.35.

N.J.A.C. 12:45-1.9 sets forth the standards and procedures to be followed in selecting groups of individuals with handicaps to be provided vocational rehabilitation services at any time when these services cannot be provided to all eligible individuals. This section is required by 34 CFR §361.36. This section differs from the 1988 proposal in that it explains in more detail the policy and procedures of the Division when an order of selection is imposed. Also, the $2,500 exemption of case expenditures referenced in the 1988 proposal has been deleted to coincide with the changes to N.J.A.C. 12:45-1.15.

N.J.A.C. 12:45-1.10 sets forth the requirements for the contents of the case record. This section is substantially similar to 34 CFR §361.39.

N.J.A.C. 12:45-1.11 sets forth the procedures for initiating and updating the individualized written rehabilitation program. This section is substantially similar to 34 CFR §361.40.

N.J.A.C. 12:45-1.12 sets forth the requirements for the contents of the individualized written rehabilitation program. This section is substantially similar to 34 CFR §361.41.

N.J.A.C. 12:45-1.13 sets forth the scope of vocational rehabilitation services for individuals. This section is substantially similar to 34 CFR §361.42.

N.J.A.C. 12:45-1.14 sets forth the standards for determining whether an individual is rehabilitated. This section is substantially similar to 34 CFR §361.43.

N.J.A.C. 12:45-1.15 sets forth the State's policies covering the determination of financial need and the types of vocational rehabilitation services for which the State has established a needs test. This section satisfies the requirements of 34 CFR §361.47. This section differs from the 1988 proposal in that all limits on services have been removed. The limits on services were referred to in this section and were specifically listed in Appendix A of the 1988 proposal. Also, the $2,500 exemption of case expenditures which served as a deductible have been deleted to benefit all individuals with handicaps.

N.J.A.C. 12:45-1.16 sets forth the standards and procedures used to protect personal information. This section is substantially similar to 34 CFR §361.49 and reflects recent amendments to the Federal regulations.

The Department, however, has clarified a vague provision in the Federal regulations concerning the release of harmful information to a representative. Under 34 CFR §361.49(c)(1), the State must release harmful medical and psychological information through the client's representative or a physician or licensed or certified psychologist. The purpose of this requirement is to protect the client from the harmful information by releasing it to a person who is qualified to evaluate the impact of the harmful information on the client. Obviously, a physician or a licensed or certified psychologist is qualified to evaluate whether or not certain information will prove harmful to a client. However, a representative may not be qualified to evaluate whether or not certain information may be harmful to a client. The Federal regulations do not provide any guidance as to the definition of a representative.

Consequently, the Department has defined the conditions for release of harmful information to a representative, parent or guardian. If harmful medical or psychological information is involved, the parent, guardian or representative must be qualified, in the opinion of the agency, to properly deal with the review of such information. If the agency determines that the parent, guardian or representative is not qualified, the agency may release a summary of the case record, which excludes the harmful medical or psychological information.

It should be noted that the Department is not denying the parent, guardian or representative access to the individual's file. The unqualified parent, guardian or representative can use a qualified physician or

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licensed or certified psychologist to aid in the review of whether or not certain information may be harmful to the client.

N.J.A.C. 12:45-1.17 sets forth the procedures for appealing any agency action or inaction. This section is substantially similar to the requirements of 34 CFR §361.49.

Social Impact

The proposed repeal and new rules will benefit individuals with handicaps and individuals with severe handicaps by providing them with notice of the services available through the Division. The proposed repeal and new rules also benefit these individuals by setting forth the application procedures for services and the criteria and standards used by the Division in determining eligibility for services and participation in paying for the cost of services. Finally, the proposed new rules benefit these individuals by setting forth the standards for protecting the client information and the procedures for appealing any agency action or inaction.

The proposed repeal and new rules will benefit the Department in that the standards and procedures used for the provision of vocational rehabilitation services will be clearly identified in rules.

Economic Impact

The proposed repeal and new rules will not have any direct impact on individuals who seek vocational rehabilitation services or the Department since these rules merely reflect standards, procedures and services that were already available under the Federal law and rules, and State law, rules and policies.

Regulatory Flexibility Statement

The proposed repeal and new rules do 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. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 12:45-1 and 3 and 12:46 through 12:49.

Full text of the proposed new rules follows.

CHAPTER 45
DIVISION OF VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER 1. PROCEDURES AND STANDARDS

12:45-1.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures, standards and criteria used by the Division of Vocational Rehabilitation Services to rehabilitate individuals with handicaps.

(b) This subchapter applies to every individual who is seeking vocational rehabilitation services through the Division of Vocational Rehabilitation Services.

12:45-1.2 Definitions

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

"Act" means the Rehabilitation Act, 29 U.S.C. §§701 et seq.

"Competitive work", as used in the definition of "supported employment," means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period, and for which an individual is compensated in accordance with the Fair Labor Standards Act, 29 U.S.C. §§201 et seq.

"Disabled public safety officer" means a non-severely disabled individual whose handicapping condition arose from a disability sustained in the line of duty while performing as a public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

"Division" means the Division of Vocational Rehabilitation Services (DVRS), New Jersey Department of Labor.

"Eligible" or "eligibility," when used in relation to an individual's qualification for vocational rehabilitation services, refers to a certification that:

1. An individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and

2. Vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

"Employability" means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, or, if appropriate, part-time employment, consistent with the capacities or abilities of the individual in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; home-based employment; supported employment; or other gainful work.

"Evaluation of vocational rehabilitation potential" means, as appropriate, in each case:

1. A preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services;

2. A thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's handicap to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability;

3. Any other goods or services, including rehabilitation engineering services, necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;

4. Referral to other agencies or organizations, when appropriate; and

5. The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is an individual with handicaps for whom a vocational goal is feasible.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Family member" or "member of the family" means any relative by blood or marriage of an individual with handicaps and any other individual living in the same household with whom the individual with handicaps has a close interpersonal relationship.

"Impartial hearing officer" means an individual:

1. Who is not an employee of a public agency that is involved in any decision regarding the furnishing or denial of rehabilitation services to a vocational rehabilitation applicant or client. An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer;

2. Who has not been involved in previous decisions regarding the vocational rehabilitation applicant or client;

3. Who has background and experience in, and knowledge of, the delivery of vocational rehabilitation services; and

4. Who has no personal or financial interest that would be in conflict with the individual's objectivity.

"Individual with handicaps" means an individual:

1. Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

2. Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether the individual might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

"Individual with severe handicaps" means an individual:

1. Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability;

2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended peirod of time; and

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3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

"Integrated work setting," as used in the definition of "supported employment," means job sites where:

1. Most co-workers are not handicapped, and individuals with handicaps are not part of a work group of other individuals with handicaps; or

2. Most co-workers are not handicapped, and if a job site described in paragraph 1 above is not possible, individuals with handicaps are part of a small work group of not more than eight individuals with handicaps; or

3. If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting.

"Physical and mental restoration services" means:

1. Medical or corrective surgical treatment;

2. Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

3. Dentistry;

4. Nursing services (in conjunction with other medical and healthcare services and upon recommendation of a physician);

5. Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

6. Convalescent or nursing home care;

7. Drugs and supplies;

8. Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

9. Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select (All cases involving blind and visually impaired individuals with a level of visual functioning directly impacting on the handicap to employment shall be referred to the New Jersey Commission for the Blind and Visually Impaired for services.);

10. Podiatry (in conjunction with other medical and healthcare services and upon recommendation of a physician);

11. Physical therapy;

12. Occupational therapy;

13. Speech or hearing therapy;

14. Psychological services;

15. Therapeutic recreation services;

16. Medical or medically related social work services;

17. Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

18. Special services for the treatment of individual suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

19. Other medical or medically related rehabilitation services that would contribute to the reduction or elimination of barriers to employment including art therapy, dance therapy, music therapy and psychodrama.

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

"Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

"Supported employment" means:

1. Competitive work in an integrated work setting with ongoing support services for individuals with severe handicaps for whom competitive employment:

i. Has not traditionally occurred; or

ii. Has been interrupted or intermittent as a result of severe handicaps; or

2. Transitional employment for individuals with chronic mental illness.

"Vocational rehabilitation services" means time-limited services that are dedicated to the reduction or elimination of the barriers to employment.

1. When provided to an individual, also means those services listed in N.J.A.C. 12:45-1.13.

2. When provided for the benefit of groups of individuals, also means:

i. The establishment of a rehabilitation facility;

ii. The construction of a rehabilitation facility;

iii. The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one individual with handicaps;

iv. The use of existing telecommunications systems; and

v. The use of services providing captioned films or video cassettes for deaf persons.

12:45-1.3 Processing applications and referrals

(a) Each individual seeking vocational rehabilitation services shall complete an application which can be obtained from any local Division office. If the individual is a referral, the person or agency making the referral may complete the application on behalf of the individual. If the individual is incapable of completing an application, the individual's parent, guardian or representative may complete the application.

(b) Each individual or representative shall submit the application and any available medical or psychiatric records relating to disability to the nearest Division office.

(c) Upon reviewing the application, a Division counselor shall arrange an appointment for the individual at the nearest local Division office. If the individual cannot travel, the counselor may visit the individual.

(d) Each individual referred for vocational rehabilitation services shall be interviewed by a counselor as soon as possible after referral.

12:45-1.4 Eligibility for vocational rehabilitation services

(a) An individual shall be eligible for vocational rehabilitation services if the counselor determines that the following exists:

1. A physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

2. A reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(b) Each counselor shall apply the eligibility requirements without regard to sex, race, age, creed, color or national origin of the individual applying for service.

(c) No group of individuals shall be excluded or found ineligible solely on the basis of the type of disability.

(d) No upper or lower age limit shall be established which will in and of itself, result in a finding of ineligibility for any individual

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with handicaps who otherwise meets the eligibility requirements set forth in (a) above.

(e) No residence requirement, durational or other, shall be established which excludes from services any individual who is present in the State.

(f) Each counselor shall advise his or her client, at least once annually, of the prohibitions against discrimination set forth in (b) above.

12:45-1.5 Evaluation of vocational rehabilitation potential: preliminary diagnostic study

(a) In order to determine whether any individual is eligible for vocational rehabilitation services, the counselor shall conduct a preliminary diagnostic study to determine:

1. Whether the individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

2. Whether vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability, or whether an extended evaluation of vocational rehabilitation potential is necessary to make this determination.

(b) The preliminary diagnostic study shall include:

1. An appraisal of the current general health status of the individual based, to the maximum extent possible, on available medical information; and

2. An evaluation by the appropriate medical specialist when necessary to determine the current status of the disorder.

(c) In all cases of mental or emotional disorder, an examination shall be provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed in accordance with the laws and rules of the State of New Jersey. In cases of mental retardation, reports from certified school psychologists may be used to document the disability.

(d) If appropriate, an individual may select his or her own physicians to conduct the necessary medical examinations provided the physician will accept Division fees.

12:45-1.6 Evaluation of vocational rehabilitation potential: thorough diagnostic study

(a) Upon determination of eligibility, the counselor shall conduct a thorough diagnostic study to determine the nature and scope of services needed by the individual.

(b) The thorough diagnostic study includes in all cases to the degree needed, an appraisal of the individual's:

1. Functional capacities and limitations;
2. Personality;
3. Intelligence level;
4. Educational achievement;
5. Work experience;
6. Personal, vocational and social adjustment;
7. Employment opportunities;
8. Patterns of work behavior;
9. Ability to acquire occupational skill;
10. Capacity for successful job performance;
11. Employability;
12. Need for rehabilitation engineering services; and
13. Other pertinent data.

12:45-1.7 Extended evaluation to determine vocational rehabilitation potential

(a) Eligibility for vocational rehabilitation services under a plan for extended evaluation shall be determined only upon:

1. The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

2. An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of employability unless there is an extended evaluation to determine vocational rehabilitation potential.

(b) The extended evaluation period shall begin on the date of certification for extended evaluation to determine rehabilitation potential.

1. Only one 18-month maximum period shall be permitted during the time that the case is open.

2. If a case has been closed because of a determination that the individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.

(c) Vocational rehabilitation services, authorized after the expiration of the extended evaluation period, shall be provided only if the certification of eligibility has been executed by the counselor.

(d) The individual's progress during the extended evaluation plan shall be assessed as frequently as necessary but at least once every 90 days. This assessment shall include periodic reports from the facility or person providing the services and be used to determine whether the individual may be eligible or ineligible.

(e) The extended evaluation shall be terminated at any time before the end of the 18-month extended evaluation when:

1. The individual is found eligible for vocational rehabilitation services since there is a reasonable assurance that he or she can be expected to benefit in terms of employability from vocational rehabilitation services; or

2. The individual is found ineligible for any additional vocational rehabilitation services since it has been determined on the basis of clear evidence that he or she cannot be expected to benefit in terms of employability from vocational rehabilitation services.

12:45-1.8 Certification: eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility

(a) Before or at the same time that an individual with handicaps is accepted for vocational rehabilitation services, there shall be a certification that the individual has met the basic eligibility requirements as set forth in N.J.A.C. 12:45-1.4.

1. The certification of eligibility shall be dated and signed by the counselor.

(b) Before and as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there shall be a certification that the individual has met the requirements in N.J.A.C. 12:45-1.7(a).

1. The certification for extended evaluation shall be signed and dated by the counselor.

(c) Whenever the counselor determines on the basis of clear evidence that an applicant or recipient of vocational rehabilitation is ineligible for services, the counselor shall sign and date a certification.

1. The certification shall contain the following:

i. The reasons for the ineligibility determination;

ii. A statement that the determination is made only after full consultation with the individual or, as appropriate, the individual's parent, guardian, or other representative, or after giving a clear opportunity for this consultation; and

iii. When appropriate, a detailed explanation of the availability of the resources within a client assistance project established under section 112 of the Act, and a statement that referral is made to other agencies and facilities, including when appropriate, the State's independent living program.

(d) The ineligibility determination shall be reviewed within 12 months.

1. A review of an ineligibility determination shall not be conducted in situations where the individual has refused the review, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(e) The counselor may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an evaluation of vocational rehabilitation potential and the counselor has made repeated efforts to contact the individual and to encourage his or her participation.

12:45-1.9 Order of selection for services

(a) In the event a shortage of funds precludes the provision of services to all eligible clients, the Director shall invoke an order of selection.

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(b) After documentation of eligibility and execution of Certification of Eligibility, the following priorities will be followed according to the Director's determination of how many categories can be served. The order of selection is as follows:

1. Clients classified as severely handicapped;
2. Disabled public safety officers;
3. Non-severely disabled individuals who are also clients of other agencies with whom the Division has written agreements of shared service responsibility; and
4. All other clients.

(c) If the Division cannot serve every individual within a designated category due to the amount of available funds, then the Division will provide services to clients in the order in which they applied for services.

(d) When imposed, the order of selection shall not preclude;

1. Clients whose eligibility was determined prior to the implementation date;
2. Diagnostics necessary to establish a client's eligibility;
3. No-cost services;
4. Post-employment services; and
5. Programs and services funded under sources other than Title 1 of the Act (Independent Living; Supported Employment; Fairlawn Deaf Program).

12:45-1.10 Case record for the individual

(a) Each counselor shall maintain for each applicant for, and recipient of, vocational rehabilitation services a case record which shall include, to the extent pertinent, the following information:

1. Documentation concerning the preliminary diagnostic study supporting the determination of eligibility, the need for an extended evaluation of vocational rehabilitation potential, and, as appropriate, documentation concerning the thorough diagnostic study supporting the nature and scope of vocational rehabilitation services to be provided;
2. In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than 12 months after the determination was made;
3. Documentation supporting any determination that the individual's handicaps are severe;
4. Documentation as to periodic assessment of the individual during an extended evaluation of vocational rehabilitation potential;
5. An individualized written rehabilitation program and any amendments to the program;
6. In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the individual with handicaps is stable or slowly progressive unless the individual is being provided an extended evaluation of rehabilitation potential;
7. Documentation supporting any decision to provide services to family members;
8. Documentation relating to the participation by the individual with handicaps in the cost of vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;
9. Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;
10. Documentation that the individual has been advised of the confidentiality of all information pertaining to his or her case, and documentation and other material concerning any information released about the individual with handicaps with his or her written consent;
11. Documentation as to the reason for closing the case including the individual's employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;

i. The case of an individual who has been provided vocational rehabilitation services under an individualized written program but who has been determined after the initiation of these services to be no longer capable of achieving a vocational goal, documentation of any reviews of this determination shall be included in the record;

12. Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved; and
13. Documentation concerning any action and decision involving the individual's request for review of rehabilitation counselor or coordinator determinations.

12:45-1.11 Individualized written rehabilitation program: procedures

(a) When a counselor determines that an individual is eligible for vocational rehabilitation services or that a period of extended evaluation is necessary to determine rehabilitation potential, an individualized written rehabilitation program shall be prepared for the individual.

(b) The counselor shall develop the individualized written rehabilitation program with the participation of the client or his or her parent, guardian or other representative.

(c) The counselor shall monitor the individualized written rehabilitation program to assure that services are being provided in accord with the written program.

(d) The counselor shall provide a copy of the written program and any amendments to the client or his or her parent, guardian or other representative including other suitable professional and informed advisors.

(e) The counselor shall inform the individual of all the requirements affecting the development, initiation and review of the individualized written rehabilitation program.

(f) The counselor shall review the individualized written rehabilitation program as often as necessary but at least on an annual basis.

1. Each individual with handicaps or, as appropriate, that individual's parent, guardian, or other representative, shall be given an opportunity to review the program and, if necessary, jointly redevelop, and agree to its terms.

12:45-1.12 Contents of the individualized written rehabilitation program

(a) The written rehabilitation program shall be based on a determination of employability designed to achieve the vocational goal of the individual and shall be developed through assessments of the individual's particular rehabilitation needs. Each individualized written rehabilitation program shall, as appropriate, include, but not be limited to, statements concerning:

1. The basis on which a determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;
2. The long-range and intermediate rehabilitation objectives established for the individual based on an assessment determined through an evaluation of rehabilitation potential;
3. The specific rehabilitation services to be provided to achieve the established rehabilitation objectives including, if appropriate, rehabilitation engineering services;
4. An assessment of the expected need for post-employment services;
5. The projected dates for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;
6. A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;
7. A reassessment, prior to case closure, of the need for post-employment services;
8. The views of the individual with handicaps, or, as appropriate, that individual and a parent, guardian, or other representative, including other suitable professional and informed advisors, concerning the individual's goals and objectives and the vocational rehabilitation services being provided;
9. The terms and conditions for the provisions of vocational rehabilitation services, including responsibilities of the individual with handicaps in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services, if

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any, and the extent to which comparable services and benefits are available to the individual under any other program;

10. An assurance that the individual with handicaps has been informed of that individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations;

11. An assurance that the individual with handicaps has been provided a description of the availability of a client assistance program established under section 112 of the Act;

12. The basis on which the individual has been determined to be rehabilitated; and

13. The plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which those plans are developed, and, if appropriate for individuals with severe handicaps, a statement of how these services will be provided or arranged through cooperative agreements with other service providers.

(b) Each individualized written rehabilitation program shall also contain, for individuals with severe handicaps for whom a vocational objective of supported employment has been determined to be appropriate:

1. A description of the time-limited services, not to exceed 18 months in duration, to be provided by the State; and

2. A description of the extended services needed, an identification of the State, Federal, or private programs that will provide the continuing support, and a description of the basis for determining that continuing support is available.

12:45-1.13 Vocational rehabilitation services for individuals

(a) The following vocational rehabilitation services shall be available:

1. Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

2. Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout the program of services for an individual with handicaps, referral necessary to help individuals with handicaps secure needed services from other agencies, and advising clients and client applicants about client assistance programs under 34 CFR Part 370.

3. Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

4. Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this paragraph unless maximum efforts have been made by the counselor to secure grant assistance in whole or in part from other sources;

5. Maintenance, including payments, not exceeding the estimated cost of subsistence and provided at any time after vocational rehabilitation services have begun through the time when post-employment services are being provided. For an individual with handicaps, maintenance covers basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessary to support and derive the full benefit of the other vocational rehabilitation services being provided;

6. Transportation, including necessary travel and related expenses including subsistence during travel (or per diem payments in lieu of subsistence) in connection with transporting individuals with handicaps and their attendants or escorts for the purpose of supporting and deriving the full benefit of the other vocational rehabilitation services being provided. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective;

7. Services to members of an individual with handicaps family when necessary to the vocational rehabilitation of the handicapped individual;

8. Interpreter services and notetaking services for the deaf;

9. Telecommunications, sensory and other technological aids and devices;

10. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, other appropriate public service employment, and occupations which are designated as indicative of having significant career growth and employment potential;

11. Placement in suitable employment;

12. Post-employment services necessary to maintain or regain other suitable employment. "To maintain or regain other suitable employment" shall not be construed to mean an upgrade of services;

13. Occupational licenses, including any license, permit or other written authority required by a State, city or other governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies;

14. Rehabilitation engineering services; and

15. Other goods and services that can reasonably be expected to benefit an individual with handicaps in terms of employability.

12:45-1.14 Individuals determined to be rehabilitated

(a) In order to be determined rehabilitated, an individual must have been, as a minimum:

1. Determined to be eligible under N.J.A.C. 12:45-1.4;

2. Provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services;

3. Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized written rehabilitation program; and

4. Determined to have achieved and maintained a suitable employment goal for at least 60 days.

(b) After an individual has been determined to be rehabilitated, the individual shall receive post-employment services if necessary to assist an individual to maintain or regain other suitable employment.

12:45-1.15 Participation by individuals with handicaps in the cost of vocational rehabilitation services

(a) The Division shall conduct a needs assessment for each individual with handicaps at the time services are to be provided to establish how much financial participation, if any, the individual with handicaps will provide toward the cost of services. The needs assessment shall be conducted as set forth below to ensure that equitable treatment is accorded to all individuals with handicaps in similar circumstances.

(b) The Division shall inform each individual with handicaps that the agency reserves the right to request verification of the current financial situation of the individual with handicaps.

(c) Prior to or at the time of the individualized written rehabilitation program (IWRP) conference, the Division shall require each individual with handicaps to sign a tax disclosure form which authorizes the Internal Revenue Service to release information to the Division from the latest tax return of the individual with handicaps.

(d) Each individual with handicaps shall provide the following information on form DVR-17 prior to the IWRP conference:

1. Name, social security number and date;

2. All income sources for each member of the family of the individual with handicaps;

3. Number of dependents in the family including the individual with handicaps;

4. Liquid assets of the family;

5. Extraordinary medical expenses of the family;

6. Extraordinary debt due to disability of the individual with handicaps;

7. Medical insurance of the individual with handicaps; and

8. A signed certification that the information provided on DVR-17 is true.

(e) The Division may require the individual with handicaps to provide supporting data to verify the information on the DVR-17.

(f) Each individual with handicaps must submit an IRS Tax Disclosure Form and a revised DVR-17 if there is a significant change in financial status or a request for post-employment services.

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(g) Immediately upon receipt of a completed DVR-17, the Division shall review the form and calculate the amount of financial participation. The amount of financial participation shall be calculated as follows:

1. The total amount of expenses directly attributable to the disability shall be subtracted from the amount of excess income reported by the individual with handicaps. "Excess income" means the weekly gross income of the individual with handicaps minus the weekly income allowance set forth in (h) below, plus the liquid assets reported by the individual with handicaps minus the liquid asset allowance set forth in (i) below.

2. In cases where the service being provided is a total cost item, the individual with handicaps shall contribute 10 times the amount of excess income. Total cost item means, but is not limited to, wheelchairs, hearing aids, crutches and other appliances. The formula as set forth above shall be applied as follows:

i. If, after calculating the amount of excess income, the figure is a negative number, the individual with handicaps is not required to participate in the payment of the cost of the item.

ii. If, after calculating the amount of excess income, the figure is a positive number and is greater than the cost of the item, then the individual with handicaps must pay for the entire cost of the item.

iii. If, after calculating the amount of excess income, the figure is a positive number and is less than the cost of the item, then the individual with handicaps must pay the difference between the total cost of the item and the amount of excess income.

3. Each individual with handicaps who is over the age of 18 and living in his or her parent's home shall have only his or her own income considered in the financial participation calculation.

4. The Division may waive financial participation if the individual with handicaps has extraordinary medical expenses which would preclude his or her participation in the cost of services.

(h) The current weekly income allowance, which the Division shall update annually by amending this subsection based on average income as determined by the United States Bureau of Labor Statistics, *Consumer Expenditure Survey*, shall be determined in accordance with the following table:

Number of Family Members	Weekly Income Allowance
1	$ 462
2	562
3	662
4	762
5	862
6	962
7	$1062

For each additional family member, add $100 to the weekly income allowance.

(i) The current liquid asset allowance which the Division shall update annually by amending this subsection shall be determined in accordance with the following table:

Number of Family Members	Liquid Asset Allowance
1	$20,000
2	22,000
3	24,000
4	26,000
5	28,000
6	30,000
7	32,000

For each additional family member, add $2,000 to the liquid asset allowance.

(j) The following services shall not be based on economic need:

1. Diagnostic;
2. Counseling and guidance;
3. Placement;
4. On-the-job training; and
5. Supported employment.

12:45-1.16 Protection; use and release of personal information

(a) All personal information in the possession of the Division shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the Division may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under (d), (e), and (f) below.

(b) The Division shall inform each applicant, client, representative of an applicant or client, and, as appropriate, service provider, cooperating agency, and interested person of the confidentiality of personal information and the conditions, for accessing and releasing this information.

(c) The Division shall provide individuals who are unable to communicate in English or who rely on special modes of communication with explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them.

(d) The requirements for the release of information to an involved individual are set forth below. Involved individual means an individual for whom the Division has a case record (see N.J.A.C. 12:45-1.10).

1. When requested in writing by the involved individual or his or her representative, the Division shall make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but shall be provided through his or her representative, a physician or a licensed or certified psychologist. Harmful information means information which may be detrimental to the physical or emotional state of the involved individual or which may cause the individual to pose a threat to himself or herself or to others.

i. If medical or psychological information, the knowledge of which shall be harmful if disclosed to the client or applicant, is involved, the Division shall determine if the parent, guardian or representative is qualified to properly deal with the review of such information with the client or applicant.

ii. If the Division determines that the parent, guardian or representative is not qualified to properly deal with the review of medical or psychological information that is harmful to the client or applicant, the Division may provide a summary of the case record which excludes the harmful medical or psychological information to the parent, guardian or representative.

2. When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(e) The requirements for release of information for audit, evaluation, and research is as follows:

1. Personal information may be released to an organization, agency or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, and only if the organization, agency, or individual assures that:

i. The information will be used only for the purposes for which it is being provided;

ii. The information will be released only to persons officially connected with the audit, evaluation or research;

iii. The information will not be released to the involved individual;

iv. The information will be managed to safeguard confidentiality; and

v. The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(f) The requirements for release of information to other programs or authorities is as follows:

1. Upon receiving the informed written consent of the individual, the Division may release to another agency or organization for its

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program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the Division believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purposes for which it is being provided and will not be further released to the involved individual;

2. The Division shall release personal information if required by Federal law;

3. The Division shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

4. The Division may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others.

12:45-1.17 Appeal of vocational rehabilitation applicant or recipient

(a) Applicants/clients for vocational rehabilitation shall be advised of their right to a review in the event that they are dissatisfied with any action with regard to the furnishing or denial of vocational rehabilitation services.

1. A review must be requested in writing by the applicant or client. This written request should be submitted to the office manager.

2. The review shall be held at a time and place convenient for the applicant or client.

3. The applicant or client will be notified of the date, time, and place of the review. The notification will be sent in advance of the review and provide enough time for the applicant or client to prepare for the review.

4. The applicant or client may be represented by counsel, friend, Client Assistance Program located in the Department of the Public Advocate, parent, guardian or self. If he or she chooses to represent himself or herself, he or she must be an adult, 18 years of age or older.

5. The applicant or client and his or her representative, if he or she desires to have one, will be given an adequate opportunity for cross examination and to present evidence on his or her behalf during the review.

6. The review shall be held before an impartial hearing officer within 45 days of the request by the applicant or client for a review.

7. The impartial hearing officer shall render a decision in writing and provide a full written report of his or her findings and the grounds for the decision to the client or his or her representative and to the DVRS Director within 30 days of the completion of the review.

8. Within 20 days of the mailing of the impartial hearing officer's decision to the applicant or client and the Director, the Director shall notify the applicant or client in writing of his or her intention to review the initial decision.

9. If the Director fails to notify such individuals within 20 days, the decision of the impartial hearing officer will be considered final.

10. If the Director decides to review the decision, such individuals may submit to the Director additional evidence and information relevant to a final decision with 15 days of the receipt of the Director's notice of intention to review.

11. A final decision shall be made in writing by the Director within 30 days of the mailing of the notice of intention to review and shall include a full report of the findings and the grounds for such decision. A copy of such decision shall be provided to such individuals.

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Paternity Services for Non-Public Assistance Clients

Proposed Amendment: N.J.A.C. 10:81-11.9

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-3, Family Support Act of 1988 (P.L. 100-485), and 45 CFR 302.31 and 303.5.

Proposal Number: PRN 1990-155.

Submit comments by May 2, 1990 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 10:81-11.9(d), authorized by the Family Support Act of 1988 (P.L. 100-485), expands paternity testing services to non-public assistance clients. Current rules require that county welfare agencies (CWAs) pay blood test fees for public assistance cases only.

Social Impact

The proposed amendment will remove the economic barrier in the determination of paternity and reinforce the principle that both parents are responsible for the economic well-being of their children. At the present time, a blood test fee is required from an applicant of a non-public assistance case. This fee could be a deterrent if financial resources are limited. The proposed amendment will relieve the non-public assistance applicant of this fee, thereby increasing the number of paternity establishments in these cases.

Economic Impact

The proposed amendment will not have an adverse impact upon the State or the CWAs. Although the CWAs will now be paying for non-public assistance cases as well as public assistance cases, the Federal reimbursement rate will be increased from 68 percent to 90 percent. Under the proposed amendment, 300 cases would be processed at the cost of $9,000 to the CWA after reimbursement. Under the present system, 300 cases could be processed at the cost of $28,800 to the CWA after reimbursement. As these figures show, the increased rate of reimbursement allows a larger number of cases to be processed in relation to cost. Some CWAs will experience a reduction in blood test expenses as a result of enhanced Federal participation. The proposed amendment will have no economic impact on current recipients but may relieve a financial burden on those non-public assistance cases who have limited resources.

Regulatory Flexibility Statement

This proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, record keeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rule governs a public assistance program designed to certify eligibility for Aid to Families With Dependent Children program to low-income population by a governmental agency rather than a private business establishment.

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

10:81-11.9 Responsibilities of the CWA/CSP Unit

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

(d) Legal action taken by the CSP Unit: If the CSP Unit collects information sufficient to locate the absent parent, legal proceedings shall be initiated for the purpose of establishing paternity and/or obtaining support.

1. (No change.)

2. Filiation proceedings: With regard to cases in which paternity has not been acknowledged, the CSP Unit shall file a complaint to establish paternity in a court of competent jurisdiction.

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i. (No change.)

ii. Payment for blood test: **The CWA shall provide payment of all fees for paternity determinations in AFDC and non-AFDC cases. No fee shall be imposed on the applicant.** The CWA/CSP Unit shall have the court stipulate that the defendant is responsible for payment of the blood test. The only exceptions would be for the following reasons:

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

iii.-v. (No change.)

3.-10. (No change.)

(e)-(l) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

REACH Post-AFDC Sliding Fee Scales

Sliding Fee Determination, Collection and Monitoring

Proposed Amendment: N.J.A.C. 10:81-14.18

Proposed New Rules: N.J.A.C. 10:81-14.18A and 14.18B

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-13 and 44:10-1 et seq.

Proposal Number: PRN 1990-154.

Submit comments by May 2, 1990, to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10:81-14.18 and proposed new rules N.J.A.C. 10:81-14.18A and 14.18B further clarify within New Jersey's Realizing Economic Achievement (REACH) program, Section 302 of the Federal Family Support Act (FSA) of 1988, Public Law 100-485, and regulations at 45 CFR 256, which guarantee child care for 12 months for certain REACH participants who have lost eligibility for the Aid to Families with Dependent Children (AFDC) program due to increased earnings, increased hours of work, or the loss of the time-limited disregard of earnings. The adoption of an amendment to N.J.A.C. 10:81-14.18, which was proposed at 22 N.J.R. 136(a), appears elsewhere in this Register.

The proposed amendment and new rules set forth the specific fee scales required under the Family Support Act which determine the amount of fee an employed REACH participant who is no longer receiving AFDC is required to contribute toward the cost of post-AFDC REACH child care benefits. Proposed new rule N.J.A.C. 10:81-14.18B establishes the procedures for collection and monitoring of fee collection, as required by Federal regulations at 45 CFR 256.

N.J.A.C. 10:81-14.18(e)7 is proposed to provide that a sliding fee scale established by the Department of Human Services will provide for some level of contribution by all recipients of post-AFDC child care benefits. The fee scale is based on family income, size, number of children and number of children in care. The proposed amendment refers to the fee scale that is contained in N.J.A.C. 10:81-14.18A. N.J.A.C. 10:81-14.18(e)7 also provides that, pursuant to requirements established by the Department of Human Services, counties must establish procedures for collection of fees, and refers to N.J.A.C. 10:81-14.18B containing those requirements. Finally, the section states that individuals who fail to pay the required fee will lose eligibility for post-AFDC child care benefits for as long as back fees are owed, subject to appropriate notice and hearing requirements.

Proposed N.J.A.C. 10:81-14.18A, REACH post-AFDC sliding fee scale, contains a statement of purpose that, for AFDC families who lose eligibility for AFDC due to increased earnings, by establishing a fee scale for post-AFDC child care benefits. The REACH program seeks to enable families to remain employed, to provide freedom of choice in selection of child care benefits, and to comply with the Federal Family Support Act of 1988. Once assessed, the fee is deducted from the REACH maximum child care payment rates, and applies to all types of care for which REACH provides payment. All families who become ineligible for AFDC on or after April 1, 1990 due to income from employment are required to pay a fee toward the cost of REACH post-AFDC child care services.

There are two fee scales: Scale I for full-time care (30 hours per week or more), and Scale II for part-time care (less than 30 hours per week). The fee scales are set forth in N.J.A.C. 10:81-14.18A and include allowances for absences/holidays and emergency closings. Fees are not reduced in those instances. The assessed fee may not exceed the cost of care.

The fee is determined based on the AFDC eligible family size at time of AFDC case closing, and considers all gross earned and unearned income as defined by the AFDC program. Once determined, the fee does not change unless the REACH participant reports a reduction in income or increase in family size. The amount of the fee will depend on the number of children in care. Therefore, for one child, the parent pays 100 percent of the fee. If a second child is in care, then the parent will pay 50 percent of the fee for that child. No additional fee is assessed for the third and additional children in the same family receiving post-AFDC child care.

Fees are refunded to a participant as a lump sum payment within 30 days when a fair hearing results in a reduced fee or when an error in fee computation has resulted in overcharges to the participant.

Proposed N.J.A.C. 10:81-14.18B, Sliding Fee Determination, Collection and Monitoring, provides a detailed outline of the procedures to be followed by key individual entities in the REACH program—county welfare agency income maintenance (IM) workers, REACH case management, the Lead Child Care Entity who is responsible for overseeing child care services in the county, the REACH participant, and the provider of care for the REACH participant's child(ren). The procedures may be reassigned within a county to entities which, according to the design and operation of the county's REACH program, could more appropriately handle the functions, with certain limits. All counties must assure the Division in writing that participants will receive maximum benefits in a timely manner, including accurate fee determinations. Additionally, the county itself must determine eligibility for AFDC and post-AFDC child care benefits, and provide and deliver notices of all terminations of benefits.

When the AFDC recipient becomes employed, she is responsible for reporting the start date of employment and amount of earnings to the CWA. The CWA IM worker is responsible for determining eligibility for AFDC based on this information. The IM worker is also responsible for accurately recording in FAMIS the earnings, as reported and verified by the AFDC recipient, upon which the fee will be based. The IM worker is also responsible for initiating AFDC case closing, and sending out Form R-10, REACH Benefit Letter, advising of potential eligibility for post-AFDC child care benefits and of the requirement to pay a fee toward the cost of child care.

The REACH case manager (CM) is responsible for monitoring Form R-10 to see if the participant responds by telephone or in writing. The CM will offer assistance in filling out the application. When the participant writes or phones, she is deemed to have applied for post-AFDC child care benefits. Once the participant responds, she is required to submit a complete application, which means providing verification of earnings if not already done. Receipt of such verification determines the date that payment of REACH child care benefits will start. The case manager then computes the fee based on verified earnings, and advises the participant of the requirement to pay the fee to the provider.

The case manager and the REACH participant then complete the REACH Agreement, indicating that as long as the participant remains employed the support service of child care will be provided for a 12-month period, or for the balance of the 12-month post-AFDC period if a complete application was submitted in the second post-AFDC month or later. The case manager and participant also complete the top portion of the five-part Form R-20, REACH Post-AFDC Child Care Fee Agreement, with identifying information and containing the amount of the assessed fee. Case management retains one copy of Form R-20 and gives the remaining copies to the participant.

The participant then goes to the child care provider and together they negotiate fee payment arrangements and complete the rest of Form R-20. The provider and participant sign the form and each retain a copy, and the provider sends the remaining two copies to case manager for distribution to the lead child care entity. The participant must pay the fee, either weekly or bi-weekly, at the start of the period of care. The provider will establish a verifiable method of recording fee collection. Assistance to

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accomplish this will be provided by the lead child care entity. All fee information must be kept confidential by the provider.

The lead child care entity is responsible for assisting the provider in understanding his or her responsibilities, and may provide technical assistance in establishing the recordkeeping procedures.

If the participant is late in paying the fee, the provider must inform the participant and case management by completing and sending Form R-21, Notice of Failure to Pay REACH Post-AFDC Child Care Fee. The fee is late when it is not paid on the first date that is due. Form R-21 provides notice that the fee must be paid within 10 days of the due date, or else action will be taken to terminate post-AFDC benefits. The provider must attempt to collect the fee, and by the tenth day must report disposition—either payment or continued nonpayment—to REACH case management. As a check on the provider, if case management has not received a response, case management must follow up with the provider on the 11th day to determine the participant's continued eligibility for post-AFDC child care benefits.

If the participant has not paid the fees that are due, case management will follow up by sending Form R-22, Notice of Termination of REACH Child Care Benefits, to the participant, with copies to the provider and lead child care entity. This form advises the participant that REACH post-AFDC child care benefits will be terminated in 10 days due to nonpayment of the fee, and that a fair hearing is available. If the provider receives the fees during this 10-day period, he or she has the responsibility to contact case management to stop the termination action. If post-AFDC benefits are not terminated, case management will advise the provider that REACH will continue to pay the balance of the REACH post-AFDC child care benefits.

The participant has the right to a fair hearing when REACH post-AFDC child care benefits are terminated due to nonpayment of fees, in accordance with procedures set forth at N.J.A.C. 10:81-6, 10:81-7, and 10:90-2.5.

Social Impact

The social impact of the proposed amendment and new rules is expected to be positive. The Federal requirement for parents to contribute toward the cost of post-AFDC child care by payment of a fee may assist the family in budgeting for the cost of child care once the benefits expire. It is recognized, however, that mere payment of part of the cost of care may not offset the loss of benefits at the end of the 12-month period. Through the existing REACH program structure at the local level, counties and service providers are actively working to locate low cost care, and to coordinate post-AFDC child care arrangements with existing programs, such as Head Start. Child care available through the Social Services Block Grant (SSBG) may provide additional assistance as the post-AFDC period expires.

Economic Impact

The effect of implementing these FSA provisions for post-AFDC child care will be to provide Federal Financial Participation (FFP) in the amount of 50 percent of the total cost of heretofore state-only funded post-AFDC child care benefits. Since October 8, 1987, when REACH began providing these post-AFDC child care benefits, costs were funded by State-only funds. The FFP will be approximately $3.5 million in State Fiscal Year 1990, and $6.5 million in State Fiscal Year 1991.

The Department anticipates that the proposed amendment and new rules will have no negative economic impact on the CWA's which are required to determine, collect and monitor the sliding fees. The proposed amendment and new rules will not result in an adverse economic impact on families currently receiving State-funded post-AFDC REACH child care benefits or families who become eligible for post-AFDC child care benefits prior to April 1, 1990. The existing rules will apply to those families; payment of a fee toward the cost of care will not be required.

Regulatory Flexibility Statement

The proposed amendment and new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment and new rules impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

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

10:81-14.18 REACH support services: child care

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

(e) Post-AFDC child care pertains to child care available to families whose eligibility for AFDC has ceased due to increased **earnings, increased** hours of **employment (including new employment) which result in increased earnings**, [or earnings from, employment including earnings from new employment,] or as a result of the loss of earned income disregards due to the expiration of time limits at N.J.A.C. 10:82-4.

1.-6. (No change.)

7. Fee requirement for post-AFDC child care: Each family receiving post-AFDC child care is required to contribute a fee toward the cost of such care.

i. Sliding fee scale: A sliding fee scale established by the Department of Human Services will provide for some level of contribution by all recipients of post-AFDC child care. The sliding fee scale shall consider: family income, family size, number of children, and number of children in care. The fee scale is set forth in N.J.A.C. 10:81-14.18A.

ii. Collection of fees: Pursuant to requirements established by the Department of Human Services, each county must establish methods and procedures for the collection of fees, and may vary the period of collection for different fee levels. The requirements for fee collection are set forth in N.J.A.C. 10:81-14.18B.

iii. Failure to pay the required fee: Individuals who fail to cooperate in paying the required fees will, subject to appropriate notice and hearing requirements, lose eligibility for post-AFDC child care benefits for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

Renumber 7. through 8. as **8.-9.** (No change in text.)

(f)-(j) (No change.)

10:81-14.18A REACH post-AFDC sliding fee scale

(a) By the adoption of a Statewide sliding co-payment fee scale for REACH post-AFDC child care benefits provided to families ineligible for AFDC as a result of increased earnings, increased hours of work or the loss of time-limited earned income disregards on or after April 1, 1990, the REACH Program seeks to:

1. Enable an AFDC family to accept and maintain employment;

2. Ensure that the parent has freedom of choice in selecting child care arrangements and is provided with flexibility to choose the location and type of provider that best meets their child care needs; and

3. Require that all recipients of REACH post-AFDC child care benefits pay a portion of the cost of care based on ability to pay, as required by the Federal Family Support Act of 1988.

(b) The REACH post-AFDC child care sliding fee scales, based on the family size and gross income of the AFDC eligible unit at case closing, are used to determine the fee. Once assessed, the fee is deducted from the amount to be paid to the provider by the REACH Program up to the maximum REACH rates. This assessed fee for child care services is then paid directly by the parent. Any balance remaining is paid by the REACH Program for the total cost of care. The REACH post-AFDC child care fee policy and procedures are applicable for all types of care arrangements available through the REACH Program and approved by the appropriate child care evaluating agency, as follows:

1. Licensed child care centers;

2. Registered family day care homes;

3. Self-arranged care (including in-home care);

4. Summer camps which are approved by the Department of Health (see N.J.A.C. 8:25); and

5. School-age child care programs as set forth at N.J.A.C. 10:81-14.18(e)1.

(c) All AFDC families who become ineligible for AFDC on or after April 1, 1990 due to (increased) income from employment shall pay a fee toward the cost of REACH Post-AFDC child care services.

(d) The sliding fee scales are as follows:

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1. The amount of the required fee is based on the family's income level, family size, number of children, and number of children in care. There are two sliding fee scales:

i. Sliding Fee Scale I—Full-Time Care; and

ii. Sliding Fee Scale II—Part-Time Care.

2. Assessed fees are apportioned to cover a 52-week period. Holidays, emergency closings, and absences do not exclude or reduce the required fee co-payment.

REACH POST-AFDC SLIDING FEE SCALE* I
BY FAMILY SIZE
FULL-TIME

2	3	4	5	6	7	Weekly Fee	Bi-Weekly Fee
0- 1,676	0- 2,070	0- 2,464	0- 2,858	0- 3,253	0- 3,326	2.00	4.00
1,677- 3,351	2,071- 4,140	2,465- 4,928	2,859- 5,716	3,254- 6,505	3,327- 6,653	4.00	8.00
3,352- 3,749	4,141- 4,943	4,929- 5,688	5,717- 6,433	6,506- 7,178	6,654- 7,922	5.00	10.00
3,750- 5,027	4,944- 6,209	5,689- 7,392	6,434- 8,575	7,179- 9,758	7,923- 9,979	6.00	12.00
5,028- 6,702	6,210- 8,279	7,393- 9,856	8,576-11,433	9,759-13,010	9,980-13,306	8.00	16.00
6,703- 8,378	8,280-10,349	9,857-12,320	11,434-14,291	13,011-16,263	13,307-16,632	10.00	20.00
8,379-10,053	10,350-12,419	12,321-14,784	14,292-17,149	16,264-19,515	16,633-19,958	12.00	24.00
10,054-11,729	12,420-14,489	14,785-17,248	17,150-20,007	19,516-22,768	19,959-23,285	15.00	30.00
11,730-13,404	14,490-16,558	17,249-19,712	20,008-22,866	22,769-26,020	23,286-26,611	18.00	36.00
13,405-15,009	16,559-18,541	19,713-22,072	22,867-25,604	26,021-29,136	26,612-29,797	21.00	42.00
15,010-16,615	18,542-20,525	22,073-24,434	25,605-28,344	29,137-32,254	29,798-32,986	24.00	48.00
16,616-18,221	20,526-22,509	24,435-26,796	28,345-31,084	32,255-35,371	32,987-36,174	27.00	54.00
18,222-19,827	22,510-24,493	26,797-29,158	31,085-33,823	35,372-38,489	36,175-39,362	30.00	60.00

*Families with a Maximum Gross Income, for their Family size, in excess of their scale will be assessed the Maximum Fee.

REACH POST-AFDC SLIDING FEE SCALE* I
BY FAMILY SIZE
FULL-TIME

8	9	10	11	12	Weekly Fee	Bi-Weekly Fee
0- 3,400	0- 3,474	0- 3,548	0- 3,622	0- 3,696	2.00	4.00
3,401- 6,801	3,475- 6,948	3,549- 7,096	3,623- 7,244	3,697- 7,392	4.00	8.00
6,802- 8,667	6,949- 9,412	7,097-10,156	7,245-10,901	7,393-11,603	5.00	10.00
8,668-10,201	9,413-10,433	10,157-10,645	10,902-11,866	11,604-11,808	6.00	12.00
10,202-13,601	10,434-13,897	10,646-14,193	11,867-14,488	11,809-14,784	8.00	16.00
13,602-17,002	13,898-17,371	14,194-17,741	14,489-18,111	14,785-18,480	10.00	20.00
17,003-20,402	17,372-20,845	17,742-21,289	18,112-21,733	18,481-22,176	12.00	24.00
20,403-23,802	20,846-24,319	21,290-24,837	21,734-25,355	22,177-25,872	15.00	30.00
23,803-27,202	24,320-27,794	24,838-28,386	25,356-28,977	25,873-29,568	18.00	36.00
27,203-30,460	27,795-31,122	28,387-31,784	28,978-34,426	29,569-33,109	21.00	42.00
30,461-33,719	31,123-34,452	31,785-35,185	34,427-35,918	33,110-36,651	24.00	48.00
33,720-36,978	34,453-37,782	35,186-38,586	35,919-39,390	36,652-40,194	27.00	54.00
36,979-40,238	37,783-41,112	38,587-41,987	39,391-42,862	40,195-43,737	30.00	60.00

*Families with a Maximum Gross Income, for their Family Size, in excess of their scale will be assessed the Maximum Fee.

REACH POST-AFDC SLIDING FEE SCALE* II
BY FAMILY SIZE
PART-TIME**

2	3	4	5	6	7	Weekly Fee	Bi-Weekly Fee
0- 1,676	0- 2,070	0- 2,464	0- 2,858	0- 3,253	0- 3,326	1.00	2.00
1,677- 3,351	2,071- 4,140	2,465- 4,928	2,859- 5,716	3,254- 6,505	3,327- 6,653	2.00	4.00
3,352- 3,749	4,141- 4,943	4,929- 5,688	5,717- 6,433	6,506- 7,178	6,654- 7,922	2.50	5.00
3,750- 5,027	4,944- 6,209	5,689- 7,392	6,434- 8,575	7,179- 9,758	7,923- 9,979	3.00	6.00
5,028- 6,702	6,210- 8,279	7,393- 9,856	8,576-11,433	9,759-13,010	9,980-13,306	4.00	8.00
6,703- 8,378	8,280-10,349	9,857-12,320	11,434-14,291	13,011-16,263	13,307-16,632	5.00	10.00
8,379-10,053	10,350-12,419	12,321-14,784	14,292-17,149	16,264-19,515	16,633-19,958	6.00	12.00
10,054-11,729	12,420-14,489	14,785-17,248	17,150-20,007	19,516-22,768	19,959-23,285	7.50	15.00
11,730-13,404	14,490-16,558	17,249-19,712	20,008-22,866	22,769-26,020	23,286-26,611	9.00	18.00
13,405-15,009	16,559-18,541	19,713-22,072	22,867-25,604	26,021-29,136	26,612-29,797	10.50	21.00
15,010-16,615	18,542-20,525	22,073-24,434	25,605-28,344	29,137-32,254	29,798-32,986	12.00	24.00
16,616-18,221	20,526-22,509	24,435-26,796	28,345-31,084	32,255-35,371	32,987-36,174	13.50	27.00
18,222-19,827	22,510-24,493	26,797-29,158	31,085-33,823	35,372-38,489	36,175-39,362	15.00	30.00

*Families with a Maximum Gross Income, for their Family Size, in excess of their scale will be assessed the Maximum Fee
**30 hours per week or less, for example, summer care for school-age children

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REACH POST-AFDC SLIDING FEE SCALE* II
BY FAMILY SIZE
PART-TIME**

8	9	10	11	12	Weekly Fee	Bi-Weekly Fee
0- 3,400	0- 3,474	0- 3,548	0- 3,622	0- 3,696	1.00	2.00
3,401- 6,801	3,475- 6,948	3,549- 7,096	3,623- 7,244	3,697- 7,392	2.00	4.00
6,802- 8,667	6,949- 9,412	7,097-10,156	7,245-10,901	7,393-11,603	2.50	5.00
8,668-10,201	9,413-10,433	10,157-10,645	10,902-11,866	11,604-11,808	3.00	6.00
10,202-13,601	10,434-13,897	10,646-14,193	11,867-14,488	11,809-14,784	4.00	8.00
13,602-17,002	13,898-17,371	14,194-17,741	14,489-18,111	14,785-18,480	5.00	10.00
17,003-20,402	17,372-20,845	17,742-21,289	18,112-21,733	18,481-22,176	6.00	12.00
20,403-23,802	20,846-24,319	21,290-24,837	21,734-25,355	22,177-25,872	7.50	15.00
23,803-27,202	24,320-27,794	24,838-28,386	25,356-28,977	25,873-29,568	9.00	18.00
27,203-30,460	27,795-31,122	28,387-31,784	28,978-34,426	29,569-33,109	10.50	21.00
30,461-33,719	31,123-34,452	31,785-35,185	34,427-35,918	33,110-36,651	12.00	24.00
33,720-36,978	34,453-37,782	35,186-38,586	35,919-39,390	36,652-40,194	13.50	27.00
36,979-40,238	37,783-41,112	38,587-41,987	39,391-42,862	40,195-43,737	15.00	30.00

*Families with a Maximum Gross Income, for their Family Size, in excess of their scale will be assessed the Maximum Fee
**30 hours per week or less, for example, summer care for school-age children

(e) The criteria for determination and re-determination of the fee are as follows:

1. The criteria for determining the amount of the fee are family size and income.

i. Family size consists of all members of the AFDC eligible unit at the time the AFDC case is closed.

ii. Family income includes all gross earned and unearned income, as defined at N.J.A.C. 10:82-4, received by all members of the AFDC eligible unit. The gross amount of family income must be verified by wage stubs or similar documentation, as a condition of receiving post-AFDC child care benefits.

2. The sliding fee scale is determined by the number of hours child care services are being provided to the child.

i. Full-time care is defined as care for 30 hours or more per week.

ii. Part-time care is defined as care for less than 30 hours per week.

iii. In no case may the co-payment fee exceed the cost of care.

3. Once the fee is determined, it will remain unchanged for the duration of the child care placement for the 12-month post-AFDC period, unless there is an increase in family size, or a reduction in gross family income. The participant must notify the CWA of any such changes occurring in the family. The CWA (case management) shall determine any changes in the fee.

(f) The process for fee assessment based on the number of children in care is as follows:

1. When only one child in the family is receiving post-AFDC child care services, 100 percent of the fee is assessed.

2. Fees will be assessed for the first and second child in a family receiving REACH post-AFDC child care benefits as follows:

i. When both children are receiving the same child care services from the same provider (for example, both receiving full-time care), one shall be assessed at 100 percent of the fee while the sibling will be assessed at 50 percent of the fee. The fee assessment shall be applied according to the age of child care: 100 percent of the fee for the oldest child in care, and 50 percent of the fee for the next oldest child in care.

ii. When both children are receiving different child care services from the same provider (for example, full-time and part-time care), the fee shall be determined for the respective type of care. The higher fee will then be charged at 100 percent and the lower fee at 50 percent (for example, 100 percent fee for full-time care and 50 percent fee for part-time care).

iii. When both children are receiving different child care services from separate providers, the child care service with the highest fee will be assessed to the client at 100 percent of the required fee. The second child care service will be assessed to the participant at 50 percent of the required fee (for example, 100 percent fee for full-time care and 50 percent fee for part-time care).

iv. When both children are receiving the same child care services but from different providers (for example, both receiving full-time care), one shall be assessed at 100 percent of the fee while the sibling will be assessed at 50 percent of the fee. The fee assessment shall be applied according to the age of child in care: 100 percent of the fee for the oldest child in care, and 50 percent of the fee for the next oldest child in care.

v. Fees shall be rounded to the nearest dollar. If the fee is one to 50 cents, it will be rounded down to the nearest dollar, and if 51 to 99 cents, it will be rounded up to the next dollar.

3. No fee will be assessed to a family for the third and additional children receiving REACH post-AFDC child care benefits.

(g) The requirements for refunds of fees are as follows:

1. Refunds are made to the participant by the REACH program as a lump sum payment when:

i. A fair hearing decision results in a reduced fee; or

ii. An error in fee computation has resulted in overcharges to the participant.

2. Overcharges are refunded within 30 days of the fair hearing decision or discovery of the error.

10:81-14.18B Sliding fee determination, collection and monitoring

(a) This section sets forth procedures for determining the amount of a REACH participant's fee toward the cost of post-AFDC child care, for the collection of the fee, monitoring payment (and nonpayment) of the fee, and for notification of nonpayment of fees and termination of post-AFDC child care benefits for continued nonpayment of fees.

1. The procedures are listed according to the entities involved in the fee determination and collection process: the county welfare agency income maintenance staff, the county REACH case management staff, the provider of child care, and the county REACH lead child care entity.

2. Counties are responsible for the entire fee determination and collection process and functions, according to the standard procedures detailed in this section. Counties may adapt the procedures to local operations, and may reassign functions among the entities listed below. However, counties must make sure that the tasks are completed, benefits are processed in a timely manner that affords participants maximum benefits, fees are accurately determined, and participants are not denied benefits they are otherwise eligible to receive.

(b) Procedures for determining REACH post-AFDC child care fees are as follows:

1. County welfare agency (CWA) income maintenance (IM) functions are as follows:

i. When the AFDC recipient becomes employed, she must report employment to the CWA and provide documentation to verify employment—the start date and amount of earnings—as a condition of eligibility for REACH post-AFDC benefits of one year of extended Medicaid coverage and post-AFDC child care.

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ii. When the IM worker receives the documentation referenced in (b)1i above, the worker will determine if the family will continue to be eligible for AFDC based on income.

iii. If earned income received or expected to be received renders the family ineligible for AFDC, the IM worker will initiate AFDC case closing and the processing of post-AFDC REACH benefits, including extended Medicaid benefits and post-AFDC child care.

(1) The IM worker will do the following:

(A) Enter the amount of verified earnings into FAMIS at the time the action is taken on computer to close the AFDC case. These earnings will be used to compute the fee that the participant must pay toward cost of post-AFDC child care, if the participant elects to apply for such benefits.

(B) Send out Form PA-15, Notification Form, advising of the termination of AFDC benefits and effective date.

(C) Send out Form R-10, REACH Benefit Letter, advising the participant of:

(I) The availability of post-AFDC REACH benefits—extended Medicaid and post-AFDC child care;

(II) The requirement to pay a co-payment fee toward the cost of post-AFDC child care; and

(III) The need to apply for post-AFDC child care by contacting (by phone, mail or in-person) the REACH case manager listed at the bottom of Form R-10.

(D) Forward one copy of Form R-10 to REACH case management.

(2) If the participant has not provided verification of earnings at time of case closing, the IM worker will complete steps (b)1iii(1)(A) through (B) above, inserting estimated earning in FAMIS, and including a statement in the Form R-10 of the need to provide such verification of earnings as a condition of eligibility for the extended benefits.

(A) The participant must provide verification of earnings within 30 days of the effective date of AFDC case closing. If the participant does not provide such verification of earnings, there is no eligibility for post-AFDC REACH benefits.

iv. To the extent possible, the IM worker should complete the AFDC case closing, income verification process and mailing of Form R-10 before the AFDC case is closed. This will ensure that participants receive child care benefits in a timely and uninterrupted manner, and ensure that providers receive payment of fees and REACH voucher payments. If this is not possible, the process should be completed as soon as possible after the AFDC case is closed, during the first month of AFDC ineligibility.

v. Computation of eligibility period for post-AFDC child care benefits: The eligibility period for post-AFDC child care benefits will be computed in accordance with N.J.A.C. 10:81-14.18(e)4i.

2. REACH case management functions are as follows:

i. Upon receipt of the Form R-10 from IM, case management will monitor the form to see if the REACH participant contacts case management.

ii. The date the REACH participant contacts case management in response to the Form R-10 will be considered the date of application for REACH post-AFDC child care benefits. In order to begin receiving payments for post-AFDC child care, the participant must make a complete application, which includes providing verification of earnings.

iii. The period of eligibility for post-AFDC child care benefits is computed according to N.J.A.C. 10:81-14.18(e)4. A REACH participant will begin receiving post-AFDC child care benefits when a complete application is received, computed according to (b)2iii(1) and (2) below:

(1) If the participant submits a complete application within 30 days of the effective date of AFDC case closing, that is, by the end of the month for which the case was closed, the participant will start receiving post-AFDC child care benefits as of the effective date of case closing. The benefit period will be 12 months.

(2) If the participant submits a complete application after the AFDC case has been closed for one calendar month, the participant will start receiving post-AFDC child care benefits commencing with the date the complete application was received by the CWA. The benefit period will be the balance of the 12-month period. In such situations, post-AFDC benefits will not be retroactive to the first day of the month the complete application was received.

iv. Upon receipt of a response from a participant requesting REACH post-AFDC child care benefits, the REACH case manager and the participant will discuss the child care arrangements, including the requirement to pay a fee toward the cost of care. The REACH case manager will determine the amount of the participant's fee based on verified earnings, family size and the number of children in post-AFDC child care. The case manager and participant will then complete a REACH Agreement for Support Services indicating the child(ren) for whom child care is to be provided, the duration of the child care benefits, the name(s) and address(es) of the child care provider(s), and the amount of the child care benefits.

(1) The case manager will give the participant a copy of the Agreement and forward a copy of the REACH Agreement to the lead child care entity.

(2) Once the REACH Agreement is signed, case management will process the support agreement, and mail out vouchers to the provider(s) listed in the REACH Agreement(s).

v. The case manager will complete and send out Form R-20, REACH Post-AFDC Child Care Fee Co-Payment Agreement, to the child care service provider, notifying the child care service provider(s) of the following:

(1) The effective starting date of REACH post-AFDC child care benefits;

(2) The amount to be reimbursed to the provider through a REACH child care voucher payment;

(3) The responsibility that the participant has for any remaining unpaid balance to the provider for the total cost of care (including the required amount of the REACH post-AFDC child care fee that is to be paid by the participant to the provider); and

(4) That payment for child care by REACH voucher cannot be made until case management receives the signed copies of the Agreement.

vi. Case management must retain one copy of Form R-20 to monitor completion of the agreement by the provider and participant, and to ensure that both parties understand their responsibilities and agree to the payment schedule of the fee.

3. Child care service provider functions are as follows:

i. Upon receipt of the Form R-20, REACH Post-AFDC Child Care Fee Agreement, from case management, the participant and the provider must negotiate the terms of the Agreement, including frequency of fee payment and collection (either weekly or biweekly), and date or day of fee payment. Frequency and day of fee payment can be based on individual circumstances, including the participant's source and frequency of income and the fee payment procedures already established by the provider. Collection periods should coincide with the periods covered by the REACH post-AFDC child care voucher to the extent possible.

ii. The terms of fee payment will be set forth in the Agreement and both the participant and provider must sign the agreement. Form R-20 is a five-part form used to:

(1) Provide the participant receiving REACH post-AFDC child care benefits with written documentation of her fee obligation;

(2) Establish the responsibilities of the parent or guardians and the provider; and

(3) Establish a basis for monitoring compliance with the REACH post-AFDC fee policy.

iii. Form R-20 is to be completed and signed by the provider and parent for each child for whom a fee is assessed.

iv. Once the Form R-20 is completed, the provider will:

(1) Distribute copies to the parent;

(2) Retain the original for the provider's files; and

(3) Return the remaining copies to either the REACH Case Manager or the Lead Child Care Entity, as determined by the county, who will distribute the copies.

v. The provider should implement a system designed to ensure an efficient, error-free method of recording and accounting for all co-payment fee collections. The Lead Child Care Entity is available to provide technical assistance to providers in establishing such a sys-

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tem. The provider may wish to adapt recordkeeping systems used in the Social Services Block Grant (SSBG) system, such as the One-Write Fee Collection System or a comparable method.

(1) Providers must establish procedures for the collection of the fee from the participant.

vi. The provider and REACH participant will then execute the terms of the Agreement. The provider will collect the assessed fees from the participant prior to the start of the service delivery period. Thereafter, fees are to be collected either weekly or biweekly, according to the terms of the Agreement. The child care provider has the responsibility to make reasonable efforts to collect assessed fees from the REACH post-AFDC participant.

(1) A weekly fee is due on or before the first day of the week that service is provided. Fees not paid by the end of the first day of the week are considered late. If the child is enrolled in the middle of the week, the fee for the first week is prorated in accordance with the number of days service is provided, and is due on or before the first day of service.

(2) A biweekly-weekly fee is due on or before the first day of the biweekly-weekly period in which service is provided. Fees not paid by the end of the first day of the biweekly-weekly period are considered late. If the child is enrolled in the middle of the week, the fee for the first biweekly-weekly period is prorated in accordance with the number of days service is provided, and is due on or before the first day of service.

vii. The income and fee information recorded on the Agreement is confidential. The provider, Lead Child Care Entity, and REACH Case Manager are responsible for ensuring that access to this information is restricted to those individuals responsible for assessing and collecting fees.

4. REACH Lead Child Care Entity functions are as follows:

i. The Lead Child Care Entity is responsible for advising the provider at time of recruitment into REACH of the post-AFDC fee requirements, including the requirement that the participant must pay a portion of the cost of care, for training the provider in voucher completion, and for providing assistance in fee collection and monitoring, as determined by the county.

ii. The functions of the REACH Lead Child Care Entity are as follows:

(1) To maintain a file of the completed REACH Agreements for Support Services for all participants receiving post-AFDC child care as part of the overall provision of child care services;

(2) To maintain a file of the completed Forms R-20 for the same reason; and

(3) To offer technical assistance to child care providers as needed and when requested.

5. Reassignment of functions shall be accomplished as follows:

i. A county may opt to reassign functions set forth in this subsection to county entities other than those listed, for example, the Lead Child Care Entity, if, given the county's REACH operations, those functions would be more appropriately handled by that other entity.

(1) Functions that may not be reassigned to entities other than those listed in this subsection include: determining eligibility or ineligibility for REACH post-AFDC child care benefits, or sending adverse action notices to the REACH participant advising of the termination of REACH post-AFDC child care benefits.

ii. A county must use the forms listed in this subsection in its REACH post-AFDC operations.

(c) Fee collection, monitoring, and procedures for late payment or nonpayment of fees and termination of REACH post-AFDC child care benefits are as follows:

1. The following are provider functions:

i. It is the responsibility of the child care service provider to monitor fee collection in accordance with terms of the Form R-20 Agreement.

ii. Whenever the REACH post-AFDC child care fee has not been paid to the provider on the date that payment is due, that is, the fee due date, the fee is considered late.

iii. In the event of nonpayment of assessed fees by the participant, the provider will follow up on continued nonpayment by informing the REACH case manager of same. This action by the provider in conjunction with the REACH case manager will initiate the process for terminating REACH post-AFDC child care benefits. On the first day that the fee is late, and on each fee due date thereafter, the provider must:

(1) Immediately notify both the parent and REACH case management by telephone of nonpayment of the fee; and

(2) Complete a Form R-21, Notice of Failure to Pay REACH post-AFDC Child Care Fee. The Form R-21 is a four-part form used to provide written notice to:

(A) Advise the parent/guardian of a child receiving REACH post-AFDC child care services of the amount of assessed fees which have not been paid;

(B) Advise the REACH case manager and the Lead Child Care Entity of the nonpayment status of the parent/guardian of a child receiving REACH post-AFDC child care services;

(C) Advise the Lead Child Care Entity of the nonpayment status of the parent/guardian of a child receiving REACH post-AFDC child care services;

(D) Document the provider's efforts to collect the assessed fee co-payment;

(E) Serve a formal warning notice to the parent or guardian that the REACH program requires the provider to report continued nonpayment and the case manager to take action to terminate post-AFDC child care services unless overdue fees are paid within 10 days of the date of the notice; and

(F) Alert REACH case management and the Lead Child Care Entity that child care services may be terminated due to nonpayment status of the REACH post-AFDC participant.

iv. Four copies of the Form R-21 are completed and signed by the child care service provider. The provider will:

(1) Give or send the original to the participant.

(2) Send copies to the REACH case manager and Lead Child Care Entity; and

(3) Retain a copy for the provider's files.

v. The provider must give a follow-up or subsequent report to case management, either in writing or by telephone, of the payment or continued nonpayment of fees.

(1) If the participant pays the assessed fees within 10 days of the date of Form R-21, the provider must report payment to case management so that post-AFDC child care benefits will not be terminated inadvertently.

(2) If the participant does not pay the assessed fees within 10 days of the date of Form R-21, the provider must report continued nonpayment of fees to case management so that post-AFDC child care benefits may be terminated.

(3) If the provider fails to report nonpayment, the REACH program will not be liable for unpaid fees for care provided as of the 11th day after the date of Form R-21.

vi. Under no circumstances may the participant be charged a late fee payment penalty.

2. The Lead Child Care entity will provide technical assistance to the provider in cooperation with REACH case management as needed.

3. REACH case management functions are as follows:

i. Case management should establish a tickler or follow-up system so that, if the provider has not given a disposition of the case by the 11th day after the date of Form R-21, case management will contact the provider and obtain disposition of the overdue fees (either payment or continued nonpayment), and record the disposition in the REACH case record.

ii. Following initial notification by the provider of the nonpayment status of assessed fees by the participant, the REACH case manager will do the following:

(1) Determine the effective date that REACH post-AFDC child care benefits will be terminated; and

(2) Complete a Form R-22, Notice of Termination of REACH post-AFDC Child Care Services. The Form R-22 is used to provide written notice to:

(A) Advise the parent/guardian of a child receiving REACH post-AFDC child care services of the amount of assessed fees which have not been paid;

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(B) Advise the parent/guardian of the right to request and obtain a fair hearing;

(C) Serve as formal notice to the parent or guardian that REACH post-AFDC child care services will be terminated by a specific date unless overdue fees are paid;

(D) Serve as written confirmation for the provider and Lead Child Care Entity that child care services will be terminated due to the late or nonpayment status of the REACH post-AFDC participant; and

(E) Advise the provider that if fees are subsequently paid by the participant, the provider must contact REACH case management advising of the payment, to ensure voucher payments are uninterrupted or are resumed.

(3) Four copies of the Form R-22 are completed and signed by the REACH Case Manager. The REACH case manager will:

(A) Send the original to the participant;

(B) Distribute copies to the provider and the Lead Child Care Entity; and

(C) Retain a copy for the participant's files.

4. When post-AFDC child care services are terminated due to nonpayment of fees, the participant of a child receiving REACH post-AFDC child care services retains the right to request a fair hearing. If timely request (within 10 days) is made, the REACH Program will continue to make payment to the provider for the REACH portion of child care services rendered until a fair hearing is held, and a final determination is made.

i. In all cases where a fair hearing is requested, the procedures outlined in N.J.A.C. 10:81-6, 10:81-7, and 10:90-2.5 (see N.J.A.C. 10:81-14.7) are to be followed.

5. Reassignment of functions shall be accomplished as follows:

i. A county may opt to reassign functions set forth in this subsection to county entities other than those listed, for example, the Lead Child Care Entity, if, given the county's REACH operations, those functions would be more appropriately handled by that other entity.

(1) Functions that may not be reassigned to entities other than those listed in this subsection include: determining care benefits, sending adverse action notices to the REACH participant advising of the termination of REACH post-AFDC child care benefits, or involvement in the fair hearing process.

ii. A county must use the forms listed in this subsection in its REACH post-AFDC operations.

TRANSPORTATION
(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes N.J. 54 in Atlantic County, N.J. 26 in Middlesex County and N.J. 83 in Cape May County

Proposed Amendments: N.J.A.C. 16:28-1.55, 1.104 and 1.119

Authorized By: John F. Dunn, Jr., Director; Division of Traffic Engineering and Safety Programs.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1990-158.

Submit comments by May 2, 1990 to:

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

The agency proposal follows:

Summary

The proposed amendments will establish revised "speed limit" zones along Routes N.J. 54 in the Borough of Buena and Buena Vista Township; Atlantic County; N.J. 26 in the City of New Brunswick and North Brunswick Township, Middlesex County; and N.J. 83 in Dennis Township, Cape May County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the revisions to current of "speed limit" zones along Routes N.J. 54 in the Borough of Buena and Buena Vista Township, Atlantic County; N.J. 26 in the City of New Brunswick and North Brunswick Township, Middlesex County; and N.J. 83 in Dennis Township, Cape May County were warranted.

The Department therefore proposes amendments to N.J.A.C. 16:28-1.55, 1.104 and 1.119 based upon the traffic investigations.

Social Impact

The proposed amendments will establish revised "speed limit" zones along Routes N.J. 54 in the Borough of Buena and Buena Vista Township, Atlantic County; N.J. 26 in the City of New Brunswick and North Brunswick Township, Middlesex County; and N.J. 83 in Dennis Township, Cape May County for the safe and 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 installation of speed limit signs. Motorists who violate the amended rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, record keeping 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 amended rules primarily affect the motoring public.

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

16:28-1.55 Route 54

(a) The rate of speed designated for the certain [part] **parts** of State highway [route number] **Route** 54 described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

[1. For both directions of traffic:

i. 35 miles per hour from the intersection of Route US 30 to Tilton Street, Hammonton; thence

ii. 25 miles per hour to the intersection of Washington Street; thence

iii. 35 miles per hour to a point 300 feet south of Chews Road (County Road number 599); thence

iv. 50 miles per hour to a point 50 feet south of milepost 9; thence

v. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

1. In Buena Vista Township, Atlantic County:

i. for both directions of traffic, 55 miles per hour between the Borough of Buena North westerly line and the Borough of Folsom southerly line (approximate mileposts 1.10 to 6.90).

ii. For northbound direction of traffic, 55 miles per hour between Route U.S. 40 and the Borough of Buena North westerly line (approximate mileposts 0.00 to 1.10).

2. In the borough of Buena, Atlantic County, for southbound direction of traffic, 55 miles per hour between Route U.S. 40 and the Township of Buena Vista southerly line (approximate mileposts 0.00 to 1.10).

16:28-1.104 Route 26

(a) The rate of speed designated for the certain [part] **parts** of State highway [route number] **Route** 26 described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

[1. For both directions of traffic:

i. 45 miles per hour from the junction of Route US 1 and Route 26 to a point 1,000 feet south of How's Lane, North Brunswick Township; thence

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ii. 35 miles per hour to the northerly terminus of Route 26 in the City of New Brunswick;

iii. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

1. In North Brunswick Township, Middlesex County:

i. For both directions of traffic:

(1) Zone 1: 45 miles per hour between Route U.S. 1 and Patton Street (approximate mileposts 0.00 to 0.84); thence

(2) Zone 2: 35 miles per hour between Patton Street and the City of New Brunswick South westerly line (12th Street) except for 25 miles per hour when passing through the Livingston Park School zone while 25 mph when flashing signs are operating during recess or while children are going to or leaving school, during opening and closing hours (approximate mileposts 0.84 to 1.52).

ii. For northbound direction of traffic, 35 miles per hour between the City of New Brunswick South westerly line (12th Street) and the City of New Brunswick South easterly line (Mile Run Brook) (approximate mileposts 1.52 to 2.60).

2. In the City of New Brunswick, Middlesex County, for southbound direction of traffic, 35 miles per hour between the Township of North Brunswick North westerly line (12th Street) and the Township of North Brunswick North easterly line (Mile Run Brook) (approximate mileposts 1.52 to 2.10).

16:28-1.119 Route 83

(a) The rate of speed designated for the certain part of State highway [route number] **Route** 83 described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

[1. For both directions of traffic:

i. 50 miles per hour from the intersection of Route US 9 to the intersection of Route 47;

ii. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

1. In Dennis Township, Cape May County, for both directions of traffic: 50 miles per hour between Route U.S. 9 and Route N.J. 47 (approximate mileposts 0.00 to 3.84).

(a)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT
BUREAU OF MAINTENANCE SUPPORT
Junkyards Adjacent to the Interstate and Primary Highway Systems
Proposed Readoption: N.J.A.C. 16:43

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:5E-1 et seq.

Proposal Number: PRN 1990-170.

Submit comments by May 2, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66 (1978), N.J.A.C. 16:43, Junkyards Adjacent to the Interstate and Primary Highway Systems, will expire on September 3, 1990. The staff of the Bureau of Maintenance Support has reviewed these rules and has determined that the rules are necessary, reasonable, and proper for the purpose of which they were originally promulgated. Under the provisions of N.J.A.C. 1:30-4.4, the Department is proposing the readoption of this chapter without change.

These rules were proposed to effectuate the purposes of the New Jersey Junkyard Control Act, N.J.S.A. 27:5E-1 et seq., which are to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, and to foster the public policy of the State expressed by the Act, which is to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and primary highway systems within the State. Additionally, these rules comply with Section 136 of Title II of the Federal Highway Beautification Act of 1965 and the provisions of Title 23 Code of Federal Regulations (CFR), part 751, Junkyard Control and Acquisition.

The subchapters are summarized as follows:

N.J.A.C. 16:43-1 outlines the general provisions of the rules.

N.J.A.C. 16:43-2 describes conditions and actions required concerning illegal junkyards.

N.J.A.C. 16:43-3 prescribes the requirements for non-conforming junkyards.

N.J.A.C. 16:43-4 outlines the procedure to be followed in the screening and fencing required by the Junkyard Control Act.

Social Impact

The rules proposed for readoption will continue the standards required for the control, operation, establishment and maintenance of junkyards along the State's highway systems as stipulated in the New Jersey Junkyard Control Act, the Federal Highway Beautification Act of 1965, and Title 23 of the Code of Federal Regulations, Part 751. Counties and Municipalities may adopt more restrictive ordinances and conditions for the control of junkyards.

Economic Impact

The rules proposed for readoption have an economic impact on any person(s) desiring to establish a junkyard along the highway systems through the application process, permit fees and the acquisition of land. The Department will incur direct and indirect costs caused by the acquisition of lands as may be necessary to secure the relocation, removal, or disposal of junkyards, and the payment of costs of relocation, removal, or disposal thereof. Persons presently operating junkyards in compliance with these rules will benefit because there has been no increase of any required fees by the readoption. Counties and municipalities may be impacted since they may adopt ordinances. Any violations of any provision of this chapter will be grounds for fine, modifications, suspension or revocation of any license issued. There is no direct economic impact on the public.

Regulatory Flexibility Analysis

The rules proposed for readoption impose no reporting or record keeping requirements. Compliance requirements are imposed by way of the application and permit requirements, including fees. These requirements are imposed on anyone seeking to establish a junkyard in compliance with established standards. Some owners or operators may be defined as small business, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For any new owner, these requirements may increase their start-up capital costs; for established businesses the compliance costs will have no impact. As the rule effectuates a statutory scheme and serves to promote the benefit and overall well-being of the general populace, no differentiation in requirements is provided for small businesses.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:43.

(b)

DIVISION OF SYSTEMS PLANNING
BUREAU OF ACCESS AND DEVELOPMENT IMPACT ANALYSIS
State Highway Access Management Code Definitions; Access Classification; Access Standards; Permits; Process for Changes in Classification; Access Management Plans; and Designation of Limited Access
Proposed New Rules: N.J.A.C. 16:47
Proposed Repeal: N.J.A.C. 16:41-2

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Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and State Highway Access Management Act, P.L. 1989, c.32.
Proposal Number: PRN 1990-171.

The Department has scheduled **public hearings** on the proposed rules as follows:

Monday, April 9, 1990
Rutgers University, Camden
Campus Center, Building 5
Camden, N.J.
3:00 P.M. to 8:00 P.M.

Thursday, April 12, 1990
Jersey City Municipal Building
Council Chambers
280 Grove St.
Jersey City, N.J.
3:00 P.M. to 8:00 P.M.

Thursday, April 19, 1990
Eatontown Borough Municipal Building
Council Chambers
47 Broad Street
Eatontown, N.J.
3:00 P.M. to 8:00 P.M.

The purpose of the hearings is to afford the public the opportunity to have their comments and suggestions entered into the record for consideration prior to the final adoption of the proposal. The hearings will be conducted in a quasi-legislative, rather than a quasi-judicial, manner. **Two additional public hearings** will be scheduled, in cooperation with the State Legislature, and appropriate notice will be given. Persons desiring to make a presentation at a hearing are requested to present a written transcript for inclusion in the record. Presentations will be limited to five minutes and will be tape-recorded.

Submit written comments by May 2, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
CN 600
Trenton, N.J. 08625

The agency proposal follows:

Summary

Under the provisions of the "State Highway Access Management Act, P.L. 1989, c.32 (hereinafter, "the Act"), the Department of Transportation is required to adopt a State Highway Access Management Code (hereinafter, "State Highway Access Code" or "Access Code"), N.J.A.C. 16:47. In view of this mandate, the Department has proposed the repeal of N.J.A.C. 16:41-2, Permits for Driveways (Access), and the adoption of the rules proposed herein.

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 originates in vehicular movements 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 on the highway, and to obtain the optimum use of highway investments. 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.

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, was constructed at great public expense and constitutes irreplaceable public assets. 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 the present and future generations.

Section 3c of the Act indicates that alternative design standards can be applied to lots which were in existence prior to the adoption of the access code and which cannot meet the standards of the access code. In developing the design standards for access points, the Department based the standards on such factors as speed, existence of separate deceleration area, geometrics, and the type and number of vehicles using the driveway.

The Department concluded that the design standards are not a function of time, and proposes to address nonconforming lots through limits on maximum vehicular use pursuant to authority in Section 5 of the Act.

Section 3e of the Act provides for counties and municipalities to adopt access codes for streets and highways under their jurisdiction. The State highway access code was developed considering this provision. The principles embodied therein should be easily transferable to counties and municipalities desirous of implementing local access codes.

Section 3d of the Act establishes time frames for the issuance of access permits. Historically, the Department has covered approvals for large and complex developments in developer agreements in lieu of access permits. While the procedures proposed for developer agreements in the access code will lead to an acceptance or rejection of such developments within the time frames specified in the Act, the preparation of the developer agreement requires additional time.

The Department will act to issue all permits pursuant to the time frames established in the Act. For applications leading to developer agreements, the Department proposes to approve the concepts embodied in the application or reject them with reasons within 200 days, and to further impose an additional 60 day deadline upon itself within which it will process developer agreements ensuring proper legal, technical, and financial form.

Section 3d of the Act establishes a 45 day time frame for the issuance of minor access permits. The above notwithstanding, minor permits involving traffic signals may require additional time for the review and approval of the related traffic engineering and electrical engineering plans, including substantiation of the need for the signal and specification of hardware and equipment locations. In such cases, minor permits may be issued conditionally, subject to subsequent final approval of traffic signal work.

Some access applications propose improvements to roadway facilities controlled 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's time.

Section 3a of the Act indicates that the Commissioner shall adopt the access code within one year of the effective date of the Act. Because of the complexity of the access code, the Department proposes to adopt the access code within the prescribed period, but to withhold implementation of the access code standards and permit process until at least September 1, 1990. This is to provide an opportunity for the Department to make information about the access code available to potential applicants, to hold training sessions for the public and Department staff, and to print the necessary forms and directions.

Through these new rules, the Department has established a system of access management which will protect the functional integrity of the State highway system and the public investment in that system. The rules are summarized as follows:

N.J.A.C. 16:47-1 establishes the definitions used throughout the rules.
N.J.A.C. 16:47-2 establishes access clarifications.
N.J.A.C. 16:47-3 establishes access standards.
N.J.A.C. 16:47-4 establishes the application and permit process.
N.J.A.C. 16:47-5 establishes the procedure for changes in access classification.
N.J.A.C. 16:47-6 establishes the provisions for an access management plan.
N.J.A.C. 16:47-7 establishes the procedure for designation of limited access.

Social Impact

The proposed new rules will establish an access code that enables the State to protect the valuable capital investment in its highway system. The access code balances the public's desire for mobility with the property owners' right to sufficient reasonable access to the general system of streets and highways. The public benefits through enhanced mobility of people and goods. The anticipated reduction in the number of access points and conflicts will also improve safety.

The access code contains the Department's vision of the ultimate capacity of the State highway system and helps to preserve these transportation corridors. Although some highway segments may never reach these limits, the access code will be a valuable planning tool for all levels of government as well as owners of property along and near highways.

The impacts of added development will be evaluated considering long range expectations for highways. These impacts may require mitigation by the private sector in the form of proportionate financial contributions or the construction of public improvements, thereby supplementing public funds.

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The access code limits the vehicular use on lots where access points meeting the spacing requirements cannot be located. Access to very large developments should be spaced so that traffic signals are not located too close together.

The access code establishes procedures and time periods for the Department to issue, deny, revoke, or expire access permits. Time constraints are imposed on applicant's responses to the Department. Applicants are also limited regarding revisions to an application in response to comments from the Department. Property owners should benefit from a new level of predictability of the Department's responses to proposals. This should assist the property owners in obtaining other governmental approvals of their development.

Municipalities will be limited to approving subdivisions along State highways that conform to the requirements of the access code. In addition, the classification system and access standards in the access code can be applied by counties and municipalities to their roadway systems, to benefit their motorists.

Economic Impact

The proposed new rules may increase capital costs for applicants where the rules are more restrictive than the existing rules. However, in some instances, applicants may incur decreased expenses as a result of plan modification. The actual amounts of any increase or decrease in capital costs cannot be estimated, due to variations in individual applications.

The proposed new rules will not increase the fees for access applications and permits but, because the proposed new rules are more complex and restrictive than the existing rule, may cause applicants to incur increased non-fee expenses for professional services to assist in the preparation of applications. These services could include, but are not limited to, those provided by consultants, attorneys and engineers. The actual amounts of the potential increases in costs cannot be derived because of the high degree of variation among individual applications.

Permit renewal fees for work not completed within the time period specified in the permit are proposed to increase, however, these increases will not impact the majority of permittees.

The following information indicates the impact of the proposed rules on permit renewal fees for each driveway. Proposed renewal fees are equal to the respective permit fee for the type of access involved. Fees are intended to cover the costs of evaluation.

	Current	Proposed
Private:	$10.00	$ 15.00
Combined residence and business:	$20.00	$ 25.00
Government driveway:	$20.00	$ 500.00
Minor:	$20.00	$ 85.00
Major:	$20.00	$1,250.00
Major with Planning Review:	$20.00	$3,000.00
Street:	$20.00	$ 500.00
Street improvement:	$20.00	$ 25.00

Regulatory Flexibility Analysis

The proposed new rules will not impose any bookkeeping or record keeping 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 compliance requirements may cause small businesses to incur increased capital costs and increased costs for professional services. The specific amounts cannot be estimated, due to the variation in applications. The Department has established permit fees based on size and complexity of application, and this may have a beneficial effect on small businesses. The Department does not believe that specific differentiation based on business size is appropriate in the rules, due to the need to assure the safety of the public.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 16:41-2.

Full text of the proposed new rules follows:

CHAPTER 47
STATE HIGHWAY ACCESS MANAGEMENT CODE

SUBCHAPTER 1. DEFINITIONS

16:47-1.1 Definitions

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

"Average annual daily traffic (AADT)" means the total yearly traffic volume in both directions of travel divided by 365.

"Access application" means a document submitted to the DOT to initiate the access approval process.

"Access classification" means an identification system for regulating access, based on function, environment and traffic characteristics applicable to all streets and highways within the State except controlled access roadways.

"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 Section 3 of the State Highway Access Management Act of 1989, P.L. 1989, c.32.

"Access level" means allowable turning movements from access points on a State highway segment based on 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 developed jointly by the DOT and the municipality in which the highway is located.

"Access permit" means a permit issued by the DOT 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 streets or driveways with the 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 primary function 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. These programs can include flex-time, the compressed work week, and staggered hours.

"Alternative access" means the ability to enter a State highway indirectly through another improved roadway.

"Applicant" means a private party, municipality or county applying for an access permit.

"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 request for revisions or information and when DOT receives it. Time during this period is not counted in the DOT 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.

"Arterial" means a transportation route with intersections carrying a main flow of traffic through an area.

"Authority" means the governing body or public official charged with the care of a highway.

"Auxiliary lane" means a lane striped for use, but not used for through traffic.

"Average vehicle ridership (AVR)" means a numerical value calculated by dividing the number of employees scheduled to start work between 6:00 A.M. and 10:00 A.M. into the number of vehicles arriving to the work site between 6:00 A.M. and 10:00 A.M.

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"Bandwidth" means the time in 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 signal system.

"Berm" means the area from the curbline to the right-of-way line. It is 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 an express bus service, usually administered by an employer, with limited pickup at destination stops, guaranteed seats, and advanced 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, either using one car and sharing expenses, or rotating the vehicle used so that no money changes hands.

"Cars" means any motorized vehicle having two or more axles.

"Certificate of Acceptance" means a document issued by the DOT indicating the permittee for a major permit with a planning review has satisfactorily met the conditions of the permit. This is required in advance of using the access and obtaining a certificate of occupancy.

"Change of property use" means any alteration of the functions performed on a property.

"Collector roads" means the classification category for roads that primarily serve intracounty trips characterized by moderate volume and speed, and provide for land access, traffic circulation and access to arterials.

"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 form and content requirements, thereby making it acceptable for DOT review.

"Compressed work week program" means a program which consists of allocating the working hours into fewer than five days per week or fewer than 10 days per two-week period, such as a four-day work week or nine-eighty schedule.

"Concept review" means a general analysis of the access and highway improvements addressed in a 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.

"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.

"County road" means a road taken over, controlled, built, maintained 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.

"Daily movements" means the highest estimated two-way traffic volume at a site during a 24-hour period.

"Day" means calendar day, unless otherwise specified.

"Deficiency meeting" means a meeting held at the request of the DOT between the applicant and DOT representatives to discuss an application.

"Department" means the New Jersey Department of Transportation.

"Depressed curb" means the 1½" 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 Access and Concept Review applications performed by the Major Permits Unit of the Regional Design Office.

"Design standards" means standards for design based on the following:

1. "New Jersey Department of Transportation Design Manual—Roadway", March 3, 1987 or superseding issue, avalable from the Bureau of Design Standards.

2. "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", 1990 or superseding issue which contains this chapter and additional information, available from the Department's Regional Maintenace Office.

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", 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 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, Transportation Research Board, 2101 Constitution Ave. NW, Washington, D.C. 20418, 1967.

11. Stover, Virgil G. and Koepke, Frank J., "Transportation and Land Development," Institute of Transportation Engineers, 525 School Street SW, Suite 410, Washington, D.C. 20024-2729, 1988.

12. Standard Specifications for Road and Bridge Construction, New Jersey Department of Transportation, 1983 or superseding edition, available from the Bureau of Contract Administration.

13. Department of Transportation Policy and Procedure Manual, available from the Division of Management Information Systems.

"Desirable typical section" means the ultimate future State highway configurations envisioned by the Department.

"Developer agreement" means a contract between the DOT and a developer which allows owners of land abutting highways to have access to the highway and requires the DOT and developer 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" menas 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.

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"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 curb line from extended property line to the beginning of driveway.

"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 use" means any increase in the area or volume of the improvements on a property.

"Expiration" means 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 line (E.P.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.

"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.

"Four-forty schedule or four-day work week" means a compressed work week schedule where employees 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.

"Frontage" means the length along the highway right-of-way line of a single property between the side property lines.

"Frontage road" means a service road, usually parallel to the State highway, designed to reduce the number of individual 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 serving a State, municipal, county or public school facility.

"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 of improvements.

"Improvement" means:

1. A traffic generator, either a proposed development or an expansion of an existing development; or

2. 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.

"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 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.

"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 have no easement or right of 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 roads" means 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.

"Low speed rural" means the access classification for roadways in rural environments with posted speed limits 45 mph or less.

"Low speed urban" means the access classification for roadways in urban environments with posted speed limits 40 mph or less.

"Maintenance" means continuous work required to hold a driveway or road 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" means access applications for development with an expected two-way traffic volume of 500 vehicles per day or more.

"Major access applications with planning review" means access applications for development with an expected two-way traffic volume of 500 vehicles per day or more and with an expected peak hour volume of 200 vehicles or more.

"Major collector" means a subcategory for collector roads in rural environments that serve important intra-county traffic corridors and provide service to major county traffic generators.

"Major generator" means a use or uses which generates 500 or more vehicular trips per day, total for both directions.

"Maximum vehicular use limits" means the highest number of vehicles per day allowed to access a nonconforming lot.

"Median" means that portion of a divided highway separating traffic proceeding in opposite directions.

"Median opening" means a paved area between opposite directions of a divided roadway which 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.

"Minimum spacing distance" means the required distance between access points.

"Minor access applications" means access applications for development with an expected two-way traffic volume of less than 500 vehicles per day.

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"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 than on principal arterials.

"Minor collector" means a subcategory for collector roads in rural environments that serve smaller places and towns and connects locally important traffic.

"Minor generator" means a use or uses which generate less than 500 vehicular trips per day, total of both directions.

"Mode split" means a breakdown of the transportation means used by commuters to travel to work. This includes single occupant vehicles, cars or vanpools, buses, trains, bicycles, etc.

"Monitoring" means the measuring of the formation of ridesharing modes at a work site. It entails keeping a record of who the employees travel to and from work and how many employees drive alone, share a ride, or walk to work.

"Monolithic curb" means when curb and gutter are constructed as one unit.

"Multilane 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-eighty schedule" means a compressed work week program that allows employees to work their usual number of hours in a two-week 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 lots which were in existence prior to the adoption of the Access Code that cannot meet the standards of the Access Code.

"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.

"Peak hour" means the 60 consecutive minutes during which the highest traffic volume occurs along a roadway or driveway.

"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.

"Pre-application conference" means a meeting between a potential applicant and DOT representatives before submission of an application.

"Previously anticipated daily movements" means the estimated 24 hour two-way traffic count entered on the application and confirmed by DOT 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, copartnership, 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, involving alterations or renewal of almost all of the component factors of the original improvement.

"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 a condition requiring only maintenance.

"Residence and business driveway" means the entrance or driveway serving a combination of private residence and business use.

"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 determination that alternative access is available.

"Reverse frontage" means an access road constructed to the rear of parcels 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 property owned and acquired by the DOT.

"Right-of-way line (R.O.W. line)" means the outer edge of State highway property, separating highway property from abutting properties of others.

"Road" means a highway other than 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 environment used for access classification purposes based on population density and intensity of land use development.

"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 signals on each side of or along the frontage of the applicant's property.

"Setback(s)" means the distance between the right-of-way line and roadside structures, such as buildings, gasoline pump islands, display stands or other object.

"Shared driveway" or "shared access" means a single driveway serving two or more parcels.

"Shoulder" means the portion of the roadway that lies between the edge of the traveled way and curbline.

"Sidewalk area" means that portion of the right-of-way that lies between the curbline and right-of-way line. 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 by 100 movements during the peak hour of the highway or the development or by 10 percent of the previously anticipated daily movements.

"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.

"State highway" means a road taken over, controlled, built, maintained, or otherwise under the jurisdiction of the State.

"State highway system" means the network of routes taken over and maintained by the State.

"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:

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1. In a distance of 1,320 feet on its centerline, there are 20 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 improvement" means any changes to an existing street, which do 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 where employees work at a location other than the conventional office. This place may be the home, or an office close to home.

"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.

"Traffic impact study" means a report analyzing future roadway conditions with and without an applicant's development. The report includes an analysis of mitigation measures.

"Transportation demand management (TDM)" means strategies that reduce vehicle trips, especially peak period travel, to the commuter's destination.

"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.

"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.

"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.

"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 numerator is the number of vehicles passing a given point in a unit of time and whose denominator 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 traffic streams traveling in the same general direction, accomplished by merging and diverging. Weaving occurs when a merge is closely followed by a diverge, such as when an entrance ramp is closely followed by an exit ramp and the two ramps are joined by an auxiliary lane.

SUBCHAPTER 2. ACCESS CLASSIFICATIONS

16:47-2.1 Requirements

There are hereby established the following access classifications for the State highway system as set forth in Appendix A of this chapter, incorporated herein by reference. The access classification, access level, and desirable typical section for any particular lot shall be determined by reference to Appendix B of this chapter, 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—fully controlled access: Access is prohibited on interstates, toll roads, freeways, and limited access highways.

2. AL I—access via streets or grade separated interchanges: The designs set forth in Figures C-4 through C-7 of Appendix C, Access Levels Diagrams, illustrate such access. For AL I, the standards set forth in N.J.A.C. 16:47-3.3 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. AL III—right turn access to and from an access point and left turn access via a signalized jughandle: Figures C-10 and C-11 of Appendix C, Access Levels Diagrams, illustrate such access. The jughandle may or may not be at access point. For AL III, the standards set forth in N.J.A.C. 16:47-3.4 are applicable.

5. AL IV—right turn access to and from an access point and left turn access via a left turn lane: Figures C-12 through C-16 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. For AL IV, the 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 Manual on Uniform Traffic Control Devices for Streets and Highways (U.S. Department of Transportation, Federal Highway Administration 1988 ed.) or superseding edition. The standards set forth in N.J.A.C. 16:47-3.3, 3.4, 3.5 and 3.6 are applicable in all other cases.

6. AL V—access, to and from an access point: Figures C-17 through C-19 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, the standards set forth in N.J.A.C. 16:47-3.3 are applicable if the traffic volumes at the intersection of the access point with the State 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 Manual on Uniform Traffic Control Devices for Streets and Highways (U.S. Department of Transportation, Federal Highway Administration 1988 ed.) or superseding edition. The standards set forth in N.J.A.C. 16:47-3.4 are applicable in all other cases.

7. AL VI—access to and from the State highway and an access point, provided that there is an edge clearance of at least five feet, suitable sight lines and that the access does not otherwise create a dangerous condition: The design set forth in Figure C-21 of Appendix C, Access Levels diagrams, illustrates such access. For AL VI, the standards set forth in this section and N.J.A.C. 16:47-3 are applicable.

(b) The access level permitted on each segment of the State highway system shall be determined by reference to Appendix B.

(c) The owner of a lot fronting on a State highway segment may apply for a more restrictive access level than for which the segment is designated, with Access Level 0 being the most restrictive access classification.

16:47-3.2 Access on state highway segments with access levels I to V

(a) Access points 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

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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 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 be 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 of 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, the 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.

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 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 divided multi-lane accessible principal arterials cross;

2. Where the green time available if a signal is installed at the location proposed for the interchange would be less than 50 percent for accessible principal accessible arterials or less than 40 percent for minor arterials;

3. Where a new at-grade signalized intersection at the same location would not result in level of service C or better on the State highway during peak periods 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;

4. Where an existing at-grade signalized intersection at the proposed location operates at level of service F and there is no reasonable improvement that can be made to provide sufficient capacity;

5. Where a major public street intersection is located near a major generator proposed to be served by the intersection and it would not be feasible to provide effective signal progression along the artery for both the through traffic and the traffic which would be generated by the major generator; or

6. Where the minimum percent band widths would not be maintained.

(c) Interchanges proposed to serve major generators may be permitted only if, in addition to meeting the requirements set forth in (b) above:

1. The Major generator is located along a principal accessible arterial where either direct access or left turns are prohibited by this Access Code or would otherwise be undesirable as determined by the Commissioner;

2. The traffic flows entering or leaving the generator would reduce the highway green time per cycle for any signal which would serve the generator to less than 50 percent for accessible principal arterials and less than 40 percent for minor arterials.

3. The location which would otherwise be signalized does not meet the signal spacing criteria set forth in 16:47-3.3 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", 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", 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 signalized spacing. 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 signals and other provisions

(a) The location of signals applies to Access Levels I through VI. 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 signals shall take precedence over the location of unsignalized access points when there is a conflict. The signal spacing criteria shown on 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 locations for future signals along a State highway segment within which a signal is proposed or if such segment is less than one mile, the following shall apply:

1. A signal may be permitted within the segment at the optimal location so designated or at another location if, in the case of the latter, the applicant demonstrates that:

i. The signal meets the criteria for warrants set forth in part 4C of Manual on Uniform Traffic Control Devices for Street and Highways (U.S. Department of Transportation, Federal Highway Administration 1988 ed.) or a superseding edition; and

ii. The minimum band width percentages are attained or exceeded as follows:

Functional Class 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, 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 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.

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4. Minimum band widths percentages shall be calculated based upon posted speed limits and cycle lengths, unless otherwise specified by the Department, using software acceptable to the Commissioner, and shall assume operation of the existing signals and of 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 locations along a State highway segment within which a signal is proposed and such segment is one mile or more, the following shall apply:

1. A signal shall be permitted within the segment if the applicant identifies the optimal location of future signals along the segment and:

i. The 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 shall be designated by the Commissioner, after recommendation by the applicant.

3. The applicant, in identifying optimal locations for future signals, 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 shall be calculated based upon posted speed limits and cycle lengths, unless otherwise specified by the Department, using software acceptable to the Commissioner and shall assume operation of the existing signals and of 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 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.) 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 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 requirements 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.

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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.

(e) Unsignalized access points, whether on conforming or nonconforming lots, shall also be subject to the following requirements:

1. Unsignalized access points on divided highways for major generators involving left-turn ingress and egress shall be located at existing median breaks, if any exist, and where access points would conform to the signal spacing requirements set forth in N.J.A.C. 16:47-3.4.

2. If future volumes could warrant installing a traffic signal and signalized spacing requirements cannot be met, the Commissioner may, as a condition of the access permit, provide that at such time future volumes are reached he or she may close the left turn access with no recourse by the applicant.

3. If an undivided highway becomes divided, the Commissioner may, as a condition of the access permit, at such time close the left turn access with no recourse by the applicant.

4. For access points on a divided highway, the following apply:

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 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 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.

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 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 decides to permit left-turn access, pursuant to (e)8 above, then the applicant shall, at the Commissioner's discretion, improve 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.*

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. 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. 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 any off-site requirements deemed necessary.

(f) A street proposed by a county or municipality to extend to the State highway may 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.

(g) Expansions or changes which generate significant increases in traffic on developed non-conforming 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 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 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.

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(b) Paving of driveways is not to extend beyond the curbline into the shoulder area. The existing grade of the highway shoulder 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) That portion of the driveway between the curbline and the right-of-way line 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 pavement is constructed.

16:47-3.8 Control dimensions

(a) The abbreviations used in this chapter and their meaning is as follows:

P.L.	—Property Line
R.	—Radius
CL	—Centerline of Highway
E.	—Edge Clearance
E.P.L.	—Extended Property 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

(b) All portions of the driveway shall be within the extended property lines. The edge clearance (E) shall not be less than five feet. This is measured from the extended property line, along the curbline to the beginning of curbline opening.

(c) The curbline opening (C.O.) shall be as follows:

1. Residential: 12 feet to 30 feet.
2. Non-residential: 24 feet to 50 feet.

(d) 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 20 feet to 34 feet.
ii. Two-way operation: 20 feet to 46 feet.

(e) Street width (W) shall be as follows:

1. Residential: 24 feet to 50 feet.
2. Non-residential: 30 feet minimum.

(f) The access point angle (Y) shall be as follows:

1. One-way operation: 45 degrees minimum.
2. Two-way operation: As near 90 degrees as site conditions will permit with a minimum 60 degrees.

(g) Radius (R) shall be as follows:

1. Residential: 10 feet maximum.
2. Non-residential: 15 feet maximum.

(h) The distance between driveways shall be as follows:

1. Residential: 25 feet minimum.
2. Non-residential: 25 feet minimum.

(i) The area between access points and extending from the curb or shoulder line to the right-of-way line must be raised six inches above the surface of the adjacent drives and seeded, sodded, or otherwise improved.

(j) 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 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 Department's desirable typical section.
2. Gasoline service stations and small businesses shall be a minimum of 40 feet outside the right of way line for Department's desirable typical section.
3. Large restaurants and businesses should be a minimum of 50 feet outside the right-of-way line for Department's desirable typical section.

(k) The corner clearance for access level VI shall be a minimum of 25 feet.

(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 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.

Maximum grades: 4 percent within 25 feet of curbline for driveways; 4 percent within 50 feet of curbline for streets.

(n) Figure 2 is a diagrammatic sketch and layout to illustrate and suggest geometrical designs for driveways where large volumes of traffic are anticipated.

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. Curb depressions are generally omitted when constructing complex driveways 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 feet minimum from the curbline. The minimum area of the island is 75 square feet.

16:47-3.9 Curb

(a) The Department may require curb construction along any frontage. The 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 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. 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 as depressed curbs, where it shall be 1½ inch 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 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.

1. To construct a depressed curb where curbing exists, the permittee will be required to entirely remove that section of existing curb to a joint and replace it with new curb.

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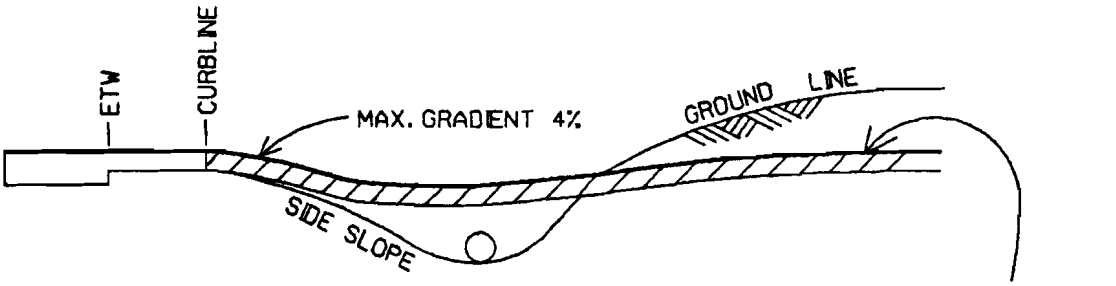
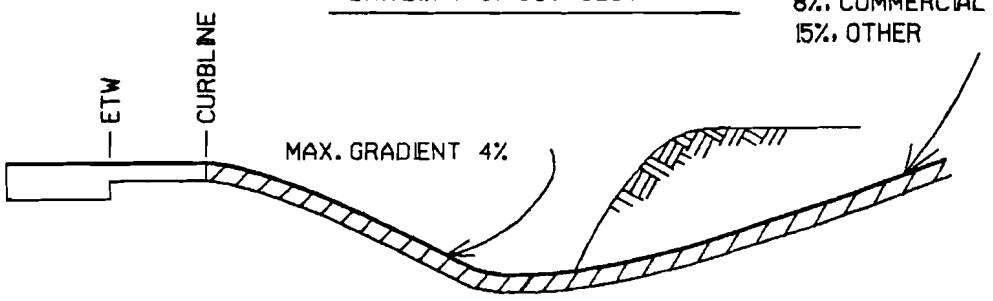
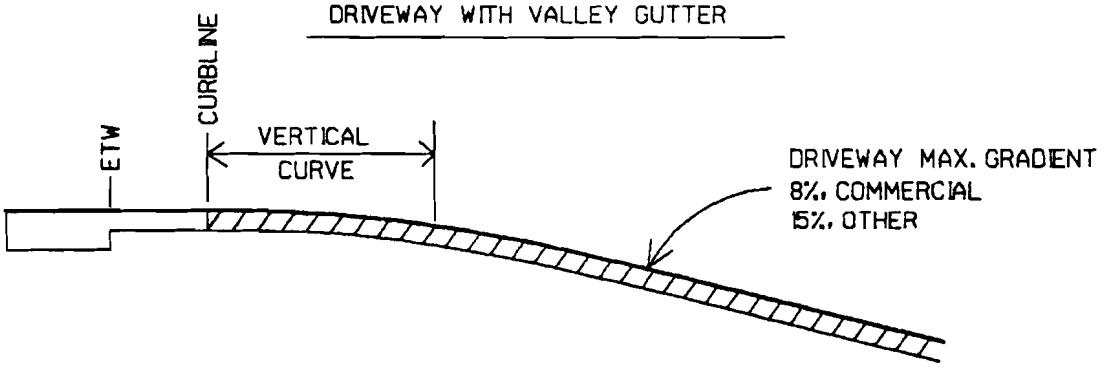


DRIVEWAY IN CUT SECTION

DRIVEWAY MAX. GRADIENT
8%, COMMERCIAL
15%, OTHER

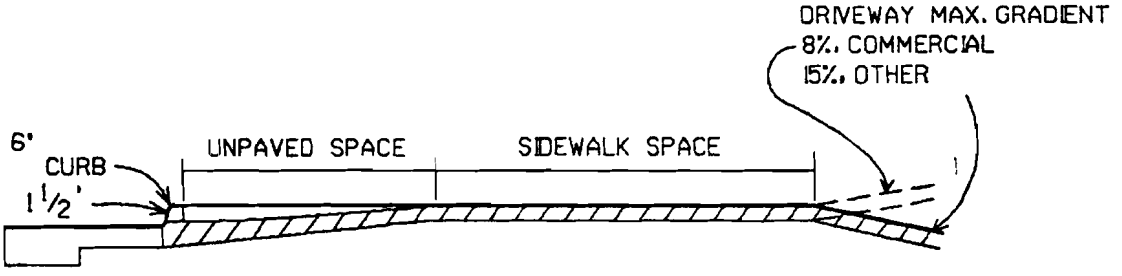


DRIVEWAY WITH VALLEY GUTTER



DRIVEWAY AT FILL SECTION

WITHOUT CURB



DIFFERENCE BETWEEN GRADIENT OF DRIVEWAY AND CROSS SLOPE OF PAVEMENT SHOULD NOT EXCEED 10%

WITH CURB

NOT TO SCALE

DRIVEWAY PROFILE CONTROLS

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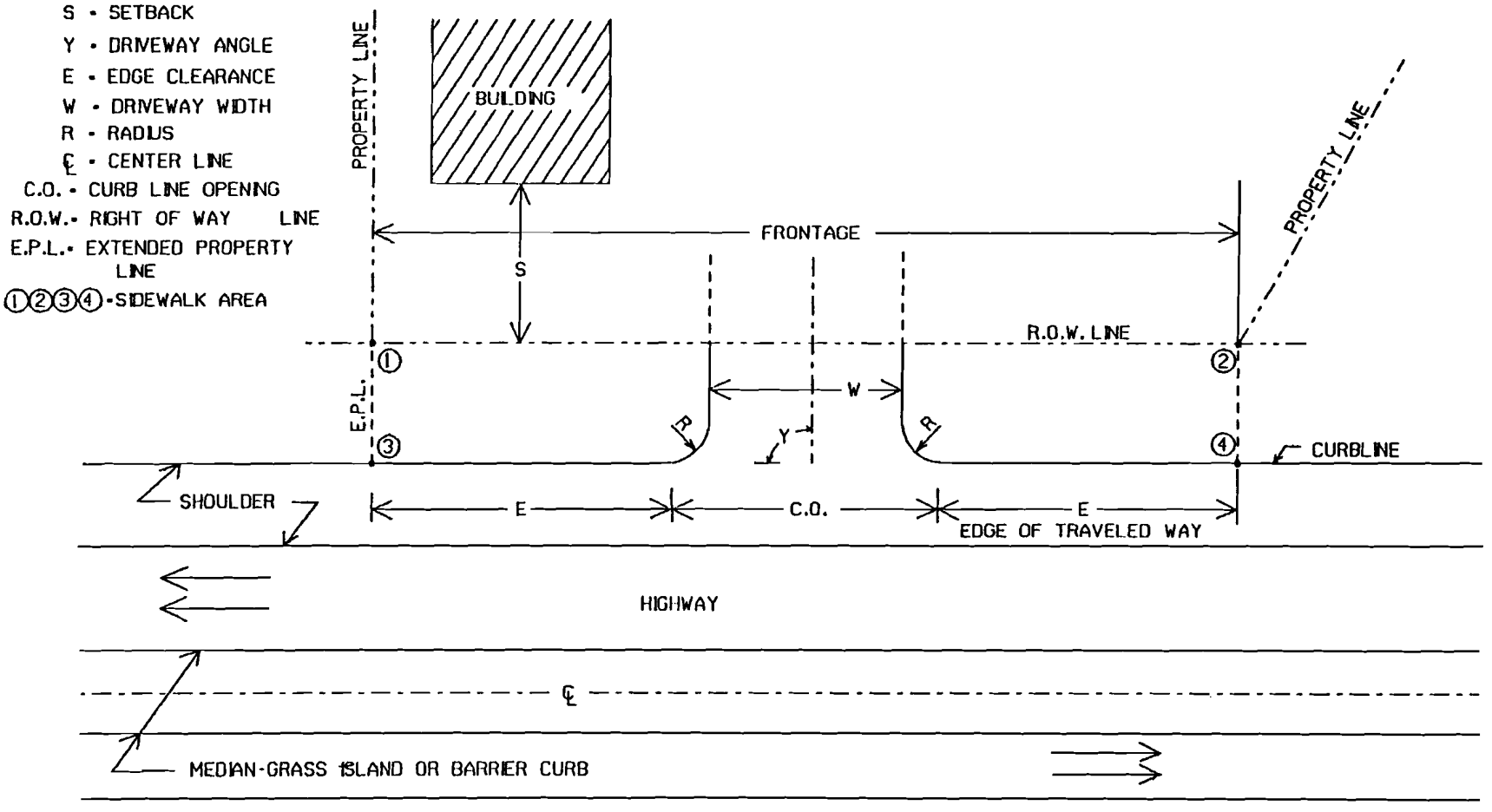
Interested Persons see Inside Front Cover



SINGLE DRIVEWAY - DIAGRAMMATIC
FOR ILLUSTRATING DEFINITIONS

NOT TO SCALE

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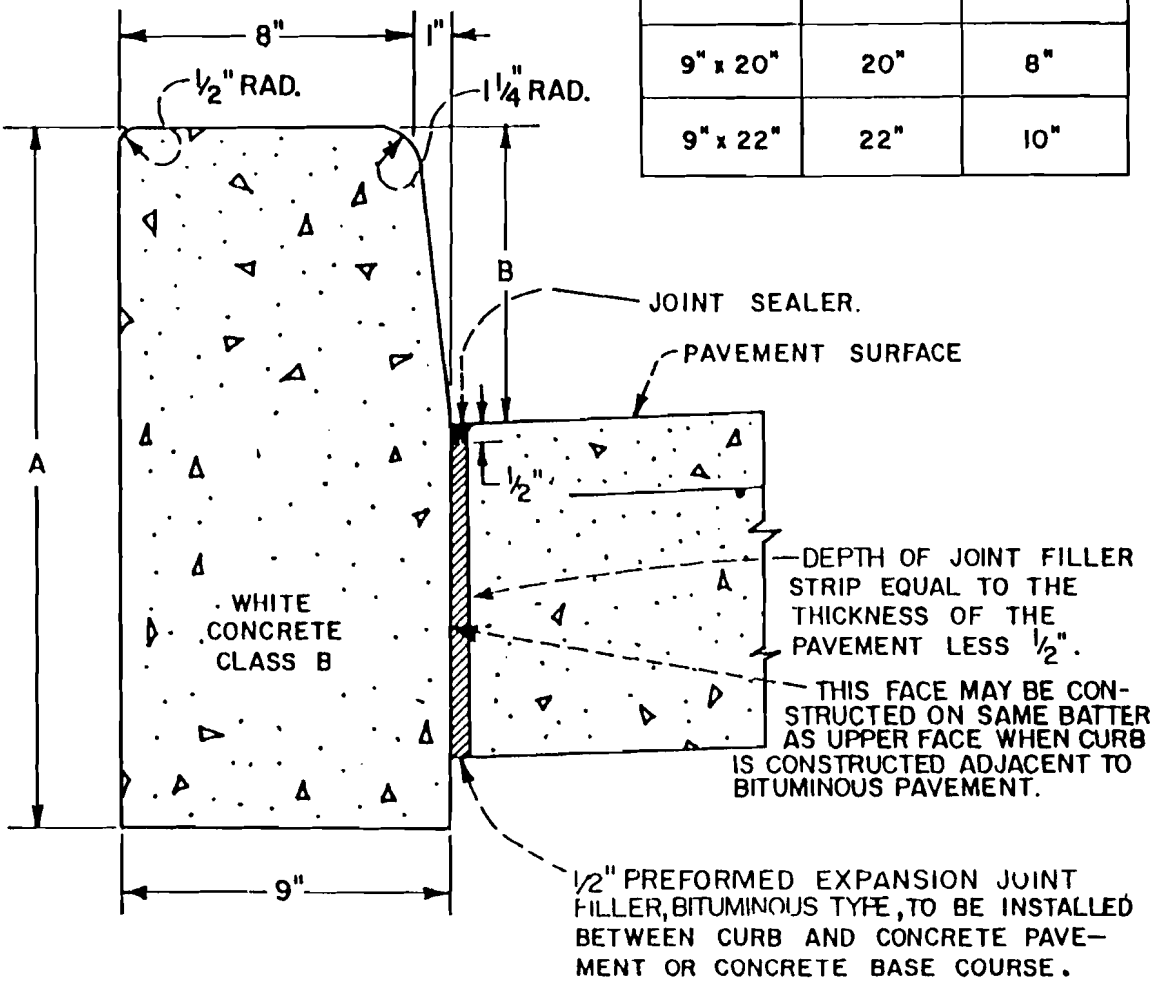
CURB SIZE	DIM. A	DIM. B
9" x 18"	18"	6"
9" x 20"	20"	8"
9" x 22"	22"	10"



TRANSVERSE JOINTS ½" WIDE SHALL BE INSTALLED IN THE CURB 20'-0" APART AND SHALL BE FILLED WITH PREFORMED BITUMINOUS-IMPREGNATED FIBER JOINT FILLER RECESSED ¼" IN FROM FRONT FACE AND TOP OF CURB.
EXPANSION JOINTS THRU AND ADJACENT TO THE CURB SHALL BE INCLUDED IN THE UNIT PRICE BID FOR CURB

WHITE CONCRETE VERTICAL CURB

NOT TO SCALE

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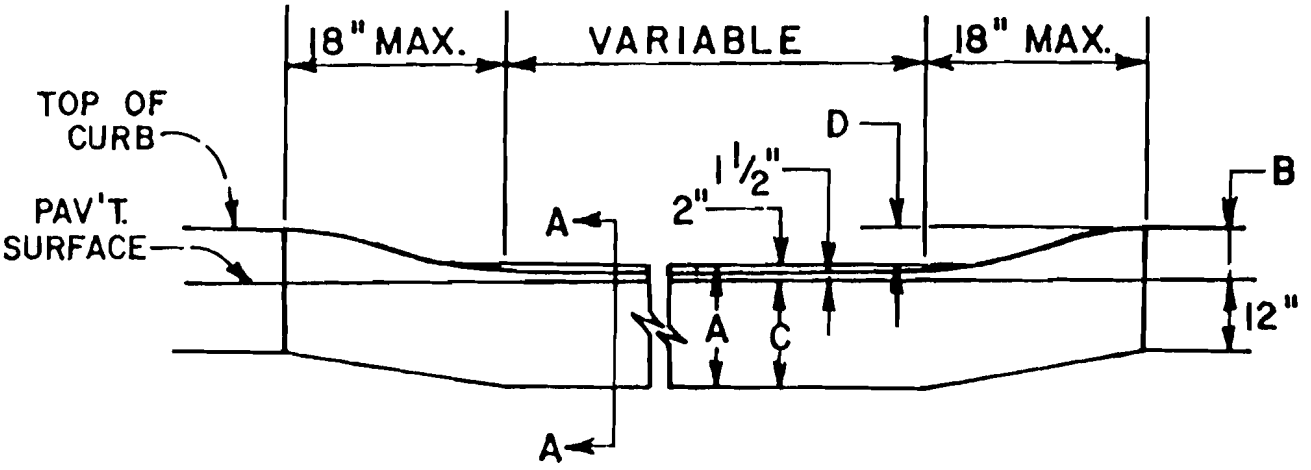

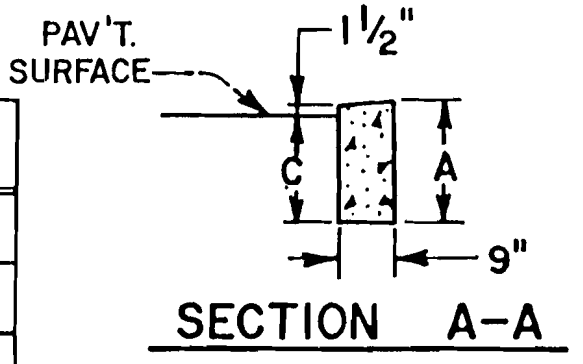

CURB SIZE	DIM. A	DIM. B	DIM. C	DIM. D
9"x 18"	18"	6"	16"	4 1/2"
9"x 20"	20"	8"	18"	6 1/2"
9"x 22"	22"	10"	20"	8 1/2"

METHOD OF DEPRESSING CURB AT DRIVEWAYS

NOT TO SCALE

2. Depressed curbs will not be provided on new highway construction unless the improvement of the abutting property is in progress or is contemplated in the immediate future, in which case the property owner must first obtain an access permit.

3. The top of the depressed section of curb shall be 1½ inch higher than and parallel to the established gutter 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 of 1½ inch above gutter grade after which the broken surface shall be finished with a 1:2 Portland Cement Mortar mixture to present a smooth and even surface.

(h) The approach ends shall have a 10 foot transition, from a two inch face to a 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 inch face, as shown on Figure 6 below. All transitions shall have joints at the six inch face end.

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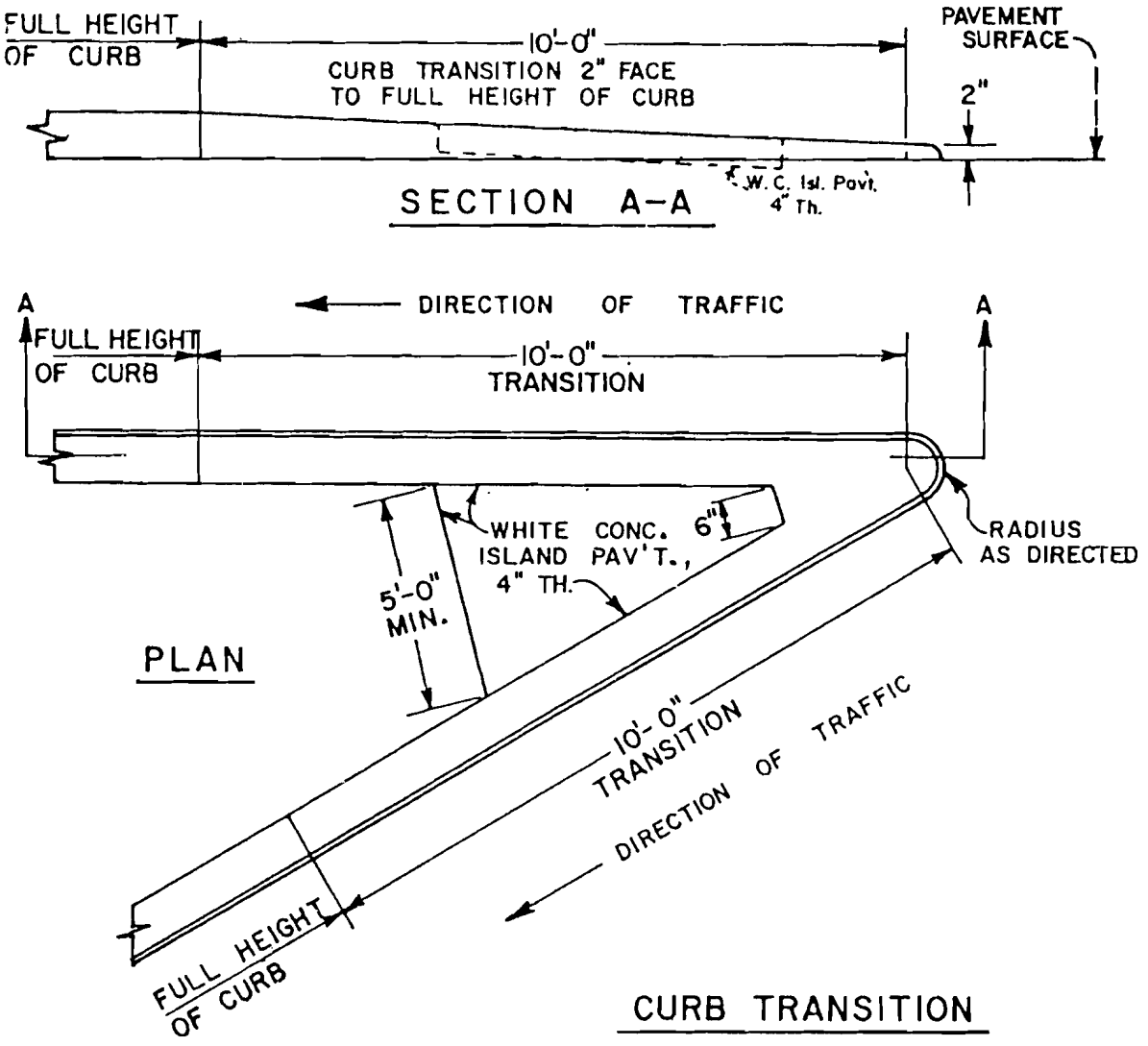

16:47-3.10 Sidewalk area

(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) 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. The Department favors the construction of sidewalk; however, sidewalks are not required unless specified by the Department, the applicant, or local ordinance. The Department is not responsible for maintaining sidewalk.

(c) Concrete sidewalk shall be as follows:

1. Concrete sidewalk to be constructed within the right-of-way of any State highway shall be Class C air-entrained concrete, and shall conform to Standard Specifications for Road and Bridge Construction, except if specifically otherwise allowed in the permit. The subgrade shall also be prepared in accordance with these specifications.

2. The concrete proportion shall consist of one part Portland Cement, two parts sand and four parts crushed stone or washed gravel as provided in Department Standard Specifications 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 adjacent curb.

8. Finish shall be made 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 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, pipes of size and material designated by the Department are to be installed beneath drives.

(c) Where ditches exist and conditions are favorable, installation of a continuous pipe of proper size may be permitted.

1. Where installation of pipe exceeds 350 feet in length, a manhole must be constructed midway between the ends. Installation of pipe longer than 350 feet will not be permitted without intermittent manholes.

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2. All runs of 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 be used for servicing of vehicles, displays, or to conduct private business. 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 be erected on or overhanging Department right-of-way, nor may 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.

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 which hides from view or interfers 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 signal bearing thereon or 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 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 line must 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 openings in newly constructed or resurfaced highways. This restriction does not apply to the construction of driveways.

(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.

16:47-3.13 Relocations or removals within driveway areas

(a) The Department has jurisdiction of 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. 16:41-3.9.

(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 Standards 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 county or municipal permission must be obtained before access permission is requested.

(g) Permission may be granted for construction of a driveway which impacts a utility pole or fire hydrant. Utility poles will not be permitted on channelizing islands. Poles 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 pole have attached to it service connections for 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. These are placed in accordance with a carefully designed spacing pattern. However, should a new design be necessary, 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 curb. Extreme care must be exercised not to damage conduit or cables during removal of curb and construction of driveways. 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 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.

16:47-3.14 Materials and workmanship

(a) Materials and workmanship used in construction within highway right-of-way are subject to inspection and approval of the Department.

1. The work, as far as is practicable, must conform in 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.

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.

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(b) The Department will not expend public funds in assisting abutting property owners to obtain access to the highway, except as indicated in (d) below.

(c) The following apply to landscaping:

1. Only very low growing ground cover may be maintained 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) Driveways cannot be authorized that cross or otherwise encroach upon State property, or its frontage.

(g) Dedications or donations of land shall comply with prevailing Federal Laws and Federal Highway Administration Regulations.

16:47-3.16 Municipal activities

(a) No property 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.

(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 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.

(c) A municipality shall not 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.

(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. Municipalities shall not issue certificates of occupancy until they have received a copy of the Certificate of Acceptance.

16:47-3.17 Other provisions

(a) For access levels I through VI 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 shall be interpreted as requiring the Department at its own expense to signalize, construct or improve access points or make other improvements related thereto.

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.

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. Where cooperation between applicants cannot be obtained, the Department will review each permit application separately.

16:47-4.3 Permit process

(a) Any person must submit an application and obtain a permit from the Department before:

1. Constructing one or more driveways or streets entering on any State highway;

2. Reconstructing, changing, or modifying any existing driveway or street;

3. Constructing sidewalk, curb, drainage or any other related work within the limits of highway right-of-way;

4. Significantly expanding the facilities on a lot having access to a State highway; or

5. Significantly changing the use on a lot having access to a State highway.

(b) An applicant shall complete and submit the proper application form to the Regional Maintenance Office.

(c) All driveways and streets in existence prior to January 1, 1970 shall be assumed 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 must have had permits issued or they are presumed not to have permits. The permittee is responsible for providing evidence of a permit.

(d) The Department's Regional Maintenance Offices shall be the initial point of contact for all applicants desiring access to State highways. The Regional Maintenance Offices will confirm that the applicant has applied for the proper type of permit and coordinate the review process with other Department offices.

(e) 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 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 shared access between lots, the application shall be signed by the owner of each lot.

(g) Applications shall reflect conditions that exist at the time the application is submitted to the Regional Maintenance Office and incorporate State, county, municipal or private projects that have been advertised.

(h) All 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 and new streets. Street improvement applications must be submitted for all other proposed changes to existing streets.

1. There are three different categories of access applications. They are based on traffic generation, as determined by reference to the Institute of Transportation Engineers' (ITE) *Trip Generation.* 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 trips per day.

ii. Major applications are for uses generating 500 or more trips per day.

iii. Major applications with planning review are for uses generating 500 or more trips per day and 200 or more peak hour trips.

(j) The Department shall determine the final classification of the types of permits required.

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(k) Permits expire when the permittee violates any permit conditions. In addition to any site specific conditions imposed by the Department, all 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;

2. The property covered by the permit shall not be subdivided;

3. The permittee shall not transfer the property without written notification to the Department at the time of transfer; and

4. Work must be started within one year of the date the permit was issued.

(l) When the Department becomes aware that a permit condition has been violated, it shall notify the permittee, in writing, that it 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 remedies available to the Department.

(m) When the holder of the expired permit applies for a new permit, the application shall reflect the expanded or changed use as well as the uses provided 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 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:

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 a 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. Determine that property zoned or used for:

i. 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 that motorists will have a convenient, direct and well-marked means of both reaching the site and returning to the 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.

ii. 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 or agricultural purposes (except as provided in (l)3i above) has access onto any improved public street or highway.

4. Purposes other than that for which it is zoned has access as required above for the more intense use;

5. Assist the property owner in establishing the alternative access. 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 as provided in (n)6 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. 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.

16:47-4.4 Type of permit and review determination

(a) The Department shall determine the types of applications required. Appendix E, Access Application Thresholds, incorporated herein by reference, shall be used for determining the type of application and for determining which Department units will review an application. Any use generating less than 500 trips per day requires a minor application. Any use generating 500 or more trips per day and less than 200 peak hour trips requires a major application. Any use generating 200 or more peak hour trips 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:

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 sum is less than 1.00, then the application will be a minor. If sum is equal to or greater than 1.00, then the application will be a major and require the second test.

2. With the size of each use and 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 sum is less than 1.00, then the application is a major. If 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 be used only to determine the type of application. Any required traffic analysis for potential signalization or traffic impact study shall use the actual trip generation process described in the ITE 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.

16:47-4.5 Access permit applications

(a) The maximum time frames for various types of applications are summarized below.

DEPARTMENT TIME FOR APPLICATIONS ACCEPTED FOR REVIEW[1]

	Form	Minor[2]	Major[3]	Major with Planning Review[3]
Private Driveway	MT—32	35	NA	NA
Residence and Business Combined	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

Notes

1. Times are for applications in areas not covered by Access Management Plans.
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.

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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 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.

16:47-4.6 Permits and permit fees

(a) The non-refundable fees for access applications, permits, and renewal are set forth below. Fees must be in the form of a check or money order made payable to the Department. Cash will not be accepted. The application fee must 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 shall not be issued until the proper fee for the permit has been collected.

Type	Application Fee Each Property	Permit Fee Each Property	Renewal Fee Each Property
Private Driveway	$ 35.00	$ 15.00	$ 15.00
Combined Residence and Business	75.00	25.00	25.00
Government Driveway	150.00	500.00	500.00
Minor	265.00	85.00	85.00
Major	3,750.00	1,250.00	1,250.00
Major with Planning Review	9,000.00	3,000.00	3,000.00
Concept Reviews	500.00	—	—
Street	150.00	500.00	500.00
Street Improvement	5.00	25.00	25.00

(b) Developments containing at least a 20 percent set aside for low and moderate income housing, 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 percent reduction in the permit fee. To be eligible for this reduction, the applicant must submit the full application fee and an affidavit from the municipal approving authority, certifying that the 20 percent requirement has been met. Upon approval of the access, the Department will reduce the permit fee by 20 percent of the total fee. The renewal fees are not subject to reduction.

(c) A permit issued by 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 the applicant any of these rights.

(d) A permittee may construct an access point intersecting a State highway.

1. When the construction work under the terms of the permit is not started within one year of the date permit was issued, the permit expires. The permittee must submit a new application with plans which reflect any changes.

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 request an extension of time by letter to the appropriate Regional Maintenance Office with 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 when issuing permits.

(g) The Department may demand from the applicant, as a condition of any permit, 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.

(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 purchaser, 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.

16:47-4.7 Companion 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 of these determinations. If the application is incomplete, 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, 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 submit the completed and signed permit documents and permit fee to the Regional Maintenance Office within 180 days of the Regional Maintenance Office response. Applicants failing to respond on time will have their applications rejected.

(e) When 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 form deficiencies three times or technical content deficiencies in an applicant's submissions three times, then the application will be rejected and the applicant must 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 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. 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 residence and business combined

(a) Applications for minor access permits for private use 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 drive-

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ways in relation to the gutter or curbline. Plan sheet size should not exceed 24 inches by 36 inches.

(b) The following information shall be submitted with the application:

1. Property 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 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;
17. Type of driveway and apron construction (concrete, bituminous, gravel);
18. Justification for exceptions to design standards;
19. Length of property frontage along highway;
20. Distance from each side property line to closest driveway on adjacent properties—preceding (in feet) following (in feet);
21. Distance to nearest traffic signal—preceding (in feet) following (in feet);
22. Vacancy of all adjacent properties;
23. Zoning designation for lot; and
24. 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

(a) Applications for minor access permits for other minor uses must 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 not exceed 24 inches by 36 inches. Topographic features must be shown on both sides of undivided roads and one side of divided roads for 250 feet to 500 feet in each direction.

(b) The following information must be submitted with the application:

1. Site location map (Tax maps are not acceptable. Maps should reference at least two cross streets on each side of the property, milepost, north arrow and scale);
2. Property 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 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 traffic count for the driveways;
21. Number of lanes;
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 line to the edge of pavement;
29. Number of new units for residential, rooms for hotels or square footage for retail, office, or warehouse;
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 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. Distance to nearest traffic signal—preceding (in feet) following (in feet);
38. Vacancy of all adjacent properties;
39. Zoning designation for lot; and
40. 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 of these determinations. 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.

(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.

(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 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. 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 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 form deficiencies three times or technical content deficiencies in an applicant's submissions three times, then the application will be rejected and the applicant must 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 always be submitted.

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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 not exceed 24 inches by 36 inches. Please note that 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 location map (Tax maps are not acceptable. The Key map must reference at least two cross streets on each side of the property, milepost, north arrow and scale);
2. Property lines;
3. Right of way line from Department desirable typical section;
4. Topography showing all highway features within 500 feet of the property 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 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, bituminous, gravel);
18. Contours—existing and proposed;
19. Corner clearance;
20. Driveway and island radii;
21. Estimated traffic count for the driveways;
22. Number of lanes;
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 line to the edge of pavement;
30. Number of new units for residential, rooms for hotels or square footage for retail, office, or warehouse;
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;
37. Drainage calculations—existing and proposed development;
38. Any joint access with other properties;
39. Changes to existing traffic signals;
40. New traffic signals and MUTCD warrant numbers;
41. Justification for exceptions to design standards;
42. Length of property 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. Distance to nearest traffic signal—preceding (in feet) following (in feet);
46. Vacancy of all adjacent properties;
47. Zoning designation for lot; and
48. Waivers requested.

(c) A temporary traffic control plan for each stage of construction may be required at the discretion of the Department.

16:47-4.13 Major access permits with planning review process

(a) Potential applicants must 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 considering submission of Major Applications requiring a Planning review shall send the Major Permits Unit a letter including the following information for the proposed development:

1. Site location noting route, direction, milepost, township, county;
2. Size and type for 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 applicant shall forward the traffic counts and municipal documentation for other proposed developments to the Bureau of Access and Development Impact Analysis 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 of acceptance or rejection of the application and verify the type of permit.

(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.

(g) When 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 form deficiencies or technical content deficiencies three times in an applicant's submissions, then the application will be rejected and the applicant must 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 always be submitted.

(j) The Regional Maintenance Office will respond to the applicant and request that the applicant submit 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. 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. 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

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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.

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, 9 copies of detailed plans to a scale of one inch equals 30 feet or one inch equals 50 feet. Plan sheet size should 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 location map (Tax maps are not acceptable. The Key map must reference at least two cross streets on each side of the property, milepost, north arrow and scale);
2. Property lines;
3. Right-of-way line from Department desirable typical section;
4. Topography showing all highway features within 500 feet of the property 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 site all driveways—existing and proposed;
13. Location of nearest driveway on adjacent properties, 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, bituminous, gravel);
19. Contours—existing and proposed;
20. Corner clearance;
21. Driveway and island radii;
22. Estimated 24-hour traffic count for the driveways;
23. Number of lanes;
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 line to the edge of pavement;
31. Number of new units for residential, rooms for hotels or square footage for retail, office, or warehouse;
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;
38. Drainage calculations—existing and proposed development;
39. Any joint access with other properties;
40. Changes to existing traffic signals;
41. New traffic signals and MUTCD warrant numbers;
42. Proposed site and highway transportation improvements;
43. Copy of Department traffic growth rate letter;
44. Justification for exceptions to design standards;
45. Length of property 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. Distance to nearest traffic signal—preceding (in feet) following (in feet);
49. Vacancy of all adjacent properties;
50. Zoning designation for lot; and
51. Waivers requested.

(c) A temporary traffic control plan for each stage of construction may be required at the discretion of the Department.

16:47-4.15 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 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 submit a permit application.

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 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 not exceed 24 inches by 36 inches. This application should 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 location, including existing topography within 1,000 feet in each direction (poles, grades, etc.);
3. Property lines;
4. Right-of-way line from Department desirable typical section;
5. Drainage—existing and proposed;
6. Driveway widths;
7. Driveway alignments;
8. Curbline openings;
9. Estimated 24-hour traffic count for access points;
10. Type of construction (concrete, bituminous, gravel, etc.);
11. Parking facilities and internal traffic circulation;
12. Speed change lanes (acceleration, deceleration, left turn slots);
13. Traffic signals—existing and proposed;
14. Lane and shoulder widths;
15. Number of lanes;
16. Location of centerline on undivided highways and median on divided highways;
17. Location of existing median openings on divided highways;
18. Traffic pattern changes;
19. Copy of Department traffic growth rate letter;
20. Typical section—existing and proposed, including widths and pavement types;
21. Highway traffic striping—existing and proposed;
22. Justification for exceptions to design standards;
23. Length of property frontage along highway;

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24. Distance from property line to closest driveway on adjacent properties preceding (in feet) following (in feet);
25. Vacancy of all adjacent properties;
26. Zoning designation of lot; and
27. Waivers requested.

16:47-4.17 Access management plans

(a) The Department review times for applications conforming to an access management plan 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.

(b) The processing of developer agreements will require 85 days 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.

(c) Applicant time for developer agreements shall include:

1. The time required by the applicant to review and obtain internal approvals of 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) Any fees paid as part of the access application process shall be credited against the total payment required pursuant to a developer agreement. The total payment required shall not be less than the total of the application and permit fees.

16:47-4.19 Street intersections

(a) For new streets, applications for street intersections shall be accompanied by:

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, 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) 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 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 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 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 to waive all rights to receive compensation from the State for these lands and access rights and 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 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 potential signalization, the study shall be completed 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 signal improvements, for a distance of at least one signal spacing standard in each direction;

2. Substantiation that a 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 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 bandwidth 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 bandwidth when existing locations are at or below 30 percent;

9. Use of the applicable minimum highway bandwidth as stated in N.J.A.C. 16:47-3.4 or 40 percent minimum highway bandwidth whichever is more restrictive, if the signal is proposed at the new access point;

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10. Use of the green time, in seconds, shall accommodate pedestrian movement;

11. Use of trip generation estimates based on ITE *Trip Generation* 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 a No Build alternative;

17. A summary analysis that clearly indicates when Level of Service and Delay standards are or are not met;

18. Safety analysis, including the interaction of adjacent conflict points and movements;

19. A conceptual design showing all geometric elements and dimensions with a detailed explanation of any elements that may need a Design exception; 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 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 under Department supervision. At the request of the permittee, the Department may perform the signal modification. The 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 be independent of any developer agreement or 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 signal plans should be at a scale of one inch equals 30 feet. Traffic signal designs shall be submitted in accordance with MUTCD requirements.

16:47-4.22 Level of service

(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 highway improvements and development may be phased, as long as mitigating improvements are opened in advance of each phase. When the highway improvements 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. The geographic scope of the analyses will be determined at the pre-application conference.

(c) The applicant should not limit the focus to the specific locations identified when an unacceptable deterioration of the LOS standards have 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	Build out of each phase	Final Improvement +10

16:47-4.24 General standards

(a) General level of service standards are as follows:

1. For highway segments anticipated to operate at LOS A or B, deterioration to the midpoint of LOS C.

2. For highway segments anticipated to operate at LOS C or D, deterioration of one-half of LOS D, provided the LOS does not enter LOS E.

3. For highway segments anticipated to operate at LOS E or F, no deterioration. The capacity must be improved so that, at a minimum, build traffic conditions are not worse than no-build traffic conditions.

16:47-4.25 Uninterrupted flow standards

(a) Uninterrupted flow standards are as follows:

1. The general standards listed in N.J.A.C. 16:47-4.24(a) apply.

2. For a section of highway operating at or below LOS C under the no-build condition, the uninterrupted-flow V/C ratio will not increase more than 0.1.

16:47-4.26 Signalized intersection standards

(a) Signalized intersection standards 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 a 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 not exceed one-half the range of delay for the LOS at said approach under the no-build condition, and the actual delay will 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.

3. If the no-build is LOS E or F, delay will be used to compare build and no-build conditions.

4. If any no-build movement on a 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.

5. Comments on the interaction of conflicting movements at adjacent driveways and roadways may be required.

6. If there are closely spaced traffic signals in the vicinity of the development, an arterial analysis may be required.

(b) Signalized intersection standards for non-State highway approaches are as follows:

1. No movement on an 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

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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 may be required.

(c) The following table summarizes the requirements of this section:

	LOS STANDARDS FOR SIGNALIZED INTERSECTIONS					
	Movement on State-Highway Approach No-Build LOS					Minor Approach
Build Conditions	A or B	C	D		E or F	
			Delay <32.5 sec.	Delay >32.5 sec.		
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

The applicant shall perform the unsignalized intersection analysis, 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 may be required.

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. 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".

1. For a merge or diverge operating at LOS A or B under the no-build condition, the LOS will 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, 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 possible for LOS 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.

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 and major access applications with a planning review. The study shall be performed by a licensed professional engineer and include the following:

1. A narrative summary as follows:

i. 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 indicate that the access points are in conformance with the Access Code.

ii. The narrative summary should establish that the LOS standards are met. If they are not met, the narrative summary must support the applicant's proposals.

iii. Figures should show the location of the development and access points.

iv. Any highway improvements necessary to mitigate traffic impacts according to the Department's guidelines should be generally stated and illustrated. Included must be the applicant's position with regard to these improvements. The entity responsible for each improvement shall be noted.

v. Any improvements not required to meet Department guidelines, but desired by the applicant, should be presented along with facts indicative of their workability.

vi. Issues raised at the pre-application conference should be addressed in summary form.

2. A project description, including the following:

i. The applicant and project name;

ii. A location map;

iii. A project description using quantities compatible with those in the Institute of Transportation Engineers (ITE) 4th edition, *Trip Generation,* or a superseding edition;

iv. Unique functional or operational activities which relate to atypical trip making activity (such as ridesharing participation, bus intercept, or recreational use facilities);

v. Project phasing identifying the year of development activities per phase and proposed access plans;

vi. 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) Peak-hour volumes;
(2) Number of lanes;
(3) Cross section;
(4) Intersection signalization and configuration;
(5) Signal progression;
(6) Percentage of heavy trucks;
(7) Grades;
(8) Adjacent driveway locations;
(9) Jurisdiction;
(10) Transit route; and
(11) Transit frequency;

vii. Joint access agreements; and

viii. Proposed transportation improvements.

3. A traffic analysis. Extensive documentation is required for 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. For trip generation, the Institute of Transportation Engineers (ITE) trip-generation rates are the standard. 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 trip generation rates other than ITE.

(1) The peak-hour traffic analysis must identify site, roadway, and coincidental peak-hour conditions, and the beginning and end of the peak-hour used. The peak-hour will generally be the A.M. and P.M. weekday peak-hours. The Department may depending on project characteristics, consider other peak-hours, such as Saturday afternoon or evening.

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(2) For mixed use developments, internal trips should be addressed in the trip distribution section.

ii. For trip distribution, the procedure and rationale should be documented. Trip making and travel patterns for each site must be shown. The distribution for each land use shall be shown graphically and presented as a percentage of the total. 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.

iii. The traffic assignment should follow logically from the trip distribution. Any special conditions must be explained.

(1) Peak-hour traffic volumes covering the analysis area must 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.

iv. Support will have to be provided for any pass-by credit used. Included must 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) Because of the highly judgemental nature of pass-by 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. (8½ inches by 11 inches preferred, 11 inches by 17 inches maximum); and

(3) Traffic assignment must be graphically displayed, with passby credits shown.

4. The following concerns the travel demand management plan:

i. The Department encourages applicants to submit a travel demand management (TMD) plan to reduce vehicle miles of travel to and from the site and to seek active participation from a transportation management association servicing 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 services; 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, then the applicant shall provide the Department with annual status follow-up reports.

(6) The applicant may include a travel demand management program designed to encourage 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.

(7) 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 the Department's transmittal of background growth rates.

(A) 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. The Department will accept calculations performed using software based on HCM. The Department preference is for McTrans software. The Bureau of Access and Development Impact Analysis must approve the use of other software. Any deviation from the HCM accepted values must be fully documented.

(B) Capacity analysis must be performed at each access point and adjacent intersections or any other location as necessary within the analysis area. Identification of specific locations and the need to discuss the interaction of conflicting traffic movements will be products of the pre-application conference.

(C) 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

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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 access availability should 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) The no-build analysis of future years should be based on traffic signal timing that will be appropriate for the future year traffic volumes. The applicant can only take credit for changes in timing facilitated by improvements that the applicant proposes to make.

(G) Summary tables should 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. These tables should facilitate comparison of build and no-build conditions, or of existing and improved configurations.

(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

(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) For improvements made to all State highways, except interstate highways, Department design standards shall apply. Work must conform to the standards 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, and the "NJDOT Design Manual—Roadway" and the "NJDOT Design Manual—Bridges and Structures". In the case of a discrepancy, the NJDOT manual will govern over the AASHTO publication.

(c) 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 conditions. 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 with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Regional Director shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Regional Director denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Regional Director, the applicant may, wthin 15 days, submit an appeal to the Assistant Commissioner, Cosntruction and Maintenance.

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. 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 consideration to the Major Permits Unit within 30 days of a notice of rejection or conditions. 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 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.

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. 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 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 chaper 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.

(c) The Department may issue permits for lots that do not have permits, at no cost to the lot owner.

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(d) Permits issued by the Department for Department initiated actions shall be at no cost to the lot owner.

16:47-4.34 Financial contributions

The Department may require financial contributions towards the cost of constructing capacity improvements to the State highway system. 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.

16:47-4.35 Waivers

(a) 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) If a waiver is granted, the approval will be incorporated in the conditions of the permit.

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;
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
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.

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 of 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

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 within which the segment is located.

16:47-5.5 Decision on request for classification

(a) The Commissioner, in evaluating the application, 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 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 Administration Procedure Act, N.J.S.A. 52:14B-1 et seq. A proposed change is subject to a public comment period.

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, 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 upon reconsideration.

SUBCHAPTER 6. ACCESS MANAGEMENT PLANS

16:47-6.1 Authority

(a) The Commissioner may adopt access management plans provided that:

1. The procedures set forth in this subchapter have been complied with;
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

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development ordinances in accordance therewith. All approvals and decisions shall be in accordance with the access management plan.

(b) An access management plan may not be abandoned by any party without the joint agreement of all parties.

(c) An access management plan may not be revised except in the manner set forth in N.J.A.C. 16:47-6.10.

(d) An 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 non-participating entities shall be compatible with the adopted access management plan.

16:47-6.3 Effect prior to adoption

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 which is not subject of an adopted access management plan, and a decision on a permit application 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 the following:

i. Identification of 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 the names of any transportation management associations having geographical jurisdiction 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. Identification of all existing and future access points.

2. The report may also contain 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;

iii. Identification of the responsibilities of each of the participants for the improvements contemplated by the plan;

iv. The manner in which 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;

vi. Expected future mitigation measures, including traffic limitations for nonconforming lots; and

vii. Other appropriate factors.

3. The map shall be at a scale of one inch equals 100 feet or one inch equals 200 feet 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 for each lot fronting 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.

(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 Transportation, CN 600, 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 those persons identified in (a) above.

(c) The party 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 participating in the joint planning process, except that the expenses for reproduction, travel, communication, and supplies shall be borne by each party. Costs to be shared shall include the time of on-staff professionals and of consultants. In the case of joint initiation, one party shall be designated as the initiator and shall be responsible for conveying the municipal 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, 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 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 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:

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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 in (a)6 through 8 above receiving notice pursuant to (a) above decide to proceed with 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 that all resolutions have been received and that the joint planning process may begin. 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 within such county or municipality; or

2. An independent toll road authority, transportation development district, or transportation management association fails to provide notice.

(i) The primary contacts 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 contacts 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 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, 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 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.

16:47-6.7 Incorporation

The governing bodies of the municipalities and counties which participated in the joint planning process shall, upon completion of the review of public comments by the working committee and such revisions to the access management plan as may be made, 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 and 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 developing the access management plan.

16:47-6.9 Adoption

The Commissioner shall, within 60 days of receipt of all of the municipal ordinances and master plan amendments, 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 municipality or county which participated 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 60 days of such notification, call a meeting of all members of the original working committee, or such successors as are designated to discuss the revisions. 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.

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SUBCHAPTER 7. DESIGNATION OF LIMITED ACCESS

16:47-7.1 Procedures

The Commissioner may, after ensuring adequate alternative access, 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. 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 mail to owners of lots within the segment and to all municipalities and counties located within 200 feet 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 subchapter, pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

APPENDIX A
ACCESS LEVELS (AL) BY ACCESS CLASS AND HIGHWAY CHARACTERISTICS
BASED ON DESIRABLE TYPICAL SECTIONS

URBAN CHARACTERISTICS

	HIGH SPEED* (>=45mph)						LOW SPEED* (<45mph)					
	DIV		UNDIV (MULTI-LANE)		2-LANE		DIV		UNDIV (MULTI-LANE)		2-LANE	
ACCESS CLASS	AL	CELL	AL	CELL	AL	CELL	AL	CELL	AL	CELL	AL	CELL
ACCESSIBLE PRINCIPAL ARTERIALS	II	(1)	IV	(2)	IV	(3)	III	(4)	IV	(5)	V	(6)
MINOR ARTERIALS	III/IV	(7)	IV	(8)	V	(9)	III/IV	(10)	IV	(11)	V	(12)
COLLECTOR ROADS	IV	(13)	V	(14)	VI	(15)	IV	(16)	V	(17)	VI	(18)
LOCAL ROADS	VI	(19)	VI	(20)	VI	(21)	VI	(22)	VI	(23)	VI	(24)

RURAL CHARACTERISTICS

	HIGH SPEED* (>=50mph)						LOW SPEED* (<50mph)					
	DIV		UNDIV (MULTI-LANE)		2-LANE		DIV		UNDIV (MULTI-LANE)		2-LANE	
ACCESS CLASS	AL	CELL	AL	CELL	AL	CELL	AL	CELL	AL	CELL	AL	CELL
ACCESSIBLE PRINCIPAL ARTERIALS	I	(25)	IV	(26)	IV	(27)	II	(28)	IV	(29)	V	(30)
MINOR ARTERIALS	II	(31)	IV	(32)	V	(33)	III/IV	(34)	IV	(35)	V	(36)
MAJOR COLLECTORS	III/IV	(37)	V	(38)	VI	(39)	IV	(40)	V	(41)	VI	(42)
MINOR COLLECTORS	IV	(43)	V	(44)	VI	(45)	IV	(46)	V	(47)	VI	(48)
LOCAL ROADS	VI	(49)	VI	(50)	VI	(51)	VI	(52)	VI	(53)	VI	(54)

ACCESS LEVEL	DESCRIPTION
0	FULLY CONTROLLED ACCESS (0)
I	ACCESS AT INTERSECTION ALONG PUBLIC ROADWAYS ONLY OR AT INTERCHANGE
II	RIGHT-TURN ACCESS DRIVEWAY ONLY
III	DRIVEWAY WITH PROVISION FOR LEFT TURN ACCESS VIA JUGHANDLE
IV	DRIVEWAY WITH PROVISION FOR LEFT TURN ACCESS VIA LEFT-TURN LANE
V	DRIVEWAY WITH PROVISION FOR LEFT TURN ACCESS (LIMITED BY SPACING REQUIREMENTS & SAFETY CONSIDERATIONS)
VI	DRIVEWAY ACCESS LIMITED ONLY BY EDGE CLEARANCE AND SAFETY CONSIDERATIONS

GENERAL NOTE: THE NUMBER IN PARENTHESES FOR EACH CELL REPRESENTS THE CELL NUMBER REFERRED TO ON APPENDIX B.
NOTE FOR III: JUGHANDLE MAY BE LOCATED AT OR IN VICINITY OF ACCESS DRIVEWAY.
NOTE FOR III/IV: ACCESS LEVEL WILL DEPEND ON DESIGN STANDARDS FOR THE SPECIFIC ROUTE INVOLVED.
*BASED ON POSTED SPEED LIMIT.

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APPENDIX B
STATE HIGHWAY ACCESS LEVELS BY ROUTE AND MILEPOST
ACCESS LEVEL (AL)

0. Fully Controlled Access
I. Access along Street or Interchange Only
II. Right-turn access Driveway Only
III. Driveway with Provision for Left-turn Access via Jughandle
IV. Driveway with Provision for Left-turn Access via Left-turn lane
V. Driveway with Provision for Left-turn Access (Limited By Spacing Requirements and Safety Considerations)
VI. Driveway Access Limited by Edge Clearance and Safety Considerations

DESIRED TYPICAL SECTIONS CODES (DTS) & RIGHT OF WAY WIDTHS (R.O.W.)

DTS	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
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	101′	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

CELL NUMBER SEE APPENDIX A

ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
1	0.00	5.46	0	6A	0
1	5.46	5.94	2	6A	1
1	5.94	7.20	2	6C	1
1	7.20	13.70	2	8A	1
1	13.70	22.40	2	6A	1
1	22.40	38.34	2	8A	1
1	38.34	38.88	2	4B	1
1	38.88	40.45	2	6A	1
1	40.45	41.85	3	6A	4
1	41.85	43.15	2	6A	1
1	43.15	45.40	3	6A	4
1	45.40	45.48	2	6A	1
1	45.48	54.49	2	8C	1
1	54.49	57.40	3	6A	4
1	57.40	62.00	3	6A	4
1	62.00	62.13	3	4A	10
1	62.13	62.80	4	4A	10
1	62.80	62.93	3	4A	4
1	62.93	63.20	2	6C	1
1	63.20	64.90	2	5A	1
1 B	0.00	0.88	3	4A	4
1 B	0.88	1.05	3	5A	4
1 B	1.05	2.73	2	6A	1
1 T	0.00	2.29	2	6A	1
1 T	2.29	4.11	3	6A	4
3	0.00	9.20	2	8A	1
3	9.20	10.40	2	6C	1
3	10.40	10.82	2	4A	1
4	0.00	0.23	3	8A	4
4	0.23	2.20	3	4A	4
4	2.20	7.70	2	8A	1
4	7.70	9.95	0	8A	0
4	9.95	10.89	2	8A	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	3.17	6	2A	18
7	0.00	0.53	4	4D	5
7	0.53	1.60	2	4A	1
7	1.60	3.67	4	4C	2
7	3.67	4.16	4	4C	5
7	4.16	10.10	4	4D	11
9	3.06	6.50	4	4C	32
9	6.50	9.60	4	4C	35
9	9.60	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	30.60	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	55.20	4	4C	32
9	55.20	57.30	4	4C	35
9	57.30	61.70	4	4C	32
9	61.70	62.50	4	4C	35
9	62.50	63.30	4	4A	34
9	63.30	64.60	2	4A	31
9	64.60	70.20	3	4A	34
9	70.20	70.50	4	4B	34
9	70.50	71.05	3	4A	34
9	71.05	74.40	2	4A	31
9	74.40	86.56	3	4A	34
9	86.56	88.60	2	4A	1
9	88.60	89.95	3	4A	4
9	89.95	90.93	2	4A	1
9	94.40	94.50	4	2B	3

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ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
9	94.50	100.40	2	4A	1
9	100.40	102.96	3	4A	4
9	102.96	103.20	2	4A	28
9	103.20	114.10	2	6A	1
9	114.10	114.30	2	4B	1
9	114.30	123.09	2	6A	1
9	123.09	135.23	2	8A	1
9	135.23	136.23	2	6A	1
9 W	0.00	0.35	3	4B	4
9 W	0.35	0.76	3	4A	4
9 W	0.76	1.28	4	4E	5
9 W	1.28	11.00	2	4A	1
9 W	11.00	11.15	4	2A	3
10	0.00	14.50	2	6A	1
10	14.50	15.20	3	6A	4
10	15.20	19.70	2	6A	1
10	19.70	20.00	2	4A	1
10	20.00	20.85	3	4A	4
10	20.85	22.69	2	4A	1
10	22.69	23.47	3	4A	4
12	0.95	10.58	2	4A	31
12	10.58	11.70	4	4A	34
13	0.00	0.03	4	4D	11
13	0.03	0.43	4	4D	11
13	0.43	0.58	4	4G	11
15	0.00	2.05	4	4C	5
15	2.05	2.29	2	6A	1
15	2.29	2.46	2	8B	1
15	2.46	3.66	2	6A	1
15	3.66	5.42	2	6A	31
15	5.42	6.00	3	6A	34
15	6.00	6.35	3	6A	4
15	6.35	6.75	2	6A	1
15	6.75	14.13	0	6A	0
15	14.13	14.20	2	6A	31
15	14.20	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	2	6A	1
18	0.00	30.85	0	4A	0
18	30.85	34.25	2	4A	1
18	34.25	36.94	2	6A	1
18	36.94	39.95	2	8A	1
18	39.95	40.80	3	8A	4
18	40.80	41.75	2	8A	1
18	41.75	43.71	2	6A	1
20	0.00	3.93	3	6A	4
21	0.00	0.34	2	4B	1
21	0.34	0.91	2	6B	1
21	0.91	4.00	3	6B	4
21	4.00	4.10	2	6A	1
21	4.10	12.45	0	6A	0
22	0.30	0.62	0	6B	0
22	0.62	0.73	3	4A	4
22	0.73	1.49	3	6B	4
22	1.49	2.00	2	6B	1
22	2.00	4.45	2	4A	1
22	4.45	19.22	0	6A	0
22	19.22	28.39	2	4A	31
22	28.39	31.50	2	4A	1
22	31.50	37.05	2	6A	1
22	37.05	41.59	2	4A	1
22	41.59	59.15	2	6A	1
22 A	2.38	3.40	4	4D	5
22 A	3.40	4.05	4	4D	2
23	0.00	0.60	4	4D	5
23	0.60	0.80	3	4B	4
23	0.80	2.06	4	4D	5
23	2.06	3.99	4	4D	2
23	3.99	5.05	4	4D	5
23	5.05	5.80	3	6A	4
23	5.80	16.98	2	6A	1
23	16.98	27.23	1	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	4.50	4	4D	11
24	4.50	7.30	4	4D	5
24	7.30	7.45	5	2A	6
24	7.45	7.63	2	6A	31
24	7.63	10.50	0	6A	0
24	10.50	10.86	2	6A	31
26	0.00	0.85	4	4E	8
26	0.85	2.10	4	4E	11
27	0.00	1.45	4	4F	5
27	1.45	3.40	4	4F	2
27	3.40	4.42	4	4F	35
27	4.42	6.18	4	4F	32
27	6.18	9.36	4	4F	2
27	9.36	10.20	4	4F	5
27	10.20	13.85	4	4F	2
27	13.85	15.25	4	4F	5
27	15.25	17.50	4	4D	5
27	17.50	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	5.00	4	4D	5
28	5.00	6.90	4	4D	2
28	6.90	12.88	4	4D	5
28	17.30	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	0	6A	0
29	6.20	6.70	3	4A	4
29	6.70	8.70	2	4A	1
29	8.70	9.40	2	4A	31
29	9.40	16.82	5	2A	36
29	16.82	18.10	6	2A	42
29	18.10	18.60	5	4C	41
29	18.60	19.60	6	2A	42
29	19.60	20.30	5	4C	41
29	20.30	23.36	6	2A	42
29	23.36	34.26	6	2A	39
30	0.95	1.20	3	6A	4
30	1.20	1.80	3	8B	4
30	1.80	1.98	3	6A	4
30	1.98	6.40	2	4A	1
30	6.40	6.55	2	6A	1
30	6.55	7.12	3	6A	4
30	7.12	7.95	2	6A	1
30	7.95	12.70	2	4A	1
30	12.70	16.54	2	4A	31
30	16.54	18.00	3	4B	34
30	18.00	18.30	3	4A	34
30	18.30	26.05	2	4A	31
30	26.05	27.60	2	4A	1
30	27.60	29.60	3	4A	4
30	29.60	30.72	2	4A	1
30	30.72	35.10	2	4A	31
30	35.10	41.67	2	4A	1
30	41.67	41.80	4	4G	2
30	41.80	42.25	4	4G	5
30	42.25	50.53	4	4G	2
30	50.53	54.39	4	4G	5
30	54.39	55.42	3	6B	4
30	55.42	56.75	2	8B	1

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ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
30	56.75	57.25	3	8B	4
30	57.25	57.90	3	6B	4
30	57.90	58.23	3	8C	1
31	1.15	3.82	4	4C	5
31	3.82	4.67	4	4C	2
31	4.67	5.05	2	4A	1
31	5.05	5.91	4	4C	2
31	5.91	6.20	2	4A	1
31	6.20	6.89	4	4C	2
31	6.89	7.19	2	4A	1
31	7.19	8.60	4	4C	2
31	8.60	12.37	4	4C	26
31	12.37	22.10	1	4A	25
31	22.10	24.40	2	4A	28
31	24.40	42.12	1	4A	25
31	42.12	42.28	2	4A	28
31	42.28	42.34	2	4A	1
31	42.34	43.19	3	4A	4
31	43.19	43.56	2	4A	1
31	43.56	46.12	1	4A	25
31	46.12	49.00	2	4A	28
32	0.00	0.92	2	4A	31
32	0.92	1.18	3	4A	34
33	0.00	2.30	4	4D	5
33	2.30	5.50	4	4C	5
33	5.50	7.88	4	4C	2
33	12.44	12.52	2	6A	1
33	12.52	13.68	4	4C	2
33	13.68	14.02	4	4C	5
33	14.02	14.85	4	4E	5
33	14.85	15.00	4	4E	2
33	15.00	15.18	4	4C	2
33	15.18	16.41	2	4A	1
33	16.41	18.00	1	4A	25
33	18.00	24.00	1	6A	25
33	24.00	24.40	1	4A	25
33	24.40	24.91	5	2B	33
33	24.91	26.54	4	4C	26
33	26.54	26.80	2	6A	1
33	26.80	26.93	4	4F	5
33	26.93	28.70	4	4E	5
33	28.70	29.94	4	4E	2
33	29.94	31.43	6	2A	39
33	31.43	36.30	1	4A	25
33	36.30	37.45	4	4C	26
33	37.45	38.34	2	4A	1
33	38.34	40.30	4	4C	2
33	40.30	40.62	2	6A	1
33	40.62	41.80	4	4C	5
33	41.80	42.44	4	4C	11
33 F	0.00	5.03	0	6A	0
34	0.00	0.33	2	4A	1
34	0.33	12.60	2	4A	31
34	12.60	20.48	4	4C	32
34	20.48	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	3.43	0	6A	0
35	3.43	3.51	2	6B	1
35	3.51	3.77	2	4B	1
35	3.77	9.00	3	4A	4
35	9.00	9.10	4	4C	5
35	9.10	13.00	4	4E	5
35	13.00	14.40	3	4A	4
35	14.40	14.55	4	4D	5
35	14.55	16.04	2	4A	1
35	16.04	20.10	4	4F	2
35	20.10	20.56	2	4A	1
35	20.56	21.04	4	4C	5
35	21.04	22.30	3	6A	4
35	22.30	24.61	4	4C	5
35	24.61	24.94	2	4A	1
35	24.94	29.50	2	6A	1
35	29.50	31.20	4	4F	5
35	31.20	33.00	4	4C	5
35	33.00	33.15	3	6A	4
35	33.15	34.37	4	4E	5
35	34.37	34.65	5	2A	6
35	34.65	34.84	3	4A	4
35	34.84	35.80	2	4A	1
35	35.80	43.91	2	6A	1
35	43.91	44.62	2	6B	1
35	44.62	45.74	2	6A	1
35	45.74	47.00	3	6A	4
35	47.00	51.00	2	6A	1
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	2	6A	1
36	1.25	1.45	2	5A	1
36	1.45	1.55	2	6A	1
36	1.55	3.73	2	4A	1
36	3.73	4.11	3	4A	4
36	4.11	5.78	4	4D	5
36	5.78	6.57	2	4A	1
36	6.57	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	2	5A	1
36	13.00	19.90	2	4A	1
36	19.90	24.18	2	6A	1
36	24.18	24.40	2	4A	1
37	0.00	1.40	2	4A	31
37	1.40	6.50	2	4A	1
37	6.50	6.80	2	8A	1
37	6.80	11.46	2	6A	1
37	11.46	13.12	2	5A	1
37	13.12	13.42	2	4A	1
38	0.00	9.90	2	6A	1
38	9.90	13.70	2	4A	1
38	13.70	15.29	3	4A	7
38	15.29	15.40	2	4A	1
38	15.40	16.80	3	4A	4
38	16.80	18.31	4	4C	2
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	4C	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	26.54	4	4C	2
40	26.54	27.32	4	4C	5
40	27.32	29.31	4	4C	2
40	29.31	32.62	4	4C	32
40	32.62	33.80	2	4A	1
40	33.80	34.50	3	4A	4
40	34.50	35.23	2	4A	1
40	35.23	38.12	2	4A	31
40	38.12	38.53	3	4A	34
40	38.53	46.27	2	4A	31
40	46.27	47.40	4	4C	35
40	47.40	53.10	2	4A	31
40	53.10	53.85	2	6A	31
40	53.85	56.79	2	6A	1
40	56.79	59.00	2	4A	1

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ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
40	59.00	60.39	3	4A	4
40	60.39	60.52	2	4A	1
40	60.52	63.51	4	4F	2
40	63.51	64.07	4	4F	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	11.80	4	4F	5
41	11.80	13.02	4	4F	2
41	13.02	13.98	2	5A	1
42	0.00	6.40	2	6A	1
42	6.40	14.28	0	8A	0
44	0.00	1.28	6	2A	51
44	1.28	2.80	6	2A	39
44	2.80	2.90	5	2A	9
44	2.90	4.10	5	2A	12
44	4.10	5.20	5	2A	9
44	5.20	6.20	5	2A	12
44	6.20	8.40	5	2A	9
44	8.40	9.40	5	2A	12
44	9.40	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	10.40	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	20.20	4	4E	32
45	20.20	22.45	4	4E	2
45	22.45	22.53	4	4E	5
45	22.53	22.60	3	4A	4
45	22.60	24.80	2	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	0	4A	0
46	0.85	2.47	4	2A	27
46	2.47	2.58	1	4A	25
46	2.58	6.86	4	2A	27
46	6.86	7.45	1	4A	25
46	7.45	9.63	4	4C	26
46	9.63	10.05	4	4C	29
46	10.05	15.74	4	4C	32
46	15.74	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	4D	35
46	22.40	24.58	4	4A	34
46	24.58	25.50	2	4A	31
46	25.50	27.30	2	4A	1
46	27.30	28.44	3	4A	4
46	28.44	29.63	2	4A	1
46	29.63	30.42	3	4A	4
46	30.42	34.22	2	4A	1
46	34.22	35.10	3	4A	4
46	35.10	36.02	2	4A	1
46	36.02	36.56	3	4A	4
46	36.56	37.29	2	4A	1
46	37.29	42.38	3	4A	4
46	42.38	42.50	3	6B	4
46	42.50	43.05	3	6A	4
46	43.05	61.60	2	6A	1
46	61.60	62.26	3	6A	4
46	62.26	68.20	2	6A	1
46	68.20	69.00	2	8A	1
46	69.00	69.37	2	6A	1
46	69.37	70.23	3	6A	4
46	70.23	70.72	2	6A	1
46	70.72	72.15	2	8A	1
47	0.67	1.16	4	4A	40
47	1.16	3.30	4	4A	37
47	3.30	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	17.57	2	4B	31
47	17.57	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	46.85	4	4D	11
47	46.85	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	62.29	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	0.40	2	4A	1
49	0.40	0.70	2	4B	1
49	0.70	3.00	3	4B	4
49	3.00	4.60	2	4B	1
49	4.60	6.29	2	4A	1
49	6.29	8.30	2	4A	31
49	8.30	8.51	3	4A	4
49	8.51	10.10	4	4C	5
49	10.10	11.00	4	4C	35
49	11.00	12.38	4	4C	32
49	12.38	12.88	4	4C	35
49	12.88	21.10	4	4C	32
49	21.10	21.62	4	4C	35
49	21.62	23.13	4	4C	32
49	23.13	24.54	4	4C	2
49	24.54	26.25	4	4C	5
49	26.25	26.50	3	4B	4
49	26.50	26.65	4	4C	5
49	26.65	27.20	4	4C	2
49	27.20	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	40.89	4	4C	2
49	40.89	53.78	4	4C	32
50	0.00	0.10	3	4B	34
50	0.10	0.24	2	4A	31
50	0.24	6.22	4	4C	32
50	6.22	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	21.15	2	4A	31
50	21.15	23.50	4	4C	32
50	23.50	24.20	2	4A	31

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ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
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	1.80	4	4E	11
53	1.80	2.35	4	4E	8
53	2.35	4.65	4	4E	11
54	0.00	1.11	4	4C	2
54	1.11	6.50	4	4C	32
54	6.50	6.92	4	4E	32
54	6.92	8.20	4	4C	32
54	8.20	8.46	4	4C	2
54	8.46	9.12	2	4A	1
54	9.12	10.14	4	4C	2
54	10.14	11.88	4	4C	5
55 F	20.00	20.80	2	4A	25
55 F	20.80	39.61	0	4A	0
55 F	53.25	60.52	0	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	7.60	3	4A	7
56	7.60	7.84	3	4B	7
56	7.84	8.70	4	4D	11
56	8.70	9.23	4	4G	11
57	0.00	0.55	4	4C	2
57	0.55	2.21	4	4C	32
57	2.21	2.60	4	4C	35
57	2.60	4.38	4	4C	32
57	4.38	5.28	4	4C	35
57	5.28	6.50	4	4C	32
57	6.50	7.00	4	4C	35
57	7.00	9.10	4	4C	32
57	9.10	9.70	5	2B	33
57	9.70	9.78	4	2B	3
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	19.05	4	4C	32
57	19.05	19.68	4	4C	35
57	19.68	20.00	4	4C	32
57	20.00	20.53	5	2B	33
57	20.53	21.10	4	2B	3
59	0.00	0.15	6	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	1.98	4	4E	11
68	0.00	0.57	2	4B	1
68	0.57	1.07	2	4A	1
68	1.07	8.02	2	4A	31
70	0.00	8.24	2	6A	1
70	8.24	10.00	2	4A	1
70	10.00	12.00	4	4C	2
70	12.00	13.00	2	4A	1
70	13.00	13.80	4	4C	2
70	13.80	14.10	2	4A	1
70	14.10	14.83	4	4C	2
70	14.83	18.30	4	4C	32
70	18.30	18.80	2	4A	31
70	18.80	19.60	4	4C	32
70	19.60	20.10	2	4A	31
70	20.10	26.10	4	4C	32
70	26.10	26.50	2	4B	31
70	26.50	38.20	4	4C	32
70	38.20	38.50	2	4A	31
70	38.50	43.25	4	4C	32
70	43.25	43.45	4	4C	35
70	43.45	45.21	3	4A	34
70	45.21	48.58	2	4A	31
70	48.58	53.76	2	4A	1
70	53.76	54.00	3	4A	4
70	54.00	54.30	2	4A	1
70	54.30	54.70	3	4A	4
70	54.70	59.84	2	4A	1
71	0.00	0.20	4	4A	10
71	0.20	5.00	4	4E	11
71	5.00	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	13.70	4	4E	32
72	13.70	27.13	2	4A	31
72	27.13	27.32	2	5A	31
72	27.32	27.53	2	6A	31
72	27.53	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	2	6A	1
73	12.70	14.46	2	6A	31
73	14.46	19.58	2	6A	1
73	19.58	21.35	2	6A	31
73	21.35	32.00	2	6A	1
73	32.00	32.35	2	8A	1
73	32.35	34.10	2	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	7.95	4	4D	32
77	7.95	22.40	2	4A	31
77	22.40	22.55	4	4A	34
78	4.16	58.50	0	6A	0
79	0.00	0.35	4	4F	11
79	0.35	1.40	5	2B	12
79	1.40	1.60	4	4E	11
79	1.60	2.17	4	4D	11
79	2.17	2.42	4	4D	8
79	2.42	2.55	5	4C	41
79	2.55	4.81	5	4C	38
79	4.81	5.18	3	4A	37
79	5.18	5.38	3	4A	7
79	5.38	5.72	4	4C	11
79	5.72	6.80	4	4C	8
79	6.80	9.31	5	4C	38
79	9.31	10.00	5	4C	41
79	10.00	11.15	5	4C	38
79	11.15	12.13	4	4D	11
80	0.50	25.48	0	6A	0
80	25.48	68.30	0	8A	0
81	0.51	0.98	2	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	1.72	3	4A	7
88	0.00	0.30	5	2B	12
88	0.30	5.21	5	2C	12
88	5.21	8.60	5	2C	6
88	8.60	8.96	4	4D	5
88	8.96	9.64	5	2C	6
88	9.64	9.84	3	4B	4
90	2.00	3.20	2	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

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ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
94	0.20	0.72	4	4D	35
94	0.72	2.31	4	4C	32
94	2.31	3.12	4	4C	35
94	3.12	8.37	4	4C	32
94	8.37	9.17	4	4C	35
94	9.17	11.82	4	4C	32
94	11.82	14.90	4	4C	35
94	14.90	21.36	4	4C	32
94	21.36	21.57	4	4D	2
94	21.57	22.50	4	4D	5
94	24.88	33.04	4	4C	35
94	33.04	35.20	4	4C	32
94	35.20	45.71	4	4C	35
109	1.37	1.65	4	4C	35
109	1.65	1.95	4	4D	35
109	1.95	2.50	4	4A	34
109	2.50	3.06	3	6A	34
120	0.00	1.00	2	6A	1
120	1.00	2.83	3	6A	4
124	7.32	8.97	2	4A	1
124	8.97	10.03	3	4A	4
124	10.03	11.39	4	4E	5
124	11.39	11.60	4	5A	10
124	11.60	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	1.70	4	4A	37
130	11.70	12.36	0	4A	0
130	12.36	14.29	0	4C	0
130	23.60	25.00	4	4C	2
130	25.00	25.35	3	4B	4
130	25.35	25.43	4	4D	5
130	25.43	25.70	3	6B	4
130	25.70	28.25	2	6B	1
130	28.25	31.90	3	6B	4
130	31.90	37.10	2	6B	1
130	37.10	40.55	2	6A	1
130	40.55	41.42	2	6B	1
130	41.42	45.76	2	6A	1
130	45.76	45.90	3	6A	4
130	45.90	46.65	3	8A	4
130	46.65	47.52	2	6A	1
130	47.52	48.26	2	6A	1
130	48.26	50.50	2	4A	1
130	50.50	54.28	2	6A	1
130	54.28	55.43	2	4A	1
130	55.43	55.71	3	6A	4
130	55.71	56.00	3	8B	4
130	56.00	56.60	3	6B	4
130	56.60	58.26	2	4A	1
130	58.26	70.04	2	6A	1
130	70.04	80.38	2	6A	31
130	80.38	83.37	2	6A	1
138	0.00	3.52	2	4A	1
139	0.00	1.47	2	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	8
147	0.00	0.30	4	4C	35
147	0.30	0.88	4	4A	34
147	0.88	1.65	2	4A	31
147	1.65	3.30	4	4A	34
147	3.30	3.50	4	4A	40
147	3.50	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	3.21	4	4D	2

ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
154	0.00	0.30	4	4C	11
154	0.30	1.70	4	4C	8
156	0.00	0.30	5	2A	9
156	0.30	0.62	5	2A	12
156	0.62	1.21	5	2A	9
157	0.00	0.45	5	2A	6
157	0.45	0.91	4	2A	3
159	0.00	0.34	2	4A	1
159	0.34	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	2	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	2	4A	1
168	9.79	9.92	3	4B	4
168	9.92	10.57	4	4C	5
169	1.00	3.31	3	4A	4
169	3.31	4.00	2	4A	1
169	4.00	5.73	3	4A	4
171	0.00	1.00	3	4A	10
171	0.08	1.00	4	4F	11
172	0.00	0.35	4	4E	11
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	4.10	6	2B	45
173	4.10	4.35	6	2B	48
173	4.35	12.62	6	2B	45
173	12.62	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	6	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	2	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	1	4A	25
202	19.04	26.25	2	4A	1
202	26.25	29.00	4	4F	2
202	29.00	29.55	2	4A	1
202	29.55	29.95	3	4A	4
202	29.95	31.50	2	4A	1

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ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
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	34.10	6	2A	39
202	34.10	36.32	5	2B	9
202	36.32	37.02	5	2B	12
202	37.02	38.10	4	4C	11
202	38.10	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	44.90	4	4C	11
202	44.90	45.00	4	4C	5
202	45.00	45.61	4	4C	11
202	45.61	45.76	4	4C	5
202	45.76	47.00	4	4E	5
202	50.03	50.45	2	4B	1
202	50.45	50.70	4	4C	2
202	51.43	51.87	4	4C	5
202	62.89	63.40	3	6A	4
202	63.40	65.58	2	6A	1
202	72.44	72.66	4	4D	5
206	0.00	0.10	2	4A	1
206	0.10	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	2	4A	1
206	35.50	35.61	3	4A	4
206	36.27	38.49	2	4A	1
206	38.49	38.90	2	6A	1
206	38.90	40.73	3	6A	4
206	44.62	45.00	2	4A	1
206	45.00	47.84	4	4C	2
206	47.84	48.39	2	4A	1
206	48.39	51.00	4	4C	2
206	51.00	51.20	2	4A	1
206	51.20	53.28	4	4C	2
206	53.28	55.80	4	4C	5
206	55.80	57.23	4	4C	35
206	57.23	58.33	2	4A	28
206	58.33	62.64	1	4A	25
206	62.64	62.70	2	4A	31
206	62.70	62.90	1	4A	25
206	62.90	64.45	2	4A	31
206	64.45	65.12	2	4A	1
206	65.12	66.31	3	4A	4
206	66.31	68.90	2	4A	1
206	68.90	70.80	2	6A	1
206	70.80	71.25	3	6A	4
206	78.32	79.25	2	4A	1
206	79.25	86.90	2	4A	31
206	86.90	87.30	3	4A	34
206	87.30	89.49	2	4A	31
206	89.49	97.51	2	4A	1
206	97.51	97.80	2	4A	31
206	97.80	99.23	2	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	108.00	2	4A	1
206	108.00	109.35	3	4A	4
206	109.35	109.40	3	6B	4
206	109.40	109.50	3	5A	4
206	109.50	110.40	3	4A	4
206	110.40	111.10	3	4A	34
206	111.10	114.10	2	4A	31
206	114.10	115.23	4	4A	40
206	115.23	116.28	3	4A	34
206	116.28	128.20	2	4A	31
206	128.20	129.55	3	4A	34
208	0.00	11.02	2	6A	1
284	0.00	0.50	5	2A	36
284	0.50	7.00	5	2A	33
322	2.24	6.30	2	4A	31
322	6.30	10.85	6	2A	39
322	10.85	11.65	4	4D	35
322	11.65	14.58	4	4C	32
322	14.58	16.10	4	4C	35
322	16.10	16.78	4	4D	2
322	16.78	18.49	4	4D	5
322	18.49	19.30	4	4D	2
322	19.30	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	48.80	2	4A	31
322	48.80	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	2	6A	1
440	3.10	3.98	2	6C	1
440	20.56	23.28	2	6A	1
524	0.45	0.90	4	4B	13

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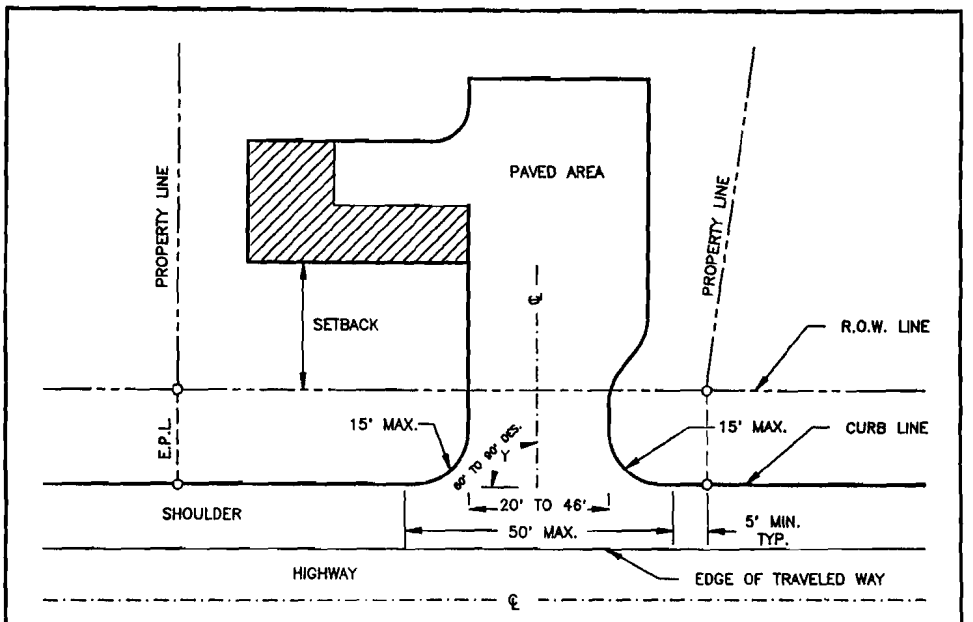
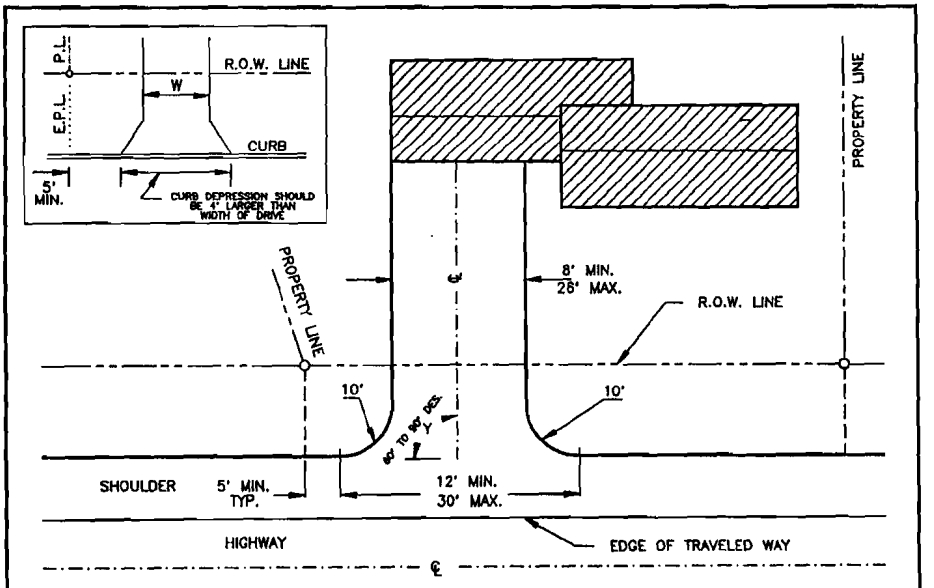
APPENDIX C
ACCESS LEVELS DIAGRAMS



DRIVEWAY FOR MINOR GENERATOR ON
DIVIDED OR UNDIVIDED HIGHWAY
(NOT TO SCALE)

8924-16 *FIGURE C-1*



DRIVEWAY FOR MINOR
RESIDENTIAL GENERATOR ON
DIVIDED OR UNDIVIDED HIGHWAY
(NOT TO SCALE)

8924-15 *FIGURE C-2*

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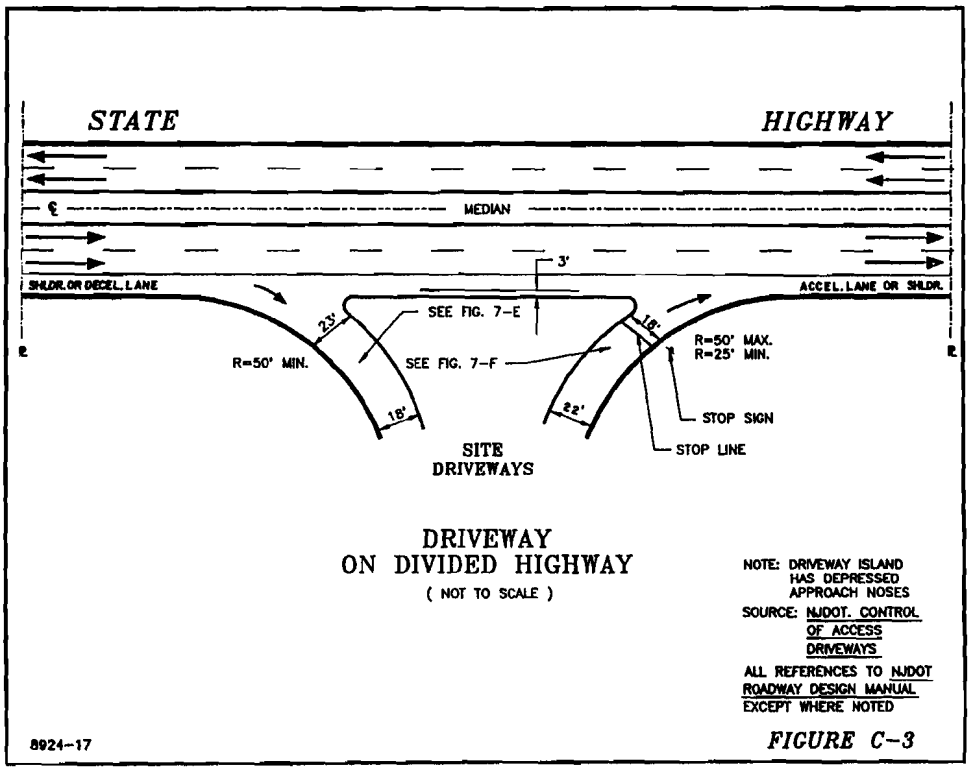

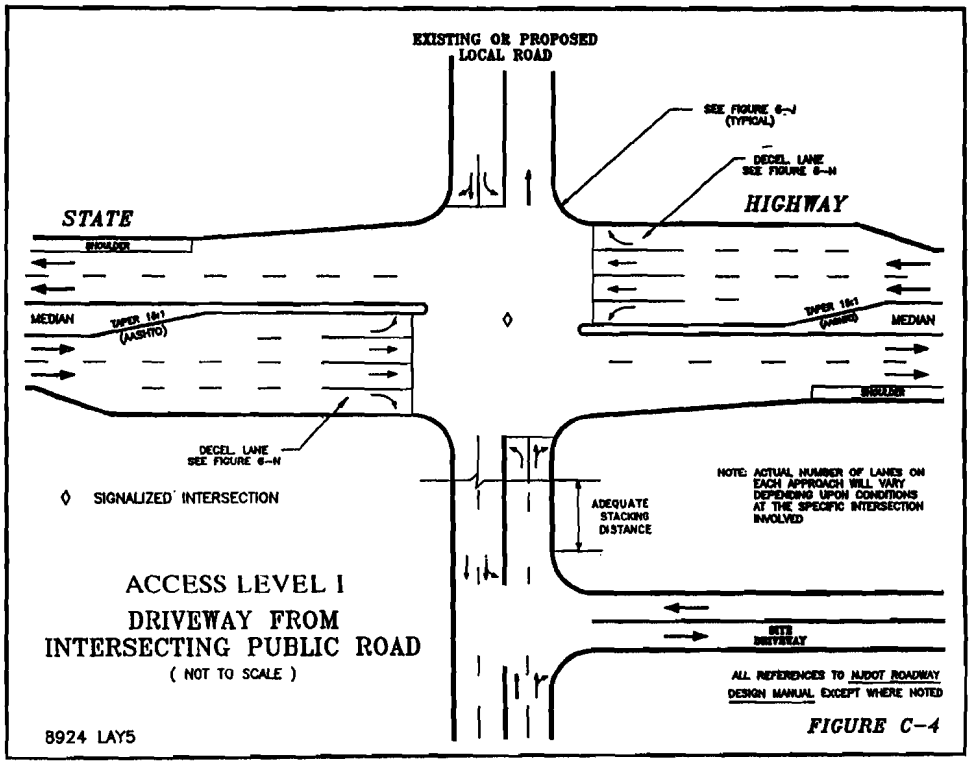

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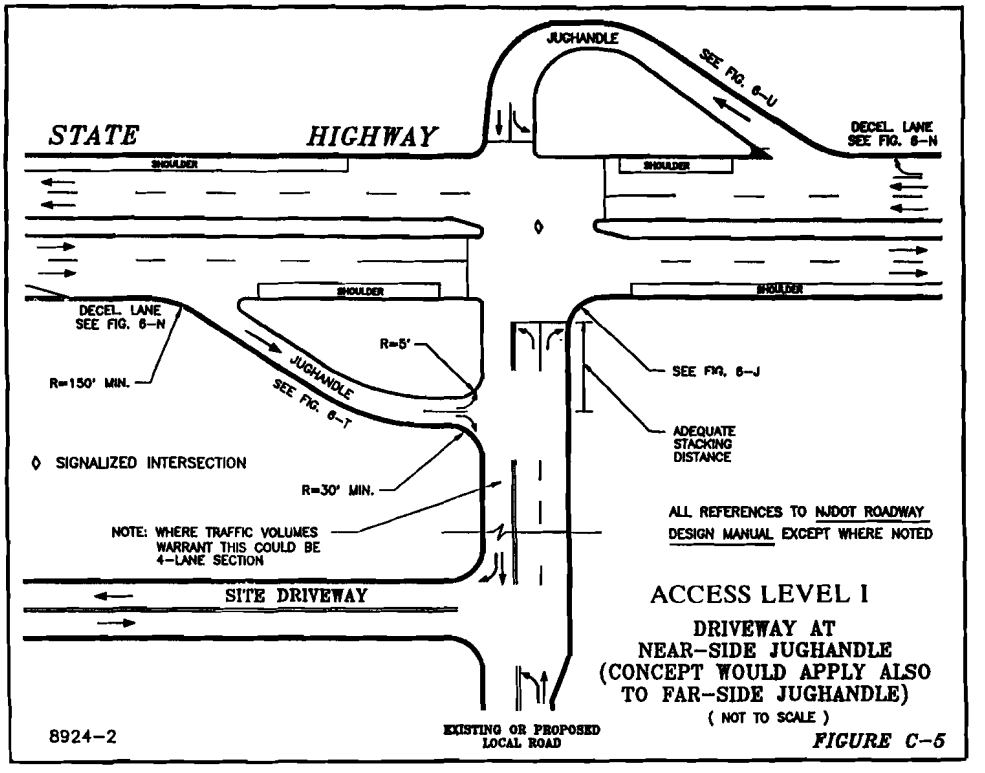

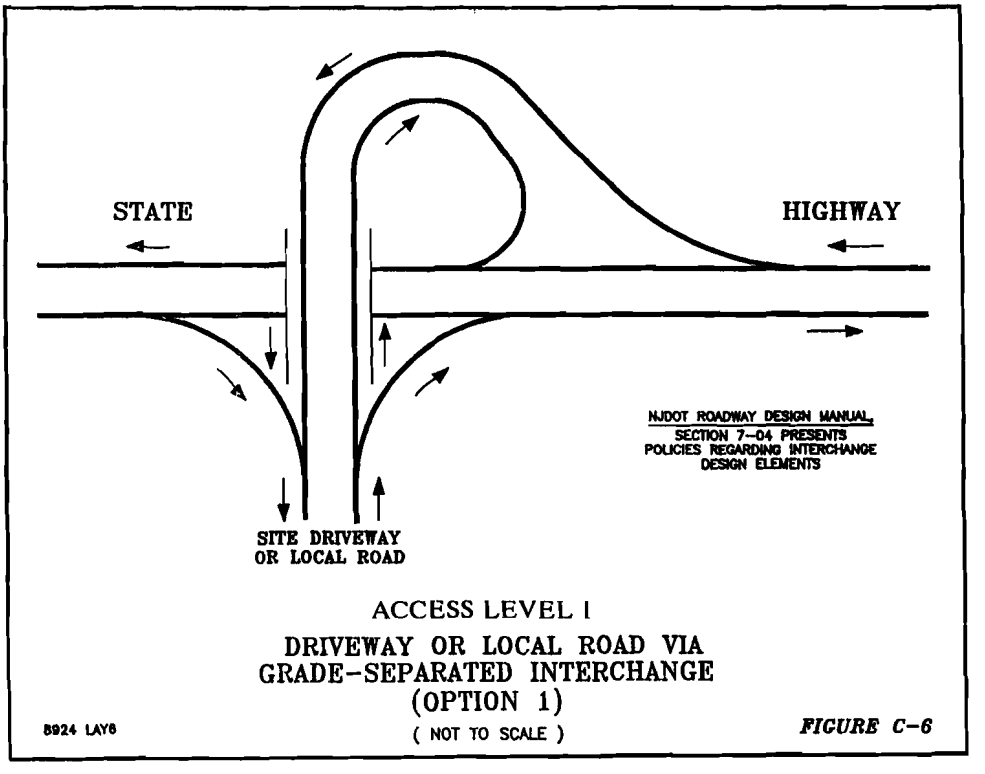

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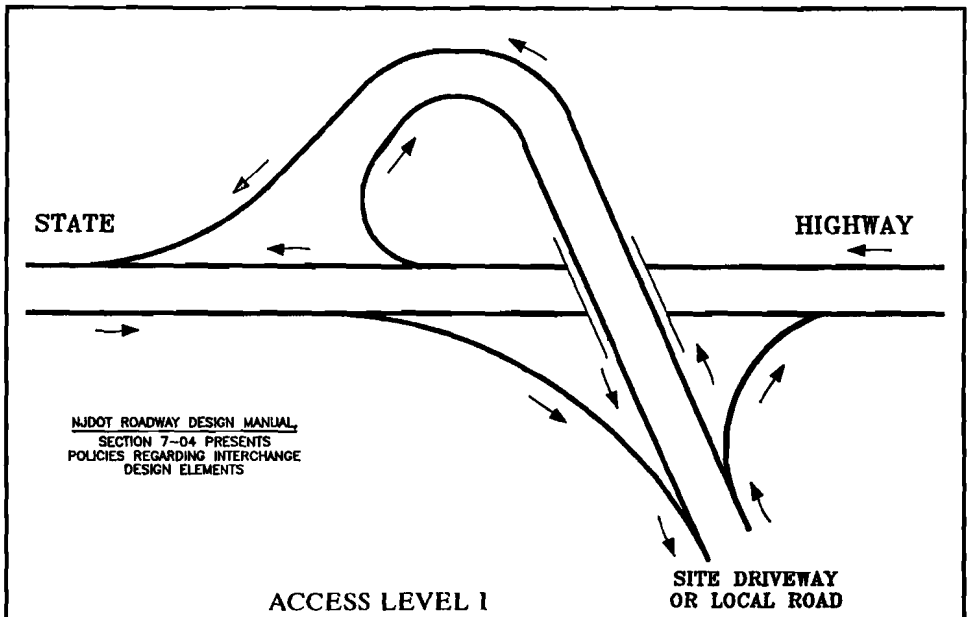
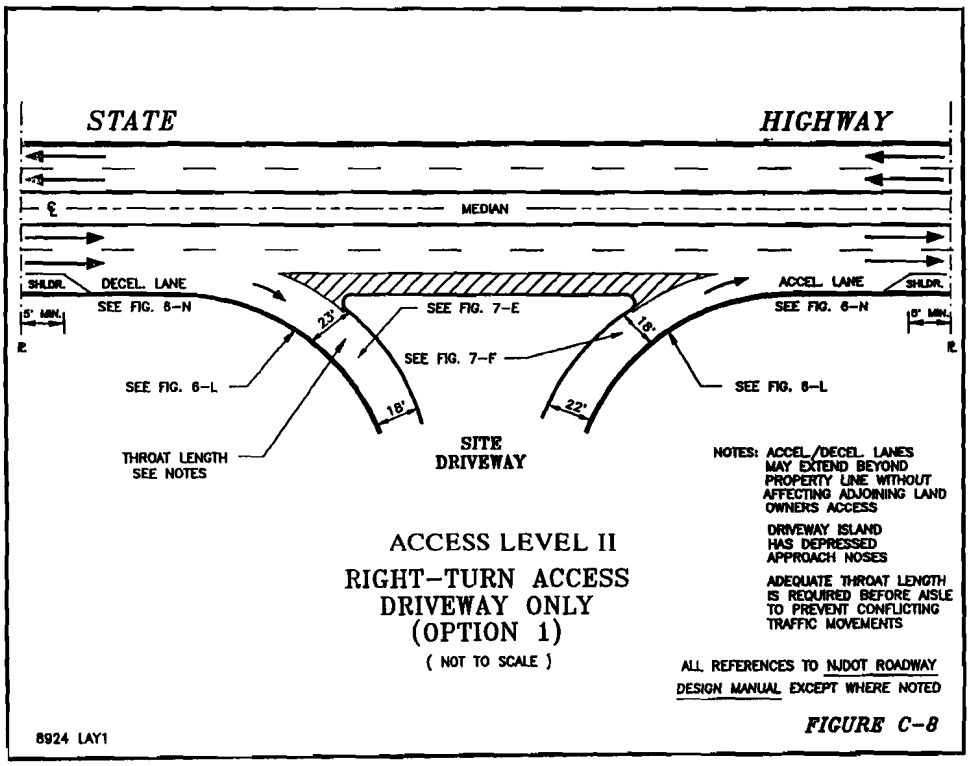


ACCESS LEVEL I

DRIVEWAY OR LOCAL ROAD VIA
GRADE-SEPARATED INTERCHANGE
(OPTION 2)

8924-4

FIGURE C-7



ACCESS LEVEL II

RIGHT-TURN ACCESS
DRIVEWAY ONLY
(OPTION 1)

(NOT TO SCALE)

8924 LAY1

FIGURE C-8

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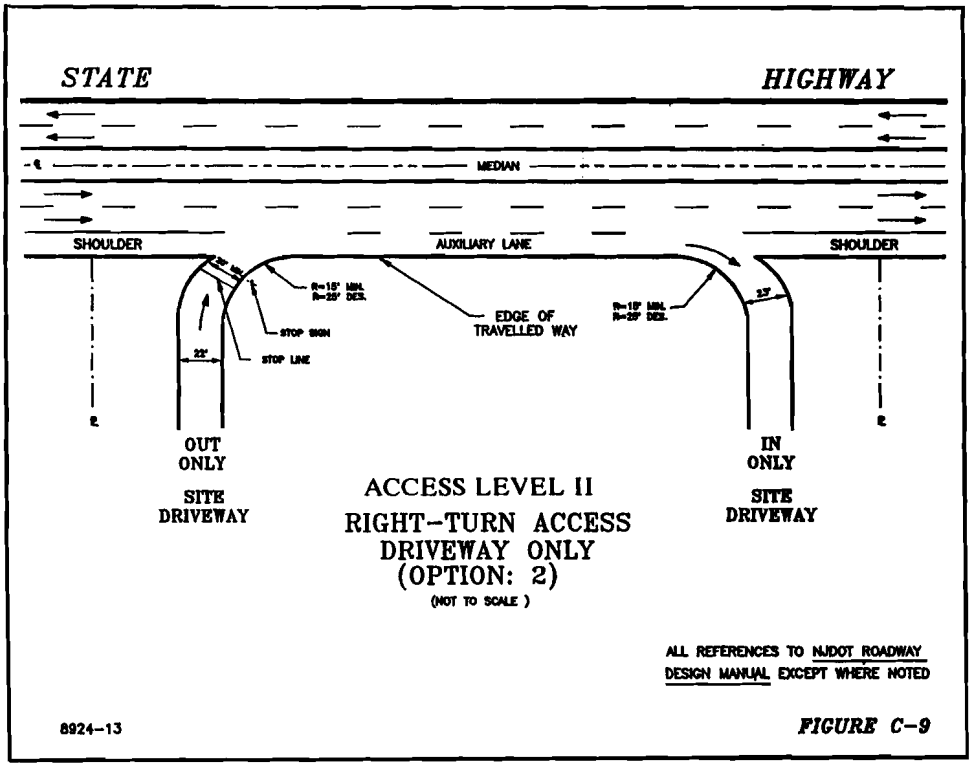

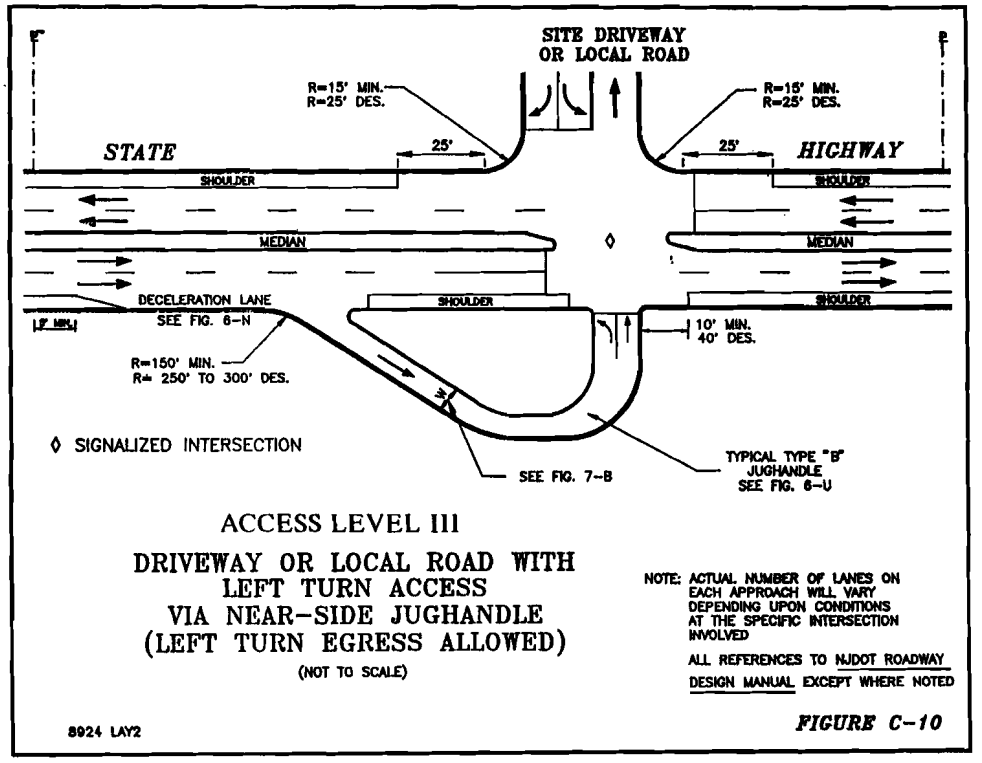

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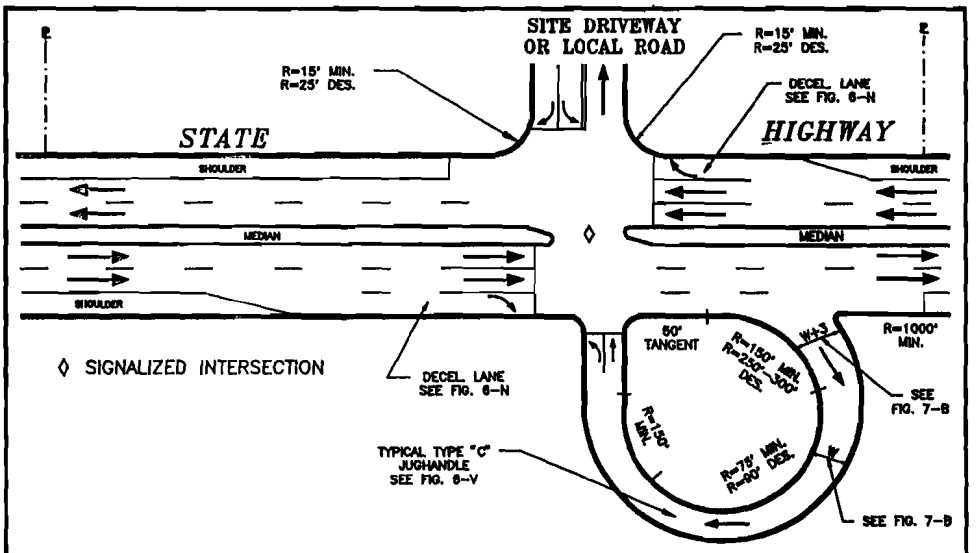

FIGURE C-11

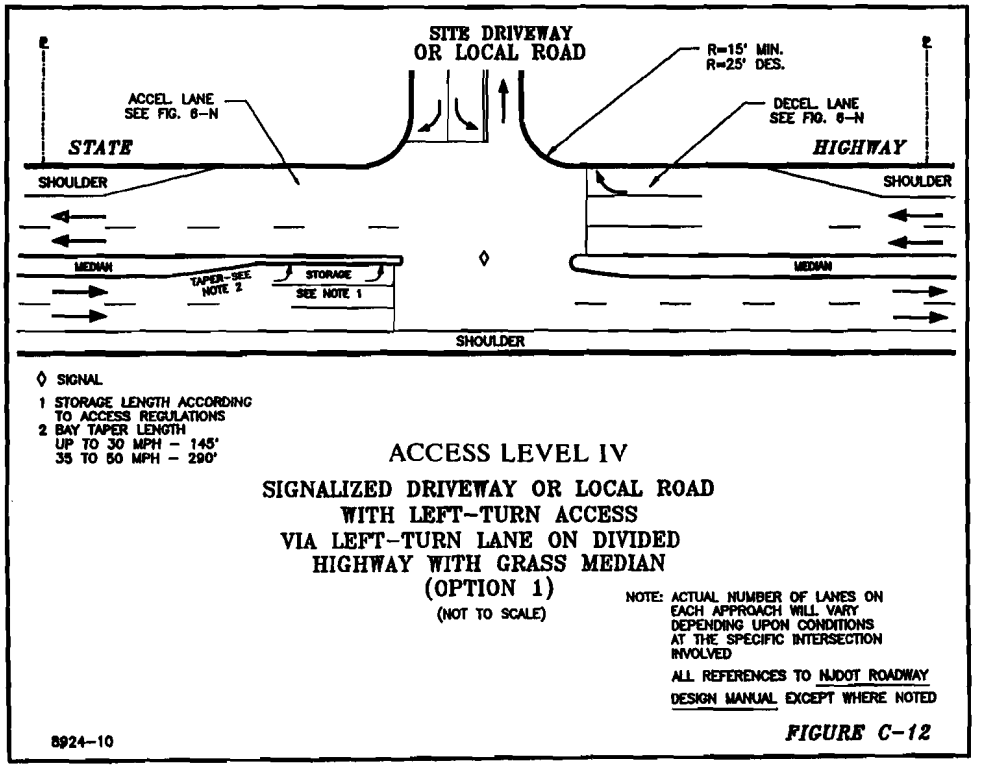

FIGURE C-12

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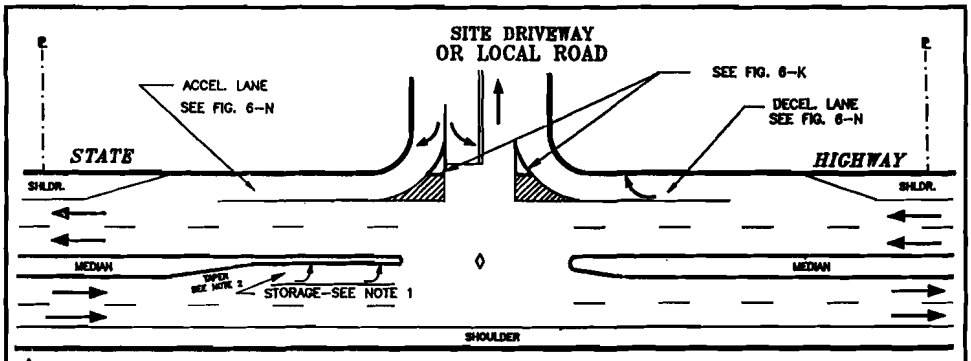


◊ SIGNAL

1 STORAGE LENGTH ACCORDING TO ACCESS REGULATIONS
2 BAY TAPER LENGTH
UP TO 30 MPH – 145'
35 TO 50 MPH – 290'

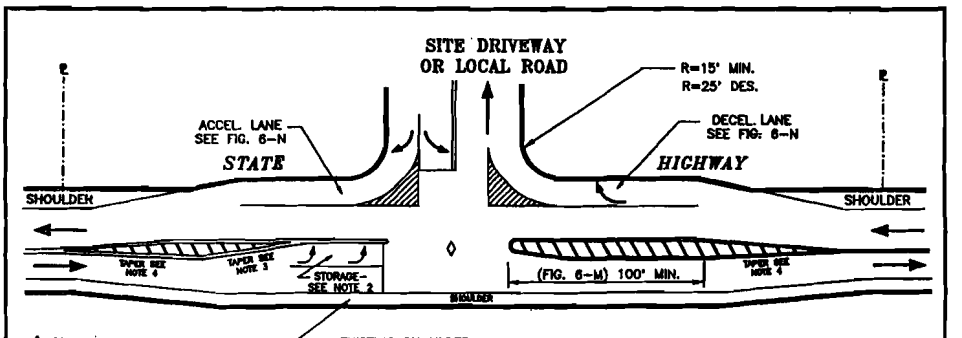
ACCESS LEVEL IV
SIGNALIZED DRIVEWAY OR LOCAL ROAD
WITH LEFT-TURN ACCESS
VIA LEFT-TURN LANE ON DIVIDED
HIGHWAY WITH GRASS MEDIAN
(OPTION 2)
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924 LAY3

FIGURE C-13



EXISTING SHOULDER
SEE NOTE 1

◊ SIGNAL

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-2o)
UP TO 40 MPH: $L=\frac{WS^2}{60}$
45 MPH OR GREATER: L=SxW

ACCESS LEVEL IV
SIGNALIZED DRIVEWAY OR LOCAL ROAD
WITH LEFT-TURN ACCESS
VIA LEFT-TURN LANE 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-14

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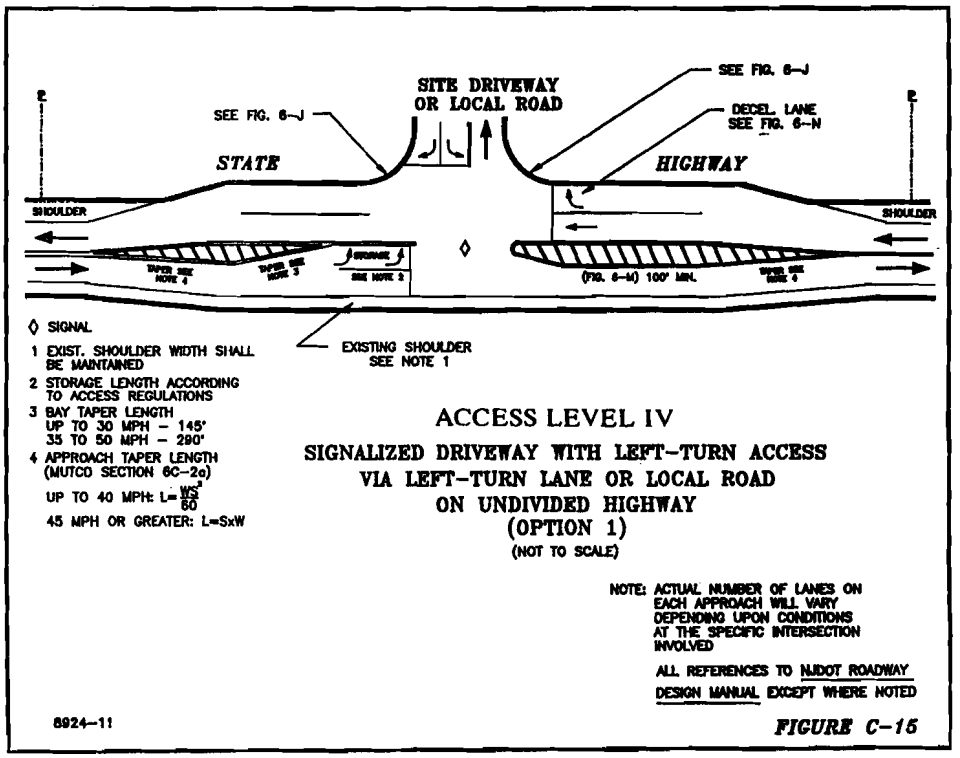

FIGURE C-15

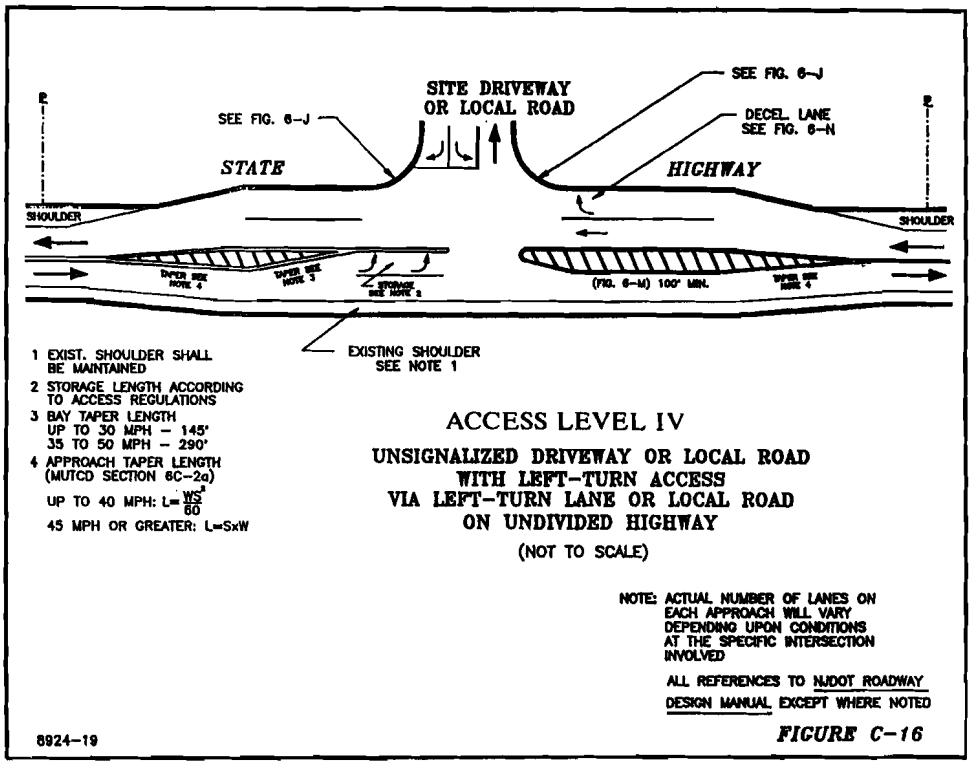

FIGURE C-16

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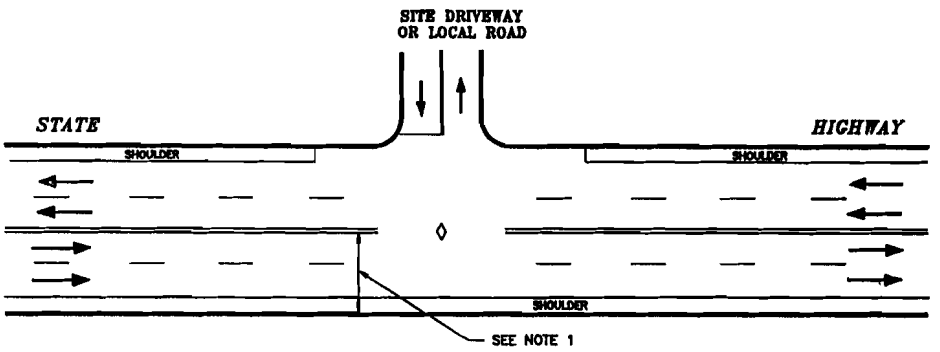


◊ MAY BE SIGNALIZED OR UNSIGNALIZED

NOTE:
1 ON TWO-LANE HIGHWAYS, THE SHOULDER WIDTH SHOULD BE 10' TO ENABLE MOTORISTS TO BYPASS VEHICLES WAITING TO TURN LEFT

ACCESS LEVEL V

UNSIGNALIZED DRIVEWAY OR LOCAL ROAD WITH LEFT-TURN ACCESS (WITHOUT LEFT TURN LANE)

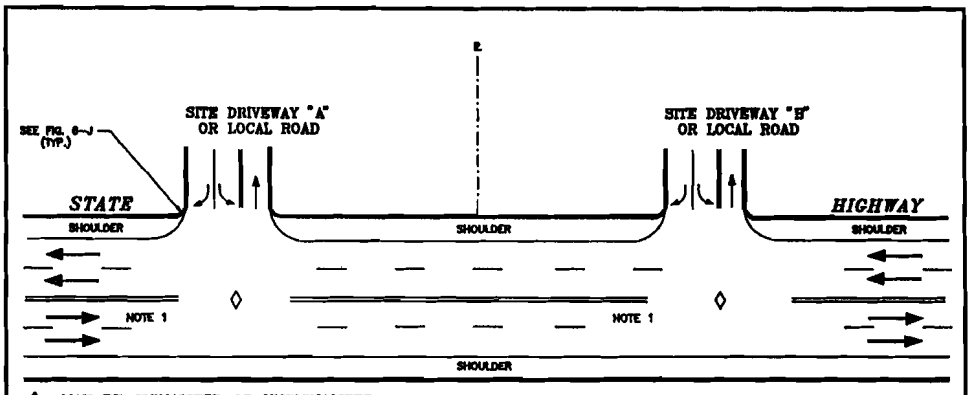
(NOT TO SCALE)

NOTE: ACTUAL NUMBER OF LANES ON EACH APPROACH WILL VARY DEPENDING UPON CONDITIONS AT THE SPECIFIC INTERSECTION INVOLVED

ALL REFERENCES TO NJDOT ROADWAY DESIGN MANUAL EXCEPT WHERE NOTED

8924-20

FIGURE C-17



◊ MAY BE SIGNALIZED OR UNSIGNALIZED

NOTE:
1 MAY HAVE LEFT-TURN LANE

ACCESS LEVEL V

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-18

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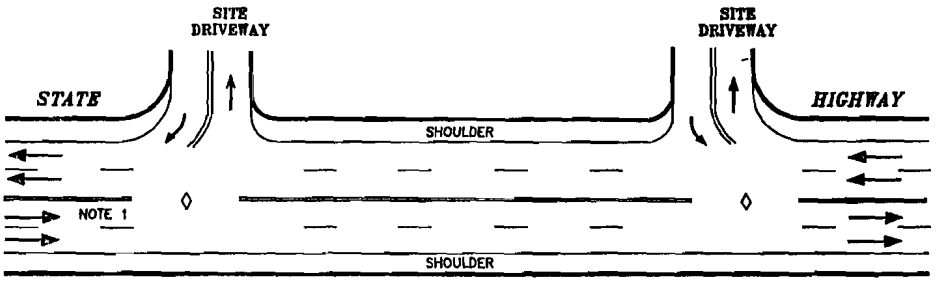


◊ MAY BE SIGNALIZED OR UNSIGNALIZED

NOTE:
1 MAY HAVE LEFT-TURN LANE

ACCESS LEVEL V

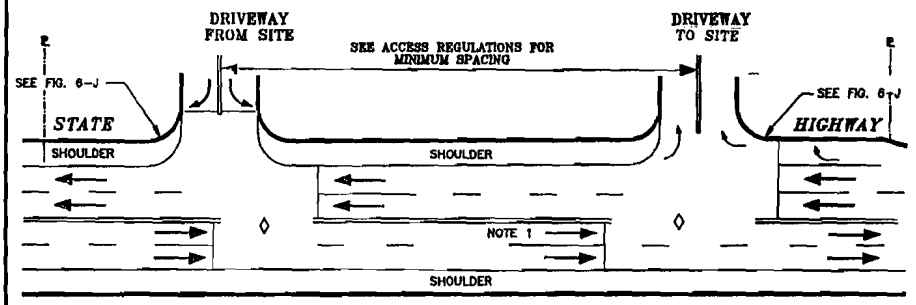
DRIVEWAY WITH RESTRICTED PROVISION FOR LEFT-TURN ACCESS (LIMITED BY SPACING REQUIREMENTS AND SAFETY CONSIDERATIONS)
(OPTION 2)
(NOT TO SCALE)

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-19



◊ MAY BE SIGNALIZED OR UNSIGNALIZED

NOTE:
1 MAY HAVE LEFT-TURN LANE

ACCESS LEVEL V

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-20

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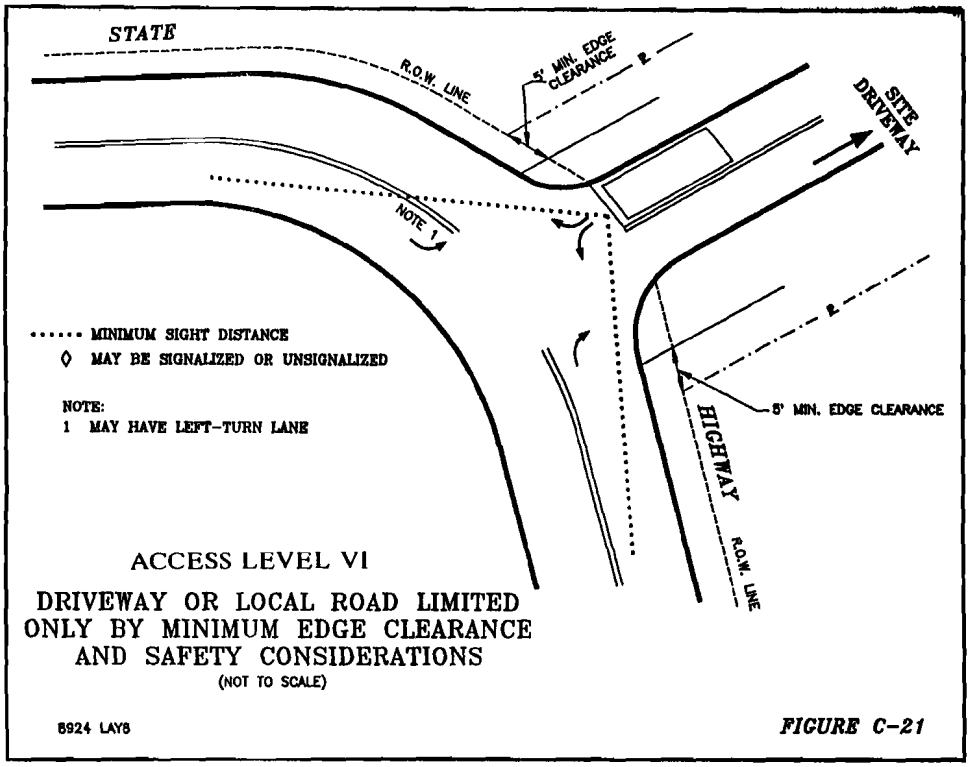

FIGURE C-21

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	2,820
80	1,470	1,760	2,050	2,350	2,640	2,930	3,220
90	1,630	1,980	2,310	2,640	2,970	3,300	3,630
120	2,200	2,640	3,080	3,520	3,960	4,400	4,840
150*	2,750	3,300	3,850	4,400	4,950	5,500	6,050

*Represents maximum cycle length for actuated signal if all phases are fully used.
One-half mile (2,640 feet) spacing applies where optimum spacing exceeds one-half mile.

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APPENDIX E
ACCESS APPLICATION THRESHOLDS

Category	Use	Units	Threshold For Major* 500 Trips Per Day	Threshold For Major with Planning 200 Peak Hour Trips
Residential	Single Fam. Det. Housing	unit	29	193
	Apartments	unit	76	362
	High Rise Apt. 3 levels	unit	88	587
	Condo/Townhouses	unit	74	398
	Mobile Home Park	unit	101	349
	Retirement Community	unit	152	500
	Congregate Care Facility	unit	233	948
	Recreational Homes	unit	158	216
	Residential Planned Unit	unit	49	245
	Hotel	room	64	221
	Motel	room	54	313
	Resort Hotel	room	48	353
Business	Warehousing	1,000 sf	42.6	256.2
	Mini Warehouse	1,000 sf	198.2	441.5
	General Light Industry	1,000 sf	68.9	180.4
	General Heavy Industrial	1,000 sf	768.1	768.1
	Manufacturing	1,000 sf	132.1	308.0
	Industrial Park	1,000 sf	0.0	180.9
	Flexspace (*all office)	1,000 sf	26.0	101.9
	Distribution Centers	1,000 sf	50.7	222.0
		acre	6.1	25.8
Office	General Office	1,000 sf	26.0	101.9
	Office Park	1,000 sf	36.7	75.4
	Research Center	1,000 sf	70.1	143.2
	Business Park	1,000 sf	14.1	118.5
	Corporate Headquarters	1,000 sf	71.3	168.5
	Medical Office Bldg.	1,000 sf	18.4	56.6
Medical	Clinic	1,000 sf	21.0	40.2
	Hospital	1,000 sf	0.0	0.0
		bed	0	147
	Nursing home	bed	214	561
Schools	Elementary school	student	550	887
	High school	student	243	506
	Jr. or Community College	student	323	1112
	University	student	208	1112
Shopping Center	Discount stores	1,000 sf	31.0	37.3
	Shopping Center	1,000 sf	1.6	8.5
	Building Materials/Lumber	1,000 sf	16.4	48.3
	Supermarket	1,000 sf	4.0	16.8
	Convenience Market	1,000 sf	0.6	1.9
	Wholesale Market	1,000 sf	74.3	346.6
	New Car Dealerships	1,000 sf	10.5	33.3
	Banks Walk-in	1,000 sf	2.0	6.4
	Banks Drive-in	windows	2	4
Entertainment	Movie Theater w/o Matinee	seat	284	562
		screens	4	4
	Movie Theater w/Matinee	screens	3	4
	Marina	berths	64	770
	Golf Course	acre	93.6	314.0
	Civic Center	1,000 sf	20.0	70.0
Gasoline/Fuel Stations	Service Stations	pumps	4	34
Food	Quality Restaurant	1,000 sf	5.7	17.3
	High Turnover restaurant	1,000 sf	2.2	4.5
	Fast Food Restaurant w/o	1,000 sf	0.6	1.4
	w/drive through	1,000 sf	0.0	5.3

*Any use that generates less than 500 trips per day will require a minor application.

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PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

All Utilities

Proposed Readoption: N.J.A.C. 14:3

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 48:2-13, 48:2-16, 48:2-17, 48:2-20, 48:2-24, 48:2-25, 48:2-27, 48:3-3, 48:3-7.8, 48:3-12, 48:13A-1 and 48:19-17.

BPU Docket Number: AX90020105.

Proposal Number: PRN 1990-145.

Submit comments by May 2, 1990 to:
Eugene J. Byrne, Esq.
Regulatory Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Public Utilities has undertaken a review of its rules contained in N.J.A.C. 14:3, All Utilities, in accordance with the "Sunset" provisions of Executive Order No. 66(1978) to ensure that they are necessary, adequate, reasonable, understandable and responsive to the purposes for which they were originally promulgated. Pursuant to Executive Order No. 66(1978), these rules will expire, if not readopted, on May 6, 1990. As a result of this review, the Board is proposing to readopt these rules. Note, however, that amendments to the Chapter have been previously proposed, in the February 20, 1990 issue of the New Jersey Register, to include N.J.A.C. 14:3-3.2, 3.6, 4.5, 4.7, 4.10, 7.5 and 7.13. In the December 18, 1989 issue of the New Jersey Register, a new rule was proposed for N.J.A.C. 14:3-4.11 concerning meter tampering and an amendment was proposed to N.J.A.C. 14:3-7.14. Note also that N.J.A.C. 14:3-10.15 was recently amended to require the filing with the Board of customer lists by solid waste collectors.

Subchapter 1, Definitions, was promulgated prior to September 1, 1969. It was promulgated to provide a consistent interpretation of words commonly used in Chapter 3, namely "Board", "customer" and "utility".

Subchapter 2, Plant, contains rules protecting utility consumers by requiring the safe, orderly and efficient construction and maintenance of plant owned by utilities. A utility, during the construction, installation and administration of its plant, is required by this subchapter to make reasonable efforts to protect the public and its property from injury or damage. It requires that plant owned by utilities is properly identified, inspected and maintained.

Subchapter 3, Service, contains rules and standards that are to be followed by all utilities subject to the jurisdiction of the Board. All provisions of this subchapter were filed and became effective prior to September 1, 1969. N.J.A.C. 14:3-3 defines a utility's duty in providing service, describes the circumstances in which a utility may refuse to connect service or may discontinue existing service, provides a utility with the right to reasonable access to utility equipment on a customer's premises, and specifies recordkeeping and reporting requirements for service interruptions.

As a result of the energy crises of 1973, N.J.A.C. 14:3-3.3 was amended effective October 17, 1975 to require that utilities furnish service in a manner that tends to conserve energy resources and utilities were required to distribute conservation information to the public.

Subchapter 4, Meters, was effective prior to September 1, 1969. The subchapter was promulgated to establish standards to be met by utilities providing service measured by meters to the public. Adherence to the standards has in the past and will in the future help to ensure that safe, adequate and proper service is provided to utility customers; metered customers will pay for what they receive and utilities will be compensated for what they provide.

Subchapter 5, Offices, was promulgated prior to September 1, 1969, to promote public convenience and safety by ensuring that the people of the State had ready access to utility representatives and offices to assist them in dealing with critical utility services. These rules have proven effective in accomplishing its stated purpose. Each utility currently maintains, in or within reasonable proximity to its service territory, one or more offices where the public can apply for service, lodge complaints or make service inquiries. The Board as well as the public have access to public utility officials in connection with routine and emergency matters.

Subchapter 6, Records, is necessary to the efficient operation of the Board. The record retention provisions of the subchapter provide the Board with vital information and data to evaluate the operational and financial aspects of the utilities it regulates. The original adoption of the subchapter arose out of the need for the Board to have access to historical records of utilities in the context of rate case review, customer inquiries and complaints, as well as other of interest to the Board. The information contained in the records, concerning plant and operations, service complaints, financial reports and accidents, continues to be necessary in order to adequately regulate public utilities. In addition, subchapter 6 defines and provides for the inspection of public records kept by the Board.

Subchapter 7, Bills and Payment for Service, establishes the parameters within which utilities may bill a customer and expect payment for service provided. This includes uniform billing practices such as a request for a deposit, a return of a deposit, the form of bill for both metered and unmetered service, method of billing and notice of discontinuance. It guarantees protection of customer rights with respect to bill disputes, diversion of service, winter termination program and discontinuance of residential service to tenants.

N.J.A.C. 14:3-7.11A, enacted in 1984, establishes requirements for budget billing and payment plans for gas and electric utility residential accounts. This rule offers utility customers a uniform set of requirements for budget billing. It replaced the prior practice of each utility setting its own budget account requirements.

N.J.A.C. 14:3-7.12A, Winter Termination Program, codified prior agency policy. This rule, which became effective in December 1987, prohibits gas and electric utilities from discontinuing residential service of eligible customers from November 15 through March 15. The rule also establishes criteria for weatherization and payment arrangements for eligible customers.

N.J.A.C. 14:3-7.16 was promulgated to protect a residential gas or electric customer from paying for service which he did not benefit from due to an interconnection of pipes or wires which diverted service to another party. This rule directs the gas or electric utility to investigate alleged diversion of service upon receipt of a written request from the customer. If diversion is found, the utility must attempt to determine the identity of the beneficiary and which part of the bill each party is responsible to pay.

Subchapter 8, Suggested Formulae, provides a suggested guide for setting utility extension formulae, interest payments, and return of deposit formulae. Residential homeowners and residential land developers thereby have a starting point from which to plan for the costs of utility service. The extension formulae in these rules are non-binding but suggested as a guide for customers and utilities. They allow customers to petition the Board for a finding that a service extension should be made without charge or at a lesser charge than is demanded by a utility.

Subchapter 9, General Provisions, contains general rules for the interpretation and application of the rules contained in Chapter 3. Subchapter 9 has proven reasonable and effective for such purpose.

Subchapter 10, Solid Waste Collection and Solid Waste Disposal, was promulgated pursuant to the Solid Waste Utility Control Act of 1970, N.J.S.A. 48:13A-1 et seq. Then and now, providing adequate solid waste collection and/or disposal at reasonable costs, is a matter of grave concern in New Jersey. During the later part of the 1960's sharply increasing prices for solid waste service appeared to be excessive compared to costs for other local governmental services. Allegations of undesirable elements in the solid waste industry were also raised.

Subchapter 10 requires persons who would engage in the solid waste business to complete applications, provide information on principals; implements the authority of the Board to approve or disapprove solid waste operations; establishes standards; sets forth the obligations of the utility to furnish service and provide adequate service, as it pertains to volume of pickup, quality, and procedures for discontinuance; prohibits agreements to limit bidding or competition; requires prior authorization from the Board to sell or transfer assets, to consolidate, merge or dissolve; and requires filings of annual reports, and keeping of books and records.

The substantive provisions of the rules proposed to be readopted by the Board are summarized as follows:

N.J.A.C. 14:3-1.1 defines certain words and terms utilized in Chapters 3 through 10 of Title 14.

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N.J.A.C. 14:3-2.1 requires utility plant and facilities to be constructed and installed in accordance with standard practice and requests cooperation among the various utilities in order to eliminate interference among different systems.

N.J.A.C. 14:3-2.2 requires that any construction work performed by a contractor be inspected by a qualified utility representative prior to being placed in service.

N.J.A.C. 14:3-2.3 requires that each utility owning poles shall prevent nonstandard foreign construction on said poles.

N.J.A.C. 14:3-2.4 requires that the name of the operating utility be displayed on each group of buildings or structures not located on railroad rights-of-way.

N.J.A.C. 14:3-2.5 requires identification by utilities of poles or structures supporting wires and of fire hydrants to indicate ownership thereof.

N.J.A.C. 14:3-2.6 requires each utility to maintain its plant in a condition that enables it to provide safe, proper and adequate service.

N.J.A.C. 14:3-2.7 requires utilities to inspect their plant with sufficient frequency to enable needed repair and maintenance work to be done.

N.J.A.C. 14:3-2.8 requires utilities to endeavor to obtain prompt notice regarding commencement and progress of construction work in close proximity to their facilities.

N.J.A.C. 14:3-3.1 requires utilities to furnish safe, adequate and proper service including the provision of service in a manner that tends to conserve energy resources and preserve the quality of the environment.

N.J.A.C. 14:3-3.2 pertains to customer applications for establishment of utility service.

N.J.A.C. 14:3-3.3 requires utilities to provide information that allows customers to obtain safe, adequate and proper service in a manner that conserves energy resources and preserves the quality of the environment; requires utilities to file and keep tariffs.

N.J.A.C. 14:3-3.4 requires utilities to apply for any necessary street opening permits, the cost of which is to be paid by the customer.

N.J.A.C. 14:3-3.5 states the grounds upon which a utility may refuse to connect with a customer installation.

N.J.A.C. 14:3-3.6 states the grounds upon which a utility has the right to suspend, curtail or discontinue service.

N.J.A.C. 14:3-3.7 states the basis for the restoration of service that has been discontinued.

N.J.A.C. 14:3-3.8 gives utilities the right of reasonable access to customer premises incidental to the rendering of service.

N.J.A.C. 14:3-3.9 requires utilities to exercise reasonable diligence to avoid interruption of service and further requires the maintenance of records of major interruptions of service.

N.J.A.C. 14:3-4.1 requires ownership and provision of utility meters by utilities.

N.J.A.C. 14:3-4.2 pertains to the installation and location of utility meters.

N.J.A.C. 14:3-4.3 pertains to access to meters by utilities.

N.J.A.C. 14:3-4.4 requires the availability of satisfactory meter testing equipment and facilities.

N.J.A.C. 14:3-4.5 pertains to meter testing by utilities at the request of a customer.

N.J.A.C. 14:3-4.6 pertains to meter testing by inspectors of the Board at the request of a customer.

N.J.A.C. 14:3-4.7 pertains to the adjustment of charges when a meter has been found to be inaccurate.

N.J.A.C. 14:3-4.8 requires a report to the Board giving a summary of all meter tests.

N.J.A.C. 14:3-4.9 requires utilities to maintain complete records on all meters.

N.J.A.C. 14:3-4.10 pertains to the replacement of meters and charges therefor.

N.J.A.C. 14:3-5.1 pertains to the maintenance and location of utility offices.

N.J.A.C. 14:3-5.2 requires utilities to furnish the Board with a list of their officials who may be contacted during normal business hours and those who may be contacted for emergencies occurring other than during normal business hours.

N.J.A.C. 14:3-5.3 requires utilities to maintain emergency telephone numbers and notify customers thereof.

N.J.A.C. 14:3-6.1 requires utilities to notify the Board of the office at which various records are kept.

N.J.A.C. 14:3-6.2 requires utilities to maintain records regarding plant and facilities and service.

N.J.A.C. 14:3-6.3 requires utilities to file annual reports on or before March 31 summarizing finances and operations for the preceding calendar year.

N.J.A.C. 14:3-6.4 pertains to the reporting of certain accidents to the Board.

N.J.A.C. 14:3-6.5 pertains to public records made, maintained or kept by the Board.

N.J.A.C. 14:3-7.1 pertains to customer deposits and the establishment of credit.

N.J.A.C. 14:3-7.2 pertains to deposits to insure the credit of new customers.

N.J.A.C. 14:3-7.3 pertains to deposits from customers in default.

N.J.A.C. 14:3-7.4 requires utilities to furnish a receipt to customers who have made a deposit.

N.J.A.C. 14:3-7.5 pertains to the return of deposits held by utilities.

N.J.A.C. 14:3-7.6 prohibits utilities from demanding another guarantee to secure payment where unmetered service is provided for which payment is received in advance.

N.J.A.C. 14:3-7.7 requires utilities to inform customers as to the method of reading of meters and of the address of an office where complaints, service inquiries and bill payments will be received.

N.J.A.C. 14:3-7.9 pertains to the form of bill for metered service and the rules concerning estimated bills for residential customers.

N.J.A.C. 14:3-7.10 pertains to the form of bill for unmetered service.

N.J.A.C. 14:3-7.11 pertains to the timing and rendering of bills.

N.J.A.C. 14:3-7.11A pertains to budget billing and payment plans of electric and gas utilities for residential accounts.

N.J.A.C. 14:3-7.12 pertains to the issuance and content of notices of discontinuances of service by utilities.

N.J.A.C. 14:3-7.12A pertains to the termination of residential electric and gas service during the heating season.

N.J.A.C. 14:3-7.13 pertains to the obligations and rights of utilities and customers regarding disputes as to bills.

N.J.A.C. 14:3-7.14 pertains to the discontinuance of electric, gas, water and sewer residential service to tenants.

N.J.A.C. 14:3-7.15 pertains to utility notification to municipalities of the residential customer of record and the premises at which electric and gas service was discontinued.

N.J.A.C. 14:3-7.16 pertains to the diversion of electric and gas residential service and the rights and obligations of landlords, tenants, beneficiaries and utilities.

N.J.A.C. 14:3-8.1 sets forth the general provisions pertaining to the suggested formulae for the extension of utility service.

N.J.A.C. 14:3-8.2 pertains to the extension of utility service, other than telephone service, into newly developed tracts of land at the request of a residential land developer.

N.J.A.C. 14:3-8.3 pertains to the extension of utility service, other than telephone service, to an individual residential customer.

N.J.A.C. 14:3-9.1 provides that the provisions of Chapter 3 shall not be construed to be retroactive.

N.J.A.C. 14:3-9.2 provides that petition may be made to the Board for deviation from these rules.

N.J.A.C. 14:3-9.3 provides that these rules shall govern in cases where they are in conflict with a utility tariff, unless the tariff is more beneficial to the customer.

N.J.A.C. 14:3-9.4 provides that these rules are promulgated pursuant to the authority vested in the Board by the *New Jersey Statutes Annotated.*

N.J.A.C. 14:3-9.5 provides that these regulations supercede or revoke rules, regulations and standards heretofore promulgated.

N.J.A.C. 14:3-9.6 requires that where a utility enters into a contract for the sale of its service at rates different from those provided in its existing tariff, copies of the contract shall be filed with the Board not less than 30 days prior to the effective date thereof.

N.J.A.C. 14:3-10.1 provides that the rules in this Chapter are applicable to solid waste collection and disposal utilities.

N.J.A.C. 14:3-10.2 provides that all solid waste collection and disposal utilities are subject to the rules set forth in Chapter 3 as well as to the Board's Rules of Practice and Administrative Orders heretofore promulgated as applicable to all utilities.

N.J.A.C. 14:3-10.3 provides that no person shall engage in the business of solid waste collection or disposal nor bid for a collection or disposal contract unless he is the holder of a certificate of public convenience and necessity issued by the Board.

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N.J.A.C. 14:3-10.4 requires that a Department of Environmental Protection certificate of registration be issued prior to the issuance of a Board certificate.

N.J.A.C. 14:3-10.5 pertains to the form and content of an application for a Board certificate.

N.J.A.C. 14:3-10.6 pertains to the issuance of a certificate by the Board.

N.J.A.C. 14:3-10.7 requires the completion of an application before a certificate will be issued.

N.J.A.C. 14:3-10.8 pertains to accounting classifications for solid waste collection and disposal utilities based on operating expenses.

N.J.A.C. 14:3-10.9 pertains to the setting and adjustment of rates for solid waste collection and disposal service.

N.J.A.C. 14:3-10.10 requires appropriate tariffs to be filed.

N.J.A.C. 14:3-10.11 pertains to the interruption of solid waste collection or disposal service and to the failure of a solid waste collection or disposal utility to render service.

N.J.A.C. 14:3-10.12 prohibits a solid waste collection or disposal utility from agreeing to limit bidding, to withdraw from a specific territory or to eliminate competition.

N.J.A.C. 14:3-10.13 requires prior authorization by the Board for solid waste collection and disposal utilities to sell or transfer assets, to change majority control or to issue securities or debt.

N.J.A.C. 14:3-10.14 requires Board approval for any consolidations, mergers or dissolutions involving a solid waste collection or disposal utility.

N.J.A.C. 14:3-10.15 requires all solid waste collection and disposal utilities to file annual reports.

N.J.A.C. 14:3-10.16 requires solid waste collection and disposal utilities to keep books, records and accounts in accordance with the Uniform System of Accounts prescribed by the Board.

N.J.A.C. 14:3-10.17 requires solid waste collection and disposal utilities to file evidence of insurance or self-insurance.

N.J.A.C. 14:3-10.18 requires solid waste collection and disposal utilities to furnish a performance bond for certain contracts, as the Board may prescribe.

N.J.A.C. 14:3-10.19 provides that the Board's rules of practice shall apply to proceedings involving solid waste collection and disposal utilities.

Social Impact

Subchapter 1 provides persons unfamiliar with terms commonly used in the industry with clear concise definitions of same.

Subchapter 2 will help assure that a plant constructed and maintained by utilities continues to provide services in a manner which is safe, adequate and proper. By requiring operation pursuant to these rules the public safety and welfare is fostered and attention is properly focused on adherence to standard and safe construction practices. The required identification of utility plant enables the public to ascertain ownership in the event that it becomes important, for instance, in the case of an accident involving utility property.

Subchapter 3 continues established Board policy intended to ensure safe, adequate, proper and environmentally sound utility service. Failure to readopt these rules would thwart the Board's ability to ensure utility service at reasonable rates to the public, while still allowing utilities a fair and equitable rate of return. The rules affect all utility customers and all persons who derive benefits from utility service. Ultimately, this encompasses the entire population of the State. N.J.A.C. 14:3-3.3 requires utilities to provide conservation information to customers, while N.J.A.C. 14:3-3.6 sets forth requirements for discontinuance of service and protects customers from improper discontinuances. There has been no change in the social conditions which existed at the time of adoption of these rules that warrant their lapse at this time. Conservation of energy resources is as important now as in the past. The restriction placed on the discontinuance of service and the refusal to connect service help guarantee customers uninterrupted service. As part of its regulatory obligation, the Board must investigate any large interruption of service; hence the necessity for the reporting and record keeping requirements regarding service interruption.

Subchapter 4 helps ensure that public utilities render safe, adequate and proper service by use of accurate meters. The rules provide guidance to and impose obligations upon public utilities. These rules provide remedies for consumers who believe that their meters are measuring consumption inaccurately. Further, meter reports, filed with the Board, provide Board Staff with a general overview of how a utility's meters are performing.

Subchapter 5 recognizes that now, as in the past, there exists a need for conveniently situated regional offices where a customer's informational needs may be attended to. Because of the potential threat to the health and safety of residents of this State if utility service is inadequate, it continues to be important for utility customers to have access to responsible officials in case of emergency on a 24-hour basis. The reasons for the promulgation of this Subchapter have proven to be well founded and are even more relevant today. Failure to readopt this subchapter would jeopardize the safety and convenience of residents of this State.

Subchapter 6 is necessary for the Board to perform its statutory responsibilities, as set forth in N.J.S.A. 48:2-1, et seq. N.J.A.C. 14:3-6.1, involving the location and examination of records, is necessary to provide the Board and its staff with the ability to locate and review utility data. N.J.A.C. 14:3-6.2, and 6.3, concerning plant and operating, and accident records, respectively, provides the Board with data to investigate the operating characteristics and service adequacy of utilities. N.J.A.C. 14:3-6.3, concerning periodic financial reports, is necessary for the Board to perform financial and operating surveillance of utilities. N.J.A.C. 14:3-6.5, public records, defines the circumstances under which the public may gain access to records kept by the Board; it also specifies which records are not public. The records kept by the Board enable it to perform its statutory responsibility of general supervision and regulation of and jurisdiction and control over all public utilities, thereby benefiting the public.

Subchapter 7 helps assure that utility customers' health and welfare are protected by providing that utility service to eligible residential customers may not be discontinued during the heating season. In addition it helps to protect the health and welfare of all utility customers by requiring that notice must be given before service is discontinued, thus serving to avoid tragedies due to unnoticed discontinuances of service. The range and scope of this rule will affect all utility customers and all other persons who derive benefit of utility service but are not customers.

Subchapter 8 provides the residential homeowner and residential land developer with a basis for understanding the costs associated with obtaining utility service. The suggested extension formulae provide such customers with a format for planning for and discussing utility service requirements in an informed manner.

Subchapter 9 favorably affects all persons having need to refer to N.J.A.C. 14:3 as it will help in the proper understanding and application thereof.

Subchapter 10 was promulgated to further the purposes of the Solid Waste Utility Control Act of 1970, N.J.S.A. 48:13A-1 et seq., to provide for efficient and reasonable solid waste collection, disposal and utilization services. Subchapter 10 has been used in proceedings against persons charged with restraint of trade practices in the industry. The subchapter continues to be of importance in view of the lessened number of solid waste collectors and disposal facilities. The subchapter, to a greater or lesser degree, affects all residents of the State and numerous governmental and quasi-governmental agencies, notably among them the Department of Environmental Protection, which is also heavily involved in regulation of the solid waste industry. If these rules are not readopted, the ability of the Board to assure that solid waste utilities render safe, adequate and proper service will be impaired; the guidance to and obligation upon public utilities provided by the rules would lapse, to the detriment of the public utilities affected thereby and to the public at large.

Economic Impact

The readoption of Chapter 3 will impose no new revenue impact or regulatory constraints. Utilities have, of necessity, been incurring expenses in complying with these rules and will do so in the future. These expenses include, but are not limited to, costs for: repair, maintenance, replacement, testing, and inspecting of plant; training and employment of employees; leasing and purchase of offices and facilities; composition, maintenance and storage of records, as well as administrative costs. These costs, when determined to be reasonable, are recognized by the Board for ratemaking treatment and, therefore, will be reflected in customer charges. The Board, however, is of the opinion that the obligations imposed by the rules are reasonable and are necessary to ensure that utilities continue to provide safe, adequate and proper service, both on a near-term and long-term basis. While there may be some costs incurred in monitoring compliance with the rules, said rules have no adverse economic impact on the Board.

The costs incurred by utilities in complying with this subchapter are such as would be required to provide an acceptable standard of safe, adequate and proper service. As noted above, when shown to be reason-

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able within the context of a rate proceeding before the Board, such expenses are ultimately recovered by utilities through service charges to customers.

Regulatory Flexibility Analysis

Subchapters 1 and 8 impose no recordkeeping, reporting or other compliance requirements upon small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no Regulatory Flexibility Analysis is required as to them.

There is presently one municipal electric utility, approximately 80 small water and 20 small sewer utility companies, and approximately 770 small solid waste utilities which meet the definition of "small businesses" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and may be affected by the other subchapters of Chapter 3.

Subchapter 2 imposes certain standards upon utilities with respect to the construction and maintenance of their plant and facilities. These rules pertain to safety requirements, and therefore, no exemption from the rules has been made for small businesses.

N.J.A.C. 14:3-3.9 requires each utility to keep a record for a period of one year of each reported interruption of service. A major interruption of service, where service to customers is interrupted for at least two hours, is required to be reported to the Board. In most cases, major utility service interruptions involve large utilities. However, due to the nature and necessity of utility service, both large and small utilities have the same reporting and recordkeeping responsibilities regarding service interruptions and, therefore, no differentiation based on business size exists.

Subchapter 4 imposes certain record keeping requirements related to the inspection and testing of meters, as well as to the making and retention of records. The rules provide guidance to customers who dispute the accuracy of their meters. The Board is of the opinion that both large and small utilities must comply with these rules to ensure that such utilities provide safe, adequate and proper service to their customers. However, in effect, a small business exemption is provided at N.J.A.C. 14:3-4.8, Meter Test Reports, which requires utilities having 500 or more meters to report quarterly, and utilities having less than 500 meters to report annually.

The Board has weighed the impact of the subchapter on small business and has concluded that the benefits derived from the regulation of meters provided for in these rules outweighs the burden imposed.

Subchapter 5 requires utilities to furnish to the Board and maintain a current list of names, addresses and telephone numbers of responsible officials to be contacted in connection with routine and/or emergency matters. Subchapter 5 also imposes upon utilities the requirement to report to the Board the current location of its offices where customers may apply for service, lodge complaints and make bill payments. Further, each utility must report to the Board the current location of offices where maps and records covering the various service areas are available to supply information to customers, governmental bodies, other utilities and contractors. No professional services need be utilized to comply with the foregoing reporting and recordkeeping requirements. In the Board's view, compliance with the rules contained in Subchapter 5 promotes the health and safety of the public, and therefore, it is not in the public interest to tailor these rules so as to minimize any adverse economic impact on small businesses.

Subchapter 6 imposes certain reporting, recordkeeping and compliance requirements. The Board does not consider it appropriate to differentiate between small and large businesses in these rules. However, since the volume of records involved varies proportionately with the size of the utility, small businesses' cost of compliance with Subchapter 6 will be proportionately less than the cost incurred by large businesses.

Subchapter 7 imposes certain reporting, recordkeeping and compliance requirements on all utilities. These requirements include the return of deposits, maintaining records of customer accounts, the form of bills, sending of discontinuance notices, and notification to municipalities of discontinuance of gas and electric service and reporting of same to the Board.

The Board is of the opinion that both large and small utilities must comply with the requirements contained in these rules. These requirements are necessary to ensure that utilities provide safe, adequate and proper service to their customers.

The Board has weighed the impact of Subchapter 7 on small business and has concluded that the need to provide safe, adequate and proper service outweighs the burden of the requirements. Therefore, no small business exemption is provided.

Subchapter 9, N.J.A.C. 14:3-9.6, requires utilities which enter into contracts for the provision of service at rates different than their filed tariffs to file such contracts with the Board, together with an explanation and justification therefor. There is no exemption from this filing requirement afforded to small businesses. The duty of the Board is to insure that reasonable rates are charged by all utilities to all customers. This filing requirement is necessary to help insure compliance by all utilities with their filed tariffs. It is especially helpful enforcing compliance with tariffs of solid waste utilities.

Subchapter 10 applies only to solid waste utilities, nearly all of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Approximately four solid waste utilities have more than 100 employees. In many instances professional help is needed to comply with the rules in Subchapter 10. However, given the continuing problems in the solid waste industry, including attempts to restrain trade and deviation from filed tariffs, and given the great predominance of small businesses in the solid waste industry, no basis for differentiation in compliance requirements based on small business exists or is warranted.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 14:3.

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Disease Control Program
Tuberculosis Control and Eradication
Adopted Repeal and New Rule: N.J.A.C. 2:2-3.3

Proposed: November 6, 1989 at 22 N.J.R. 3333(a).
Adopted: March 8, 1990 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: March 12, 1990 as R.1990 d.201, **without change.**

Authority: N.J.S.A. 4:5-18 through 4:5-75.

Effective Date: April 2, 1990.
Expiration Date: January 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The Department received six comments opposing the adoption of this rule. Each comment referred to a recent herd case of tuberculosis (TB) in Pennsylvania and suggested that a state program would prevent such an incident.

RESPONSE: The Department does not believe that the facts support the conclusion that a continuing routine area testing program will be useful in preventing a case such as the 1989 Pennsylvania event. The Pennsylvania herd was found as a result of a private annual test conducted for the purpose of sales and showing. Review of that case led to the conclusion that it must have been infected for some years. Despite ongoing annual tests, the disease had not been revealed before. Routine TB testing has been practiced for over 75 years in New Jersey. The efficacy of the test has never been high. As the number of TB infected herds have decreased, the efficiency of routine testing has also decreased.

From 1982-1988, 84 infected herds (30 in 1985) were identified on the United States mainland and islands. Two were in the northeast; one in New York in 1982, and one in New Jersey in 1985. Not one of the 84 herds was identified on the routine TB test. In 1989, an additional six herds were found; none of these were found through routine area testing.

COMMENT: Two of the commenters objected on the grounds that some farmers might have to pay for private testing to ship milk to other states or to qualify for sales to other states or countries.

RESPONSE: The Department has contacted officials in other states and they have indicated few, if any, New Jersey farmers will be required to have private tests to ship milk and similarly, few, if any, will require private testing beyond that which is already being done to ship cattle. Testing for special markets or for sale purposes is commonly the responsibility of owners and is not a significant cost of business.

Full text of the adoption follows:

2:2-3.3 Times established for tuberculin tests

(a) Cattle shall be required to undergo tuberculin testing whenever the Secretary of Agriculture has determined, by traceback or other epidemiological studies, that testing is necessary to delineate the health status of the herd.

(b) Testing shall be performed according to procedures under Title 9, Code of Federal Regulations, Part 77.1.

1. Copies are filed and may be received by writing to:
Director, Division of Animal Health
New Jersey Department of Agriculture
CN-330
Trenton, New Jersey 08625

(b)

DIVISION OF PLANT INDUSTRY

Diseases of Bees
Registration and Transportation of Bees
Adopted New Rules: N.J.A.C. 2:24

Proposed: October 2, 1989 at 21 N.J.R. 3045(b).
Adopted: March 8, 1990 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: March 12, 1990 as R.1990 d.202, **without change.**

Authority: N.J.S.A. 4:6-1 et seq.

Effective Date: April 2, 1990.
Expiration Date: April 2, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Because N.J.A.C. 2:24 expired on February 11, 1990, the rules herein are adopted as new rules, pursuant to N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:24.

Full text of the adopted amendments to the readoption follows.

SUBCHAPTER 2. REGISTRATION OF APIARIES

2:24-2.1 Registration requirements

(a) All bee yards in New Jersey where bees are over-wintered must be registered annually with the New Jersey Department of Agriculture.

(b) All registered bee yards shall comply with applicable orders, laws and rules.

(c) The Department of Agriculture shall supply the registrant with any and all appropriate orders, laws and rules.

2:24-2.2 (Reserved)

(c)

DIVISION OF MARKETS

New Jersey Sire Stakes Program
Qualifying Standards
Adopted Amendment: N.J.A.C. 2:32-2.22

Proposed: January 2, 1990 at 22 N.J.R. 3(a).
Adopted: March 8, 1990 by the Sire Stakes Board of Trustees; and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: March 12, 1990 as R.1990 d.203, **without change.**

Authority: N.J.S.A. 5:5-91.

Effective Date: April 2, 1990.
Expiration Date: June 1, 1992.

Summary of Public Comment and Agency Response:
No comments received.

Full text of the adoption follows:

2:32-2.22 Qualifying standards

(a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the following qualifying standards and be eligible at time of entry.

1. (No change.)

2. The New Jersey Sire Stakes qualifying times at the Pari-mutuel tracks will be as follows:

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	One Mile Track	5/8 Mile Track	1/2 Mile Track
Two-Year-Old-Trot	2:05	2:06	2:07
Three-Year-Old-Trot	2:03	2:04	2:05
Two-Year-Old-Pace	2:02	2:03	2:04
Three-Year-Old-Pace	2:01	2:02	2:03

NOTE: When racing at the mile track, two seconds are allowed off the half mile, but when racing on a ½ mile track, two seconds are subtracted.

3.-4. (No change.)
(b) (No change.)

COMMUNITY AFFAIRS

(a)

OFFICE OF THE COMMISSIONER

Organization of the Department of Community Affairs

Office of the Commissioner; Divisions

Adopted Amendment: N.J.A.C. 5:2-1.1

Adopted: March 8, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: March 9, 1990, as R.1990 d.199.
Authority: N.J.S.A. 52:27D-3 and 52:14B-3 and 4.
Effective Date: March 9, 1990.
Expiration Date: April 10, 1994.

Take notice that the Commissioner of Community Affairs has adopted an amendment to the Department's organizational rules. This amendment is organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), it may be adopted without prior notice or hearing and is effective upon filing.

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

5:2-1.1 Office of the Commissioner; Divisions
(a) (No change.)
(b) The Office of the Commissioner includes the Commissioner, the Deputy Commissioner, two Assistant Commissioners ***(one of whom oversees the Division of Housing and Development and the Division of Community Resources and the other of whom oversees the Division on Women and the Division on Aging),*** and the following subordinate offices and personnel who report either to the Commissioner or the Deputy Commissioner:
1. Reporting to the Commissioner:
i. (No change.)
ii. Office of the Municipal and County Ombudsman *[(including Internal Control)]*;
iii.-iv. (No change.)
2. Reporting to the Deputy Commissioner:
i.-ii. (No change.)
iii. *[Director of Planning (including the Bayshore Development Office and the]* Office of ***Policy and*** Legislative [Liaison)] ***Affairs***;
iv. Chief of Legislative Analysis and Administrative Practice; ***and***
v. Internal Control.
(c) (No change.)
(d) The Division of Community Resources includes the Office of the Director and the following offices:
1. *[Poverty and Law]* ***Legal Services***;
2. ***New Jersey*** Youth Corps;
3. *[Weatherization]* ***Low Income Energy Conservation***;
4. Community *[Service Block Grants; and]* ***Services;***
5. Recreation***; and***
6. Program Management and Development*.
(e) The Division on Women includes the Office of the Director and the following offices:
1. Advocacy***, Public Information and Legislation***;
2. (No change.)
3. Domestic Violence; *[and]*
4. Hispanic Women***; and***
5. Child Care and Disabled Women*.
(f) The Division on Aging includes the Office of the Director and the following offices:
1. Administrative *[Services]* ***and Public Information***;
2. *[Field Operations]* ***Information and Outreach Services***;
3.-4. (No change.)
5. *[Planning and Policy Development]* ***Policy, Planning and Area Agency Administration*.**
(g) The Division of Local Government Services includes the Office of the Director, *[the Office of the Deputy Director,]* the Local Finance Board, the *[Distressed Cities]* ***Municipal Revitalization*** Program and the following elements: Local Assistance and Regulatory Services.
1. The Local Assistance Element includes the Assistant Director's Office, the Bureau of Local Management Services, and the *[Office of Fiscal and State Aid;]* ***Fiscal and Grant Unit.***
2. The Regulatory Services Element includes the Assistant Director's Office, the Bureau of Authority Regulation, the Bureau of Financial Regulation, and the *[Quality]* Audit ***Quality*** Assurance Unit.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction

Continuing Care Retirement Rules

Form of Disclosure Statement

N.J.A.C. 5:19-4.3

Take notice that the Department of Community Affairs has discovered an error in the text of N.J.A.C. 5:19-4.3(a)3 in that the word "foot" in the phrase "at the foot of the disclosure statement" should be "front." Given that the paragraph refers to the placement of a table of contents, the use of the word "front" to describe the table's position is appropriate and clarifying. In addition, the article "the" should be added before "disclosure statement" for proper grammar. Pursuant to N.J.A.C. 1:30-2.7(a)3, the Office of Administrative Law has agreed to effecting this change through a notice of administrative correction.

Full text of the corrected rule follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

5:19-4.3 Form of disclosure statement
(a) The disclosure statement shall be in the following form:
1.-2. (No change.)
3. A reasonably detailed table of contents showing the subject matter of the various sections, subsections or documents contained in the disclosure statement and the page number on which each appears shall be added at the [foot] **front** of **the** disclosure statement.
4.-6. (No change.)

MILITARY AND VETERANS' AFFAIRS

(c)

THE ADJUTANT GENERAL

Organization of the Department of Military and Veterans' Affairs

Adopted New Rules: N.J.A.C. 5A:1

Adopted: March 6, 1990 by Preston M. Taylor, Jr., Deputy Adjutant General, Department of Military and Veterans' Affairs.
Filed: March 12, 1990 as R.1990 d.200.

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Authority: N.J.S.A. 38A:3-6(a) and (o).

Effective Date: March 12, 1990.

Expiration Date: March 12, 1995.

Summary

Take notice that, pursuant to the provisions of P.L. 1987, c.444, the New Jersey Department of Defense assumed responsibility for the Veterans' programs offered by the State of New Jersey formerly under the Department of Human Services. The adopted new rules outlined herein as N.J.A.C. 5A:1-1, 2, 3 and 4 highlight the mission, organization and purposes of the Department as a result of the reorganization mandated by P.L. 1987, c.444.

Full text of the adopted new rules follows.

CHAPTER 1
ORGANIZATION OF THE NEW JERSEY DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS

SUBCHAPTER 1. GENERAL

5A:1-1.1 Background

The New Jersey Department of Veterans' Affairs and Defense was established on January 16, 1988 when Governor Thomas H. Kean signed Assembly Bill 3527 into law as P.L. 1987, c.444. With this event the veterans' programs of the State of New Jersey were consolidated into The New Jersey Department of Defense with The New Jersey Army and Air National Guard. Subsequently, on October 12, 1988, Governor Kean signed a second bill (Assembly Bill 3265) into law as P.L. 1988, c.138, renaming the department as The Department of Military and Veterans' Affairs. With these two acts, one of the State's oldest cabinet level agencies, with responsibility for the command and control of the State's militia, was charged with administering the State's veterans' services.

5A:1-1.2 Mission

(a) The mission of the New Jersey Department of Military and Veterans' Affairs is to provide command and control services to the members of the militia, National Guard units, and programs benefitting the veterans of the State of New Jersey.

(b) The scope of this mission includes providing forces to fulfill the National Guard's national security mission as well as its State mission of protecting the public and property in time of domestic emergencies or national disasters; and providing services and support necessary for the betterment of the lives and well-being of New Jersey veterans and their dependents.

5A:1-1.3 Organization

The Department of Military and Veterans' Affairs, as shown on the following chart, is organized into three groupings in addition to the Office of the Adjutant General which reflects the major reporting and operational functions of the Department:

OAL NOTE: The organization chart referenced in this section is not reproducible in the New Jersey Register or Administrative Code. A copy may be obtained from the Office of Administrative Law, 9 Quakerbridge Plaza, CN 301, Trenton, New Jersey 08625.

5A:1-1.4 Office of the Adjutant General

(a) The Adjutant General is the Chief Executive Officer of the Department and oversees all functions of the Department of Military and Veterans' Affairs. Concurrently, he or she is a General Officer in the New Jersey National Guard and serves as its commander. He or she is assisted by two deputies and two assistant commissioners as well as a number of offices which report directly to him or her.

(b) The Deputy Adjutant General is one of two principal assistants to the Adjutant General. The Deputy Adjutant General oversees the general operations of the Department as directed by the Adjutant General and acts in the place of the Adjutant General in his or her absence. In addition to all other requirements, he or she is a General Officer in the New Jersey National Guard.

(c) The Administrator of Veterans' Affairs is one of two principal assistants to the Adjutant General. The Administrator oversees the general operations of the veterans' programs of the Department and in the performance of this duty carries the title of Deputy Commissioner, Veterans' Affairs in recognition of his responsibilities. In addition to all other requirements, the Deputy Commissioner must be a veteran of the Armed Forces of the United States.

(d) The Adjutant General is supported by two assistant commissioners, one for Central Support Services and one for Veterans' Affairs.

(e) The Adjutant General as the Commander of the State's National Guard is assisted in the supervision of the Department's Federal operations by a Command Administrative Officer (Federal Chief of Staff) who has principal responsibility for all Federal staff activities in support of the New Jersey National Guard including:

1. A Military Personnel Office;
2. A Plans, Operations and Training Office;
3. A Surface Maintenance (Army) Office;
4. A State Aviation (Army) Office; and
5. Subordinate Command Administrative Offices.

(f) In matters relating to the command and control of the National Guard, both the Army and Air National Guard are hierarchical military organizations, the senior commanders of which report directly to the Adjutant General on matters regarding their commands. In this area, the Adjutant General is supported by two Assistant Adjutants General, Army and Air.

(g) In matters relating to Federal resources directed at supporting the Army National Guard, The Adjutant General is assisted and advised by the United States Property and Fiscal Officer.

(h) In the normal course of events the following special staff reports directly to the Adjutant General in their respective areas:

1. The Affirmative Action Officer;
2. The Public/Command Information Officer;
3. The Inspector General;
4. The Senior National Guard Enlisted Advisor; and
5. The Executive Support Officer (Air).

(i) The following commissions and councils advise the Adjutant General directly on matters within their respective areas of interest:

1. The Veterans' Services Council;
2. The Post Traumatic Stress Disorder (PTSD) Commission; and
3. The Agent Orange Commission.

5A:1-1.5 Public Information Requests

(a) Members of the public may obtain general information from the Department of Military and Veterans' Affairs by writing to or telephoning the Public Information Office/Command Information Office, Department of Military and Veterans' Affairs, Eggert Crossing Road, CN 340, Trenton, New Jersey 08625-0340, (609) 530-6939.

(b) The cost of copies of documents to a member(s) of the public is:

1. First page to 10th page, $0.50 per page;
2. Eleventh page to 20th page, $0.25 per page;
3. All pages over 20, $0.10 per page.

(c) Government agencies, veterans and members of the National Guard are exempt from cost for copies of documents.

SUBCHAPTER 2. CENTRAL SUPPORT SERVICES

5A:1-2.1 General

The Central Support Services provides the general service and operational support required by the Department as a whole and its two major programs, Veterans' Affairs and New Jersey National Guard. Central Support Services are organized under the Assistant Commissioner, Support Services.

5A:1-2.2 Administrative Division

(a) The Administrative Division is responsible for providing administrative support to all of the Department's State and Federal activities, including the military units of the National Guard and the veterans' operations of the State.

(b) The Administrative Services Bureau of the Division provides central administrative management services to the Department in the areas of postal, correspondence, electronic message distribution and courier functions and oversees the operation of the Department's Word Processing Center. The Bureau formulates and issues military orders (general, special, permanent and travel); publishes Departmental directives, regulations and bulletins; and requisitions and

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issues office supplies. In addition, it provides budget input for several office, printing and postal accounts.

(c) The Records and Archives Bureau's duties include the management of requests for military leave (Form 33) for State, county and municipal employees; the sorting, indexing and microfilming of 65,000 previous and all current Veterans' DD 214 Forms and Death Certificates; and direct responsibility for the recording and processing of New Jersey Army National Guard Reports of Survey determinations, and the processing of all accident reports, Federal and State. The Bureau operates the Department's Records Management Center, Central Archives and Library.

(d) The Transportation and Maintenance Services Bureau maintains and repairs all of the Department's State-owned motor vehicles and grounds maintenance equipment. This Bureau ensures that all State-owned vehicles are safe to operate.

(e) The Administrative Division's Reproduction Support Bureau's major function is to provide all typesetting and printing services required by the Department. Additional responsibilities include: establishment of maintenance contracts for office equipment, arrangement for emergency repairs, management of the forms control program; and maintenance of the Department's State photocopiers.

(f) The Office of Constituent and Legislative Relations was established within the Administrative Division by incorporating Legislative Liaison with a central office to handle all legislative, gubernatorial and congressional inquiries. In addition, the Office maintains a listing of all boards, commissions and councils which are under the jurisdiction of the Department, monitoring each for pending terminations, vacancies and other personnel changes, and advising the Adjutant General and Deputy Commissioner, Veteran Affairs of their status.

(g) The Office of Internal Controls and Audits is charged with ensuring that the appropriate systems and controls are in place within the Department and all State operations are managed within the dictates of State laws and requirements.

5A:1-2.3 Fiscal Division

(a) The Fiscal Division is the Department's central office for all State purchasing, budgeting, and accounting documents for Central Operations, Veterans' Services and National Guard Program. It has fiscal overwatch and budget responsibility for all Departmental activities. The Director serves as comptroller and principal advisor to the Adjutant General on State fiscal matters and the Division has overall technical responsibility for internal controls and operating procedures pertaining to Departmental agencies and activities involved in collecting or disbursing State funds.

(b) The Division consists of two bureaus organized along functional lines into four operating sections:

1. Fiscal Management Bureau:

i. The Accounting Section is responsible for processing State fiscal documents, financial reporting to include cost accounting and Federal billing reports, and reconciliation of accounts payable and receivable.

ii. The Budget and Analysis Section has responsibility for preparing the Department's annual budget, periodic spending plans, and conducting analyses of projected expenditures and program costs.

2. Purchase and Contracting Bureau:

i. The Purchase Section serves as Departmental liaison to the State Purchase Bureau and other agencies on all purchase matters and prepares bid specifications, purchase requisitions and orders for required goods and services in support of Departmental activities and programs.

ii. The Contracting Section seeks providers and then negotiates and prepares contracts for Veterans' Service and National Guard Programs and monitors performance and reconciles expenditures for all ongoing contracts.

5A:1-2.4 Personnel Division

(a) The Personnel Division is responsible for all Departmental personnel actions such as hires, terminations, resignations, retirements, recruitments, promotions, demotions, reclassifications, payroll and health benefits for all directorates, the three veterans' homes and the memorial cemetery. The Division provides the State employees of the Department with assistance in the areas of health and pension benefits, vision care, dental care, drug prescription, pension loans, employee training, employee relations, and safety regulations.

(b) The Personnel Bureau has the responsibility for the development, implementation, review and enforcement of the Department's personnel program. This bureau, through the Director of Personnel, has the authority to coordinate the organizational structure of the Department by approving/disapproving requests for all new positions at range 29 or higher or reassigning positions from one division to another. The following set forth the responsibilities of the Personnel Bureau's four sections:

1. The PMIS and Position Control Section is directly responsible for Personnel Management Information Systems (PMIS), State Personnel Information Reporting System (SPIRS), position control, personnel files, personnel reports, and tracking system.

2. The Recruitment Section is directly responsible for recruitment, certifications, promotions, open competitive examinations, new employee assistance and Department security cards.

3. The Classification and Compensation Section is directly responsible for servicing the entire Department in the areas of position classification and compensation, organizational studies, salary administration, title generalization, job analysis and evaluation in accordance with New Jersey Departments of Personnel and Treasury regulations. This section is also charged with responsibility for administering internal Vacancy Review Board decisions.

4. The Benefits Section is directly responsible for payroll, benefits, time and attendance, service awards, employee verifications, and circular letters.

(c) The Safety Office is directly responsible for Public Employee Occupational Safety and Health Act compliance, accident reports which may result in workmen's compensation claims, and Worker Right to Know Act compliance.

(d) The Employee Development Bureau is directly responsible for Performance Assessment Review coordination, training contracts, training account funds, and Departmental employee training, to include Affirmative Action training, Certified Public Managers, retirement seminars, and health education.

(e) The Employee Relations Bureau is directly responsible for Department grievances, discipline actions, hearings and contract negotiations.

5A:1-2.5 Installations Division

(a) The Installations Division is responsible for housing all the Department's employees and clients. Its functions include acquisition/disposition/lease of real property, design/contracting/construction of new buildings or alterations, major/minor maintenance, the Department Capital Improvement Plan, daily operation and maintenance, and provision of furnishings, equipment and supplies. Departmental activity centers includes National Guard armories, shops, airfields, training sites, and warehouses as well as veterans' homes, offices and cemetery. Purchase, sale, lease in and out, and/or licensing of these properties is accomplished within the Division.

(b) The Installations Division has the total responsibility for the Department Capital Improvement Plan (CIP). Integrated into this responsibility is the requirement to produce a Long Range Construction Plan (LRCP) for the National Guard Bureau, which is coordinated with the CIP within this Division to link up matching fund requirements for National Guard construction projects. Coordination with the Veterans Department in Washington, D.C., is required to secure Federal matching funds for veterans construction. Major and minor maintenance work plans are living documents which are used to drive these maintenance programs. Input to the plans is derived from users, internal planning and design staff, State and Federal legislation, and National Guard Bureau (NGB) directives and regulations. The plans are constantly assessed and prioritized as necessary. They are used to generate both Federal and State operating budget requests as well as the Department's CIP and LRCP. The plans also drive the design functions so that projects are ready to bid when funding becomes available.

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5A:1-2.6 Office of Management Information Services

(a) The Office of Management Information Systems is charged with the overall supervision of Automated Information Systems with the Department. It consists of four interrelated Federal and State operations.

(b) The Applications Development Section provides technical assistance in the development and maintenance of computerized data bases for the timely retrieval of accurate information to enable effective planning and operations.

(c) The PC Support Group supports automation at all sites for both the State and Federal operations. This section's primary functions are to set standards for use of all computer equipment and software, provide maintenance support for all personal computers and peripheral equipment, supports the in-house training center, and administers local area networks.

(d) The Telecommunications Section establishes communication services within the Department, plans and programs for new requirements, and monitors the operation and use of communication facilities and circuits.

(e) The Federal Director of Information Management (DOIM) establishes policy for the fielding and use of NJARNG microcomputers and related software.

5A:1-2.7 Office of Policy and Planning

(a) The Office of Policy and Planning (OPP) directs and coordinates planning and policy development activities for both the State and Federal staffs of the Department and the New Jersey National Guard.

(b) All studies relating to the changing or the developing of programs or management policies which impact upon the entire Department are subject to review and analysis by the Office. Additionally, the Office has responsibility for the development of the long range plans for the Department's programs for both veterans' and National Guard activities. Short-range implementation plans set the pattern for the annual budget submission. As a follow-up to State budget planning and preparation, OPP monitors programs to ensure that funding decisions related to real property, equipment and personnel, are cost effective and compatible with the demands for accomplishing identified priority objectives.

(c) The Office is further charged by the Adjutant General with responsibility for coordinating and preparing documents related to specific departmental interests, requirements, and programs for the appropriate legislative office, State agency, the Departments of Army and the Air Force through the National Guard Bureau, Washington, D.C., and/or other Federal governmental office and commissions. It is the office of record for all demographic and economic data and has responsibility for research, data collection and analysis associated with the study of special situations as they arise.

SUBCHAPTER 3. VETERANS' AFFAIRS

5A:1-3.1 General

(a) The Department of Military and Veterans' Affairs is charged with the two-fold responsibility of supervising, administering and maintaining the facilities, programs and services provided by the State of New Jersey to its veterans and their families and with addressing their concerns and future needs. This is accomplished through three divisions, which are accountable to the Administrator of Veterans' Affairs (Deputy Commissioner of Veterans Affairs): the Division of Veterans Administrative Services; the Division of Veterans Loans, Grants and Services; and the Division of Veterans Training, Information and Referrals.

(b) All three divisions are involved in assessing the present and future needs of New Jersey veterans, listening to their concerns and expanding or developing programs to address those needs and concerns. The divisions report to the Deputy Commissioner of Veterans' Affairs through an assistant commissioner, who is responsible for the direction and administration of veterans' affairs; the management of day-to-day activities; ensuring that the best services are provided to the residents of the Veterans' Memorial Homes; support for interments to families of the deceased; providing assistance to veterans requiring entitlements; and serving as a conduit between veterans' affairs and defense to ensure and facilitate cooperation within the Department.

5A:1-3.2 Division of Veterans' Administrative Services

(a) The Division of Veterans' Administrative Services oversees the operations of New Jersey's three State-operated Veterans Memorial Homes—which offer long-term health care to elderly or disabled veterans, their wives, widows and Gold Star Mothers who are without sufficient financial ability to provide for their support and care in the community—and the Brigadier General William C. Doyle Veterans' Memorial Cemetery. New Jersey's Veterans Memorial Homes provide a full range of medical, nursing care and residential services, as well as physical, occupational and recreational therapy.

(b) The Veterans' Memorial Home—Vineland is the oldest veterans' home, and is located on 23 acres in the rural Cumberland County community of Vineland. It has 10 buildings (three residential), employs approximately 350 people and may accommodate 300 residents. The facility opened in 1899 and has been serving New Jersey veterans of every war and armed conflict. It features the only wheel-chair accessible, nine-hole miniature golf course in the United States.

(c) The Veterans' Memorial Home—Menlo Park is the largest of the State's veterans' homes and is located on 109 acres along the busy Route 1 corridor in Middlesex County's Menlo Park. It has 10 buildings (three residential), employs approximately 400 people and may accommodate 388 residents.

(d) The Veterans' Memorial Home—Paramus is the newest facility and located on 23 acres just off the Garden State Parkway in the Bergen County community of Paramus. The single-story structure opened on August 4, 1986, and may currently accommodate 112 residents. When construction is completed, the facility will consist of two connected buildings, employ approximately 400 people and accommodate 352 residents.

(e) The Brigadier General William C. Doyle Veterans' Memorial Cemetery is a 184-acre tract located in historic Arneytown, North Hanover Township, Burlington County. Dedicated by Governor Thomas H. Kean in 1986 as "a lasting memorial to those men and women who put their lives on the line to defend our country's honor and freedom," it provides free interment services to New Jersey veterans and their families, and was designed to accommodate 110,000. The facility is a contemporary memorial type with all grave markers flush with ground level and features a modern non-denominational chapel/administration building where committal ceremonies are performed.

5A:1-3.3 Division of Veterans' Loans, Grants and Services

(a) The Division of Veterans' Loans, Grants and Services provides claims assistance, counseling and other services to New Jersey's veterans and their families. The Division administers the Blind Veterans Allowance and the Paraplegic and Hemiplegic Allowance Programs, maintains a continuous liaison with the Blinded Veterans Association and other state and national veterans' organizations, provides requested assistance to the Agent Orange Commission, administers the Veterans Loan Authority, oversees the operation of the veterans' district offices, competes for private and Federal grants that would fund programs to benefit the State's veterans and their dependents, and administers the War Orphans Tuition Program.

(b) The Division maintains a Statewide network of Veterans Service Offices which serve veterans and their families in all New Jersey counties. Veterans Services Officers are trained in counseling veterans and their dependents on available State and Federal entitlements and programs, providing assistance in applying for those entitlements and working as an advocate in the veterans' behalf.

(c) The Division supervises the critically needed Post Traumatic Stress Disorder (PTSD) Program funded by a State appropriation. This Program is designed to assist veterans from all war periods and affected family members utilizing clinicians with demonstrated expertise in dealing with disorders.

(d) The Division administers the Veterans Readjustment Counseling Program which provides assistance to veterans in need of transportation to veterans administration's offices and medical centers, doctor's offices, pharmacies, State veterans' district offices or job interviews.

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5A:1-3.4 Division of Veterans' Training, Information and Referrals

The Division of Veterans Training, Information and Referrals administers the operations of the Vietnam Veterans Outreach Program and certain Federal and State training and rehabilitation programs not administered by other State departments. It provides current information to the public on Federal and State veterans' programs, services and entitlements and maintains a liaison with the New Jersey Department of Education and Department of Higher Education to ensure that veterans and their dependents are provided with the correct and necessary forms and assistance when applying for education programs. In addition, the Division is responsible for identifying all persons qualifying as "veterans" in the State, promoting veterans' preference in the business community and maintaining a liaison with the Advisory Commission on Women Veterans in New Jersey to assist that commission in increasing public awareness of the issues that impact upon women veterans and to stress the availability of the Department personnel and resources to assist women in obtaining entitlements.

SUBCHAPTER 4. NEW JERSEY NATIONAL GUARD

5A:1-4.1 General

(a) Each state of the union, plus the Military District of Washington, DC, Guam, Puerto Rico and the Virgin Islands, maintains its own militia forces. The New Jersey National Guard is the militia of the State of New Jersey. The policy governing the National Guard is outlined in Section 102, Title 32, United States Code:

In accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard, an integral part of the first line defenses of the United States, be maintained and assured at all times.

(b) N.J.S.A. 38A:1-1 et seq. stipulates that the Governor shall be the Commander-in-Chief of the militia of the State, except as to any part thereof called or ordered into Federal service.

(c) N.J.S.A. 38A:3-6 stipulates that the Adjutant General shall command the organized militia of the State, with responsibility for recruiting, mobilization, administration, training, discipline, equipping and general efficiency thereof.

5A:1-4.2 Missions

(a) The New Jersey Department of Military and Veterans' Affairs, with respect to the New Jersey National Guard, has two basic missions which provide the basic framework around which all National Guard activities are carried out. The Federal mission of the Department is to provide trained units and qualified individuals for day-to-day Federally mandated active component support missions as well as trained units and qualified individuals available for active duty in time of war or emergency in support of United States' war plans at such times as the nation's active forces may require augmentation. The Department's State mission is to be able to provide units organized, equipped and trained to protect life and property and to preserve peace, order and public safety in support of civil authorities.

(b) Although the Department and the National Guard continue to have a Federal mission for which they receive Federal support, the National Guard's unique strength is derived from the fact that it remains a constitutionally derived State military force. If the National Guard did not exist as such, the State would be required to develop some alternative system with which to carry out its duty to New Jersey citizens in times of adversity.

(c) A major thrust of the New Jersey Department of Military and Veterans' Affairs is therefore directed at one overall goal—military readiness which enables the National Guard, upon the order of the Governor, to accomplish its State or Federal missions.

5A:1-4.3 Responsibilities

(a) Both the Federal government and the State of New Jersey have certain responsibilities to the National Guard based upon its required missions and duties. These responsibilities are administered, supervised and reviewed by the Department of Military and Veterans' Affairs.

(b) On the whole, the responsibilities of the Federal government to the National Guard include those items which support Federally mandated activities. These responsibilities include paying Federally recognized personnel for participation in authorized training and duty; procuring and issuing uniforms, arms, equipment and supplies; supervising training; and appropriating funds each year for the expense of providing ordnance, quartermaster stores and equipment required to support a modern military force. Additionally, the Federal government is responsible for sharing with the State the expenses involved in the construction and maintenance of training and storage facilities.

(c) The State of New Jersey has the overall responsibility for the provision of units qualified for Federal recognition as determined by the Secretaries of the Army and Air Force. Additionally, the State appoints, promotes, transfers, assigns and separates personnel of the Army and Air National Guard.

(d) The State provides funding on an equitable basis with the Federal government for construction and maintenance of training and storage facilities. In addition, the State must establish procedures to ensure the proper training of personnel assigned to the National Guard as well as to account for and maintain all Federal property and funds.

5A:1-4.4 New Jersey Army National Guard

(a) The Headquarters, New Jersey State Area Command (NJ-STARC) has a Federal and State mission, both of which are divided into a premobilization and post mobilization arena.

1. NJ-STARC's Federal missions are as follows:

i. Premobilization: Command, control and supervise Army National Guard units allotted to New Jersey, and prepare units for mobilization.

ii. Post Mobilization: Exercise command over mobilized Army National Guard units and exercise operational control of other Federal units as directed.

2. NJ-STARC's State missions are as follows:

i. Premobilization: Command, control and supervise Army National Guard units employed in support with civil authorities in the protection of life and property and the preservation of peace, order and public safety under competent orders of State officers.

ii. Post Mobilization: Assist the State in organizing and training a militia; perform command and control functions in support of civil authorities; and prepare to reconstitute the National Guard units released from Federal service.

(b) Troop Command is organized to provide command, control and supervise non-divisional Army National Guard Combat Service Support units capable of and available for State service in time of State emergency and national disasters at the call of the Governor of the State of New Jersey.

1. Immediately upon mobilization, the Troop Command will assist the non-divisional units in their mobilization at their respective mobilization stations and/or points of embarkation. Upon accomplishment of this specific mission, the headquarters may become the nucleus of an Area Support Group Headquarters to be employed with either a corps support brigade or an army support brigade.

2. Troop Command subordinate units are the highest priority mobilization units within the New Jersey Army National Guard structure. They receive this priority with regards to assignment of the latest, most modern equipment and they are subject to the highest training standards in order to ensure their immediate response in the event of war.

(c) The 50th Armored Division is the largest single major Army National Guard command and control headquarters in New Jersey. It has responsibility for all combat and combat support units in the state and is one of two heavy or armored divisions in the National Guard of the United States.

(d) The New Jersey Military Academy (NJMA) has been located at the National Guard Training Center, Sea Girt, New Jersey, since 1958. It is the primary education center for the New Jersey National Guard. The mission of the New Jersey Military Academy is to provide selected individuals with the necessary professional knowledge to improve military skills, to enhance understanding of the art of military science and to foster those high standards of proficiency and leadership required of active members of today's Army and Air National Guard. The Academy's function has grown from being

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solely that of an Officer Candidate School to become the focal point for leadership training at all levels of military service from basic non-commissioned officers through senior officers in the New Jersey National Guard and U.S. Army Reserve.

(e) The National Guard Training Center (NGTC) is located in Sea Girt, New Jersey. Its 168 acres of State-owned property was established in 1885 for use by the New Jersey National Guard. It consists of buildings of various types to include housing, classrooms and a dining facility. The NGTC is also the home of the New Jersey National Guard Militia Museum, which opened in September of 1981 and contains many items of National Guard heritage; The New Jersey National Guard Medical Examining Facility, in operation twice a month to service all prospective enlistees and current members of the National Guard; and four weapons qualification ranges utilized by the National Guard State Police.

(f) On October 7, 1987, New Jersey became home to the Nation's first High Technology Training Center (HTTC). HTTC helps to overcome training restrictions caused by the limited number of firing ranges and allows extensive use of subcaliber devices by thousands of troops in the Guard, Reserve and Active Components, thereby reducing ammunition costs and training time, eliminating excessive fuel consumption and, most importantly, providing realistic training. The HTTC's facilities include an armor/anti-armor laser indoor firing range, a maintenance training laboratory with both M-1 and Bradley Tank Turret Trainer, Training Set Fire Observation, M60A3 Tank System, M-COFT (Mobile Conduct of Fire Trainer), ARTBASS (Army Training Battle Simulation System), Microfix (a combination intelligence data processor/computer graphics system), VIGS (Videodisc Gunnery Simulator) and EIDS (Electronic Information Delivery Systems).

5A:1-4.5 New Jersey Air National Guard

(a) Headquarters, New Jersey Air National Guard serves as the command and control element of the New Jersey Air National Guard under the command of the Adjutant General. To enhance the combat readiness of all units of the New Jersey Air National Guard, it regulates the following: organization and mission; officer personnel; retention; airmen promotions; training; and awards, ceremonies and honors.

(b) The 108th Tactical Fighter Wing provides combat ready aircrews and support personnel to support Tactical Air Command requirements for worldwide deployment in Air Interdiction/Suppression of Enemy Air Defenses and Offensive Counter Air/Close Air Support.

(c) The 177th Fighter Interceptor Group provides mission ready, combat ready aircrews and support personnel to support Tactical Air Command requirements for the peacetime air sovereignty and wartime air defense of the continental United States, to provide personnel to detect, intercept, identify, and if necessary, destroy enemy airborne objects, with a 24-hour daily alert mission.

(d) The 170th Air Refueling Group provides combat ready aircrews and support personnel to the Commander-in-Chief Strategic Air Command for employment in support of worldwide nuclear and conventional operations with a 24-hour daily alert mission.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Board of Tree Experts
Advertising By Tree Experts
Adopted New Rules: N.J.A.C. 7:3-3

Proposed: October 16, 1989 at 21 N.J.R. 3212(a).

Adopted: February 3, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection, and January 31, 1990 by the Board of Tree Experts, Stephen Chisholm, President.

Filed: March 6, 1990 as R.1990 d.188, **with substantive and technical changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3; 13:1D-9; 45:1-8; 45:1-9; and 45:15C-1 through 45:15C-10.

DEP Docket Number: 040-89-09.

Effective Date: April 2, 1990.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

On October 16, 1989 at 21 N.J.R. 3212(a), the Department of Environmental Protection (Department) and the Department's Board of Tree Experts (Board) proposed to promulgate a new subchapter at N.J.A.C. 7:3-3 to govern advertising by tree experts and by Certified Tree Experts certified by the Board. The Department received written comments from three commenters during the public comment period on the proposal ending December 15, 1989.

COMMENT: In addition to the models proposed in these rules, the Department and the Board should allow Certified Tree Experts to list their names in advertisements as follows: (Name of Certified Tree Expert), N.J. State Certified Tree Expert No. (or #) (certificate number). This model differs from proposed N.J.A.C. 7:3-3.5(a)2ii only in the addition of the word "State."

RESPONSE: The Department has revised the proposed models to allow the use of the terms "N.J.," "New Jersey," "State," "N.J. State," or "New Jersey State" preceding the terms "Certified Tree Expert" or "C.T.E." The intent of these rules was to require Certified Tree Experts to clearly indicate their certified status in their advertising and to require the inclusion of the certificate number in all forms of advertising. The use of these descriptive terms does not interfere with either objective, and should minimize the effect of the new rules on Certified Tree Experts presently in practice.

COMMENT: There is currently much confusion on the part of homeowners who have contracted with tree experts who refer to themselves as "Certified" when they are Certified Pesticide Applicators, not Certified Tree Experts. Homeowners are not always able to make this distinction and assume the certification is for tree expertise. Is a companion regulation governing Certified Pesticide Applicators being considered? The Department needs to do something to eliminate this confusion.

RESPONSE: The Department anticipates that the rules in this subchapter will eliminate some of the public's confusion between Certified Tree Experts and Certified Pesticide Applicators. Since the new rules require Certified Tree Experts to clearly indicate that their certification is for tree expertise, the Department hopes that members of the public will assume that the term "Certified" alone does not denote certification by the Board. However, if the implementation of these rules demonstrates that enough non-certified tree experts are advertising themselves as "Certified" because of pesticide certification to cause significant confusion, then the Department will consider proposing companion requirements for Certified Pesticide Applicators.

COMMENT: The proposed new rules will have a detrimental economic impact on practicing Certified Tree Experts by making them change forms of advertising which have been in place for many years just to add the certificate number. In practice, no one ever requests the certificate number, and having to add the certificate number might involve changing the whole logo for a business.

RESPONSE: The requirement at N.J.A.C. 7:3-3.5(a) that Certified Tree Experts include their certificate number in all forms of advertising is derived directly from N.J.S.A. 45:1-9, which states: "Any contractor licensed by the State shall indicate his license or certificate number on all contracts, subcontracts, bids and all forms of advertising as a contractor." [emphasis added] The term "contractor" is defined at N.J.S.A. 45:1-8 to include tree experts certified by the State pursuant to the Tree Expert Act, N.J.S.A. 45:15C-1 to 45:15C-10. This statutory requirement has been in place since 1973; the Department included it in these rules so that all advertising requirements for tree experts would be listed in one place, and to inform practicing Certified Tree Experts who may have been previously unaware of this requirement.

COMMENT: Proposed N.J.A.C. 7:3-3.5(a)3, which prohibits a Certified Tree Expert from advertising in a manner which implies that the business with which he or she is associated bears certification, would have a significant detrimental impact on the State's Certified Tree Experts by requiring them to change many logos and forms of advertising now in use.

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RESPONSE: N.J.A.C. 7:3-3.5(a)3 is derived from N.J.S.A. 45:15C-8, which prohibits a person from representing himself or herself to the public as a Certified Tree Expert or assuming to practice as a Certified Tree Expert without receiving certification from the Board, and N.J.S.A. 45:15C-6, which requires Certified Tree Experts to adhere to canons of professional ethics in the practice of tree care. The Board issues certification as a tree expert to individual tree experts, on the basis of individual qualifications and examination. It would constitute misrepresentation for a Certified Tree Expert to imply that the business with which he or she is associated bears certification since that certification is an individual professional license and was not issued to the business as an entity. In addition to misleading the public into thinking that the State has certified the operation of the business itself, such advertising could potentially mislead the public into thinking that all tree experts employed by that firm are Certified Tree Experts, even if non-certified tree experts are associated with the firm. Therefore, this rule provision should have a significant detrimental impact only on those individuals seeking to profit from misleading advertising practices in the conduct of their tree care businesses.

COMMENT: The proposed new rules will have a maximum negative impact on Certified Tree Experts, who will be required to change their advertising, and will have little impact on non-certified tree experts. Who is going to police this law? The Board should consider educating the public to the benefits of using Certified Tree Experts and offering study materials to non-certified tree experts to help them attain certification.

RESPONSE: Although N.J.A.C. 7:3-3.5(a) and (b) direct only Certified Tree Experts to change their advertising to conform with these new rules, non-certified tree experts may need to change their advertising to comply with N.J.A.C. 7:3-3.5(c), which prohibits misrepresentation by non-certified tree experts. The Department and the Board intend to police this law by checking for compliance with the new requirements and pursuing certificate sanctions against Certified Tree Experts and injunctive relief against non-certified tree experts (see N.J.A.C. 7:3-3.6). As part of its continuing efforts to improve the practice of tree care in this State, the Board does try to educate the public about the benefits of using Certified Tree Experts, and to help tree experts obtain certification.

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 3. ADVERTISING BY TREE EXPERTS

7:3-3.1 Scope and authority

This subchapter constitutes the rules of the Department of Environmental Protection (Department) and the Department's Board of Tree Experts (Board) governing advertising by tree experts and by Certified Tree Experts certified by the Board under the authority of N.J.S.A. 45:15C-1 through 45:15C-10. The purpose of these rules is to protect the public from deceptive advertising by uncertified tree experts, and to codify as part of the Department's administrative rules the contractor licensing requirements imposed on Certified Tree Experts by N.J.S.A. 45:1-8 and 45:1-9.

7:3-3.2 Construction

This subchapter shall be liberally construed to permit the Department of Environmental Protection and the Board of Tree Experts to effectuate the purposes of N.J.S.A. 45:1-8, 45:1-9, and 45:15C-1 through 45:15C-10.

7:3-3.3 Severability

If any section, subsection, provision, clause, or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:3-3.4 Definitions

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

"Advertising" means the description or presentation of a product or service in some medium of communication in order to induce the public to buy, support, or approve of it, including, but not limited to, telephone listings, letterhead, business cards and lettering on vehicles.

"Board" means the Board of Tree Experts established in the Department of Environmental Protection by N.J.S.A. 45:15C-3.

"Certified Tree Expert" means a natural person meeting the qualifications at N.J.S.A. 45:15C-4 who has received from the Board of Tree Experts, after successful completion of an examination by the Board as provided at N.J.S.A. 45:15C-5, a certificate authorizing him or her to practice as a Certified Tree Expert.

"Department" means the Department of Environmental Protection.

"Tree expert" means a person skilled in the science of tree care who presents himself or herself to the public for compensation as a practicing tree expert, including as an arborist, tree expert, tree specialist, or tree surgeon.

7:3-3.5 Advertising by tree experts

(a) A tree expert who has received a certificate from the Board shall represent himself or herself as a Certified Tree Expert in all forms of advertising relating to tree care, subject to the following:

1. The Certified Tree Expert shall list his or her name and certificate number in the advertisement;

2. The listing of the Certified Tree Expert's name and certificate number in the advertisement shall be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

i. (Name of Certified Tree Expert), Certified Tree Expert No. (or #) (certificate number); or

[ii. (Name of Certified Tree Expert), N.J. Certified Tree Expert No. (or #) (certificate number); or]

*[iii.]***ii.*** (Name of Certified Tree Expert), C.T.E. No. (or #) (certificate number);

iii. At the Certified Tree Expert's option, any one of the following terms may be inserted before the term "Certified Tree Expert" in (a)2i above or "C.T.E." in (a)2ii above: N.J., New Jersey, State, N.J. State, or New Jersey State.

3. A Certified Tree Expert shall not advertise in a manner which implies that the name of the business with which he or she is associated bears certification; and

4. All existing forms of advertising shall be changed to conform with the requirements of this section within one year of the effective date of this subchapter, or at the time of renewal for the advertisement, whichever is sooner.

(b) A tree expert who has received a certificate from the Board shall not continue to practice as a Certified Tree Expert, or use such title or any other words, letters, or abbreviations tending to indicate that such person is a Certified Tree Expert, if the Board has suspended or revoked his or her certificate.

1. All existing forms of advertising shall be changed to remove any reference to certification by the Board immediately following the suspension or revocation of a certificate by the Board, and continuing through the period of suspension or revocation.

(c) A tree expert shall not represent himself or herself to the public as having received a certificate from the Board, or assume to practice as a Certified Tree Expert, or use such title or any other words, letters, or abbreviations tending to indicate that such person is a Certified Tree Expert, without having received such certificate.

7:3-3.6 Violations; penalties

(a) The Board may suspend, for a period not to exceed two years, the certificate of a Certified Tree Expert who violates any of the rules in this subchapter, subject to the following:

1. The Board shall mail notice of the cause for the contemplated suspension and the date of hearing thereon to the violator at his or her registered address at least 20 days before the hearing;

2. The Board shall not suspend the violator's certificate until it has afforded the violator the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., on the contemplated suspension; and

3. By majority vote, the Board may reinstate a certificate suspended under this section.

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(b) The Board may revoke the certificate of a Certified Tree Expert who violates more than one, or on more than one occasion, any of the rules in this subchapter. More than one violation of any of the rules in this subchapter shall be deemed wrongful conduct in the practice of professional tree care and shall constitute grounds for revocation of the certificate, subject to the following:

1. The Board shall mail notice of the cause for the contemplated revocation and the date of hearing thereon to the violator at his or her registered address at least 20 days before said hearing;

2. The Board shall not revoke the violator's certificate until it has afforded the violator the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., on the contemplated revocation; and

3. By majority vote, the Board may reissue a certificate revoked under this section.

(c) If any person violates any of the rules in this subchapter, the Department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation.

(d) A person violating the provisions of N.J.A.C. 7:3-3.5(c) shall be subject to any penalties prescribed at N.J.S.A. 45:15C-1 et seq.

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System Fee Schedule for NJPDES Permittees and Applicants

Adopted Amendment: N.J.A.C. 7:14A-1.8

Proposed: November 20, 1989 at 21 N.J.R. 3590(a).

Adopted: March 6, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: March 8, 1990 as R.1990 d.197, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:10A-1 et seq., specifically 58:10A-9.

DEP Docket Number: 048-89-10.

Effective Date: April 2, 1990.

Expiration Date: June 2, 1994.

Summary of Public Comments and Agency Responses:

A public hearing on the proposed amendment to N.J.A.C. 7:14A-1.8 was held on December 20, 1989 at the Labor Education Center Auditorium, Cook College, Rutgers University in New Brunswick, New Jersey. Approximately 40 members of the public attended the public hearing and five persons presented oral testimony. Fifty-eight commenters submitted written comments prior to the close of the comment period on December 29, 1989.

General Comments

COMMENT: Several permittees commented that it is unfair to require the regulated community to review, analyze and comment on such an important and detailed regulatory proposal within 30 days and requested that the Department extend the public comment period.

RESPONSE: The Department considered the request to extend the public comment period on the proposed amendment based on the nature of the comments received. In general, public comments were very site-specific and did not represent major problems with the proposed fee assessment methodology. The decision was made not to extend the comment period on the proposed amendment to N.J.A.C. 7:14A-1.8 because the NJPDES fee assessments must be sent to the permittees on an expedited basis in order to maintain fiscal stability. Further, with respect to site-specific comments pertaining to fee calculations, N.J.A.C. 7:14A-1.8(a) provides permittees with the opportunity to request a recalculation of the fee assessment if the permittee believes the Department has calculated the permit fee incorrectly. These recalculation requests must be submitted within 30 days of the fee assessment.

COMMENT: One commenter stated that it was unfair and unwise to expect the Department to develop such an innovative and far-reaching proposal in a vacuum, isolated from the affected regulatory community without the opportunity to consider how various facility specific details will be applied to such a generalized fee formula. This comment was particularly directed towards the fee formula for those ground water permittees required to conduct compliance monitoring.

RESPONSE: The Department developed the proposed amendment based upon public comments received during prior rulemaking proposals and Annual Fee Reports and the Department's experience in NJPDES ground water permitting. The proposed amendment to N.J.A.C. 7:14A-1.8 incorporates these experiences and is designed to encourage permittees to initiate remedial activities to address ground water pollution. In addition, the permittee's opportunity to recalculate permit fees provides the Department with ample interaction with the regulated community and their facility specific concerns.

COMMENT: One commenter suggested that the Department enact a public outreach program or an information gathering committee, similar to the process used to develop "A Ground Water Strategy for New Jersey." This process is recommended since many affected parties, such as those with potentially leaking underground storage tanks, have not been issued New Jersey Pollutant Discharge Elimination System (NJPDES) ground water permits as of this date.

RESPONSE: The Department is developing an optional pre-application seminar for prospective applicants. Topics to be addressed include: effluent sampling, discharge monitoring reporting, fees, and alternatives to discharging. The Department has also developed a fee calculation guide which will be mailed to all facilities currently in compliance or corrective action. Copies can be obtained from the Division of Water Resources' Fee Management Section, CN-029, Trenton, New Jersey 08625.

COMMENT: It is improper for the Department to utilize the proposed amendment to calculate the fee assessments. The commenter stated that any use of the proposed fee assessments even as tools to show each permittee the potential impact of the new proposed rules is improper and indicates the Department's predetermination to adopt the proposed amendment no matter how appropriate public comments may be to the contrary.

RESPONSE: The Department believes that each permittee must evaluate the impact of the proposed amendment as it applies to his or her individual situation. In addition, the Department will send revised fee assessments to permittees which will conform to the adopted version of the rule. For this reason, the Department mails each permittee a detailed environmental impact/fee assessment calculation sheet.

COMMENT: The Department should release example fee calculations utilizing the proposed fee methodology particularly for those in compliance monitoring either through publication in the New Jersey Register, and/or public hearings or seminars.

RESPONSE: The Department mailed each permittee a copy of their individual fee calculation regardless of their monitoring status. The Department staff is available to explain the fee assessment methodology on an individual basis. In fiscal year 1991 (FY91), the Department will offer pre-application seminars. Also, for FY91, the Department will mail each ground water permittee an instruction package and allow the permittees to calculate their environmental impact for the FY91 fee assessment.

COMMENT: One commenter pointed out that the Annual Fee Report and the summary in the rule proposal state that the driving factor in changing the fee rules came from case opinions, one of which was *Public Service Electric & Gas v. Dep't of Environmental Protection,* 193 *N.J. Super.* 676 (App. Div. 1984), *aff'd* 101 *N.J.* 95 (1985). The commenter stated that the Department missed the point when they tried to address the court's feelings on the application of fees, which was that the Department should scale NJPDES permit fees proportionately to the degree of harm threatened by the permittee's discharge.

RESPONSE: The rule proposal provides a fee assessment methodology that more appropriately distributes the cost of the NJPDES program to those facilities that pose the greatest risk to the environment. The amendment contains lower minimum fees and monitoring status factors for those facilities that have initiated ground water remediation. This structure encourages permittees to begin remediation of ground water pollution and thereby simultaneously reduces the degree of environmental harm and their NJPDES fee assessment. In cases where the monitoring program required by the permit is designed to evaluate if a past discharge activity caused environmental impact, only the minimum fee will apply. This structure provides that where the permittee continues to investigate potential environmental harm, the permittee will pay a minimum NJPDES fee.

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N.J.A.C. 7:14A-1.8(a), General Conditions and Applicability of NJPDES Fees

COMMENT: If the Department, pursuant to N.J.A.C. 7:14A-1.8(a)9, bases the fees for FY90 on data from the period July 1987 through June 1988, what is the purpose of a fee recalculation?

RESPONSE: Although environmental impact for FY90 is based on data from the period July 1, 1987 through June 30, 1988, individual fee calculations may contain errors. The permittee may have transcribed data from a laboratory report incorrectly or the data may have been entered by the Department incorrectly. The recalculation process set forth in N.J.A.C. 7:14A-1.9(a)6 occurs after the initial bill is assessed by the Department. This process ensures that permittees pay the appropriate NJPDES permit fee based on its environmental impact. To minimize these types of problems, the Department has initiated a pre-billing process which is completed before the Annual Report and fee schedule are prepared by the Department. In FY90, the Department mailed instructions to all surface water dischargers to assist them in the calculation of their pollutant loadings which are used to calculate their environmental impact for the FY90 billing period. In FY91, ground water and significant indirect user (SIU) dischargers will also be afforded this opportunity.

COMMENT: Several commenters stated that the proposed fee schedule for FY90 does not properly represent the environmental impact of discharges since the actual pollutant loadings at certain facilities have decreased significantly as a result of treatment level improvements implemented after the period July 1, 1987 through June 30, 1988. As a result, facilities do not receive the benefit of a lower NJPDES fee after spending a significant amount to upgrade wastewater treatment. The Department should use more recent data.

RESPONSE: In accordance with N.J.A.C. 7:14A-1.8(a)7, the Department uses reported pollutant loadings from the most recent 12-month period for which self-monitoring reports are available. For the 1989-90 fee schedule, data from the period July 1, 1987 through June 30, 1988 has been used. The Department requires approximately six months to generate the proposed fee schedule. This data period would have been current had the proposed fee schedule been available in June, 1989 as planned. The 1990-91 Annual Fee Report will be printed in the summer of 1990, while actual fee assessments would not be due until January 1991. In these fee assessments, the Department will use the data from the period January 1, 1989 through December 31, 1989. The delay with the rule amendments resulted in the use of data 18 months old. Future fee assessments will be based on data only 12 months old, therefore, improvements in discharge quality will be seen in future NJPDES fee assessments.

COMMENT: One commenter stated that improvements in their treatment process should result in wastewater with lower toxicity. The commenter felt he should be assigned a lower bioassay factor because he will be making further improvements. Two other commenters recommended that the Department amend N.J.A.C. 7:14A-1.8(a)7 and calculate NJPDES permit fees based on the approximate or probable pollutant loads based upon the required plant performance or the permit limitations. Using estimated loads would allow a community that has significantly improved its treatment plant to receive a financial benefit through lower permit fees.

RESPONSE: As stated above, in accordance with N.J.A.C. 7:14A-1.8(a)7, the Department uses actual reported monitoring data in the fee calculation. Most permittees discharge an amount significantly less than the maximum quantity established in the permit and discharge quality/quantity can vary during the specified monitoring period. Therefore, the data period specified in the Annual Fee Report is used for all permittees, except for new discharges where the Department uses any available data. In general, this period represents the most current 12-month period for which data is available on the computer system. The Department cannot assess permit fees based on anticipated improvements in effluent quality, quantity or toxicity. Reductions and improvement which result in lower pollutant loadings and toxicity will be reflected in future fee assessments. Therefore, where there are improvements in treatment, a permittee will eventually obtain financial benefits through lower fee assessments.

COMMENT: Last year's environmental impact and rate and this year's values appear to counteract each other. The permittee felt that the Department had redefined terms.

RESPONSE: The commenter's observation is correct because the total environmental impact multiplied by the rate for the discharge category plus the minimum fees results in the total budget for the category. Therefore, they do counteract each other where the total environmental impact is large the rate is small and vice versa. In accordance with N.J.A.C. 7:14A-1.8(a)10, the FY89 environmental impact was determined using a cube root and the FY90 environmental impact was calculated using a square root. As a result of the planned phase-out of the cube root factor, environmental impact values will increase. Since the rate is calculated by dividing the budget by the total environmental impact, the resulting rate used to calculate individual fees in FY90 is less than in the rate used in FY89.

COMMENT: At N.J.A.C. 7:14A-1.8(a)10, it states that the Department shall take the square root of the total pollutant load for the period July 1, 1989 through June 30, 1990. The proposed fees were determined using a square root factor. It appears you are off by two years in your own publication.

RESPONSE: The time period specified at N.J.A.C. 7:14-1.8(a)10 refers to the billing period and indicates how the permit fees for that specific billing period will be calculated. Therefore, for the period July 1, 1989 through June 30, 1990 or the FY90 billing period, the fees will be determined using a square root. Pursuant to N.J.A.C. 7:14A-1.8(a)10, fees assessed after July 1, 1990, will be based on the calculated total pollutant load, quantity, or total weighted concentration.

COMMENT: The Department's proposal to phase-out the cube root factor in N.J.A.C. 7:14A-1.8(a)10 causes our fee to increase exponentially based on our design flow.

RESPONSE: The Department's proposal will result in a linear distribution of costs associated with the NJPDES program based on environmental impact. The use of a cube root factor assessed a greater proportional share of the costs of the NJPDES program to small and/or efficient discharges. This phase-out will benefit all but the facilities with the greatest environmental impact.

COMMENT: The phase-out of the cube root factor in N.J.A.C. 7:14A-1.8(a)10 will greatly increase revenues to the Department. This action is in direct conflict with the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-9, which authorizes the Department to charge reasonable administrative fees which shall not exceed the cost of processing, monitoring and administering the NJPDES permits.

RESPONSE: The Department develops a rate on an annual basis to take into consideration the changes in the individual and total environmental impact for a discharge category. Because the rate in N.J.A.C. 7:14A-1.8(a)9 is adjusted annually, the sum of all NJPDES fees assessed will not exceed the proposed budget. Therefore, as individual environmental impacts increase as a result of the phase-out of the cube root factor, the rate will decrease.

COMMENT: One commenter received a pre-billing publication from the Department which indicated that the cube root was taken on the risk factors. The proposed fee assessment we just received used the original risk factors. The risk factor for nitrogen ammonia used in the pre-billing notice was 10 and in the proposed fee assessment is 100. Please explain the risk factors.

RESPONSE: The pre-billing instruction package for FY90 utilized the cube root of the risk factors. Upon further consideration, the Department decided not to use the cube root of the risk factors because the Department determined that this procedure will not maintain the relative ranking of pollutants. Therefore, until further technical assessment can be performed the original risk factors will be used. However, proposed fees were assessed using the original risk factors in Table I of N.J.A.C. 7:14A-1.8. The risk factor for Nitrogen species reported as Nitrogen is 100. Nitrogen ammonia reported as ammonia is assigned a risk factor of 1,000.

N.J.A.C. 7:14A-1.8(d), Annual Fees for Ground Water Discharges

COMMENT: One permittee notified the Department that it was no longer discharging industrial wastewater to its septic system and had requested termination of its NJPDES permit. The permittee is still monitoring ground water quality as required by the NJPDES permit. If a fee was required at all, this assessment should be based on a ground water monitoring status of two for detection monitoring, not 10 for compliance monitoring.

RESPONSE: The Department may require post-closure detection monitoring to ensure that past discharge activities have not impacted ground water quality. Facilities conducting detection monitoring will be assigned a monitoring status of two in accordance with N.J.A.C. 7:14A-1.8(d)1iii. However, if ground water quality impacts have been detected, the monitoring status will no longer be classified as detection. Facilities with permits requiring activities other than detection monitoring such as compliance monitoring and corrective action are assigned a ground water monitoring status of five or 10 in accordance with N.J.A.C. 7:14A-1.8(d)1iii, and permit fees for these facilities are assessed in accordance with N.J.A.C. 7:14A-1.8(d)2.

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COMMENT: The Department issued a NJPDES discharge to ground water (NJPDES-DGW) permit for the construction of a new community septic system. No discharge will occur for at least a year. The proposed fee was based on the estimated flow when constructed. The commenter felt that he should not be required to pay a NJPDES fee.

RESPONSE: The NJPDES fee schedule is intended to recover the costs associated with the processing, monitoring and administering NJPDES permits. All NJPDES permit holders are required to pay a NJPDES permit fee based on their potential environmental impact as defined in N.J.A.C. 7:14A-1.8. If the permittee has no discharge and is not conducting compliance monitoring or ground water remediation the minimum fee is assessed. Once the facility is operating, the fee is based on the environmental impact of the discharge.

COMMENT: A facility should not be assessed a NJPDES ground water permit fee when all manufacturing operations have ceased and they no longer occupy any space within the State.

RESPONSE: A NJPDES ground water monitoring permit may be required to evaluate the long term effects of past discharge practices. Once the Department has determined that past activities have not impacted ground water, neither a NJPDES permit nor a fee will be required.

COMMENT: A permittee lined its lagoons with an impermeable liner. These units are part of a closed loop system. According to the permittee, this discharge is closed and a NJPDES fee should not be required.

RESPONSE: The lining of a lagoon with an impermeable liner does not signify that there will be no possibility that the liner will leak, nor does it preclude the possibility that the unlined lagoon has caused ground water contamination from past practices. The NJPDES rules are intended to control past and present discharges to the waters of the State, as well as any discharges which may have the potential to cause pollution. As such, for a facility such as one with lined lagoons, a NJPDES-GWD permit and NJPDES fee is required.

COMMENT: The Department's proposal does not meet the standards of fairness or have a rationale to accomplish the goals intended by the proposed amendment.

RESPONSE: The proposed fee schedule distributes the cost of administering the NJPDES program among those facilities whose actions give rise to the need for environmental regulation. The proposed amendments provide a financial incentive, through lower permit fees, to those facilities with known ground water quality impacts to initiate remedial activities. The fee assessment methodology treats all permittees with ground water contamination fairly by distributing a proportionate share of the NJPDES program costs based upon the magnitude of the impact on the environment.

COMMENT: The Department stated that the proposed amendment will not be used as a source of additional revenue but as a means to distribute a proportional share of the existing NJPDES program costs to those facilities which have impacted ground water quality. The commenter stated that this goal has not been achieved since our fee increased to $23,585.

RESPONSE: The Department utilizes several categories for assessing NJPDES permit fees. The commenter is a municipal ground water discharger and is assessed a proportional share of the municipal program based on its environmental impact as calculated in N.J.A.C. 7:14A-1.8(d)1.

COMMENT: Where a ground water permit has been issued for corrective action and/or compliance monitoring at the site and a landfill is also present, only one ground water fee should be assessed. In this situation, which monitoring wells are used to determine permit fees?

RESPONSE: The proposed amendment to the ground water fee assessment methodology provides the Department with the ability to base environmental impact on the level of ground water impact measured in the monitoring wells. Many permittees have closed landfills and other ground water disposal units regulated through a single NJPDES permit with one comprehensive monitoring program. The Department will assess a NJPDES ground water discharge fee for facilities in corrective action and/or compliance monitoring based on the delineated area of the plume or the area of the facility as specified at N.J.A.C. 7:14A-1.8(d)2 or a NJPDES ground water discharge fee for detection monitoring as specified at N.J.A.C. 7:14A-1.8(d)1. In addition, the Department will assess a NJPDES fee for their landfill permit assessed in accordance with N.J.A.C. 7:14A-1.8(f). All monitoring wells are used by the Department to calculate the total weighted concentration in accordance with N.J.A.C. 7:14A-1.8(d)2.

COMMENT: The operation of our land disposal operation is very expensive and requires that we discharge high quality effluent. The fee schedule does not provide an incentive for a permittee to meet very stringent treatment levels. The Department should provide a credit for facilities which takes into account the expense associated with maintaining a high quality discharge.

RESPONSE: The fee schedule is not designed to provide financial incentives for permittees that attain effluent quality standards established by NJPDES permits. Facilities which do not meet established discharge limitations are in violation of their NJPDES permits and may be subject to enforcement action. The Department has included a new waste type for those facilities which discharge sanitary wastewater with better than secondary treatment to the ground waters of the State. Facilities with higher treatment standards have a lower environmental impact than a similar sized facility with less than secondary treatment, therefore, these facilities will be assessed lower fees.

COMMENT: One commenter recommended that the Department incorporate a provision to limit the potential size of any facility's annual permit fee. This would provide protection for the incentives built into the NJPDES ground water permit fee system. The commenter recommended that no individual permittee be required to pay more than 10 percent of the residual budget (costs based on environmental impact).

RESPONSE: The proposed amendment is intended to distribute the costs associated with the NJPDES program based upon the environmental impact. Limiting the maximum amount any one permittee's fee assessment may be inconsistent with the Department's goal of distributing the costs based on environmental impact. The Department expects that many more facilities will be moved from the detection monitoring/minimum fee category to compliance monitoring over the next few years. As a result, the residual costs of the ground water program will be distributed across a larger number of facilities. However, the Department will consider the possibility of establishing a maximum permit fee in future rule proposals.

COMMENT: One commenter recommended that the Department incorporate a "control factor" to reflect the extent to which pollution is migrating off-site. This factor would reduce the environmental impact for those facilities that have demonstrated effective control over ground water pollution while increasing fees for those who fail to control pollution. Sites without effective ground water controls represent a greater risk to the environment.

RESPONSE: Conditions of a NJPDES permit for ground water remediation or control of ground water pollution regulate the migration of pollution off-site. The proposed amendment treats those permittees that have delineated the extent of contamination differently from those who have not yet defined the plume. As provided at N.J.A.C. 7:14A-1.8(d)2, where the permittee has delineated the plume, the Department utilizes the area of the plume and utilizes the average pollutant concentration over the entire site to determine the total weighted concentration. Where the extent of contamination is unknown, the Department uses the area of the facility and the average pollutant concentration from the monitoring well with the highest value. Furthermore, the fee methodology will result in a larger fee for larger areas of contamination. Those permittees with effective controls will generally have smaller areas of contamination and thus pay a proportionally smaller fee than those who do not have effective controls.

COMMENT: The Department should move more aggressively to bring more ground water dischargers into the NJPDES permit program in the near future and move permittees from detection monitoring to compliance monitoring, where appropriate.

RESPONSE: One of the major objectives of the ground water discharge permit program is to bring more discharges into the permit program using appropriate informational mailings. The Underground Storage Tank (UST) Program, N.J.A.C. 7:14B, the Environmental Cleanup Responsibility Act (ECRA) Program, N.J.A.C. 7:26B, and NJPDES detection monitoring permits provide the necessary information for determining where further ground water monitoring, source removal, hydraulic source control and/or ground water remediation is required. The Department is placing more emphasis on reviewing and evaluating ground water monitoring data and upgrading NJPDES permits and, where appropriate, moving permits from detection monitoring to compliance monitoring.

COMMENT: The purpose of the fees is to cover the administrative costs of the NJPDES program, not to coerce industry into actions which are not required by the NJPDES permit or regulations. Using area and total weighted concentration in the fee formula assesses disproportionately high fees to facilities with NJPDES permits that do not require ground water contamination plume delineation. If the Department wants to

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initiate technical changes in the NJPDES rules, the Department should propose amendments to the pertinent rules through the rulemaking process so they can be subject to public comment and due process.

RESPONSE: The NJPDES fee assessment methodology does not require a permittee to conduct any additional work activities. Plume delineation is costly but provides a better understanding of the areal extent which requires controlling. A financial incentive is provided in the fee rules at N.J.A.C. 7:14A-1.8(d)2i(2) for those facilities which provide this additional level of detail, whether required by the permit or not.

COMMENT: The proposed amendment uses several different rating factors at N.J.A.C. 7:14A-1.8(d)1iii. One commenter questioned the incorporation of these factors without proper substantiation and/or criteria for the rating numbers. The commenter requested that the Department make available the analysis or criteria used by the Department before including these factors in the fee rules.

RESPONSE: The Department proposed the use of a Ground Water Rating Factor which is similar to the existing Surface Water Rating Factor found at N.J.A.C. 7:14A-1.8(c)iv. The Ground Water Rating Factor is a number between 1.3 and 5, which is multiplied by the discharge component of the environmental impact calculation. The discharge component for active discharge is the volume multiplied by the risk factor. For compliance and corrective action, the discharge component is the area multiplied by the total weighted concentration. Permeability is a measure of how quickly pollution moves through the underlying materials. The existing permeability factors in N.J.A.C. 7:14A-1.8(d)1 ranged from 0.1 to 10 and were multiplied by other factors such as aquifer rating and monitoring status. The resulting locational multiplier ranged from 10 to 1,000. The proposed creation of the Ground Water Rating Factor which sums the locational parameters together places greater importance on the portion of environmental impact calculation the permittee can control, such as the amount of contamination in the ground water and the quality being discharged.

COMMENT: One commenter stated that the Department's use, in N.J.A.C. 7:14A-1.8(d)1iii(4), of a permeability of 10^{-2} centimeters per second where the permeability has not been provided is an unreasonable assumption for permeability when site specific data is unavailable since soil classification studies have been completed throughout most of the State.

RESPONSE: The Department uses soil classification information to assign a permeability rating if such a rating is appropriate throughout the site. In many cases, the local conditions are inconsistent and make a general assignment of permeability inappropriate. The permittee may always submit site-specific permeability data.

COMMENT: The Department did not provide an adequate explanation in the public record to explain why the permeability ratings in N.J.A.C. 7:14A-1.8(d)1iii(4) were increased. How can the Department arbitrarily increase the ratings when no change in the geologic formation has occurred?

RESPONSE: In the existing fee assessment methodology, the aquifer rating, permeability rating, and monitoring status factors were multiplied together. The new formula calculates a Ground Water Rating Factor by adding together the values associated with the aquifer factor, permeability factor, the monitoring status factor and ground water use factor. The permeability rating factors were altered not because of any geologic formation changes, but because the formula for the new ground water rating factor needed changes. The Department determined that the existing permeability ratings deemphasized the use of permeability at the lower permeability ratings over the other locational factors such as the aquifer rating and the monitoring status.

COMMENT: Changing the permeability rating from a 10 to 20 at N.J.A.C. 7:14A-1.8(d)1iii(4) resulted in significant increases in permit fees.

RESPONSE: The proposed amendment to the permeability rating was not the reason for increased fee assessments. The proposed use of a Ground Water Rating Factor in N.J.A.C. 7:14A-1.8(d) places more emphasis on the discharge component rather than locational parameters the permittee cannot control.

COMMENT: Two commenters stated that the Department has not provided any basis or background documentation as to how it will come to a final decision as to the ground water monitoring status assigned to an individual facility pursuant to N.J.A.C. 7:14A-1.8(d)1iii(1). The lack of this information is procedurally improper and does not meet the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

RESPONSE: The methodology for assigning a ground water monitoring status to a NJPDES permit is specified in N.J.A.C. 7:14A-6. In general, initial or interim NJPDES permits are issued to a facility to establish a detection monitoring program. Detection monitoring, as defined at N.J.A.C. 7:14A-6.15(c), is designed to determine if the regulated active discharge to ground water or a past discharge activity has impacted ground water quality. A permittee who does not have an active regulated ground water discharge and is simply monitoring its site to detect the possibility of contamination is considered to be in detection monitoring. Once environmental impact has been detected through a detection monitoring program or other environmental assessment program such as ECRA or the UST program, the permittee will be notified by the Department to initiate a compliance monitoring program in accordance with N.J.A.C. 7:14A-6.15(j) and where appropriate, initiate the appropriate corrective measures in accordance with N.J.A.C. 7:14A-6.15(k). Finally, the comment addresses an issue which is beyond the scope of the proposed amendments to N.J.A.C. 7:14A-1.8 and therefore, the Department has complied with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

COMMENT: We have taken the corrective action approved by the Department. The lagoon and surrounding soils were trucked off-site for disposal. The Department, in N.J.A.C. 7:14A-1.8(d)1iii(1), should include the removal of contaminated soil from the site in the definition of "corrective action" and assign a Ground Water Monitoring Status factor of five for corrective action, not a 10 for compliance monitoring.

RESPONSE: The assignment of ground water monitoring status factors is based on the level of activity required by the NJPDES permit. Source removal alone is not generally considered complete corrective action. If the Department has determined that ground water remediation is not required, the Department will issue a permit for long-term monitoring with alternative concentration limits. Permits for source removal with long-term monitoring requirements are considered corrective action and will be assigned a Ground Water Rating Factor of five. However, if the permittee is required to determine the extent of ground water contamination and develop a ground water clean-up plan the facility is considered to be in compliance monitoring in accordance with N.J.A.C. 7:14A-1.8(d)1 and will be assessed a Ground Water Rating Factor of 10.

COMMENT: After five years of waiting for the permits to close the facility, we should certainly be considered post closure monitoring and receive a Ground Water Monitoring Status of two in accordance with N.J.A.C. 7:14A-1.8(d)1iii(1).

RESPONSE: Ground Water Monitoring Status is assigned based on the level of activity required by the NJPDES permit. Where a facility has closed its ground water discharge units and is conducting detection monitoring the Ground Water Status Factor is two pursuant to N.J.A.C. 7:14A-1.8(d)1iii. However, if ground water contamination is detected at the site, the facility will be assigned a Ground Water Status Factor of 10 if compliance monitoring is required or five if corrective action is required.

COMMENT: N.J.A.C. 7:14A-1.8(d)1 takes into consideration the level of ground water monitoring at the site rather than the total pollutant loading. This proposal eliminates any incentives to discharge high quality effluent.

RESPONSE: The Department added the monitoring status factor in 1987 to evaluate the overall impact that present or past discharge activities may have on the ground water quality. N.J.A.C. 7:14A-1.8(d)1i was amended to include a new risk rating for those facilities which provide better than secondary treatment before discharging effluent to the ground waters of the State. This ensures that facilities with better than secondary treatment will be assessed a lower fee than a similar-sized facility with less than secondary treatment.

COMMENT: The use of a Ground Water Use factor in N.J.A.C. 7:14A-1.8(d)1iii(1) does not take into consideration the fact that our facility cannot impact any municipal or residential users since we own all the property downstream. If a factor must be applied it should be the lowest rating.

RESPONSE: The Ground Water Use factor is simply an indication of the potential for environmental impact against the predominate use of ground water for potable water supplies. This factor is assigned strictly based on the ground water usage within the municipality in order to standardize the application of the Ground Water Use factor. The Department has not addressed the unique situations that may exist where a facility in a low use municipality has a significant localized impact or where a facility is unable to impact any public or private wells because of the special situations described by the commenter. The Department

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will use the ratings assigned to each municipality as presented in the Annual Fee Report and Fee Schedule to calculate environmental impacts and assess annual NJPDES permit fees.

COMMENT: In N.J.A.C. 7:14A-1.8(d)1iii(1), the Department proposes to take into consideration the level of ground water monitoring required by the NJPDES permit. In general, this approach seems to be appropriate; facilities starting to monitor past releases will greatly benefit since it could take several years before a release is detected.

RESPONSE: Under the NJPDES permit program, permits are issued for active ground water discharges and to evaluate past discharge activities. A permittee monitoring a past release would be subject to the minimum fee for detection monitoring. If environmental impacts are detected, the Department would upgrade the permit to compliance monitoring or corrective action and the permit fee would be assessed in accordance with N.J.A.C. 7:14A-1.8(d)2.

COMMENT: The Department should clearly define criteria to reduce the overall fee once remediation has been initiated. The permittee believes that this criteria will greatly encourage timely remediation.

RESPONSE: The Department believes that the lower Ground Water Monitoring Status factor and a lower minimum fee for those facilities that move from compliance monitoring to corrective action provides financial incentives to initiate corrective action. Failure to implement the corrective action plan, as required by the NJPDES permit, will place the facility in non-compliance. As a result of non-compliance, the facility is subject to fines and penalties.

COMMENT: Adding a ground water use factor in N.J.A.C. 7:14A-1.8(d)1iii(1) increased permit fees.

RESPONSE: The incorporation of the Ground Water Use factor in itself was not the driving force in increasing permit fees. The amendment includes a Ground Water Rating factor which is based on ground water use in the municipality, an aquifer rating, a permeability rating and the level of ground water monitoring. In the past, these parameters placed a greater emphasis on the locational factors which were beyond the control of the permittee. The Ground Water Rating factor balances these parameters and generates a multiplier of one to five rather than a multiplier of .1 to 1,000. The use of a Ground Water Use factor redistributed the cost of the program based on an important variable, the use of ground water.

COMMENT: Acres is a new concept in the fee formula at N.J.A.C. 7:14A-1.8(d)2i. While the Department is interested in finding the extent of the plume, the commenter stated that in certain areas of the State there are no plumes and where there are plumes, there is no relationship between the size of the plume and the size of the site.

RESPONSE: Where there is no plume on a site, the permittee is simply required to conduct detection monitoring. Where there is a plume, the Department agrees that the area of the facility may not supply a direct relationship to the degree of environmental impact, but the area provides an approximation of the potential environmental impact where the plume is not delineated. However, wherever possible, the environmental impact will be based on a surface projection of the area of the plume. In most cases, the Department will require the permittees to delineate the extent of contamination.

COMMENT: As proposed in N.J.A.C. 7:14A-1.9(d)2i, the total area of the site has no relationship to the degree of harm caused by the permittee's discharge. The permit fee should be based only on the area that is truly of environmental concern. The proposed formula will assess two permittees with the same quantity or toxicity of discharge different fees simply because one facility is larger than another.

RESPONSE: As stated above, the area of the facility may not supply a direct relationship to the degree of potential environmental impact. However, many permittees will be required by their NJPDES permits to delineate the extent of ground water contamination. In addition, other facilities will volunteer to delineate the plume as a result of financial incentives provided by the proposed fee assessment methodology.

COMMENT: The Department must clarify how it will address plume delineation in N.J.A.C. 7:14A-1.8(d)2i, where the permittee cannot fully delineate due to natural barriers, uncooperative off-site property owners, the availability of qualified well drillers, and other real world obstacles.

RESPONSE: Plume delineation is addressed through the NJPDES permit process and issues such as obstacles to successful plume delineation are part of the permit negotiation and permit adjudication process.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2i, the Department proposed an amendment to assess permit fees on the area of the plume of ground water contamination. This provision assesses disproportionately high fees to those facilities which have not delineated the plume. In many cases, older permits do not require plume delineation. Where delineation is required, the permittee may wait long periods of time before this information is reviewed by the Department. The Department should phase in this provision to allow adequate time for the Department to review this data.

RESPONSE: The objective of the Department's ground water quality management program is to identify, control, and reduce ground water contamination. While many older permits may not specifically require plume delineation, the NJPDES fee rules provide a financial incentive to do so. Under the proposed amendment in N.J.A.C. 7:14A-1.8(d)2i(2), a facility can analyze the cost of plume delineation and compare that cost to the potential savings in a reduced annual NJPDES permit fee. The Department will review plume delineation data and promptly approve or disapprove the delineation submitted. The Department does not see the need to phase in the use of area; if the plume has not been delineated, the Department will use the area of the facility in accordance with N.J.A.C. 7:14A-1.8(d)2i(1).

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii, the total weighted concentration used in the fee calculation is difficult to duplicate.

RESPONSE: The Department is developing an instruction package that will be mailed to all NJPDES ground water dischargers performing compliance monitoring or corrective action so that the total weighted concentration can be calculated by the permittee. For the FY90 fee assessment, the Department used the reported well monitoring data for the period July 1, 1987 through June 30, 1988. In a few cases, more recent monitoring results were used if data from the specified period was unavailable. All parameters with a standard or a limit established in the NJPDES permit are used. The calculation method is dependent on whether the plume has been defined. If the plume has been defined then the average concentration is calculated for each pollutant. Half of the reported detection limit is used for non-detectable values in the NJPDES permit. The average concentration is determined for each pollutant using all reported values from all monitoring wells. If a pollutant is reported as non-detectable at all wells, then that pollutant is dropped from the total weighted concentration. The average values are multiplied by the associated risk factors in Table I. These values are summed together and a square root applied to derive the total weighted concentration. Under this scenario, the environmental impact for facility Z is based on the average concentration of Pollutant A and the average concentration of Pollutant B. If the plume is not delineated, then the average pollutant concentration for each pollutant is calculated for each monitoring well for the selected monitoring period. The Department selects the well with the highest average pollutant concentration for use in the calculation of the total weighted concentration. Half of the reported detection limit is used for non-detectable values. Again, the average concentrations are multiplied by the associated risk factors, summed together and a square root applied. Under this scenario, the total weighted concentration for Facility X would be based on the average concentration of pollutant A from Well #1, the average concentration of pollutant B from Well #2 and the average concentration of pollutant C from Well #5.

COMMENT: The Department uses the highest average pollutant concentration in any well to calculate the total weighted concentration where the plume has not been delineated as described at N.J.A.C. 7:14A-1.8(d)2ii. This does not demonstrate conditions that might exist over the entire site. This procedure gives validity to spikes and anomalies that may have existed in one well at one time during the year. This mathematical approach is without basis and should be revised.

RESPONSE: As explained above, the highest average concentration, which is used when the plume is not defined, is an average selected from the monitoring well which over time displayed the highest concentrations. This process is not intended to measure the conditions at the site as the extent of environmental impact is unknown. Once this area of impact has been defined, the average concentration over the entire site is used.

COMMENT: One commenter stated that the Department's proposed amendment of N.J.A.C. 7:14A-1.8(d)2ii uses risk factors in the calculation of the total weighted concentration. There is no scientific justification for the risk factors and the relative ratio between them established in Table I of N.J.A.C. 7:14A-1.8.

RESPONSE: The risk factors in Table I of N.J.A.C. 7:14A-1.8 were adopted on June 12, 1985 and have been used in the environmental calculations for the FY87, FY88 and FY89 billings. The risk factors adopted in 1985 ranked pollutants according to toxicological data amassed by the Department. The Department used the risk factors in the calculation of the total weighted pollutant load for ground water NJPDES fees under the existing rule, N.J.A.C. 7:14A-1.8(d)1vi. The

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proposed amendment in N.J.A.C. 7:14A-1.8(d)2ii simply incorporated the existing risk factors in the calculation of the total weighted concentration.

COMMENT: The risk factors in Table I, proposed to be used in N.J.A.C. 7:14A-1.8(d)2ii, consist of a wide range of pollutants. Since the range covers chemicals high in risk and low in risk, the range reduces the effectiveness of the rules as a tool for assessing fees based on the impact of chemicals in the lower risk groups, which may be found in higher concentrations. The permittee encouraged the Department to develop more appropriate risk factors based on toxicological study and analyses of conditions at New Jersey facilities.

RESPONSE: As stated above, the Department has not proposed an amendment to the risk factors presented in Table I of N.J.A.C. 7:14A-1.8. The Department plans to reevaluate the risk factor matrix in the next fiscal year.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii, the Department should apply the square root to the product of the area multiplied by the total weighted concentration. This would minimize the importance of area in determing the environmental impact. Under the current formula, the environmental impact is strongly dependent on the area. The commenter stated that this proposal would create a more equitable rule while adhering to the spirit and formula of that commitment.

RESPONSE: The Department uses the cube root and the square root factor as a means of graduating the fee structure. In FY91, the Department will calculate environmental impact without a root factor. Establishing a fee structure based upon the actual environmental impact is consistent with our objective of distributing the cost of the program to those who have done the most to introduce pollutants into the environment. Area is a significant factor in determining the environmental impact. Facilities with larger areas of contamination have a greater environmental impact.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii, the Department should specify the units to be used to calculate the total weighted concentration.

RESPONSE: The Department inadvertently failed to include the applicable units and agrees that the units to be used to determine the total weighted concentration should be specified in the rules. The Department mailed each permittee a proposed fee assessment in which the total weighted concentration was calculated using milligrams per liter since most permit limits are specified as milligrams per liter. Parameters reported in other units were converted. N.J.A.C. 7:14A-1.8(d)2ii has been revised to reflect the proper units used.

COMMENT: For those NJPDES ground water permittees not performing detection monitoring, the Department should not penalize a permittee for ground water pollution which migrates from another property onto its property or for natural background conditions in the environmental calculation of the NJPDES fee.

RESPONSE: Contamination from sources outside the permittee's property and natural background contamination are issues that must be addressed in the NJPDES permit process. N.J.A.C. 7:14A-6 specifically requires that ground water quality is to be measured upgradient of pollution sources at the permittee's facility to determine natural background conditions. Therefore, a permittee will not be penalized for natural background conditions or upgradient pollution sources which are addressed in the NJPDES permit. Where a permittee is not in detection monitoring, the Department requires that the reported concentration of pollutants in all monitoring wells be used in the fee calculation.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii, the Department should not double count pollutants where a parameter is measured individually and as part of a generic determination such as total dissolved solids and chlorides.

RESPONSE: The Department agrees and will attempt to minimize duplicative pollutant concentrations from the total weighted concentration such as that identified by the commenter. If a permittee believes that this situation exists in the FY90 fee proposal, the Department's Fee Management Section should be contacted to correct the problem. Additionally, this situation could be addressed through a fee recalculation request.

COMMENT: Some permits have been issued with monitoring requirements which apply at certain wells. The Department should not apply the maximum pollutant concentration of these selective parameters in the total weighted concentration in N.J.A.C. 7:14A-1.8(d)2ii.

RESPONSE: The total weighted concentration is based on the all pollutant concentrations identified in the ground water monitoring wells at the site. Where the plume has been delineated, the average by parameter for the site will be used to calculate the total weighted concentration. Facilities that have not delineated the plume pose a greater risk to the environment. As such, the well with the highest average pollutant concentrations over time will be used to calculate the total weighted concentration.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii, the total weighted concentration includes pollutants which do not have permit limits. These parameters should not be used in the fee calculation.

RESPONSE: The Department agrees that the total weighted concentration is based on all chemical parameters with standards or limits established in the NJPDES permit. Parameters without standards are essentially monitor-only parameters and are not to be included in the fee calculation. This is consistent with the Department's prior calculation of NJPDES fees. The Department will review all environmental impacts calculated under N.J.A.C. 7:14A-1.8(d)2 to ensure that monitor-only parameters are not mistakenly included in the fee calculation. The Department has changed N.J.A.C. 7:14A-1.8(d)2ii to clarify the use of pollutants that are assigned limitations in the NJPDES permit in the calculation of the total weighted concentration.

COMMENT: The Department has not provided a provision in N.J.A.C. 7:14A-1.8(d)2ii to eliminate spurious high data that has not been confirmed at subsequent samplings.

RESPONSE: The Department's proposal utilizes the average pollutant concentrations over a 12-month monitoring period. This procedure minimizes the effect of high data. Spurious high data values are required to be reevaluated by the permittee in accordance with N.J.A.C. 7:14A-6.15 and N.J.A.C. 7:14A-2.5(a)14vi. The Department reviews ground water monitoring data submitted by NJPDES permittees to evaluate whether ground water contamination is present. Spurious high data values do not automatically place a permittee into a compliance monitoring program. Notification from the Department to initiate a compliance monitoring program is the result of consistent values above standard or localized extreme values.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii, the Department has proposed to utilize the "highest average" pollutant concentration. A permittee recommended that the Department use "average concentrations" and questioned how an average can be highest.

RESPONSE: As stated above, the highest average is an average value for a specific pollutant as measured in a specific well for the selected monitoring period. When the plume is unknown, the average is calculated by well for each pollutant. The well with the highest average concentration for each pollutant over the monitoring period is selected for the total weighted concentration. Therefore, pollutant concentrations can be selected from more than one monitoring well.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii, the Department should use the average concentration of all pollutants within the defined plume area and the average pollutant concentrations outside the plume along with the appropriate risk factors to calculate environmental impact. This approach would weigh the size and concentration of the plume in the environmental impact calculation for those required to delineate plume.

RESPONSE: The commenter's approach would be extremely difficult to implement. The Department's proposed amendment is founded on the assumption that a permittee installs the minimum number of wells required to delineate the plume. The commenter implies that permittees could install many wells outside the plume in an effort to reduce the average pollutant concentration. The installation of monitoring wells is addressed through the NJPDES permit process.

COMMENT: In N.J.A.C. 7:14A-1.8(d)2ii, the Department proposes to use the highest average concentration in the total weighted concentration where the plume has not been delineated. One permittee felt that the overall average concentration at the site would be more accurately representative of their environmental impact.

RESPONSE: The proposed amendment uses the highest average pollutant concentration where the plume has not been delineated to encourage permittees to delineate the extent of ground water pollution. Once the plume has been delineated, the average pollutant concentrations are used rather than the highest concentration of each pollutant from any monitoring well. The Department's goal is to provide a better definition of the extent of ground water contamination.

N.J.A.C. 7:14A-1.8(f) Annual Fees for Ground Water Discharges from Landfills

COMMENT: Increased permit fees for properly closed landfills are unjustifiable and a hardship to the community.

RESPONSE: The NJPDES fee schedule distributes the cost of the NJPDES program based on the impact the discharge has on the environment. For properly closed landfills, the fee assessment formula at

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N.J.A.C. 7:14A-1.8(f)1iii provides a lower closure status factor of .1 and N.J.A.C. 7:14A-1.8(h)2i provides a minimum fee of $500.00.

COMMENT: One landfill permittee expressed concern that his landfill fee increased significantly while the nature and amount of discharge did not change. This action is not consistent with the Department's intent to implement a fee schedule which graduates fees in proportion to the deleterious environmental impact of the permittee's discharge.

RESPONSE: The Department proposed amendments to the landfill fee methodology at N.J.A.C. 7:14A-1.8(f) to incorporate the use of the Ground Water Rating factor. The proposed Ground Water Rating factor in N.J.A.C. 7:14A-1.8(f) utilizes the existing aquifer rating, permeability rating, ground water monitoring status and operating status factors as set forth in N.J.A.C. 7:14A-1.8(d)1iii, and incorporates a new factor, Ground Water Use. However, these factors have been added together to obtain a Ground Water Rating factor of zero to five rather than multiplying these factors together. This amendment places a greater significance on the size, type and quantity of waste disposed or discharged, rather than the locational factors the permittee has no control over. The proposed fee schedule continues to graduate fees in proportion to the deleterious impact of the permittee's discharge.

COMMENT: One commenter stated that its fee calculation under the proposed amendment does not bear any relationship to the impact of the discharge or the need to regulate the facility; rather, the amendment is designed to recover the shortfall in revenue anticipated as a result of the decision in *Vi-Concrete v. Department of Environmental Protection,* 115 *N.J.* 1 (1989). The Department acknowledges that as a result of the Court's decision it will not assess a fee for those NJPDES permits issued to the owners of landfills which closed before January 1, 1982. The Department should only use monies generated through NJPDES fee assessments to cover the costs associated with the monitoring of NJPDES regulated landfills.

RESPONSE: The Department's proposed landfill budget is based on the estimated costs of processing, monitoring and administering the remaining NJPDES landfill permits issued to landfills operating after January 1, 1982. The reduction in the number of permits will allow staff to appropriately administer the remaining landfill permits. The landfill budget does not include the personnel costs that may be incurred by the Department to develop new rules for landfills that closed before January 1, 1982.

N.J.A.C. 7:14A-1.8(h) Minimum NJPDES Fees

COMMENT: Several commenters disagreed with the Department's proposal in N.J.A.C. 7:14A-1.8(h)2v to increase the minimum fee from $10,000 to $20,000 for all hazardous waste facilities (HWFs) and industrial waste management facilities (IWMFs). One commenter stated that he should not be listed as an IWMF since its Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., surface impoundments had been closed. Another commenter felt that a HWF which treats, stores and disposes a generator's hazardous waste poses a greater risk than an IWMF. Another commenter stated that the minimum fee was excessive and funds would be better spent implementing ground water remediation activities. Another commenter pointed out that all HWFs are not the same and only those conducting ground water monitoring activities pursuant to their RCRA permits should be classified as a HWF for fee assessment purposes. Another commenter stated that he had closed his RCRA regulated surface impoundment.

RESPONSE: Both Federal and state laws have singled out hazardous wastes for greater regulation. IWMFs are a subclass of HWFs and the regulatory framework for hazardous waste established by Congress through RCRA does not generally reflect the degree of risks for hazardous waste and treats all hazardous waste fundamentally the same. The nature of operation, whether the facility has a closed RCRA surface impoundment, treats, stores or disposes of any type of hazardous waste or is conducting ground water remediation resulting from any RCRA or non-RCRA source, places these facilities in a category which requires a greater degree of regulation by the Department. In all cases, the NJPDES fees assessed by the Department are to cover the costs associated with the permit program and the costs associated with ground water remediation are appropriately funded by the regulated facility. The higher minimum fee for HWFs and IWMFs is appropriate as it distributes a greater share of the NJPDES program costs to those facilities which demand a greater quantity of the Department's resources to process, monitor and administer the NJPDES permits issued for these sites. Therefore, the Department believes that a minimum fee of $20,000 for these facilities is appropriate.

COMMENT: In N.J.A.C. 7:14A-1.8(h)2v, the Department should establish a two-tiered minimum fee structure for those facilities classified as Industrial Waste Management Facilities (IWMFs) and Hazardous Waste Facilities (HWFs). The proposed minimum fee of $20,000 does not provide any incentive for permittees to initiate ground water remediation as provided for all other ground water permittees. The permittee recommended that those IWMF/HWF facilities conducting compliance monitoring be assessed a minimum fee of $40,000 while those conducting ground water remediation be assessed a minimum fee of $15,000.

RESPONSE: The Department agrees that the proposed minimum fee does not provide financial incentives through lower minimum fees for those HWFs and IWMFs which initiate ground water remediation. A financial incentive is provided for these facilities through the assignment of a lower ground water monitoring status factor. In the future, the Department will consider establishing a tiered minimum fee structure for these IWMFs and HWFs similar to the minimum fee structure for all other ground water discharges.

COMMENT: In N.J.A.C. 7:14A-1.8(h), inadequate information has been provided by the Department concerning the proposed minimum fees; therefore, it is almost impossible to determine whether the minimum fees assigned in the rules are fair and reasonable.

RESPONSE: N.J.A.C. 7:14A-1.8(h) provides that the lowest minimum fees for ground water permits are paid by those facilities that are merely monitoring to detect if the discharge or a past discharge activity impacted ground water. The highest minimum fees are applied to those facilities in compliance monitoring, where ground water impacts have been identified but no action to mitigate the source of pollution has been initiated by the permittee. N.J.A.C. 7:14A-1.8(h)2ii provides that once the permittee initiates corrective measures, a lower minimum fee is assessed to reflect that actions have been taken to mitigate the source.

COMMENT: One commenter recommended increasing the minimum fee in N.J.A.C. 7:14A-1.8(h)2i from $500.00 to $1,000 for those permittees conducting detection monitoring and assigned a ground water monitoring status of two. Those facilities not required to monitor ground water require less administration than those conducting detection monitoring and this difference should be reflected in the minimum fees.

RESPONSE: The Department agrees that facilities conducting detection monitoring do require more administration than those facilities not required to conduct ground water monitoring. However, these facilities do not differ significantly in terms of environmental impact which is the basis for NJPDES fees. Where no monitoring is required, the Department has established that the nature of the discharge poses minimal risk to the environment. With detection monitoring, no environmental impact has been established. Therefore, the Department will continue to assess a minimum fee of $500.00 for those NJPDES permittees with a ground water monitoring status of one or two as described at N.J.A.C. 7:14A-1.8(h)2i.

COMMENT: With respect to N.J.A.C. 7:14A-1.8(h)2iv, one permittee felt that the Department erred in assigning his operating landfill a minimum fee of $2,500. Since this facility was conducting detection monitoring, the permittee felt that the minimum fee should be $500.00.

RESPONSE: The Department has established the minimum fees for landfills based upon the operating status of the facility at N.J.A.C. 7:14A-1.8(h)4. Where a landfill is operational, the minimum fee is $2,500 in accordance with N.J.A.C. 7:14A-1.8(h)4 regardless of the ground water monitoring status. Facilities closed before January 1, 1982 or those that have gone through proper closure activities are assessed a minimum fee of $500.00. Those facilities that are still operating or that closed after January 1, 1982 but have not been properly closed are subject to a minimum fee of $2,500.

COMMENT: In N.J.A.C. 7:14A-1.8(h)2iii, the Department has proposed a minimum fee of $5,000 for those facilities conducting compliance monitoring. This is extremely unfair to smaller ground water dischargers since the Department has indicated that a generic and streamlined "general permit" will be applicable for many service stations. These permits will not require extensive analysis or evaluation by NJPDES permit writers since a bulk of the work has already been done and is easily applied generically to other service station permits. Another commenter suggested that the minimum fee for Discharge to Ground Water—category 7 "general permits" be consistent with other NJPDES general permit fees, which is usually $500.00.

RESPONSE: The Department does not issue "general permits" for ground water at this time, nor does the Department assess a pre-set permit fee for general permits. Individual permit fees are based on the environmental impact calculated in accordance with the appropriate fee assessment methodology found at N.J.A.C. 7:14A-1.8. A permittee with

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no active ground water discharge will be assessed a minimum fee if the NJPDES permit simply requires detection monitoring to evaluate whether a past discharge activity impacted ground water quality. The minimum fees established at N.J.A.C. 7:14A-1.8(h) are based on the relative impact posed by the discharge to the environment. A greater risk is posed to the environment by a discharge with an unknown area of influence. Once ground water remediation activities are initiated at the facility and the risk posed by that discharge is being mitigated, the facility will be assessed a lower minimum fee. In accordance with N.J.A.C. 7:14A-1.8(h)2iii, the minimum fee once corrective measures are initiated is $1,500.

COMMENT: It is requested that the Department classify those facilities which are issued permits for ground water monitoring only, in light of known contamination, as alternative concentration limits and be assessed the minimum fee of $500.00 pursuant to N.J.A.C. 7:14A-1.8(h)2i.

RESPONSE: As set forth in N.J.A.C. 7:14A-1.9(h), the minimum fee schedule for ground water discharges is based upon the ground water monitoring status factor. The Department determines the appropriate ground water remediation strategy through the NJPDES permit process. A permittee may be required to remove the source of ground water contamination and monitor to ensure that corrective action has been successful. In these instances, alternative concentration limits may be established to monitor the required corrective action. Facilities with source removal and alternative concentration limits, and facilities conducting active ground water remediation for corrective action are both assigned a ground water monitoring status of five as provided at N.J.A.C. 7:14A-1.8(d)1iii, and the minimum fee for facilities with a ground water monitoring status of five is $1,500 as stated at N.J.A.C. 7:14A-1.9(h).

General Comments on the application of N.J.A.C. 7:14A-1.8 and the NJPDES Annual Fee Report and Fee Schedule

COMMENT: A permittee stated that his NJPDES-SIU permit expired in 1987. The permittee felt that a permit fee should not be required for this discharge.

COMMENT: A permittee felt that his fee assessment was extremely excessive since he was classified as a minor discharge by the United States Environmental Protection Agency (USEPA). The permittee uses water from the Elizabethtown Water Company in its industrial cooling process. The permittee had a laboratory compare the quality of the tap water and the non-contact cooling water discharged and the results were practically the same. As a result, the permittee feels that it is being overcharged and taken advantage of.

COMMENT: The Statewide application of a pollutant risk factor in N.J.A.C. 7:14A-1.8(c)1i is inappropriate. The risk associated with a pollutant such as BOD (biochemical oxygen demand) does not cause the same impact on a large waterway and a small waterway.

COMMENT: One commenter objected to the inclusion of chromium in his fee assessment since it is below the detection limit as established by their laboratory.

COMMENT: The Department has double-counted chromium in its surface water fee assessments by calculating loadings for total chromium, hexavalent chromium, and trivalent chromium.

COMMENT: My NJPDES permit establishes a discharge limitation for total chromium. Total chromium is comprised of both hexavalent and trivalent chromium. The Department has assigned a risk factor of 100,000 for total chromium and for hexavalent chromium. Trivalent chromium was assigned a risk factor of 100. All chromium discharged from my facility is in the trivalent chromium form, therefore, my environmental impact should be based on trivalent chromium not total chromium.

COMMENT: One commenter stated that charging $17 million to run the NJPDES permit program is unreasonable. The commenter thought that it should be done for less, and that many charges to be paid through the NJPDES system are not part of the administration, monitoring or issuance activities.

COMMENT: The Department's budget is not prepared as a business or authority would prepare its budget. An evaluation of changing program needs is not completed. For example, the actual expenditures for vehicles in FY88 was $72,000 compared with a budget proposal of $198,000 in FY90. Telephone expenditures in FY88 were only $52,000 yet the Department has budgeted $131,300 for FY90. There is no explanation for this increase.

COMMENT: The Department spent 363.5 hours on Rahway Valley Sewerage Authority in FY88. Using an average hourly rate of $91.32, the cost of processing, monitoring and administering this NJPDES permit was $33,198. Rahway Valley Sewerage Authority's fee was $78,000 last year. The fee any one facility is paying far outweighs the services the Department is providing to the facility. There is no backup as to how Rahway Valley Sewerage Authority profited from this type of regulation.

COMMENT: The Department's budget includes 134 people for the surface water program and a total of 27 or 20 percent are for staff in the Management Services Element. The Ground Water Program has 74 positions while only four or five percent are assigned to the Management Services Element. The commenter requested that the Department explain this difference.

COMMENT: This year the Department has budgeted $242,000 for temporary services or 14 percent of the total salaries for the surface water program. These temporary employees are used for data entry and receptionists. The Department should hire staff rather than pay for temporary services.

COMMENT: One commenter stated that the NJPDES program must be audited by an outside agency to ensure that NJPDES fees are allocated appropriately. The lack of an outside audit is like "the fox watching the hen house."

COMMENT: Local budgets must be received by the New Jersey Division of Local Government by November 1 of each year. Permittees must receive their proposed fee assessments by October to include these costs in their budget. Mailing the proposed fees on November 17 is just too late for us to incorporate the fee into our budget.

COMMENT: One commenter stated that the Department's ability to charge fees for services imposed on public agencies has virtually become a situation of taxation without representation. The appropriateness of these fees is not reviewed and approved by the Assembly and the Senate. We would not object if these fees were a few dollars and only covered the costs of processing, monitoring and administering the NJPDES permits, but when fees become unreasonable charges to the public, they in effect become taxes which are out of control. Another commenter stated that the NJPDES program is functioning as a taxation program. There should be a total review of the budgeting procedure, because what is going on is just unacceptable and at one point the Legislature is going to hear what has happened.

COMMENT: The Department is including the costs associated with activities not required by Title 4 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1251 et seq., which is the permit section. Title 3 of the Clean Water Act covers planning activities and enforcement. Activities distantly connected to the NJPDES permits such as the development of wasteload allocations, water quality based effluent limitations, stream modelling, computer modelling, bioassay testing, supervising the installation of ground water monitoring wells, evaluating and approving ground water remediation alternatives, and enforcement are not part of processing, monitoring and administering the NJPDES permits. The Department is transferring the responsibility for activities other than permitting that is required by the Clean Water Act to the NJPDES program. Since these activities are not required under Title 4 of the Clean Water Act, they should not be included in the NJPDES budget.

COMMENT: The costs of programs such as stream modelling should not have to be borne by those permittees who do not benefit by such monitoring programs. One permittee suggested that the Department develop a separate cost-sharing system to cover activities that benefit certain permittees.

COMMENT: Two commenters stated that the cost of permit enforcement should not be included in the NJPDES program budgets as it is not part of administering a permit. The Department should separate enforcement costs from the administrative costs so that the permittees do not have to pay for enforcement.

COMMENT: One commenter stated that if NJPDES fees must be used for enforcement activities, then the penalties received for NJPDES violations should be used to offset the cost of the NJPDES program.

COMMENT: It is not possible to conduct a thorough evaluation of the fee schedule and the total costs to be derived, as there is no breakdown between surface water dischargers or ground water dischargers or indirect dischargers, nor is there a breakdown of how many staff hours will be spent in each of those areas.

COMMENT: An organizational chart showing where people work should be included so that the overall program may be evaluated. A brief description of each of the personnel and their relationship to the NJPDES program should be included so that their worth to the program may be evaluated.

COMMENT: A permittee objected to the use of stream rating factor in N.J.A.C. 7:14A-1.8(c) since it increased his fee and he has no control over it.

COMMENT: The stream ratings assigned to the Hudson River and the Upper Hackensack River are both 1.42. However, the environmental impacts of a discharge to the Upper Hackensack River could not be comparable to a discharge to the Hudson River. The Hudson River is

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more similar to the Delaware River Zone 2 (Trenton to Northeast Philadelphia) and should be assigned a similar stream rating.

COMMENT: One commenter pointed out that the Department has recognized a need for a comprehensive plan for dealing with the contamination of ground water resources in the Newark metropolitan area. But the application of long term ground water remediation by one facility in terms of accomplishing some regional water quality bill is not reasonable at this time. The Ironbound district is in the industrial area on reclaimed marshland. The ground water is heavily degraded by saline intrusion as well as man-induced pollutants. Based on this assessment, the aquifer rating of eight for the Brunswick formation in the Newark Ironbound section is inappropriate.

COMMENT: The stream rating factor listed for Ocean Waters, Cape May County in the Annual Fee Report is not consistent with the calculation methodology.

COMMENT: One commenter stated that the use of a stream rating factor is wrong because it penalizes an industry because of its geographic location. Whether the discharge occurs to a pristine brook or a heavily polluted river should not affect the fee assessment. Meeting permit requirements and discharge limitations should be the basis of the fee assessment.

COMMENT: One commenter stated that their company would rather shut down than pay this ridiculous fee.

COMMENT: Comparing our fee assessment to other dischargers indicates that facilities with higher flows and lower treatment levels are paying about the same.

COMMENT: A facility can be actively involved with several divisions within the Department. As a result, a facility could be required to pay ECRA fees, NJPDES fees, and any solid and hazardous waste management fees. The Department has designated a lead division for these types of reviews. The Department should include a provision to allow for fee reductions or exclusions in those instances where the Division of Water Resources defers review jurisdiction to another division. Another commenter stated that facilities going through an ECRA required cleanup must pay ECRA fees as well as establish financial assurance for the cleanup. An additional NJPDES fee should not be required in these instances. Collecting multiple annual fees while only maintaining passive interest is unjustified.

COMMENT: The rate or multiplier used in the fee calculation appears to be of significant importance. However, we cannot find in the Annual Fee Report or the proposed rules the basis of the use of this number.

COMMENT: The Department has established a risk factor for each pollutant. The commenter stated that the Department should reevaluate these risk factors because the environmental impact would vary enormously depending on the size of the discharge as compared to the receiving stream.

COMMENT: The Department does not seem realistic in its goal to clean New Jersey's waters. The stream which receives our wastewater also receives stormwater runoff which is more polluted than our discharge.

COMMENT: The Department should not utilize factors in the environmental impact calculation that are beyond the control of the NJPDES permittee such as the POTW efficiency that is used in the SIU fee calculation.

COMMENT: One commenter stated that his facility has paid over $100,000 in NJPDES permit fees over the past few years. His proposed fee for FY90 is $60,000 which places the company in the top five percent. If fees are based on environmental impact and according to our fee we have a significant impact, then why have we been waiting since 1985 for a new permit? Are we paying for the Department to subsidize other permits or Department programs?

COMMENT: Small wastewater treatment plants, package plants, and community septic systems are paying high permit fees. The commenter stated that the fees should be based on the actual flow not the design flow.

COMMENT: The Department's fee schedule is punitive and does not recognize circumstances where another program in the Department is the lead for engineering work and the implementation of closure activities.

RESPONSE: The comments above pertain either to the application of the existing NJPDES fee rule at N.J.A.C. 7:14A-1.8 or the application of the 1989-90 NJPDES Annual Fee Report and Fee Schedule and therefore will be answered separately. Even though the comments above do not pertain to the Department's proposed amendments to N.J.A.C. 7:14A-1.8, the Department has included the comments in this adoption document because many commenters failed to distinguish which comments applied to the amendments to N.J.A.C. 7:14A-1.8 and which comments applied to the assessment of NJPDES fees in general. The Department's response to the above comments are included in the Department's notice adopting the 1989-90 NJPDES Annual Fee Report and Fee Schedule in this issue of the New Jersey Register.

Summary of Agency-Initiated Changes.

The Department has corrected the grammar in N.J.A.C. 7:14A-1.8(h)2v to clearly state that the $20,000 minimum fee is required from HWFs, IWMFs, NJPDES-DGW/IWMFs and NJPDES-DGW/IWMFs with a permit by rule.

The Department has clarified the application of the minimum fees in N.J.A.C. 7:14A-1.8(h)2 to state that landfills and residuals are covered in N.J.A.C. 7:14A-1.8(h)3 and 4, not in N.J.A.C. 7:14A-1.8(h)2.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) The general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1.-6. (No change.)

7. The Department, in calculating Environmental Impact, shall use information reported by the permittee on Discharge Monitoring Reports (DMRs) and/or Monitoring Report Forms (MRFs) for the 12 month period for which data is available on the Department's computer. The selected 12 month monitoring period will be documented in the Annual NJPDES Fee Schedule Report. Where this information is not available, the Department shall use permit limitations, information submitted in permit applications, technical reports prepared by the Department or submitted by the permittee, or other permits issued by the Department.

8. (No change.)

9. The annual fee for all discharges is calculated by applying the formula: Fee = (Environmental Impact × Rate) + Minimum Fee, where:

i.-ii. (No change.)

iii. Minimum fee is a base cost which is added to the calculated individual fee. The minimum fees are set forth in (h) below.

10. The Department shall take either the square root of the total pollutant load as calculated in (c)1i below for surface water discharges, the quantity discharged as calculated in (d)1ii below for permittees subject to (d)1 below, or the total weighted concentration as calculated in (d)2ii below for permittees subject to (d)2 below to calculate the environmental impact for the period July 1, 1989 to June 30, 1990. The Department shall use the total pollutant load, total weighted concentration or quantity discharged in all subsequent fee years.

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

(d) The annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is based upon the level of monitoring and/or remedial activity required by the Department at the permitted site. Permittees not required to conduct ground water monitoring shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees required by the Department to conduct detection monitoring, which is defined as monitoring performed by the permittee to determine whether current or past discharges have resulted in environmental impact, shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees which are required by the Department, in a NJPDES permit, administrative order, administrative consent order, directive letter, or other form of notice, to conduct compliance monitoring in accordance with N.J.A.C. 7:14A-6.15, source removal, and/or ground water remediation, shall use the Environmental Impact in d(2) below in the annual fee formula.

1. The Environmental Impact of a Discharge to Ground Water for permittees not required to conduct ground water monitoring or permittees required to conduct detection monitoring is derived by applying the formula: Environmental Impact = (Risk × Quantity × Ground Water Rating Factor) where:

i. Risk is the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each type of waste stored, treated or discharged. The rating numbers are assigned as follows:

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Rating	Risk
1	Non-contact cooling water, treated ground water, filter backwash, sanitary wastewater with at least secondary treatment.
2	Other treated and untreated sanitary wastewater, food processing waste, stormwater runoff including runoff from non-hazardous waste storage areas, sanitary sludge.
5	Non-hazardous industrial process waste.
15	Metal plating waste, hazardous industrial process waste, landfill leachate, or ground water, wastewater, stormwater runoff or sludge containing hazardous constituents.

ii. Quantity is the average daily volume in millions of gallons discharged by the permittee for the monitoring period selected by the Department in (a)7 above.

iii. Ground Water Rating Factor is the sum of the Ground Water Monitoring Status Factor, the Aquifer Factor, Ground Water Use Factor and Permeability Rating divided by 10 where:

(1) Ground Water Monitoring Status Factor is the rating number, assigned to the facility based on the level of monitoring and/or remediation required at the facility, as set forth in the NJPDES permit, administrative order, administrative consent order or directive letter in accordance with N.J.A.C. 7:14A-6.15, as follows:

Rating	Status
1	Permittee is not required to conduct ground water monitoring under the NJPDES permit.
2	Permittee is conducting post-closure or post remediation monitoring.
2	Permittee is required to conduct detection monitoring.
5	Ground water remediation and/or hydraulic source control is being performed at the site.
5	Alternative concentration limits have been established.
10	Compliance monitoring is required as ground water contamination has been identified in detection monitoring phase and/or ground water remediation is required.

(2) Aquifer Factor is the rating number, based on ground water yield potential, assigned to each aquifer formation listed in Table II. Where a facility is located on an unlisted aquifer, the Department will determine the aquifer factor. Where the facility is located on more than one aquifer the highest rating number will be assigned.

(3) Ground Water Use is the rating number assigned to the municipality where the permitted facility is located based on the percentage of the municipality that relies on public or private wells for drinking water and the volume of ground water withdrawn in million gallons per day (MGD). The Department, in the Annual NJPDES Fee Schedule Report, prepared pursuant to (b) above, shall set forth the individual ratings assigned to each municipality. Where a municipality's percent use and volume result in different ratings, the highest Ground Water Use rating number derived below shall apply. Ground Water Use rating numbers are assigned as follows:

Rating	Ground Water Use	Percent Use	Volume in MGD
5	A	>50%	>3
3	B	10%-50%	.1-3
1	C	<10%	<.1

(4) Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation immediately beneath the regulated unit or if present, the facility liner material for facilities in detection monitoring. For all other facilities, the permeability factor is based on the hydraulic conductivity of the geologic material contaminated. Where permeability has not been provided to the Department by the permittee, the Department shall assume a permeability 10^{-2}. The rating numbers are assigned as follows:

Rating	Permeability
10	$<10^{-7}$
11	10^{-6}
12	10^{-5}
14	10^{-4}
18	10^{-3}
20	10^{-2}
22	$>10^{-2}$

2. The Environmental Impact of a Discharge to Ground Water for permittees required to conduct compliance monitoring, source removal and/or ground water remediation is derived by applying the formula: Environmental Impact = (Area × Total Weighted Concentration × Ground Water Rating Factor) where:

i. Area is:

(1) The total acres of the permitted site; or

(2) Where the permittee has delineated the plume, in accordance with the requirements of the NJPDES permit, the total area in acres affected by the plume based on a surface projection.

ii. Total Weighted Concentration is the sum of all *[monitored]* pollutant concentrations ***limited in the NJPDES permit and converted to milligrams per liter (mg/l)*** multiplied by their associated risk as listed in Table I. The highest average pollutant concentration detected in any well during the monitoring period selected by the Department in (a)7 above shall be used unless the permittee has delineated the extent of the plume as required by their NJPDES permit. Where plume has been delineated, the Department shall use the average pollutant concentrations for all wells for the monitoring period selected by the Department in (a)7 above.

iii. Ground Water Rating Factor is the number derived in (d)1iii above.

(e) (No change.)

(f) The annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water from sanitary landfills and sites containing wrecked or discarded equipment is derived by applying the formula: Environmental Impact = (W1 + W2) × (Closure Status Factor + Ground Water Rating Factor) where:

i. (No change.)

ii. W2 is the total cumulative amount of each waste type received (in cubic yards) since January 1, 1985 divided by 4,840 (the square yards in an acre) and multiplied by the rating number assigned to each waste type as set forth in (f)1i above.

iii. Closure Status Factor is the rating number, based on the operating status of the landfill, assigned by the Department to each facility. The rating numbers are assigned as follows:

Rating	Closure Status
1.0	Operating landfill and sites containing wrecked or discarded equipment.
0.5	Landfill terminated after January 1, 1982 without a Department approved closure plan.
0.2	Landfill terminated prior to January 1, 1982.
0.1	Landfill terminated and properly closed in accordance with a Department approved closure plan.

iv. Ground Water Rating Factor is the number derived under (d)1iii above.

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(g) (No change.)

(h) Minimum fees are as follows:

1. (No change.)

2. The minimum fee for Discharge to Ground Water (DGW) permits*, **except for residuals and landfills covered in (h)3 and 4 below,*** shall be assessed as follows:

i. Facilities assigned a Ground Water Monitoring Status Factor of 1 or 2 under (d)1iii(1) above shall be assessed a minimum fee of $500.00;

ii. Facilities assigned a Ground Water Monitoring Status Factor of 5 under (d)1iii(1) above shall be assessed a minimum fee of $1,500;

iii. Facilities assigned a Ground Water Monitoring Status Factor of 10 under (d)1iii(1) above shall be assessed a minimum fee of $5,000;

iv. Facilities who have obtained a ground water discharge permit-by-rule pursuant to N.J.A.C. 7:14A-5.5(a) shall be assessed a minimum fee of $250.00; and

v. Hazardous Waste Facilities regulated by N.J.A.C. 7:26 *[and]* **,* Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4 *[or]**,* facilities that have been issued a NJPDES DGW/IWMF permit *[or]* ***and facilities with*** a DGW/IWMF permit-by-rule shall be assessed a minimum fee of $20,000.

3.-6. (No change.)

7. The minimum fee for an emergency permit issued pursuant to N.J.A.C. 7:14A-2.2 shall be determined based on (h)1 and 2 above but in no case will it be less than $1,000.00.

TABLES I and II (No change.)

(a)

DIVISION OF WATER RESOURCES

Notice of Administrative Correction
Water Supply Allocation Permits
Fees for Water Allocation Permits
N.J.A.C. 7:19-3.8

Take notice that the Department of Environmental Protection has discovered an error in the text of the readoption with amendments of N.J.A.C. 17:19, Water Supply Allocation Permits, as proposed in the November 20, 1989 New Jersey Register at 21 N.J.R. 3594(a) and readopted in the March 19, 1990 New Jersey Register at 22 N.J.R. 932(a).

N.J.A.C. 7:19-3.8(h), prior to the readoption, contained a requirement that annual fees or initial fees due between August 1, 1985 and the subchapter's effective date be paid by August 1, 1986. The Department intended to delete this no longer necessary subsection in the proposed readoption, but inadvertently failed to do so either in that document or the final readoption notice. Since the subsection is now obsolete by its own terms, the Office of Administrative Law has agreed to its deletion through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule (as published in the March 19, 1990 New Jersey Register) follows (deletions indicated in brackets [thus]):

7:19-3.8 Fees for Water Allocation Permits

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

[(h) Annual fees or initial fees, which were due between August 1, 1985 and the effective date of these rules, shall be paid on or before August 1, 1986.]

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Rule Invalidation
Volatile Organic Substances in Consumer Products
N.J.A.C. 7:27-23

Take notice that the validity of provisions of N.J.A.C. 7:27-23, Volatile Organic Substances in Consumer Products, has been affected by the Superior Court of New Jersey, Appellate Division, in *In the Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products,* ____ *N.J. Super.* ____, Dkt. No. A-1226-89T1 (App. Div. February 26, 1990).

Please contact the Department of Environmental Protection for further information regarding this decision.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

HEALTH

(c)

PARENTAL AND CHILD HEALTH SERVICES

Birth Defects Registry
Live Births
Readoption with Amendments: N.J.A.C. 8:20

Proposed: November 20, 1989 at 21 N.J.R. 3636(a).

Adopted: March 2, 1990 by Leah Z. Ziskin, M.D., M.S., Acting Commissioner, Department of Health.

Filed: March 2, 1990 as R.1990 d.187, **without change.**

Authority: N.J.S.A. 26:8-40.20 et seq., specifically 26:8-40.26.

Effective Date: March 2, 1990, Readoption; April 2, 1990, Amendments.

Expiration Date: March 2, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:20.

Full text of the adopted amendments follows:

8:20-1.2 Reporting requirements

(a) Any infant who is born to a resident of the State of New Jersey, or who becomes a resident of the State before one year of age, and who shows evidence of a birth defect either at birth or any time during the first year of life shall be reported to the State Department of Health, Special Child Health Services Program.

1. For reporting purposes, the conditions listed as Congenital Anomalies (Diagnostic Codes 740.00 through 759.90) in the most recent revision of the International Classification of Diseases, Clinical Modification, shall constitute reportable defects. In addition, there are several other conditions considered to be defects that are not listed under Diagnostic Codes 740.00 through 759.90 which describe Congenital Anomalies. The following birth defects are also required to be reported to the Special Child Health Services Program.

i. Congenital Anomalies, including:

(1) (No change.)

(2) Spina bifida with and without mention of hydrocephalus.

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

(6) Bulbus cordis anomalies and anomalies of cardiac septal closure such as: common truncus; transposition of great vessels; Tetralogy of Fallot; common ventricle; ventricular septal defect; ostium secundum type atrial septal defect; endocardial cushion defects; cor biloculare; and any other defects of septal closure.

(7) (No change.)

(8) Other congenital anomalies of circulatory system, such as: patent ductus arteriosus (only in infants larger than 2500 grams); coarctation of aorta and other anomalies of the aorta, aortic arch or atresia and stenosis of the aorta; anomalies of pulmonary artery; anomalies of great veins, absence or hypoplasia of umbilical artery; other anomalies of peripheral vascular system; or other unspecified anomalies of circulatory system.

(9)-(10) (No change.)

(11) Other congenital anomalies of upper alimentary tract, such as: anomalies of tongue; anomalies of mouth and pharynx; tracheoesophageal fistula, esophageal atresia, and stenosis and other anomalies of esophagus; congenital hypertrophic pyloric stenosis, congenital hiatal hernia; other anomalies of stomach; and other unspecified anomalies of upper alimentary tract.

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(12)-(15) (No change.)

(16) Other congenital anomalies of limbs, such as: syndactyly; reduction deformities of upper limb; reduction deformities of lower limb, including shoulder girdle; and other anomalies of lower limb, including pelvic girdle.

(17)-(20) (No change.)

ii. Other conditions, including:

(1) Certain endocrine, nutritional and metabolic diseases and immunity disorders, includes congenital hypothyroidism; congenital hypoparathyroidism; hypopituitarism; diencephalic syndrome; adrenogenital syndrome; testicular feminization syndrome; phenylketonuria; albinism; maple syrup urine disease; argininosuccinic aciduria; glycogen storage diseases; cystic fibrosis; alpha-1 antitrypsin deficiency; DiGeorge's syndrome; congenital deficiencies of humoral immunity; cell-mediated immunity; combined immunity deficiencies; and other specified and unspecified disorders of the immune mechanisms.

(2) Certain diseases of the blood and blood forming organs, includes hemolytic diseases of the newborn; G-6PD deficiency; hemophilia (all types); Von Willebrand's disease; and sickle cell anemia or other hemoglobinopathies.

(3) (No change.)

(4) Certain diseases of the circulatory system, includes endocardial fibroelastosis; congenital Wolfe-Parkinson-White syndrome; and Budd-Chiari syndrome.

(5) Certain diseases of the digestive system, includes abnormalities of jaw size, micrognathia and macrognathia; congenital inguinal hernia with gangrene (only in females), congenital inguinal hernia with obstruction with no mention of gangrene (only in females), congenital inguinal hernia without obstruction with no mention of gangrene (only in females), umbilical hernia (only if not covered by skin), epigastric hernia.

(6) Certain complications of pregnancy, childbirth, and the puerperium, includes amniotic bands, amniotic cyst.

(7) Certain diseases of the skin and subcutaneous tissue, pilonidal sinus.

(8) Certain conditions originating in the perinatal period, includes fetal alcohol syndrome, probable fetal alcohol syndrome (includes facies), fetal alcohol effects, fetal hydantoin (Dilantin) syndrome, bronchopulmonary dysplasia, unspecified TORCH infection and certain congenital infections including congenital syphilis, congenital rubella, cytomegalovirus, toxoplasmosis, hepatitis, herpes simplex.

(9) Neoplasms, includes lipomas of skin and subcutaneous tissue of face and other skin and subcutaneous tissue, intrathoracic and intra-abdominal organs, spermatic cord, other specified sites, lumbar, sacral, paraspinal, and other unspecified sites; benign neoplasms of skin includes blue nevus, pigmented nevus (include if greater than four inches in diameter), papilloma, dermatofibroma, syringoadenoma, dermoid cyst, hydrocystoma, syringoma; other benign neoplasms of lip, eyelid, ear, external auditory canal, skin and other unspecified parts of face, scalp, skin of neck, skin of trunk, skin of upper limb, skin of lower limb, other specified and unspecified sites including hairy nevus; hemangioma (include if: greater than four inches in diameter, multiple, more than five in number or cavernous hemangioma) of skin and subcutaneous tissue, intracranial, intra-abdominal cystic hygroma; lymphangioma of any site, hemangioma of other and unspecified site; and certain malignant neoplasms including Wilm's tumor, retinoblastoma, other congenital neoplasms including neuroblastoma, medulloblastoma, teratoma, fibrosacrcoma, histiocytosis (malignant), neurofibromatosis.

(b) Any live born infant with a birth defect who has not been previously registered and has expired shall be reported. Such reports shall indicate that the infant has expired.

(c) The administrative officer of every health care facility shall be responsible for establishing the reporting procedures for that facility. The reporting procedures must insure that every infant who is initially diagnosed as having a birth defect shall be reported to the Department. All presumptive, tentative, pending, or rule out diagnoses will be reported at the time of discharge, if the child will be diagnosed at a later time or if test results are pending.

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

(g) The reports made pursuant to these rules are to be used only by the Department of Health and other agencies that may be designated by the Commissioner of Health and shall not otherwise be divulged or made public so as to disclose the identity of any person; and such reports shall not be included under materials available to public inspection pursuant to P.L. 1963, c. 73 (N.J.S.A. 47:1A-1 et seq.).

(h) Cytogenetic laboratories shall report the results of all postnatal chromosomal abnormalities.

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

(a)

HEALTH FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE)

Readoption: N.J.A.C. 8:31A

Proposed: December 18, 1989 at 21 N.J.R. 3872(a).

Adopted: February 16, 1990 by Leah Z. Ziskin, M.D., M.S., Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: February 20, 1990 as R.1990 d.167, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq.; specifically 26:2H-5b.

Effective Date: February 20, 1990.

Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:

COMMENTER: Betty Bacharach Rehabilitation Hospital

COMMENT: The Department should periodically rebase the system.

RESPONSE: SHARE regulations provide for the development of alternate rates based on a comparison of the current base year approved costs to current base year actual expenditures. Therefore, rebasing is part of the current regulations.

COMMENT: The overspending challenge should be eliminated.

RESPONSE: The overspending challenge is for base year expenditures incurred without the approval of the Department of Health. Hospitals had an opportunity to appeal these expenditures in the base year. It would be inappropriate to automatically waiver costs which have been deemed unreasonable in an earlier time period. A hospital may address those expenditures in the current rate year as management changes.

COMMENT: A separate rate or add-on for head trauma and spinal patients should be developed.

RESPONSE: Since SHARE regulations reimburse hospitals the reasonable average covered inpatient costs for Blue Cross and Medicaid patients in the form of a per diem for each patient day experienced, a separate rate is inappropriate. Adjustments for case mix changes may be addressed through the appeals process.

COMMENT: Bad debts should be included in "total costs."

RESPONSE: The SHARE system is not an all payer system; it would be unfair to place the entire burden for bad debts on New Jersey Blue Cross and Blue Shield and Medicaid.

COMMENT: Depreciation should be based on cost studies similar to the DRG system.

RESPONSE: The Department is currently reviewing changes to SHARE regulations; the need to reform the method for determining reasonable depreciation reimbursement will be considered.

COMMENT: The Department of Health should be able to negotiate a rate after the proposed alternate rate is issued, but well before the Level I hearing date. This would save the hospital the time and cost of preparing an official Level I Appeal Document.

RESPONSE: The Department has the flexibility to negotiate rates. However, this authority should neither be abused nor used without sufficient cause. The Level I Appeal Document is necessary for a comprehensive evaluation of rate adjustments either at Level I or subsequent negotiations. Although the Level I Appeal Document results in time and financial expenditures for the hospital, it also results in a formalized hospital justification for proposed rate increases. Without this justification, there would be an inadequate supporting record for any rate changes.

COMMENT: The overspending challenge should be recalculated to include the additions to the Labor Proxy given to the DRG hospitals prior to 1989.

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RESPONSE: This comment did not specify the reasons for the requested adjustment. Recent revisions to SHARE regulations insure equity in the development of the SHARE and Chapter 83 economic factors.

COMMENT: Additional funds provided for the costs associated with the treatment of AIDS cases and universal precautions. This should be a general issue, not left to individual hospital appeals.

RESPONSE: As with other management changes, the needs and costs may vary by hospital. The current regulations provide hospitals the opportunity to appeal and be reviewed on a case by case basis.

COMMENT: Additional funds should be provided for escalating costs of trash removal.

RESPONSE: Increases in costs resulting from inflation are addressed through the economic factor calculation. Management changes are addressed through the appeals process, since the need and cost may vary by hospital.

COMMENT: Any adjustment given to the DRG hospitals' economic factor or cost structure should automatically be given to the SHARE hospitals.

RESPONSE: The methodology used to determine both SHARE and Chapter 83 reasonable inflation increases is the same. It would not be equitable to assume adjustments given to either reimbursement system are necessarily appropriate for the other. The appeal mechanism is appropriate to review the need for adjustments.

COMMENT: The four percent labor base adjustment, calculated from 1982 through 1986, given to the DRG hospitals in 1988, should be given to the SHARE hospitals as an adjustment to the economic factor.

RESPONSE: The decision of the Hospital Rate Setting Commission was related to issues for Chapter 83 only; it would be inappropriate to automatically extend this adjustment to SHARE hospitals.

COMMENTER: Cohen, Shapiro, Polisher, Shiekman and Cohen, on behalf of Children's Specialized Hospital, Fair Oaks Hospital, Robert Wood Johnson Rehabilitation Institute and St. Lawrence Rehabilitation Center.

COMMENT: The primary reason for rebasing is the SHARE methodology does not utilize data which has been sufficiently updated. This has the effect of not recognizing changes in services provided by hospitals.

In summary, the commenting hospitals believe that readoption is only appropriate if the overspending challenge is relieved by rebasing to 1988. They believe this change can be made at final adoption because the governing methodology would not be altered by these changes.

RESPONSE: The SHARE reimbursement system utilizes a base year which is two years prior to the current rate. This is the latest available data at the time the rates are calculated. There is an appeals process in SHARE regulations which enables hospitals to address costs deemed unreasonable in the base year as management changes in the current rate year.

Therefore, it is not appropriate to automatically waive base year costs deemed unreasonable.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:31A.

(a)

DRUG UTILIZATION REVIEW COUNCIL
Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: December 4, 1989 at 21 N.J.R. 3710(a).

Adopted: March 1, 1990 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: March 7, 1990 as R.1990 d.190, **without change**.

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

Effective Date: April 2, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comment and Agency Response:

No comments received.

The following products and their manufacturers were **deleted** from the List of Interchangeable Drug Products:

Nitrofurantoin macrocrystal capsules 50 mg, 100 mg	Bolar
Probenecid/colchicine (500 mg/0.5 mg) tablets	Danbury
Triamterene/hydrochlorothiazide (50 mg/25 mg) capsules	Bolar

(b)

DRUG UTILIZATION REVIEW COUNCIL
Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: October 16, 1989 at 21 N.J.R. 3292(a).

Adopted: March 1, 1990 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: March 7, 1990 as R.1990 d.191, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: April 2, 1990.

Operative Date: April 2, 1990, except for the sulindac tablets, which have an operative date of April 4, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Concerning sulindac, it was pointed out that the patent on sulindac does not expire until April 3, 1990.

RESPONSE: The Council agrees and thus made the operative date for the adoption of both sulindacs April 4, 1990.

The following products and their manufacturers were **adopted**:

Oxazepam caps 10, 15, 30 mg	**Zenith**
Sulindac tabs 150, 200 mg	**Amer. Ther.**
Sulindac tabs 150, 200 mg	**Danbury**

The following product was **not adopted**:

Probenecid tabs 500 mg	Zenith

The following products were **not adopted but are still pending:**

Albuterol tabs 2, 4 mg	Copley
Albuterol tabs 2, 4 mg	Lemmon
Albuterol tabs 2, 4 mg	Superpharm
Aspirin ER tabs 800 mg	Sidmak
Betamethasone valerate lotion 0.1%	Clay-Park
Chlordiazepoxide/amitrip. 5/12.5, 10/25	Par
Clonidine/chlorthal. tabs 0.1, 0.2, 0.3 mg	Cord
Cyclobenzaprine tabs 10 mg	Par
Cyclobenzaprine tabs 10 mg	Superpharm
Disopyramide ER caps 100, 150 mg	Chelsea
Divalproex EC tabs 125, 250, 500 mg	Par
Erythromycin EC tabs 250, 333 mg	Upjohn
Erythromycin topical soln 2%	Clay-Park
Fenoprofen tabs 600 mg	Barr
Fluocinonide soln 0.05%	Copley
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Iodinated glycerol elixir 60 mg/5 ml	PharmBasics
Loperamide caps 2 mg	Cord
Loxapine caps 5, 10, 25, 50 mg	Cord
Minocycline caps 50, 100 mg	W-C
Potassium Cl ER tabs 10 mEq	Adria
Quinine sulfate tabs 260 mg	Zenith
Sulfacet./prednisolone 10%/0.2% oph. sol	Iolab
Sulfanilamide vaginal cream 15%	Clay-Park
Sulindac tabs 150, 200 mg	Mutual
Sulindac tabs 150, 200 mg	Par
Verapamil ER tabs 240 mg	Invamed
Verapamil tabs 40, 80, 120 mg	Invamed

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 22 N.J.R. 214(c).

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(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

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

Proposed: July 3, 1989 at 21 N.J.R. 1790(a).
Adopted: March 1, 1990 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: March 7, 1990 as R.1990 d.192, **with portions not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: April 2, 1990.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Concerning propranolol ER, Wyeth-Ayerst, manufacturers of the branded product (Inderal LA) for which propranolol ER would be substituted, presented several arguments in opposition to the proposed generic: (1) exclusion of biodata on one subject, who was an outlier on the generic but not on the brand, was inappropriate; (2) dissolution of marketed lots of the generic showed some to be unacceptable; (3) analytical methods used to assay the generic did not "perform as validated," (4) no bioequivalence studies were performed on strengths below 160 mg; and (5) data were not available on the generic when given with food.

In addition, Wyeth-Ayerst provided information from a statistician who was of the opinion that the statistical analysis methods used on the data for the generic were inappropriate. Using what that expert considered a better statistical method, the generic was alleged to be inequivalent to the brand-name product.

Manufacturers of the generic rebutted that: (1) the one excluded subject met the FDA's criteria as an outlier; (2) their dissolution studies showed all batches to be in conformance with standards, and the FDA had sampled the suspect lots and had not reported any dissolution problems; (3) the assay methods were valid; (4) the FDA approved all strengths based on a biostudy of just the 160 mg product because all the other strengths contain a proportional amount of active drug; (5) the "with food" data show the generic does not release its contents prematurely; and (6) contrary to Wyeth-Ayerst's statistical expert's claim, use of the statistical methods was approved by the FDA and is considered to be the appropriate method, as corroborated by the testimony of Inwood's own statistical expert.

RESPONSE: The Council acknowledges that Inwood's statistical methods, whether acceptable to Wyeth-Ayerst or not, are those presently favored by the FDA, and that extension of the biodata to the lower strengths is also consistent with FDA policy. The existence of an "outlier" for the generic, but not the brand, is not overly surprising considering the nature of propranolol.

The Council further understands that this generic has already been extensively substituted in many other states, with no untoward reactions being particularly noticeable. The two Council physicians, one being a cardiologist, agree that any differences seen in the biodata would not present clinical problems to patients switched to the generic.

The available "with food" biodata also establish that the generic does not "dose-dump."

In summary, the Council rejected Wyeth-Ayerst's objections as either immaterial, unsubstantiated by FDA tests, or clinically unimportant, and therefore accepted the generic into the Formulary.

The following products and their manufacturers were **adopted**:

Betamethasone diprop. crm, oint, lot 0.05%	**Clay-Park**
Propranolol ER caps 60, 80, 120, 160 mg	**Inwood**

The following products were **not adopted but are still pending:**

Albuterol tabs 2, 4 mg	Purepac
Albuterol tabs 2, 4 mg	Danbury
Amantadine caps 100 mg	Invamed
Amiloride/HCTZ tabs 5/50	Danbury
Amiloride/HCTZ tabs 5/50	PharmBasics
Amoxapine tabs 25, 50, 100, 150 mg	Chelsea
Amoxapine tabs 25, 50, 100, 150 mg	Watson
Atenolol/chlorthalidone tabs 50/25, 100/25	Par
Carisoprodol/aspirin tabs 200/325	Par
Clindamycin HCl caps 75, 150 mg	Danbury
Clonazepam tabs 0.5, 1, 2 mg	PharmBasics
Cyclopentolate ophth soln 1%	Paco
Dexamethasone/neomycin/polymyxin B ophth	Paco
Doxepin caps 10, 25, 50 mg	Purepac
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Doxycycline tabs 100 mg	Pharbita
Erythromycin ER caps 250 mg	AmerTher
Fluocinonide cream 0.01, 0.025%	G&W
Fluocinonide oint 0.025%	G&W
Folic acid tabs 1 mg	Charlotte
Ibuprofen tabs 400 mg	Pharbita
Ibuprofen tabs 400, 600, 800 mg	Invamed
Indomethacin caps 25, 50 mg	Danbury
Loperamide caps 2 mg	Mylan
Lorazepam tabs 0.5 mg	PharmBasics
Methyldopa/HCTZ tabs 250/15, 250/25	Invamed
Metoclopramide inj. 5 mg/ml	Lemmon
Metoclopramide tabs 10 mg	Invamed
Metoclopramide tabs 10 mg	Sidmak
Minocycline caps 100 mg	Danbury
Nifedipine caps 20 mg	Purepac
Oxazepam caps 10, 15, 30 mg	Danbury
Prazepam caps 20 mg	PharmBasics
Prazosin caps 1, 2, 5 mg	Chelsea
Prednisolone acetate ophth soln 1%	Paco
Procainamide ER tabs 500 mg	Invamed
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Invamed
Ritodrine inj 10 mg/ml, 15 mg/ml	TEVA
Sulfacetamide sodium ophth soln 10%	Paco
Thiothixene caps 20 mg	Cord
Timolol maleate tabs 5, 10, 20 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Mylan
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Timolol tabs 5, 10, 20 mg	Chelsea
Tobramycin ophth soln 0.3%	Paco
Trazodone tabs 150 mg	Chelsea
Tropicamide ophth soln 1%	Paco
Verapamil tabs 40 mg	Purepac
Vincristine inj. 1 mg/ml	TEVA

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 21 N.J.R. 2997(a), 21 N.J.R. 3664(a) and 22 N.J.R. 214(b).

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION

Immunization Requirements

Adopted New Rules: N.J.A.C. 9:2-14

Proposed: November 20, 1989 at 21 N.J.R. 3605(a).
Adopted: March 6, 1990 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: March 6, 1990 as R.1990 d.189, **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. 18A:61D-1.
Effective Date: April 2, 1990.
Expiration Date: June 17, 1990.

Summary of Public Comments and Agency Responses:

The Board received comments regarding the proposal from two separate institutions of higher education, Rutgers, The State University, and Mercer County Community College, and a member of the public. The specific comments and the responses thereto are set forth below.

COMMENT: Rutgers, The State University, stated that the requirement of immediate implementation will bring about an undue hardship for students, their families and those required to carry out the rules that

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is far in excess of the economic and administrative impacts of the proposal. The rules should be phased in over a three year period.

RESPONSE: At one time, the Department hoped to phase in these rules over a three year period in order to give the institutions a better opportunity to implement the program in an orderly fashion with less strain upon the administration of the program. However, the Department received legal advice from the Attorney General's Office that the language of the enabling legislation, N.J.S.A. 18A:61D-1 et seq., and its effective date did not allow for such a phase-in period. Thus, the Board was left with no choice and was required to structure the rules for immediate implementation.

COMMENT: Rutgers further stated that the standards within the rules and the underlying legislation are inadequate as approximately 10 percent of those individuals vaccinated prior to 1980 are not adequately protected due to vaccine failure.

RESPONSE: The Department has consulted with the New Jersey Department of Health regarding this issue. The Department of Health does not recommend a change in the rules with regard to vaccine requirements at this time. If, in the future, the Department of Health recommends such a change, the Board will consider such a proposal at that time.

COMMENT: Rutgers further commented that students receiving financial aid will not be able to afford required vaccinations and stated that State funds should be made available for this purpose.

RESPONSE: While the Board understands this concern, there have been no State funds appropriated for this purpose. The Board would urge each institution to provide immunizations to such students as cost effectively as possible.

COMMENT: Rutgers further questioned the logic and fairness to the university and students of withdrawing registration privileges from those who do not prove that they are adequately immunized.

RESPONSE: This requirement is based upon the enabling legislation and thus is not subject to modification.

COMMENT: Mercer County Community College stated that the requirements set forth in N.J.A.C. 9:2-14.9 are overly burdensome in requiring separate hard copy records for each student as opposed to computerized records and records only for those students without exemptions.

RESPONSE: The Board agreed with this comment to the extent that the colleges should only have to keep records on those students who are not exempt from these requirements under the rules. The Board does not agree with the suggestion to allow computerized records as the Department of Health, which is responsible for monitoring these requirements, does not believe that it may do so and provide emergency assistance as the computer systems vary from institution to institution. The Board did also agree to change the requirement set forth in N.J.A.C. 9:2-14.9(c) requiring separate records as long as the confidentiality of other student records is protected.

COMMENT: Mercer County Community College further stated that the requirements constitute an administrative burden to the colleges and another barrier to disadvantaged students as they complicate the admissions process which will result in fewer disadvantaged students attending college.

RESPONSE: The requirements set forth in the rules are based upon the language set forth in the enabling legislation and thus cannot be modified. The Board recognizes these concerns, however, and has taken several steps to attempt to address this issue by making the rules as simple as possible to administer.

COMMENT: A member of the public stated that N.J.A.C. 9:2-14.8, in requiring that a student provide a written statement from an official representative of the student's religious institution, was potentially discriminatory against those individuals with religious beliefs in less organized religions.

RESPONSE: The Board agreed with this comment and accordingly modified the section.

NOTE: For organizational purposes, the language proposed as N.J.A.C. 9:2-14.2(c) was recodified as N.J.A.C. 9:2-14.1(b) without change and N.J.A.C. 9:2-14.12(b) was recodified as N.J.A.C. 9:2-14.2(c) with minor changes.

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 14. IMMUNIZATION REQUIREMENTS

9:2-14.1 Applicability

(a) This subchapter applies to every new or continuing full-time and part-time undergraduate or graduate student enrolled in a program leading to an academic degree at any public or independent institution of higher education licensed by the New Jersey Board of Higher Education.

(b) Nothing in these rules should be construed as limiting the authority of a New Jersey institution of higher education to establish additional requirements for student immunizations and documentation that it determines appropriate.

9:2-14.2 Exemptions

(a) Students shall be exempt from immunization requirements for medical or religious grounds under conditions set forth in N.J.A.C. 9:2-14.7 and 14.8.

(b) An exemption may be made, *[in]* ***at*** the discretion of an institution, for the following categories of students:

1. Each student born before 1957;

2. Each student who presents proof of having attended an elementary or secondary school located in New Jersey (such as the school record of immunization, transcript, or diploma)*[. An institution which grants an exemption on this basis should still request that the student furnish a record of immunization in accordance with N.J.A.C. 9:2-14.6]*;

3. *[A]***Each*** student enrolled in a program for which students do not congregate, whether for classes or to participate in institution sponsored events, such as those in programs for individualized home study or conducted solely via electronic media.

(c) *[Nothing in these rules should be construed as limiting the authority of a New Jersey institution of higher education to establish additional requirements for student immunizations and documentation that it determines appropriate.]***In the event of an outbreak or a threat of an outbreak, each institution which has exempted students pursuant to this section may require proof of immunity and administer the measles, mumps, and rubella vaccine or other immunizing agents to each student, other than a student exempt in accordance with (a) above when specifically authorized to do so by the State Department of Health.***

9:2-14.3 Required immunizations

(a) The following immunizations or proof of thereof shall be required pursuant to this subchapter:

1. Measles virus vaccine:

i. Each student shall document immunization of one dose of measles virus vaccine, live attenuated, or any vaccine combination containing measles antigen, that was administered after 1968 and on or after the student's first birthday.

ii. A student vaccinated with killed or an unknown vaccine prior to 1968 shall be revaccinated or produce laboratory proof of measles immunity.

iii. A student who presents serologic laboratory evidence of measles immunity shall not be required to receive measles vaccine.

2. Mumps virus vaccine:

i. Each student shall document immunization of one dose of mumps virus vaccine, live attenuated, or any vaccine combination containing mumps antigen that was administered on or after the student's first birthday.

ii. A student with a history of physician diagnosed mumps disease substantiated by a physician's statement shall not be required to receive a mumps vaccine.

iii. A student who presents serologic laboratory evidence of mumps immunity shall not be required to receive a mumps vaccine.

3. Rubella vaccine:

i. Each student shall document immunization of one dose of rubella virus vaccine, live attenuated, or any vaccine combination containing rubella antigen, that was administered on or after the student's first birthday.

ii. A student who presents serologic laboratory evidence of rubella immunity shall not be required to receive rubella vaccine.

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9:2-14.4 Institutional responsibility for enforcement

(a) Each institution shall require acceptable evidence of immunization as a prerequisite to enrollment of each student who is not exempt from the requirements set forth in N.J.A.C. 9:2-14.2 in accordance with this subchapter.

(b) Each institution shall identify to the New Jersey State Department of Health an institutional official responsible for the administration and enforcement of this subchapter and for the maintenance of immunization records.

(c) Each institution shall establish policies and procedures to enforce student compliance with this subchapter *[within 60 days of enrollment]*.

9:2-14.5 Provisional admission

(a) A student may be admitted and enrolled into the institution on a provisional basis for his or her first term if required immunization documentation is not available at the time of registration.

(b) Prior to the second term, a student must present documentation or acceptable proof of immunity in accordance with the requirements of this subchapter or be reimmunized.

(c) In the event of a vaccine preventable disease outbreak, the institution may, in consultation with the State Department of Health ***pursuant to N.J.A.C. 8:57-1.7-1.8***, exclude each student with provisional status from attending classes and participating in institution sponsored activities until proof of adequate immunization is furnished (N.J.A.C. 8:57-1.7 and 1.8).

9:2-14.6 Documents accepted as evidence of immunization

(a) An institution shall accept the following documents as evidence of a student's immunization history provided the specific immunization and the exact date of each immunization administered is listed:

1. An official school immunization record or copy thereof from any primary or secondary school indicating compliance with the immunization requirements of N.J.A.C. 9:2-14.3;

2. A record from any public health department indicating compliance with the immunization requirements of N.J.A.C. 9:2-14.3; or

3. A record signed by a physician licensed to practice medicine or osteopathy in any jurisdiction of the United States or foreign country or other licensed health professional approved by the New Jersey State Department of Health indicating compliance with the immunization requirements of N.J.A.C. 9:2-14.3.

9:2-14.7 Medical exemption to immunization

(a) A student shall be exempt from receiving or documenting receipt of any required immunizations which are medically contraindicated in accordance with N.J.A.C. 9:2-14.2(a). The conditions which comprise valid contraindication to vaccine administration shall be those set forth within the most recent Recommendations of the Immunization Practices Advisory Committee published periodically by the Centers for Disease Control, Atlanta, Georgia 30333. Such students shall present a written statement from a physician licensed to practice medicine or osteopathy within the United States or another foreign country stating that a specific immunization is medically contraindicated for a specific period and the reasons for the medical contraindication which exempt a student from the specific immunization requirements of N.J.A.C. 9:2-14.3.

(b) Each institution shall maintain the written physician's statement as part of the immunization record and shall review it annually to determine whether the exemption shall remain in effect for the next year. When a student's condition for the medical contraindication no longer exists, the student must be immunized.

(c) In the event of a vaccine-preventable disease outbreak, the institution may, in consultation with the State Department of Health, exclude each student with a medical exemption to the specific relevant vaccine from attending class and other institution sponsored activities.

9:2-14.8 Religious exemption from immunization

(a) A student is exempt from documenting the required immunizations set forth in N.J.A.C. 9:2-14.3 if the student submits a written statement to the institution signed by the student *[and an official representative of the student's religious institution]* explaining how immunization conflicts with his or her religious beliefs and such statement is made a part of the student's immunization record.

(b) In the event of a vaccine preventable disease outbreak, the institution may, in consultation with the State Department of Health, exclude each student with a religious exemption from attending class and other institution sponsored activities.

9:2-14.9 Institutional records required

(a) Each institution shall maintain a record of immunizations on each non-exempted student including those in provisional status, in accord with N.J.A.C. 9:2-14.6, *[and on each student described in N.J.A.C. 9:2-14.2(b)2]* in a format specified by the New Jersey Department of Health *[Education]*, in consultation with the Department of Higher Education, which shall include the date of each required immunization.

(b) Each institution shall attach or reference statements pertaining to physician written medical exemptions, religious exemptions, laboratory evidence of immunity or a physician's diagnosis of mumps to this record.

(c) An institution shall maintain a *[complete]* hard copy set of immunization record forms *[separate from each student's academic, medical or personal records]* in a manner accessible to health officials *[to ensure]* ***yet ensuring*** the confidentiality of each student's other records.

(d) An institution shall, upon request of a student who is transferring to another institution, send the student's record of immunization with any attached statements or a copy thereof to the other institution.

(e) An institution shall, upon request, release to a student his or her immunization record or a copy thereof if the student graduates or leaves the institution for any reason.

(f) The institution shall maintain each student's immunization record for three years following a student's graduation, termination, transfer or departure from the institution.

9:2-14.10 Reports to be provided to the State of New Jersey

(a) Each institution shall send an annual report of the immunization status of their students to the State Department of Health in a form provided by the State Department of Health.

(b) Each institution shall include in this report all students who are covered by these rules and shall submit this report by December 1 of each respective academic year. The report shall document the total number of students attending the institution, the number and groups of students specifically covered by these rules, the number of students with medical exemptions, the number of students with religious exemptions and the number of students not receiving required immunizations.

9:2-14.11 Records available for inspection

(a) Each institution shall maintain centralized records of student immunization status available for inspection by authorized representatives of the State Department of Health, the local board of health in whose jurisdiction the institution is located, or representatives of the Department of Higher Education within 24 hours of notification.

(b) Authorized representatives will only review records to monitor compliance with these rules or in the event a vaccine preventable disease outbreak is threatening.

9:2-14.12 Providing immunization

[(a)] Each institution may administer the vaccines required by this subchapter to those students unable to obtain either acceptable vaccine documentation or the measles, mumps, or rubella vaccines from their own health care provider.

[(b) In the event of an outbreak or a threat of an outbreak, each institution may administer the measles, mumps, and rubella vaccine or other immunizing agents to each student, other than a student exempt in accordance with N.J.A.C. 9:2-14.2, who are not covered by these rules when specifically authorized to do so by the State Department of Health.]

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9:2-14.13 Existing responsibilities of institutions and of the State in controlling communicable disease

(a) Each institution shall report the suspected presence of any reportable communicable disease to the local health officer in conformance with N.J.A.C. 8:57-1.2 and 1.5.

(b) In the event that an outbreak or threatened outbreak exists, the State Commissioner of Health, ***pursuant to N.J.A.C. 8:57-1.7-1.8,*** designated officers, or local health officers may issue either additional immunization requirements or modify these immunization requirements to meet the emergency. These additional requirements may include obtaining immunization documentation or requiring specific immunizations for each student not covered by these rules. Each student failing to meet these additional requirements may be excluded from attending classes and participating in institution sponsored activities until proof of adequate immunization is furnished (N.J.A.C. 8:57-1.7 and 1.8).

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Prosthetic and Orthotic Services Manual

Readoption: N.J.A.C. 10:55

Proposed: January 2, 1990 at 22 N.J.R. 4(b).
Adopted: March 8, 1990 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: March 8, 1990 as R.1990 d.194, **without change**.
Authority: N.J.S.A. 30:4D-6b(6), 7, 7a, b, c; 30:4D-12.
Effective Date: March 8, 1990.
Expiration Date: March 8, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:55.

(b)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Realizing Economic Achievement (REACH) Program; Post-AFDC Child Care

Adopted Amendment: N.J.A.C. 10:81-14.18

Proposed: January 16, 1990 at 22 N.J.R. 136(a).
Adopted: March 12, 1990 by William Waldman, Acting Commissioner of the Department of Human Services.
Filed: March 13, 1990 as R.1990 d.206, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted**.
Authority: N.J.S.A. 44:10-1 et seq.; Federal Family Support Act (FSA) of 1988, Public Law 100-485.
Effective Date: April 2, 1990.
Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
At N.J.A.C. 10:81-14.18(e)4i, several examples have been added to clarify the start date of the eligibility period for post-AFDC child care benefits. N.J.A.C. 10:81-14.18(e)7 is not being adopted. Instead, that paragraph appears as a proposal elsewhere in this issue of the New Jersey Register. This has been done in order to present the sliding fee scale itself referred to at N.J.A.C. 10:81-14.18(e)7i and to set forth specific guidelines, established by the Department of Human Services, which are mentioned at N.J.A.C. 10:81-14.18(e)7ii and set forth in proposed new rules N.J.A.C. 10:81-14.18A and 14.18B.

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

10:81-14.18 REACH support services: child care

(a) The case manager, the participant, and the lead child care entity will mutually arrange for child care for the REACH participant's child(ren) while the individual is employed or participating in an employment-directed activity, as set forth in the REACH Agreement. Child care arrangements shall be in the best interests of the child. Additional responsibilities of the case manager and lead child care entity are set forth in (h) and (i) below.

1. (No change.)

(b) Payment for the cost of child care to support participation is available through the REACH program at rates established by the Department of Human Services.

1. When child care that is in the best interests of the child has been arranged, the case manager has the responsibility to determine eligibility and authorize payment for the child care that will obtain the maximum Federal financial participation for the particular employment-directed activity. In determining payment of the cost of child care, the following sequence will be applied:

i.-ii. (No change.)

iii. Federally-matched child care costs while an individual is participating in training for employment or in a program of vocational rehabilitation;

iv. The participant's funds for the amount of the required post-AFDC child care fee; and

v. State REACH funds.

2. Payment for child care using State REACH funds may be made when the participant's own source or Federally matched child care are not available or not sufficient to pay for the cost of child care. The priority of funding sources in (b)1ii through v above will be automatically incorporated into every REACH child care payment through fiscal procedures and reporting from the CWA to DEA, unless otherwise specified.

3. Effective date: In all counties, REACH child care payments will be available as each begins the operation of the REACH program, as defined by the Department of Human Services. Payment of the required post-AFDC child care fee will be effective for participants becoming ineligible for AFDC on or after April 1, 1990 in accordance with criteria at (e)3i below.

(c) (No change.)

(d) Duration of payment: REACH child care benefits are routinely available to participants for one year of participation in a REACH employment-directed activity; for the post-employment period after the commencement of employment that does not result in ineligibility for AFDC, that is, while a participant is employed and receiving AFDC, to supplement as necessary, child care paid by the participant as required by the Social Security Act (see (g)4 below); and, after the commencement of employment that results in ineligibility for AFDC, one year post-AFDC child care, subject to payment of a post-AFDC child care fee.

1. (No change.)

2. Post-employment child care: The post-employment period shall start with the first week in which a participant is employed and receiving AFDC and shall expire when the participant is either ineligible for AFDC for reason other than sanction or penalty or is no longer employed. State REACH funds shall be used for the cost of post-employment child care in any month in which the cost of child care exceeds $175.00 for any child age two or older and $200.00 for any child under age two (see (g)3 below).

i. If an employed participant becomes ineligible for AFDC for a reason other than a sanction or similar penalty for noncompliance with AFDC program requirements, the participant shall be eligible for payment of child care through the REACH program for the one year post-AFDC period while the participant is employed, subject to (e)3 below.

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3. Post-AFDC child care: Duration of post-AFDC child care benefits is set forth in (e)4 below.

4.-5. (No change.)

(e) Post-AFDC child care pertains to child care available to families whose eligibility for AFDC has ceased due to increased hours of, or earnings from, employment including earnings from new employment, or as a result of the loss of earned income disregards due to the expiration of time limits at N.J.A.C. 10:82-4.

1. Availability of post-AFDC child care: Post-AFDC child care is available to the extent that post-AFDC child care is necessary to permit a member of an AFDC family to accept or retain employment.

i. Post-AFDC child care is guaranteed for the following:

(1) A child who is under age 13; or is physically or mentally incapable of caring for himself or herself, as verified by the county or county welfare agency, based on a determination by a physician or a licensed or certified psychologist; or under court supervision, and who would be a dependent child, if needy; and

(2) A child who would be a dependent child, except for the receipt of benefits under Supplemental Security Income under Title XVI or foster care under Title IV-E.

ii. Post-AFDC child care is available for a child age 13 or older, determined on a case by case basis.

2. Notice of potential eligibility for post-AFDC child care: The county welfare agency must notify orally, as appropriate, and in writing all families whose AFDC eligibility has been or will be terminated due to the reasons in (e)3i below, of their potential eligibility for post-AFDC child care benefits by Form R-10, REACH Benefit Letter. Form R-10 advises a family who loses or may lose AFDC eligibility due to income from employment, of potential eligibility for post-AFDC child care and extended Medicaid benefits (see N.J.A.C. 10:81-14.20), and asks the family to request such benefits by contacting the REACH case manager whose name and telephone number are included in the letter. Form R-10 includes the steps the family must take to establish eligibility for post-AFDC child care benefits and their rights and responsibilities with regard to those benefits.

3. Eligibility for post-AFDC child care: A family is eligible for post-AFDC child care, provided the following conditions are met:

i. The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from employment, including earnings from new employment, or the loss of earned income disregards, due to the time limitations at N.J.A.C. 10:82-4;

ii. The family must have received AFDC in the month preceding the first month of ineligibility (although Federal financial participation for post-AFDC child care payments is available only if the family received AFDC in at least three of the six months preceding the first month of ineligibility);

iii. The family requests post-AFDC child care benefits and provides the information necessary, including verification of earnings, for determining eligibility and fees;

iv. The participant signs a REACH Agreement covering the period during which the child care is to be provided;

v. The participant cooperates in post-AFDC activities set forth in the Agreement;

vi. The family pays the required fee, if the family ceased to be eligible for AFDC on or after April 1, 1990; and

vii. The family complies with REACH program requirements to report participation in post-AFDC activities.

4. Period of eligibility for post-AFDC child care: Notwithstanding when the family requests post-AFDC child care, eligibility for post-AFDC child care begins with the first month for which the family is ineligible for AFDC for the reasons at (e)3i above, and continues for a period of 12 consecutive months ***computed according to (e)4i below***. The 12-month post-AFDC period shall consist of 52 consecutive weeks, if the participant remains employed and does not receive AFDC during that period of time. Families may begin to receive post-AFDC child care in any month during the 12-month eligibility period.

i. The 12-month post-AFDC eligibility period shall begin with the month AFDC is terminated due to income from employment, but no later than the payment month corresponding to the budget month in which the family becomes ineligible due to earnings from employment. If the family fails to report the earnings causing ineligibility, the 12-month eligibility period shall begin with the first month in which the family became ineligible for AFDC.

***(1) Example: A participant starts employment and first receives earnings in the January budget month and reports the earnings timely in the February processing month. The earnings render the family ineligible for AFDC; assistance is terminated effective for the March payment month. The eligibility period for post-AFDC child care benefits will start on March 1, the effective date of AFDC case closing.**

(2) Example: In January a participant starts working and receives earnings that cause ineligibility for AFDC. However, the family does not report the earnings until April. Assistance is terminated effective May 1. The eligibility period for post-AFDC child care benefits will start on January 1, the month in which the family first became ineligible for AFDC due to income from employment.

(3) Example: In January a participant starts working and receives earnings that cause ineligibility for AFDC but fails to report the earnings to the CWA. In May the agency discovers the unreported earnings and terminates assistance for June, effective June 1. The eligibility period for post-AFDC child care benefits will start on January 1, the month in which the family first became ineligible for AFDC due to income from employment.

(4) Example: In February an AFDC recipient voluntarily requests that the AFDC case be closed. The agency processes the request and terminates assistance for March, effective March 1. It is later determined that the recipient has been and is currently employed, and the earnings would have rendered the family ineligible for AFDC starting in January. If the individual applies for post-AFDC child care benefits, the eligibility period for post-AFDC child care benefits will start on January 1, the month in which the family first became ineligible for AFDC due to income from employment.*

ii. Only weeks during which the participant is employed and not receiving AFDC shall be counted toward the 12-month post-AFDC period. Employment shall be presumed unless the participant reports otherwise.

5. Ineligibility for post-AFDC child care: The family is not eligible for post-AFDC child care for any remaining portion of the 12-month period if the caretaker relative:

i. Terminates employment without good cause, as defined at N.J.A.C. 10:81-14.8(b);

ii. Fails to cooperate with the county welfare agency in establishing payments and enforcing child support obligations; or

iii. Fails to pay required fees (see (e)7iii below).

6. Reestablishing eligibility for post-AFDC child care: If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month post-AFDC child care eligibility period.

i. If the family reestablishes AFDC eligibility during this period, it may qualify for a new 12-month period of post-AFDC child care. To be eligible for a new 12-month period, the family must have received AFDC in at least three of the six months preceding the first month of ineligibility for AFDC, and must satisfy all other conditions of eligibility at (e)3 above.

*[7. Fee requirement for post-AFDC child care: Each family receiving post-AFDC child care is required to contribute a fee toward the cost of such care.

i. Sliding fee scale: A sliding fee scale established by the Department of Human Services will provide for some level of contribution by all recipients of post-AFDC child care. The sliding fee scale may consider family circumstances including, but not limited to: income, family size, number of children, and number of children in care.

ii. Collection of post-AFDC child care fees: Within guidelines established by the Department of Human Services, each county must establish methods and procedures for the collection of fees, and may vary the period of collection of such fees.

iii. Failure to pay the required fee: Individuals who fail to cooperate in paying the required fees will, subject to appropriate notice and hearing requirements, lose eligibility for post-AFDC child care benefits for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.]*

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*[8.]**7.* Refusal of post-AFDC child care: A mandatory REACH participant may refuse available appropriate post-AFDC child care if the participant can arrange other child care or can show that such refusal will not prevent or interfere with employment.

i. Inference of refusal: Refusal of post-AFDC child care may be inferred if the participant does not request post-AFDC child care benefits, that is, fails to respond to Form R-10 by the end of the first month of AFDC ineligibility; does not provide the information necessary for determining eligibility and fee amount, including verification of earnings; does not sign a REACH Agreement for the period of post-AFDC child care; or, does not report participation in post-AFDC REACH activities.

*[9.]**8.* Notice and hearings for post-AFDC child care: Provision of post-AFDC child care benefits is subject to timely and adequate notice and hearing requirements at N.J.A.C. 10:81-6, 10:81-7, and 10:90-2.5 (also see N.J.A.C. 10:81-14.7).

i. Timely and adequate notice must be given if post-AFDC child care benefits are reduced, discontinued or suspended due to nonpayment of the fee; or if a change in the manner of payment results in a discontinuance, suspension, reduction or termination of benefits; or forces a change in child care arrangements.

ii. Timely and adequate notice is not required for a change in the manner of payment that does not result in an action in (e)9i above.

(f) Provider requirements: REACH payments to providers of child care are available according to the following conditions:

1.-2. (No change.)

3. Family day care providers—approved homes: Providers of family day care who are not living in the home of the REACH participant and who are not registered under (f)2 above shall be approved by the Department of Human Services in order to qualify for payment through the REACH program. Unregistered relatives, friends or neighbors are eligible for approved home status.

i.-ii. (No change.)

4. (No change.)

5. Providers of child care not in the categories (f)1 through 4 above are not entitled to payment through the REACH program for child care provided to children of REACH participants.

(g) Payment Methods: The two methods in the REACH program for issuing payments for child care are vendor payments to the provider and direct payments to the participant.

1.-3. (No change.)

4. Special requirements for employed participants: The Social Security Act requires that for any employed AFDC recipient, the actual cost of child care up to and including $175.00 per month per child age two or older and $200.00 per month per child under age two shall be disregarded from the participant's earnings, before that income is used to compute the monthly AFDC grant. Therefore, an employed participant shall pay the first $175.00 or $200.00 in child care directly to the provider. The amount in excess of $175.00 or $200.00 shall be considered a REACH post-employment child care payment to be issued as a vendor payment to the provider or as a direct payment to the participant, in accordance with (g)1 and 2 above. However, any amount in excess of $175.00 or $200.00 per month per child that is paid directly to the participant is income to the AFDC family and shall be used to compute the AFDC grant.

i.-ii. (No change.)

(h) (No change in text.)

(i) Lead child care entity responsibilities: The lead child care entity will assist the case manager and participant in obtaining appropriate child care based on the parent's and child's needs; will assist in identifying child care resources available for a participant during orientation, assessment, participation in employment-directed activities and employment; and shall verify and document that the child care arrangements meet the criteria as specified in (f) and (g) above.

(j) (No change in text.)

CORRECTIONS

(a)

THE COMMISSIONER

Fiscal Management

Grants

Adopted New Rules: N.J.A.C. 10A:2-10

Proposed: January 2, 1990 at 22 N.J.R. 14(a).
Adopted: February 22, 1990 by William H. Fauver, Commissioner, Department of Corrections.
Filed: February 28, 1990 as R.1990 d.183, **without change**.
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: April 2, 1990.
Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 10. GRANTS

10A:2-10.1 Definitions

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

"Grant" means a specific amount of funds or services given to an administrative unit or correctional facility by a funding source to be used over a specific period of time for a specific purpose.

10A:2-10.2 Responsibilities of the Grants Manager

(a) The Grants Manager shall review and process proposals, concept papers and other requests for all grants from non-State budgeted agencies.

(b) The responsibilities of the Grants Manager shall include, but are not limited to:

1. Serving as the official liaison between the Department of Corrections and all sources which issue grants;

2. Reviewing, evaluating and coordinating all grant proposals for funding;

3. Providing technical and other assistance to applicants for grants, as indicated;

4. Ensuring that applicants for grants comply with Federal, State and Department of Corrections' guidelines and procedures relating to the use of grants; and

5. Transmitting all applications for grants to the Commissioner for review, approval and signature.

10A:2-10.3 Planning

For planning purposes, any correctional facility or administrative unit contemplating a non-State funded project shall submit a memorandum containing information on the major components of the contemplated project request to the Grants Manager as soon as this information is available.

10A:2-10.4 Procedures for processing grants

(a) The Grants Manager shall process all proposals, concept papers and funding requests to outside funding agencies. No grant application will be approved by the Commissioner unless it has been reviewed and processed by the Grants Manager.

(b) Before proposals, concept papers and grant applications are submitted to any outside agency for funding, the Grants Manager shall review them with regard to:

1. Duplication of project applications;

2. Compliance with Department of Corrections' policies and procedures; and

3. Providing current information regarding grants and funding to the Commissioner.

(c) After reviewing the proposal, the Grants Manager shall contact the Project Director regarding any problems that may have developed and may suggest appropriate solutions to resolve them.

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(d) If the proposal is modified in any way, the final proposal shall be submitted to the Grants Manager for transmittal to the Commissioner for review, approval and signature.

(e) When approved by the Commissioner, the proposal shall then be submitted to the appropriate agency by the Grants Manager with a copy to the Project Director.

(f) If contracts are made with outside funding agencies, the Grants Manager must be aware of these contracts immediately.

(g) After a proposal is funded, all contracts, including correspondence, with the funding agency shall be reported immediately to the Grants Manager.

(h) Reports on the activities of funded projects shall be forwarded to the Grants Manager for transmittal to the funding agency.

(i) The Grants Manager shall be informed of the intentions of the Project Director regarding future requests for continued funding of the project.

10A:2-10.5 Reports

The Superintendent or agency head shall complete Form 950-I FISCAL REPORT OF GRANTS RECEIVED and Form 950-II REPORT OF PROGRESS OF PROJECTS FUNDED BY GRANTS and submit these forms to the appropriate Assistant Commissioner along with the Annual Report.

(a)

THE COMMISSIONER

Classification Process
Eligibility Criteria For Reduced Custody Consideration

Adopted Amendments: N.J.A.C. 10A:9-4

Proposed: October 2, 1989 at 21 N.J.R. 3050(a).

Adopted: March 6, 1990 by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 8, 1990 as R.1990 d.195, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(e)).

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

Effective Date: April 2, 1990.

Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Corrections received written comments from four commenters during the public comment period which closed on November 1, 1989.

COMMENT: Commenter stated that the proposed amendment to N.J.A.C. 10A:9-4.6(f) will result in a reduction in the number of inmates who are eligible for minimum custody status. This may have a negative impact on the Department of Corrections' ability to fill beds in the minimum units.

RESPONSE: While it is true that the proposed amendment to N.J.A.C. 10A:9-4.6(f) may result in fewer inmates being eligible for reduced custody, the Department of Corrections believes that the number so affected will not be substantial enough to adversely affect the Department's use of minimum custody beds.

COMMENT: Commenter questioned the method by which one-half the mandatory minimum sentence will be calculated under N.J.A.C. 10A:9-4.6(f) when multiple terms with mandatory minimum sentences are imposed.

RESPONSE: The Department of Corrections proposes to adhere to its present methodology, which is to aggregate all terms for the purpose of determining eligibility, including mandatory minimum terms.

COMMENT: Commenter objected to the change in language set forth in N.J.A.C. 10A:9-4.4(a)2. The commenter recommended that a definite time for review of a temporary increase in custody status be established.

RESPONSE: The Department of Corrections' reason for revising the language to provide for an indefinite time period is that a specified time is not practical. It is not the Department's intention to delay a review, but there must be sufficient time permitted to gather necessary information, or to complete an investigation before the case can properly be considered by the Institutional Classification Committee (I.C.C). Such modification will aid the inmate's case in those situations in which additional information is positive.

COMMENT: Commenter suggested that an inmate be afforded an in-person hearing by the Institutional Classification Committee (I.C.C.) whenever a custody status change occurs.

RESPONSE: This suggestion is rejected. The classification process is not a judicial-type hearing as commenter would characterize it. It is preferable to permit the I.C.C. to hold in-person reviews whenever the Committee feels it is advisable.

COMMENT: Commenter suggested that a statement be added to N.J.A.C. 10A:9-4.5(f) to clarify when the five-day period begins to run.

RESPONSE: The Department of Corrections believes that the rule clearly means that the statement of reasons be given to the inmate within five working days of the Institutional Classification Committee's (I.C.C.) decision.

COMMENT: Commenter suggested that an appellate procedure be added to N.J.A.C. 10A:9-4.5.

RESPONSE: This suggestion is rejected. As pointed out above, an Institutional Classification Committee (I.C.C.) review is not a judicial proceeding. The inmate may at any time submit correspondence, arguments or evidence which he or she believes will assist the I.C.C. in reaching or modifying its decision. This need not be formalized in order to be effective.

COMMENT: Commenter suggested that the term "New Jersey county jail credit", as used in N.J.A.C. 10A:9-4.6(f), be changed to "all presentence jail credits awarded pursuant to R. 3:21-8."

RESPONSE: The Department of Corrections finds no adequate reason to support the change suggested, and believes that the present language is clear.

COMMENT: Commenter stated that in certain instances, the statement that, "No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving", as set forth in N.J.A.C. 10A:9-4.6(f), may be illegal.

RESPONSE: The Department of Corrections believes that this statement is a correct application of its rulemaking authority for determining reduced custody eligibility. Commenter has failed to provide any specific case in which such policy would be illegal.

COMMENT: Commenter stated that the time schedule for computing eligibility, set forth in N.J.A.C. 10A:9-4.6, is confusing or ambiguous.

RESPONSE: The Department of Corrections disagrees. The period covered, for example, 25 to 29 years, means all the time up to 30 years. Thus, 29 years and 11 months (indeterminate) requires 30 months in maximum custody.

COMMENT: Commenter objected to the proposed modification of N.J.A.C. 10A:9-4.6(f) on the ground that it is ex post facto in its effect. Commenter stated that it should apply only to persons who **commit** an offense after the effective date of this amendment.

RESPONSE: The Department of Corrections disagrees. Classification rules are not "legislation" within the meaning of the term "ex post facto". So long as the Department's rules do not extend the maximum term imposed by the sentencing court, they are within the Department's legitimate rulemaking authority. The reason for using the effective date of this amendment as the time for commencement of eligibility is to allow inmates previously granted reduced custody to remain in that status while on continued satisfactory adjustment.

COMMENT: Commenter suggested that in N.J.A.C. 10A:9-4.5(b), the word "confirm" suitability be changed to "address" suitability for reduced custody.

RESPONSE: This suggestion is accepted and the change will be adopted because the psychological report is not the final arbiter of the decision to be reached by a Classification Committee as is implied with the word "confirm". In fact, the report only assists the Committee in reaching its decision and as such, the psychological report may be positive or negative.

COMMENT: Commenter pointed out that a comma is apparently misplaced in N.J.A.C. 10A:9-4.7(c)3 after the word "only".

RESPONSE: Commenter is correct. The comma should be placed before the word "only" because "only" refers to the assignment, not the Superintendent.

COMMENT: Commenter believed that the word "may" in N.J.A.C. 10A:9-4.9(b) should be "shall".

RESPONSE: The use of "may" is intentional in order to provide the Institutional Classification Committee (I.C.C.) with sufficient discretion to consider all factors, or those which the I.C.C. believes are significant in reaching its decision. It is not mandatory that every factor be given equal weight.

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COMMENT: Commenter objected to the specific five-day time limit set forth in N.J.A.C. 10A:9-4.5(f) because in some cases it may be impractical.

RESPONSE: The Department of Corrections agrees that five days is probably too restrictive, and will amend this section in the near future.

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 4. ELIGIBILITY CRITERIA FOR REDUCED CUSTODY CONSIDERATION

10A:9-4.1 Eligibility for reduced custody

(a) The criteria set forth in this subchapter shall be applied by Institutional Classification Committees (I.C.C.) to determine whether an inmate is eligible for reduced custody consideration, as follows:

1. Eligible to be considered for full minimum custody status, preceded by the successful completion of a period of time in gang minimum status;

2. Eligible to be considered for gang minimum custody status only; or

3. (No change.)

10A:9-4.3 Custody levels

(a) (No change.)

(b) Inmates classified as "gang minimum custody status" shall be assigned to activities or jobs which routinely require them to move outside the security of the correctional facility, but on the grounds of the facility and within eyesight of a correction officer, civilian instructor or other employee authorized to supervise inmates.

(c) (No change.)

(d) Except as provided by N.J.A.C. 10A:9-4.4, the successful completion of a period of time in gang minimum custody status shall be a prerequisite for full minimum custody status.

1. The amount of time in gang minimum custody status shall be at the discretion of the Institutional Classification Committee (I.C.C.).

2. Inasmuch as the Mountainview Youth Correctional Facility is classified as a minimum security facility, inmates at that facility are not required to fulfill the prerequisite time in gang minimum custody status.

(e) (No change.)

10A:9-4.4 Authority of Classification Committees

(a) Changes in inmates' custody levels within a particular correctional facility shall be made by the Institutional Classification Committee (I.C.C.).

1. In an emergency situation, or when additional information is received which negatively affects an inmate's suitability to remain in reduced custody, the inmate's custody level may be increased by order of the Superintendent, Assistant Superintendent or Director of Custody Operations.

2. Such custody level changes must be reviewed and approved by the I.C.C. as soon as is reasonably feasible.

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

10A:9-4.5 Discretion of Institutional Classification Committees (I.C.C.); factors to be considered

(a) In making decisions to reduce an inmate's custody status, Institutional Classification Committees (I.C.C.) shall take into consideration all relevant factors which, in their professional judgment, bear upon the inmate's suitability for reduced custody status. These factors may include, but not be limited to:

1.-6. (No change.)

(b) When considering inmates whose present offense or past history involves, arson, escape, assault, murder or sexual offenses, or who have been known to have psychological problems, the Institutional Classification Committees (I.C.C.) shall utilize psychiatric or psychological evaluations which are not more than six months old and which *[confirm]* ***address*** suitability for reduced custody status.

(c) Institutional Classification Committees (I.C.C.) shall not be compelled by these criteria to automatically grant a reduction in custody status to every inmate who is eligible for consideration.

(d) Institutional Classification Committees (I.C.C.) have no authority to grant reductions in custody status to inmates who fall outside the eligibility guidelines unless appropriate requests for rule exemptions are filed and approved, pursuant to N.J.A.C. 10A:1-2, General Provisions.

(e) An inmate who has been granted reduced custody status may have his or her custody status increased for any of the following reasons, subject to confirmation by the Institutional Classification Committee (I.C.C.):

1.-6. (No change.)

(f) The inmate shall receive a written notice of the reason(s) for the return to increased custody status within five working days.

10A:9-4.6 Criteria for consideration for gang minimum custody status and full minimum custody status

(a) Except as provided in N.J.A.C. 10A:9-4.7 and 10A:9-4.8, inmates who meet the criteria set forth in this section are eligible to be considered for full minimum custody status preceded by the successful completion of a period of time in gang minimum custody status. Pursuant to N.J.A.C. 10A:9-4.3(d)1, the amount of time in gang minimum custody status shall be at the discretion of the Institutional Classification Committee (I.C.C.).

(b) Institutional Classification Committees (I.C.C.) are not obligated to advance an inmate from gang minimum custody status to full minimum custody status even though the inmate qualifies for consideration under the criteria set forth in this section.

(c) When considering inmates for reduced custody status who are serving ordinary or extended prison sentences with no mandatory minimum, the I.C.C. shall take into account all New Jersey County Jail credits awarded prior to commitment on the instant offense. Inmates must have served the following number of years of their sentences in maximum custody to be eligible to be considered for gang minimum custody status and full minimum custody status.

Length of Sentence	Years in Maximum
30 years to life	5
Over 25 and up to 30 years	4
Over 20 and up to 25 years	3
Over 15 and up to 20 years	2
Over 10 and up to 15 years	1
10 years and under	None

(d) Inmates sentenced to serve mandatory minimum terms of 24 months or less are eligible to be considered for gang minimum custody status and full minimum custody status immediately following admission to a correctional facility.

(e) Prior to *[the effective date of this amendment]* ***April 2, 1990***, inmates sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the following service of time has been met. Any New Jersey County Jail credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

1.-2. (No change.)

3. However, in any instance where the application of (e)2 above would result in an inmate being eligible for consideration in less time than if he or she had no mandatory minimum, then the formula set forth in (c) above shall be applied such that the greater amount of time shall be spent in maximum custody. (EXAMPLE: If the inmate has a 20 year term and a mandatory minimum of three years, he or she shall serve the two years required in (c) above instead of the one year which would be required under (e)2 above.)

(f) After *[the effective date of this amendment]* ***April 2, 1990***, inmates sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the inmate has served one-half of the mandatory minimum. Any New Jersey county credit awarded on the instant offense shall be counted. No credit

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toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

(g) In any instance where the application of (f) above would result in an inmate being eligible for consideration in less time than if he or she had no mandatory minimum, then the formula set forth in (c) above shall be applied such that the greater amount of time shall be spent in maximum custody. (EXAMPLE: If the inmate has a 20 year term and a mandatory minimum of three years, he or she shall serve the two years required in (c) above instead of the one and one-half years which would be required under (f) above.

(h) (No change in text.)

(i) Inmates with indeterminate sentences must have served the following number of months of their sentences to be eligible to be considered for gang minimum custody status and full minimum custody status:

Length of Sentence	Months in Maximum
30 years to life	42
25 to 29 years	30
20 to 24 years	18
15 to 19 years	6
Up to 15 years	None

(j) Inmates presently serving sentences for controlled dangerous substance (C.D.S.) offenses shall be eligible to be considered for gang minimum custody status and full minimum custody status. When considering these offenders, the I.C.C. shall take into account the following:

1.-6. (No change.)

(k) (No change in text.)

(l) Inmates who have New Jersey detainers, New Jersey open charges less than five years old or who are on bail, are eligible to be considered for gang minimum custody status and full minimum custody status unless the detainer, the open charge or the bail is for one of the following:

1.-13. (No change.)

(m) Inmates who have escaped or attempted escape and who are not excluded from reduced custody pursuant to N.J.A.C. 10A:9-4.8(e) shall be eligible for reduced custody as follows:

1. If an inmate is presently serving a sentence for escape or attempted escape from inside the security of a main correctional facility or county jail, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status and full minimum custody status only when five years have elapsed since the date of apprehension of the escape or the date of attempted escape and he or she is otherwise eligible according to the criteria set forth in this subchapter.

2. If an inmate is presently serving a sentence for escape or attempted escape from a minimum security detail or unit, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status and full minimum custody status when two years have elapsed from the date of apprehension of the escape or two years from the date of the attempted escape and he or she is otherwise eligible according to the criteria set forth in this subchapter.

3. (No change.)

10A:9-4.7 Criteria for consideration for gang minimum custody status only

(a) Inmates who meet the criteria set forth in this section shall be eligible to be considered for gang minimum custody status but not for full minimum custody status.

(b) (No change.)

(c) An inmate who is presently serving a sentence for one count of a sexual offense and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for a nonsexual offense but who has a prior adult conviction for one count of a sexual offense, may be considered for gang minimum custody status provided:

1. The inmate is otherwise eligible according to the criteria set forth in this subchapter; and

2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's criminal sexual behavior and his or her likelihood for success in reduced custody status; or

3. The inmate is housed at the Adult Diagnostic and Treatment Center (A.D.T.C.) and is approved for reduced custody status by the Institutional Classification Committee (I.C.C.) and Superintendent of A.D.T.C.*,* only*[,]* for job assignment on A.D.T.C. property.

(d) An inmate who presently is serving a sentence for one conviction of arson or fire setting or malicious destruction involving arson, with no previous such adult convictions; or an inmate presently serving a sentence for a nonarson offense but who has a prior adult conviction for arson, fire setting or malicious destruction involving arson, is eligible to be considered for gang minimum custody status provided:

1. (No change.)

2. There is a psychiatric or psychological evaluation, no more than six months old, which focuses specifically on the inmate's likelihood for success in gang minimum custody status in light of the present or past conviction for arson.

10A:9-4.8 Not eligible to be considered for reduced custody status

(a) Inmates serving sentences for the offenses described below are not eligible to be considered for any type of reduced custody status, except those inmates housed at the Adult Diagnostic Treatment Center (A.D.T.C.) described in N.J.A.C. 10A:9-4.7(c)3.

(b)-(e) (No change.)

10A:9-4.9 Assignment of inmates to satellite units, except Jones Farm

(a) Only those inmates who are classified as full minimum custody status may be assigned to satellite units.

(b) When assigning inmates to satellite units, the Institutional Classification Committee (I.C.C.) may consider the following factors:

1. Notoriety or reputation of a particular inmate in the surrounding community;

2. Proximity of the satellite unit to the local community;

3. Impact on community relations with the parent institution, considering the inmate's criminal history and present record of incarceration; and

4. Any other factor which the Superintendent or Institutional Classification Committee (I.C.C.) deems relevant to the inmate's successful placement at a satellite unit.

(c) Each parent institution shall develop written guidelines consistent with this subchapter. These guidelines shall be submitted to the Deputy Commissioner, New Jersey Department of Corrections, for review.

(d) At the time of initial placement of an inmate in the correctional system, the Inter-Institutional Classification Committee (I.I.C.C.) may assign an eligible inmate directly to an appropriate satellite unit.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

BOARD OF DENTISTRY

New Jersey Board of Dentistry Rules

Adopted Readoption with Amendments: N.J.A.C. 13:30

Adopted Repeals: N.J.A.C. 13:30-1.2 through 1.16, 2.2 through 2.8, 2.18, 5.2 through 5.14, 6.2 through 6.10, 8.7 and 8.11

Proposed: January 16, 1990 at 22 N.J.R. 149(b).

Adopted: March 7, 1990 by the New Jersey Board of Dentistry, Samuel Furman, D.D.S., President.

Filed: March 12, 1990 as R.1990 d.205, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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Authority: N.J.S.A. 45:6-3; N.J.S.A. 45:6-50(h).

Effective Date: March 12, 1990, Readoption; April 2, 1990, Amendments.

Expiration Date: March 12, 1995.

The Board of Dentistry afforded all interested parties an opportunity to comment on the proposed readoption with amendments, N.J.A.C. 13:30, and the repeals which were proposed to eliminate confusion and contradictory regulations that no longer reflect the modern practice of dentistry or present Board procedure. The official comment period ended on February 15, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 16, 1990 at 22 N.J.R. 149(b). Announcements were also forwarded to the Newark Star Ledger, Trenton Times, Asbury Park Press, Courier Post, and Bergen Record, newspapers of general circulation, New Jersey Dental Association, New Jersey Hospital Association, New Jersey Dental Assistants Association, American Dental Hygiene Association, New Jersey Department of Health, the United States Department of Justice Drug Enforcement Administration and to other interested individuals and organizations.

A full record of this opportunity to be heard can be inspected by contacting William Gutman, Executive Director, Board of Dentistry, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Board of Dentistry received 38 comments, all concerning dental assistants and dental hygienists, during the official 30-day comment period. Twenty-nine comments, all substantially similar in nature, were received from licensed dental hygienists and three comments were received from registered dental assistants; comments were also received from the New Jersey Dental Hygienists' Association, the New Jersey Dental Assistants' Association, the Director of Dental Programs at Camden County College, two licensed dentists and a Board member. The comments generally fall into several categories set forth below with the Board's response to each.

COMMENT: The majority of the comments received were requests to change the required level of supervision of dental hygienists in private practice settings from direct supervision to general supervision and requests to permit dental hygienists to perform specific additional duties; that is, the administration and monitoring of nitrous oxide and the administration of local anesthesia. The New Jersey Dental Hygienists' Association commented that the use of the word "direct" puts the rules in conflict with the Dental Auxiliaries Act.

RESPONSE: The Board wishes to state at the outset that the purpose of a "sunset" regulatory review is to clarify, eliminate unnecessary or redundant rules, and bring the rules up to date. Requests for substantive rule changes are more appropriately raised and addressed separately in order to allow all parties ample time for consideration of the issues raised. Further, these issues were previously considered by a Board committee in the context of a petition for rulemaking filed with the Board on July 2, 1986 by the New Jersey Dental Hygienists' Association. At that time, the Board thoroughly reviewed all of the material it received including oral and written comments and Attorney General advice regarding the supervision standard; the Attorney General advised that "direct supervision" of a licensed hygienist by a licensed dentist is authorized by the Dental Auxiliaries Act, N.J.S.A. 45:6-48 et seq. The Board determined at that time to deny the petition on the basis that the public health, safety and welfare were best served by maintaining the current rules (see 20 N.J.R. 2330(b), September 6, 1988). Based upon the Board's previous review and consideration of these issues and the fact that the commenters to the current proposed readoption have not provided new information or compelling reasons which would persuade the Board to amend its rules in these areas, the Board determined not to make the requested amendments.

COMMENT: Several commenters suggested that the listing of expanded functions in N.J.A.C. 13:30-2.3(c) should be eliminated because these functions are the traditional duties of a dental hygienist.

RESPONSE: Dental hygienists who graduated from an approved dental hygiene program in New Jersey in 1984 or thereafter are exempt pursuant to N.J.A.C. 13:30-2.7(b) from proving their qualifications to perform expanded functions because instruction in these functions has been a prerequisite to Board approval of New Jersey Dental Auxiliary Educational Programs beginning with the 1982-1983 academic year. However, those graduating prior to 1984 and graduates of programs outside the State of New Jersey must submit proof of their qualifications in these areas so that the Board can assess their proficiency. If the Board were to eliminate the listing of expanded functions and the requirement of proof of qualifications, the Board would not be assured that the required educational standards were being met in these areas. The Board believes that all licensees must meet a single standard of proficiency in expanded functions in order to protect the public health and welfare. Accordingly, the Board will continue to list the expanded functions and will continue to require proof of qualifications from those who graduated prior to 1984 and from graduates of programs outside New Jersey.

COMMENT: The New Jersey Dental Hygienists' Association suggested that the Board may wish to formulate regulations to address graduates of foreign dental schools seeking New Jersey licensure.

RESPONSE: The Board does have a policy regarding U.S. and foreign dental school graduates seeking New Jersey licensure; that is, the Board recognizes those schools approved by the American Dental Association Commission on Accreditation, which currently recognizes schools in Canada and the United States.

COMMENT: The New Jersey Dental Hygienists' Association recommended deleting the phrase "to the auxiliary" in N.J.A.C. 13:30-2.9(b)1 since licensed dental hygienists and registered dental assistants are already specifically mentioned.

RESPONSE: The Board does not view this as a necessary deletion.

COMMENT: The New Jersey Dental Hygienists' Association recommended using the word "licensee" rather than the word "dentist" in N.J.A.C. 13:30-8.5(a)1 (complaint review procedures) since licensed dental hygienists and/or registered dental assistants may be the subject of a consumer complaint either individually or in conjunction with a dentist.

RESPONSE: The Board agrees with this comment and is therefore substituting the word "licensee" for the word "dentist" in this rule.

COMMENT: The New Jersey Dental Hygienists' Association requested that the Board expand the list of duties of a registered dental assistant to include stabilization of arch wires, placement of elastic separators, fabrication of mouth guards, applying pit and fissure sealants, removing temporary restorations, applying cavity liners and bases, and carving amalgam restorations.

RESPONSE: The Board has referred this issue to a committee for further study and recommendation to the full Board.

COMMENT: Several commenters requested a public hearing, including the New Jersey Dental Hygienists' Association, the New Jersey Dental Assistants' Association, the Director of Dental Programs at Camden County College and four individual commenters. Board member Cynthia Fong recommended that the Board grant these requests.

RESPONSE: As previously stated, the commenters have raised no new issues warranting Board consideration or a public hearing. Accordingly, the Board was not inclined to grant a hearing on the changes proposed by this sunset review since they are by and large procedural amendments.

Summary of Changes Upon Adoption:

1. In N.J.A.C. 13:30-1.2, the words "or post-doctoral dental school" were added following the words "resident in an approved hospital." This change was made to clarify that resident permits will be required of residents in both types of Board approved post-doctoral residency programs; that is, dental school programs and hospital programs.

2. In response to a comment from the New Jersey Dental Hygienists' Association, the word "licensee" was substituted for the word "dentist" in N.J.A.C. 13:30-8.5, which establishes complaint review procedures. As the representative of the Dental Hygienists' Association pointed out, licensed dental hygienists and/or registered dental assistants may be the subject of a consumer complaint either individually or in conjunction with a dentist.

3. Since investigation of a complaint is appropriate in many circumstances, and since the proposal did not address this issue, N.J.A.C. 13:30-8.5(d)5 was added to clarify that in addition to the determinations set forth in paragraphs (d) 1 to 4, the complaint review committee also may suggest to the Board that a complaint be referred for investigation to the appropriate governmental agency.

4. The statutory reference in N.J.A.C. 13:30-8.5(e)3, which concerns complaint review committee action upon completion of its review, was changed to indicate that a complaint may be referred to the Division of Law for action pursuant to N.J.S.A. 45:1-14 et seq., the Uniform Enforcement Act, rather than for preparation of a formal complaint as provided by N.J.S.A. 45:6-7. This change was made because N.J.S.A. 45:6-7 sets forth only a limited number of causes of action for license revocation or suspension; for example, it does not include insurance fraud as a cause of action. Referral to the Division of Law for action pursuant to the Uniform Enforcement Act, on the other hand, will provide the Board with a broader basis for disciplinary action.

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Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:30.

Full text of the amendments to the readoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*):

13:30-1.1 Qualifications of applicants

(a) (No change.)

(b) To qualify as a candidate for dental licensure, an applicant must present satisfactory evidence that he or she has graduated with a dental degree from a dental school, college or department of a university approved by the Board and the Commission on Dental Accreditation.

(c) To obtain a license to practice dentistry, the candidate must pass the Northeast Regional Board Examination. The Board will recognize successful completion of the Northeast Regional Board examination for up to five years. After five years, the Board will review each request on a case by case basis.

(d) All candidates for licensure in dentistry in the State of New Jersey shall, in addition to any and all other requirements for licensure, be required to take and pass to the satisfaction of the Board an examination which tests the candidate's knowledge of the rules, regulations and statutes pertaining to the practice of dentistry in New Jersey. Such examination shall be offered at least twice each year in the English language, at such time and place as the Board shall determine.

(e) To obtain a license to practice dentistry, the candidate must possess a National Board Certification showing that the applicant has successfully passed all phases of the National Boards of Dentistry.

13:30-1.2 Resident permit

Prior to obtaining licensure, a graduate of an approved dental school who has passed Part I and Part II of the National Board Dental Examination may serve as a resident in an approved hospital ***or post-doctoral dental school*** teaching program upon obtaining a resident permit from the Board.

13:30-2.1 Qualifications of applicants

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

(c) To qualify as a candidate for a license to practice dental hygiene, the applicant must first present satisfactory evidence of graduation from an educational program in dental hygiene approved by the Board and the Commission on Dental Accreditation.

(d) Applicants for licensure to practice dental hygiene in New Jersey must possess National Dental Hygiene Board Certification.

13:30-2.2 Licensure of candidates in dental hygiene

(a) (No change in text.)

(b) The New Jersey State Board of Dentistry may, in its discretion, grant a waiver of Northeast Regional Board performance testing, depending upon the record of the candidate. However, the candidate must be a graduate of a dental hygiene school approved by the Commission on Dental Accreditation.

(c) The Board will recognize successful completion of the Northeast Regional Board for up to five years. After five years, the Board will review each request on a case by case basis.

13:30-2.3 Duties of licensed dental hygienist

(a) A licensed dental hygienist may perform the following duties under the direct supervision of a licensed dentist:

1.-3. (No change.)

4. Perform all those duties delegable to the dental assistant and the registered dental assistant as defined in N.J.A.C. 13:30-2.6(a) and (b), subject to the requirements of N.J.A.C. 13:30-2.7.

(b) A licensed dental hygienist practicing within an institution may perform those duties listed in (a)1, 2 and 3 above and those duties listed in N.J.A.C. 13:30-2.6 (b)1, 2, 4, 9, 10, subject to the supervision of a New Jersey licensed dentist in an institution in this State.

(c) A licensed dental hygienist who has met the requirements of N.J.A.C. 13:30-2.7 may perform the following duties under the direct supervision of a licensed dentist:

1.-4. (No change.)

(d) (No change.)

13:30-2.4 Qualifications of registered dental assistants

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

(c) The Board may grant registration to a dental assistant who submits:

1. (No change.)

2. Proof of competency of performance as defined in N.J.A.C. 13:30-2.7 in expanded functions;

3.-5. (No change.)

13:30-2.5 Professional education

(a) (No change.)

(b) The Board may approve dental assisting programs which have been accredited by the Commission on Dental Accreditation or a program established in an institution of post-secondary education which has been accredited by a regional accrediting agency.

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

13:30-2.6 (No change in text.)

13:30-2.7 Qualifications for performance of expanded functions

(a) A dental hygienist who desires to perform expanded functions as defined in N.J.A.C. 13:30-2.3(c) and all registered dental assistants shall furnish the Board with proof of one of the following:

1. Certificate of graduation from an approved educational program in dental hygiene or dental assisting in which the expanded functions or duties as listed in N.J.A.C. 13:30-2.3 and 13:30-2.6 are taught. Instruction in expanded functions shall be a prerequisite to Board approval of Dental Auxiliary Educational Programs in the State beginning no later than the 1982-1983 academic year; or

2. (No change.)

3. Certificate of successful completion of an approved program in expanded functions in dental hygiene or dental assisting as defined in N.J.A.C. 13:30-2.8.

(b) A dental hygienist who has graduated from an approved dental hygiene program in the State of New Jersey in 1984 or thereafter shall be qualified to perform expanded functions as defined in N.J.A.C. 13:30-2.3(c), and shall be exempt from the provisions of (a) above.

13:30-2.8 Programs in expanded functions

(a) The Board may recognize the following as providers of approved programs in expanded functions:

1. An institution approved by the Commission on Dental Accreditation;

2.-4. (No change.)

13:30-2.9 Continuing education requirements

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

(e) The Board may recognize as acceptable the courses of study and amount of hours credited in continuing education programs approved by:

1. The American Dental Association and its constituents and components;

2. The Academy of General Dentistry and its constituents and components;

3. The American Dental Hygienists Association and its constituents and components;

4. The American Dental Assistants' Association and its constituents and components;

5. (No change.)

13:30-2.10 (No change in text.)

13:30-2.11 (No change in text.)

13:30-3.1 Qualifications of applicants

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

13:30-3.2 Application procedure

(a) The applicant shall:

1.-2. (No change.)

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3. Give two character references, preferably from reputable New Jersey dentists; and

4. Have the completed application notarized.

13:30-5.1 Requisites for dental schools

(a) The Board will accept for licensure only graduates of dental schools approved by the Commission on Dental Accreditation.

(b) For purposes of granting limited teaching certificates, the Board will accept graduates of dental schools approved by the Commission on Dental Accreditation or graduates of dental schools approved at the discretion of the Board.

SUBCHAPTER 6. STANDARDS FOR APPROVAL OF SCHOOLS OF DENTAL HYGIENE

13:30-6.1 General requirements

All dental hygiene schools must be approved by the Commission on Dental Accreditation.

13:30-8.1 Fee schedules

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

(d) Other fees:

1. Limited teaching certificate

i. Application $10.00

ii. Annual Renewal $5.00

2. Resident permit $10.00

(e) Except for the fees herein established, other fees prescribed by statute shall continue to be assessed by the Board in the lawful amount.

13:30-8.5 Complaint review procedures

(a) Complaints shall be in writing.

1. The complaint shall specify the name and address of the *[dentist(s)]* ***licensee(s)*** involved, the name and telephone number of the complainant, the date(s) of the alleged misconduct, and a brief but detailed explanation of the grounds for the complaint.

2. The Executive Director of the Board shall review all complaints for sufficiency. When insufficient information is given, he or she shall notify the complainant to supply the needed information without delay. Complaints may be received by telephone, but shall be confirmed in writing as indicated above.

(b) The Executive Director shall then forward the completed complaint to the licensee(s) involved with a request for all records, X-rays, models, and any other pertinent materials as well as a complete narrative in response to allegations contained in the complaint. Should sensitive material be contained in the complaint, the Executive Director may, with the consent of the Board, withhold all or part of said complaint from forwarding to the licensee(s).

1. The Executive Director shall review all responses for sufficiency. When insufficient information is given, he or she shall notify the licensee(s) to supply the information without delay.

(c) All completed complaints along with the response of the licensee(s) shall then be forwarded to a member of the complaint review committee for review and to report for consideration at the next scheduled committee meeting.

1. The complaint review committee shall consist of no more than six members of the Board and shall be appointed by the president of the Board.

2. A chairman and vice-chairman of the complaint review committee shall also be appointed by the president of the Board and shall serve until a successor is appointed. The chairman shall preside at all meetings. In the absence of the chairman, the vice-chairman shall preside.

(d) The complaint review committee shall review each complaint in order to make one or more of the following determinations:

1. That the information contained in the complaint and/or the response is insufficient. In such cases, the committee shall notify the complainant or the licensee(s) to provide the needed information without delay;

2. That the information contained in the complaint and/or the response is insufficient and requires information from a subsequent treating licensee(s). In such cases, the committee shall request needed information from said subsequent treating licensee(s) without delay;

3. That the complaint is of a nature that requires the complainant to be directly examined by another dentist to determine the state of the patient's dental health and the quality of the services which are the subject matter of the complaint; *[and/or]*

4. That the complaint requires an investigative hearing as provided by N.J.S.A. 45:1-18*[.]**; **and or***

5. That the complaint is of a nature that requires referral for investigative purposes to the appropriate governmental agency.

(e) Upon completion of its review of a complaint the committee shall report to the Board for Board consideration and final disposition one or more of the following determinations:

1. No cause for Board action;

2. Probable cause for action with attendant offer of settlement by mutual consent;

3. Referral to the Division of Law for *[preparation of formal complaint as provided by N.J.S.A. 45:6-7]* ***action pursuant to N.J.S.A. 45:1-14 et seq.***; and/or

4. Other direction or informal resolution as the Board shall deem appropriate.

Recodify N.J.A.C. 13:30-8.8 through 8.10 as 8.7 through 8.9 (No change in text.)

Recodify N.J.A.C. 13:30-8.12 and 8.13 as 8.10 and 8.11 (No change in text.)

13:30-8.12 Notification of change of address; service of process

(a) A licensee of the Board of Dentistry shall notify the Board in writing of any change of address from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, not later than 30 days following the change of address.

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

Recodify existing N.J.A.C. 13:30-8.15 through 8.17 as 8.13 through 8.15 (No change in text.)

13:30-8.16 Right to hearing

Prior to any suspension, revocation or refusal to renew a license, the licensee shall have the right to request a hearing which shall be conducted pursuant to 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.

(a)

BOARD OF EXAMINERS OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS

State Board of Ophthalmic Dispensers and Ophthalmic Technicians Rules

Readoption: N.J.A.C. 13:33

Proposed: January 16, 1990 at 22 N.J.R. 154(a).

Adopted: March 7, 1990 by the Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, J. Leo Kymer, President.

Filed: March 12, 1990 as R.1990 d.204, **without change.**

Authority: N.J.S.A. 52:17B-41.13.

Effective Date: March 12, 1990.

Expiration Date: March 12, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:33.

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(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Elimination of Wagering
Adopted Amendment: N.J.A.C. 13:70-29.19

Proposed: October 16, 1989 at 21 N.J.R. 3254(a).
Adopted: February 22, 1990 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: March 2, 1990 as R.1990 d.184, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: April 2, 1990.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-29.19 Elimination of wagering

(a) With the approval of the Racing Commission, or its designee, race tracks will be permitted to eliminate place and show wagering on any particular horse or entry in any race. Among the factors to be considered will be the quality of the horse or horses for which the elimination of wagering is sought compared to the quality of the other horses in the race. The request to eliminate place or show wagering shall be made prior to the printing of the program. Once the program is printed, elimination of wagering will not be permitted unless the following occurs:

1. If less than six wagering interests qualify horses to start in a race, the mutuel director shall be permitted to eliminate show wagering on that race.

2. If less than five wagering interests qualify horses to start in a race, the mutuel director shall be permitted to eliminate both place and show wagering on that race.

3. If two or less wagering interests qualify horses to start in a race, the mutuel director shall be permitted to eliminate wagering on that race.

(b) The decision to eliminate wagering in (a)1 through 3 above shall be made prior to the opening of mutuel windows for that day's business unless there is a change in the number of wagering interests qualified to start. If a change in the number of wagering interests qualified to start occurs after wagering has begun, the decision to eliminate wagering shall be made immediately at the time the number of wagering interests qualified to start changes.

(c) New Jersey race tracks may adjust the pari-mutuel pools to eliminate certain forms of wagering on all interstate simulcasts consistent with the pari-mutuel decisions made by the sending track associations in conformance with that state's rules and regulations. Notice of the decision to make adjustments shall be provided to the Racing Commission or its designee prior to accepting wagers on the event.

(d) In all cases where wagering is eliminated, race tracks shall inform the public through notification in the program, advertisements, public address system or any other means available.

(b)

NEW JERSEY RACING COMMISSION

Harness Rules
Elimination of Wagering
Adopted Amendment: N.J.A.C. 13:71-27.18

Proposed: October 16, 1989 at 21 N.J.R. 3255(a).
Adopted: February 22, 1990 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: March 2, 1990 as R.1990 d.185, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: April 2, 1990.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:71-27.18 Elimination of wagering

(a) With the approval of the Racing Commission, or its designee, race tracks will be permitted to eliminate place and show wagering on any particular horse or entry in any race. Among the factors to be considered will be the quality of the horse or horses for which the elimination of wagering is sought compared to the quality of the other horses in the race. The request to eliminate place or show wagering shall be made prior to the printing of the program. Once the program is printed, elimination of wagering will not be permitted unless the following occurs:

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2. If less than five wagering interests qualify horses to start in a race, the mutuel director shall be permitted to eliminate both place and show wagering on that race.

3. If two or less wagering interests qualify horses to start in a race, the mutuel director shall be permitted to eliminate wagering on that race.

(b) The decision to eliminate wagering in (a)1 through 3 above shall be made prior to the opening of mutuel windows for that day's business unless there is a change in the number of wagering interests qualified to start. If a change in the number of wagering interests qualified to start occurs after wagering has begun, the decision to eliminate wagering shall be made immediately at the time the number of wagering interests qualified to start changes.

(c) New Jersey race tracks may adjust the pari-mutuel pools to eliminate certain forms of wagering on all interstate simulcasts consistent with the pari-mutuel decisions made by the sending track associations in conformance with that state's rules and regulations. Notice of the decision to make adjustments shall be provided to the Racing Commission or its designee prior to accepting wagers on the event.

(d) In all cases where wagering is eliminated, race tracks shall inform the public through notification in the program, advertisements, public address system or any other means available.

PUBLIC ADVOCATE

(c)

THE PUBLIC ADVOCATE

Organization of the Department
Adopted Amendment: N.J.A.C. 15A:2-1.1

Adopted: March 3, 1990 by Thomas Smith, Acting Public Advocate.
Filed: March 9, 1990 as R.1990 d.198.

Authority: N.J.S.A. 52:27E-4c and 52:14B-4(b).

Effective Date: March 9, 1990.
Expiration Date: December 27, 1994.

Take notice that the Public Advocate has adopted an amendment to N.J.A.C. 15A:2-1.1(a)1i to include "Hudson" among those counties to which representation of individuals from those counties at involuntary commitment hearings held pursuant to N.J.S.A. 30:4-27.12 is provided by the Public Advocate. Representation of such individuals from Hudson County is and has been provided; its omission from the list of counties was inadvertent.

Full text of the amended organizational rule follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*):

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15A:2-1.1 Organization of the Department

(a) The Department of the Public Advocate is responsible for providing counsel for mentally ill and for developmentally disabled persons, for investigating complaints from citizens about State government, for representing the public in rate proceedings and for representing the public interest as prescribed in N.J.S.A. 52:27E-1 et seq. The following five Divisions carry out the Department's statutory mandates:

1. The Division of Mental Health Advocacy is responsible for providing individual and class action representation for former, present and potential indigent psychiatric hospital admittees on issues affecting their commitment to, release from and conditions of confinement in psychiatric hospitals, as well as issues affecting quality of psychiatric treatment and related rights issues in non-institutional settings.

i. Representation of individuals at involuntary commitment hearings held pursuant to N.J.S.A. 30:4-27.12 is limited to individuals committed from the Counties of Atlantic, Bergen, Camden, Cape May, Cumberland, Essex, Gloucester, ***Hudson,*** Hunterdon, Mercer, Monmouth, Ocean and Salem.

ii.-iv. (No change.)

2.-5. (No change.)

(b) (No change.)

TREASURY-GENERAL

(a)

OFFICE OF THE TREASURER
COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

Notice of Administrative Correction
Minority and Female Subcontractor Participation in State Construction Contracts
Applicability and Scope
N.J.A.C. 17:14-1.2 and 12A:10-2.2

Take notice that the Department of the Treasury has discovered an error in the text of N.J.A.C. 17:14-1.2 and 12A:10-2.2 in that the reference to N.J.S.A. 52:34-12(f) is incorrect. The correct reference should be to N.J.S.A. 52:32-2.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

17:14-1.2 (12A:10-2.2) Applicability and scope

(a) The rules in this subchapter are jointly promulgated by the Department of Commerce, Energy and Economic Development (hereinafter, "Department of Commerce") and the Department of Treasury to implement N.J.S.A. [52:34-12(f)] **52:32-2** which provides that a publicly bid contract is to be awarded to the responsible bidder whose bid will be most advantageous to the State, price and other factors considered. The statute further provides that any and all bids may be rejected when it is in the public interest to do so. These rules also implement N.J.S.A. 10:5-32 which provides that public works contracts shall provide for equality in opportunity by any contractor engaged in a public works project.

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

(b)

DIVISION OF BUILDING AND CONSTRUCTION
Classification and Qualifications of Bidders
Readoption: N.J.A.C. 17:19

Proposed: February 5, 1990 at 22 N.J.R. 329(b).

Adopted: March 8, 1990 by Thomas H. Bush, Director, Division of Building and Construction.

Filed: March 8, 1990 as R.1990 d.193, **without change**.

Authority: N.J.S.A. 52:35-1 et seq., specially 52:35-11, 52:27-1 et seq., 52:18A-30 and 52:18A-151 et seq.

Effective Date: March 8, 1990.

Expiration Date: March 8, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:19.

OTHER AGENCIES

(c)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION
District Zoning Regulations
Definitions; Floor Area Ratio; Restoration and Environmental Management of Wetlands; Finished Floor Evaluations; Screening; Satellite Antenna and Fill Standards.
Adopted Amendment: N.J.A.C. 19:4

Proposed: November 6, 1989 at 21 N.J.R. 3441(a).

Adopted: February 28, 1990 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Filed: March 2, 1990 as R.1990 d.186, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: April 2, 1990.

Expiration Date: May 26, 1993.

Summary of Public Comments and Agency Responses:

In addition to comments offered during the public hearing, the Office received 18 comment letters and a Resolution from the Hackensack Meadowlands Municipal Committee (HMMC). The HMMC Resolution indicated that the proposed amendments were approved by the group with one recommendation.

Comments were offered on all proposed revisions. After careful review of all comments, some changes recommended by the public have been incorporated into the amended rules. Furthermore, all comments have been addressed and all specific questions answered.

Definition of Lot

COMMENT: Five of the letters submitted included comments on the proposed revision to the definition of "lot". The following points were raised in one letter: "reduces flexibility"—property owners would not be able to transfer bulk requirements; "wetlands considerations"—reduces flexibility on lots where wetlands exist; "transferring development rights (TDR)"—suggests that the HMDC implement a more comprehensive TDR mechanism; "policy"—ability to transfer development through the creaton of a zoning lot encourages good planning and open space. Another commenter stated that the proposed revision to the definition (in conjunction with other proposed amendments) will have major impacts on future development. Another point was that the term "reasonable proximity" was not clear and that the way the definition is worded should be changed to avoid confusion. The fourth comment again dealt with the impact on developers to transfer development requirements and with the term "reasonable proximity." The last comment on this particular amendment dealt with the differences between TDR's in general and what the current definition of lot allows a developer. In addition, the letter dealt with the terms "reasonable proximity" and "contiguous" and offered suggestions on how the wording could be changed.

Two other letters were submitted that discussed the definition of lot, but in this instance, the writer was requesting an interpretation of how it would relate to his specific project. These concerns were addressed by a separate letter.

RESPONSE: It is the opinion of the New Jersey Attorney General's Office that the HMDC does not currently have the statutory authority

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to allow a transfer of development rights (TDR) within the Hackensack Meadowlands District. The proposed revision to the definition of lot is a result of this determination. The definition has been modified to prevent a transfer of development rights from taking place through the creation of a "lot" as currently defined in the rules. However, it must be noted that this agency has already taken initial steps to research TDR's and hopefully implement a TDR program in the District.

The last sentence of the definition, which is added subsequent upon adoption, allows some flexibility in instances where lots are separated by a barrier, natural or manmade, but where both lots of record or portions thereof could function as a unit, may be considered contiguous.

Restoration and Environmental Management of Wetlands

COMMENT: Three of the letters submitted included comments regarding the revision which would allow restoration and environmental management of wetlands as a permitted use in the Marshland Preservation Zone. All three comments were basically the same. They stated that by designating restoration and environmental management of wetlands as a permitted use in the Marshland Preservation Zone, it would legally imply that it is not permitted in all other zones if it is not specifically included as a permitted use. In addition, the Hackensack Meadowlands Municipal Committee, in their approval, recommended that this use should be permitted in all zones.

RESPONSE: The reason for specifically stating that it was permitted in the Marshland Preservation Zone was because the purpose of this zone, as described in N.J.A.C. 19:4-4.12, focuses on the protection and preservation of wetlands in the zone. Restoration and environmental management clearly meet the intent of this section of the rules and the zone.

However, it was **not** the Commission's intent to prohibit this use in all other zones. Therefore, HMDC is specifically including it as a permitted use in all zones and Specially Planned Areas under N.J.A.C. 19:4-6.16.

Departures from Approved Plans

COMMENT: Four of the letters submitted included comments on the proposed amendment that would make any deviation from approved plans as shown on as-built plans a violation of the rules and therefore subject to fines.

All felt that the amendment should use a different standard since fining developers for "**any**" deviation from approved plans provides too rigid a rule. Members of the development community pointed out that it is extremely common, almost inevitable, that minor field adjustments take place when construction is underway. Examples include changes in exact location of plant material, grade refinements, etc.

RESPONSE: The intent of the amendment was to insure that revised plans be submitted to this Office for review and approval when a substantial change is made. It was not HMDC's intent to prevent minor field adjustments or to fine developers for these infractions. Therefore, when changes are made that are substantial, significant or otherwise similarly qualified, without prior approval from the Office of the Chief Engineer, they will be considered a violation. The language in the proposed amendment has been modified to express its true intent.

Definition of Floor Area Ratio (F.A.R.)

COMMENT: Several commenters expressed opposition to the inclusion of parking decks into the definition of floor area ratio (F.A.R.). The commenters stated various reasons for their opposition as follows: open space will be discouraged; it is inconsistent with the planning objectives of F.A.R.; development potential will be reduced; parking decks will be discouraged; the Master Plan process will be circumvented; the Municipal Land Use Law (M.L.U.L.) contradicts this definition of F.A.R.; other commonly accepted F.A.R. definitions contradict the proposal; and the existing regulations never contemplated this provision.

RESPONSE: HMDC's current definition of F.A.R. is "the gross floor area of all buildings and structures on the lot divided by the lot area". Parking decks are included in the calculation of F.A.R. since they are a structure. The proposal to specifically mention parking decks in the F.A.R. definition is only meant to clarify HMDC's position.

Minimum open space is required in every zone by other rules, therefore, concerns about discouraging open space may only be valid when discussing an amount of open space which exceeds the minimum requirements of a specific zone.

Typically, the objective of F.A.R. in zoning ordinances as well as in HMDC's zoning regulations is to control the density and intensity of a development. While some municipal zoning ordinances may exempt parking decks from F.A.R. calculations, the HMDC has always defined parking decks as structures and therefore always included them in the F.A.R. calculation. Therefore, the development potential or the incentive to provide parking decks will not be affected.

The clarification being made to the rules at this time in no way prevents any future modifications to this or any other bulk requirement as part of the Master Plan process. Based on the above, the Master Plan process is not being circumvented.

HMDC is not subject to M.L.U.L. and, therefore, need not be consistent with the M.L.U.L. definitions. However, upon analyzing the M.L.U.L. definition of F.A.R. it appears that the proposed HMDC definition is very similar to M.L.U.L.'s definition. While M.L.U.L.'s definition does not mention parking decks, it does mention structures. Structures as defined by M.L.U.L. includes parking decks.

Floor Area Ratio (Hotel Exemption)

COMMENT: The deletion of the hotel floor area exemption from F.A.R. calculations in the Service Highway Commercial Zone was opposed in three of the letters. Developers feel that this amendment will discourage hotel construction and the benefits of hotels will be lost.

RESPONSE: This Service Highway Commercial zone is primarily found along some of the most congested roadways in the District. The zone allows very small lot areas; the smallest of any zone in the District—20,000 square feet. This exemption would give a property owner the right to build a "hotel tower" since the rules do not include height restrictions for this kind of development.

This exemption was originally put in the rules as an incentive for hotel development. Because of the traffic problems which could arise from this type of exemption and because this type of incentive is no longer needed in this zone, HMDC believes that in order to promote orderly development, it should be eliminated. Although in theory the current rule appears to be an incentive, in practice to date there have been no hotels developed in this zone. It must be noted that although the exemption is being eliminated, hotels continue to be permitted uses in this zone. The amendment will now regulate the size of the development.

Floor Area Ratio (Office Facilities)

COMMENT: Members of the development community felt that the inclusion of other uses besides office facilities, when calculating F.A.R., will reduce the maximum development potential in the Research Distribution Park zone, Research Park zone, Light Industrial and Distribution "A" & "B" zones and Heavy Industrial zone.

RESPONSE: The HMDC's proposed amendment deletes the words "for office [facilities] only" which currently appear next to the maximum F.A.R. allowed in the following zones: Heavy Industrial, Light Industrial and Distribution "B", Light Industrial and Distribution "A", Research Distribution Park and Research Park. The Light Industrial and Distribution "B" zone and the Heavy Industrial zone do not allow offices as permitted uses. In cases where a use variance might be issued, a reasonable F.A.R. number can be included as part of an approval for an office use.

With respect to the other zones mentioned, the current F.A.R. of 2.5 will not be changed. What is being changed is what is included in the calculation of this number. Although all of the remaining zones have different bulk requirements and different intents and purposes, they basically allow two types of developments: office developments and warehouse "type" developments to be used for storage, manufacturing, processing, distribution, research and development, etc. This Office is of the opinion that a F.A.R. of 2.5 is not likely to be reached by a warehouse/distribution type of development.

Currently, in these zones, the F.A.R. number of 2.5 applies to office facilities only. HMDC believes that even with the proposed amendments, the F.A.R. limitation in these zones will most likely be applicable to office-type developments only. Therefore, the current rule and the proposed amended rule still limit the same type of development. In addition, the limitation or F.A.R. permitted (2.5) is not being changed. Additionally, the changes being made so that in the case of a mixed use development, consisting of office and warehouse-type development, the total square footage of all buildings and structures on the lot does not exceed 2.5 times the lot area.

Decorative Fencing

COMMENT: Members of the development community questioned what constituted decorative fencing, and is the cost of decorative fencing justified when plant material is also required for screening.

RESPONSE: The purpose of requiring a decorative fence is to provide screening that will work in conjunction with plant material. In the early stages or initial phase, before the plant material reaches mature height,

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the fence will insure that the intent of the screening regulation, as it pertains to loading areas, is met. With respect to the question of what constitutes a decorative fence, HMDC can only say that the term "decorative fence" is commonly used by design professionals in the field.

Level of Service

COMMENT: The definition of "Level of Service" is inadequate.

RESPONSE: The proposed definition has been reviewed and amended. The amended definition is from Special Report 209, Highway Capacity Manual, prepared by the Transportation Research Board.

Economic Development/Future Development

COMMENT: Several comments were received which object to all of the rule changes because they would have a negative impact on future development within the Hackensack Meadowlands District. In particular, comments from Hartz Mountain Industries and Public Service Electric and Gas were directed to the potential negative impact on Hartz Mountain Industries, a property owner within the District. These comments claimed that Hartz Mountain Industries will realize a severe decrease in potential office construction.

General comments were received which questioned the overall changes in regard to its possible negative impact on future development in the District.

RESPONSE: The rule changes which could be interpreted as having an impact on development potential are the clarification of the F.A.R. definition, the inclusion of hotels in F.A.R. calculations within the Service Highway Commercial Zone, and the amendment to the definition of lot, which prevents transferring of development rights.

The inclusion of parking deck areas into the F.A.R. calculation has always been the policy and practice of the HMDC. The rule change which specifically includes parking decks into the calculation is a clarification of existing policy and it is not a change. Therefore, HMDC can expect that the impact that this proposed rule has on development potential today, under current regulations, will not change.

With respect to inclusion of hotel areas into F.A.R. calculations, the commenters are correct that there is a possibility that overall development potential may be reduced. However, this change applies to only one zone, the Service Highway Commercial Zone. Although hotels will continue as permitted uses in this zone, the HMDC does not want to encourage hotels without any control over the square footage that may be built. Most of the undeveloped lots in this zone are small and in close proximity to a highway.

With respect to the loss of development potential due to the change in the definition of a Lot, the commenter is correct that development potential is reduced. However, due to legal opinion from the Attorney General's Office, HMDC cannot allow the transfer of development rights from one lot to another without a change to HMDC's statutory authority. As previously stated, this Agency has already taken steps to determine how a TDR program could be implemented and function within the Hackensack Meadowlands District.

Permitted Uses in the Light Industrial and Distribution "B" Zone

COMMENT: One property owner requested that truck service stations should be included as permitted uses in the Light Industrial and Distribution "B" zone.

RESPONSE: This comment goes beyond the scope of the proposed rule changes.

Final Finished Floor Elevation

COMMENT: HMDC received comments regarding the proposed amendment to the current minimum first floor elevation requirement. The proposed change would require the first floor elevation of any future structure or addition be established at least one foot above the 100-year flood elevation as shown on the Flood Insurance Rate Maps. The current rule requires that the first floor be established at the 100-year flood elevation.

One comment expressed concern that the proposed change would add additional costs to new construction. Another comment questioned the applicability of the proposed change to the ground level of parking decks.

RESPONSE: While HMDC understands that the initial cost of construction may be increased by the proposed change, it believes that the benefits would be substantial during 100-year storm events. The modification brings HMDC requirements in line with the requirements of the New Jersey Department of Environmental Protection. Additional savings to the owner would be in the form of lower flood insurance costs. It should be noted that this rule will not affect the ground level of parking decks.

Fill, Excavation, Regrading and Surcharge

COMMENT: Comments were received expressing concerns over the additional costs involved with the new requirement that Geotechnical Reports be submitted for all earthwork operations. A specific objection was raised in regard to this new requirement in conjunction with small regrading or minor earthwork operations. Another commenter objected to the proposed fill regulation which refers to the New Jersey Department of Environmental Protection (NJDEP) definition of "clean fill." The objection concerns the NJDEP restriction of using clean concrete greater than eight inches in diameter as clean fill, citing that there may be instances where, from a geotechnical standpoint, solids greater than eight inches in diameter can provide a desirable stabilized base for construction in wet areas. Another comment suggested that the citation of the NJDEP clean fill definition be added for clarity.

RESPONSE: It has been a policy that all applicants whose projects involved substantial earthwork operations submit geotechnical reports. Therefore, there is no additional cost associated with the proposed requirement. The proposed provision will be modified, however, to allow the Office of the Chief Engineer to waive this requirement for projects where the required earthwork is minor in nature.

The Office of the Chief Engineer agrees that there may be **isolated** cases where fill containing clean concrete or rubble greater than eight inches in diameter can be the desired base material in a fill project and therefore will revise the proposed fill regulation to permit the use of this material at the discretion of the Chief Engineer. The citation of NJDEP's definition of clean fill will be added as suggested.

Building Height

COMMENT: One commenter expressed concern that the new definition of building height would penalize buildings with depressed loading areas.

RESPONSE: Building height only applies to residential developments in the District. Therefore, this definition will have limited application and will not affect industrial type buildings.

Antenna

COMMENT: One commenter thought that ground-to-ground antenna were inadvertently excluded from the new definition of allowable antenna.

RESPONSE: The proposed definition of antenna allows ground-to-ground antenna: "**terrestrially and/or** orbitally based uses" are permitted.

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

19:4-2.2 Definitions

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

. . .

"Building height" means the vertical distance from the lowest grade level at the base of the structure to its highest point.

. . .

"Floor area ratio (F.A.R.)" means the gross floor area of all buildings and structures, including parking decks, on the lot divided by the lot area.

. . .

"Level of service" *[means a measure of the ability of a section of roadway of significant length to carry specific volumes of traffic.]* ***means a qualitative measure describing operational conditions within a traffic stream using such quantitative factors as speed, travel time, volumes, traffic interruptions, convenience and safety.***

"Lot" means a designated parcel, tract, or area of land established by a plat or otherwise as permitted by law and to be used, developed, or built upon as a unit. Such lot may consist of a single lot of record, a portion of a lot of record, or a combination of the above and must be under single ownership and within reasonable proximity to one another. A lot can only be created by a recorded agreement to which the HMDC must be included as a party. A lot cannot be created for the purpose of transferring bulk requirements unless the lots of record or portions of lots of record are contiguous and within the same zone. ***Whether or not lots or portions of lots which are separated by a manmade or natural barrier, such as a waterway or a right-of-way, will be considered to be contiguous will be determined by the Office***

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of the Chief Engineer based upon the nature and extent of such barrier and the nature and extent of the area in which such barrier is located.*

. . .

"Neighborhood shopping center" means establishments which provide for the sale of convenience goods (food, drugs and sundries) and personal services (those involving the care of a person or his or her apparel), and those that meet the daily needs of an immediate neighborhood trade area.

. . .

"Public utility uses: heavy" means the following uses operated by any public utility authorized to do business in New Jersey:

1.-2. (No change.)

Recodify existing 4.-7. as 3.-6. (No change in text.)

7. Water towers;

8. Electrical generating stations.

. . .

"Satellite antenna" means a device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses. This definition is meant to include, but not be limited to, what are commonly referred to as satellite earth stations, TVRO's (Satellite Television Receiving Antenna), and satellite microwave antennas.

19:4-4.8 Obstructions in required yards

(a) The following shall not be considered to be obstructions and shall be permitted when located in a required yard:

1. In all yards: Open terraces not over four feet above the average level of the adjoining ground, terraces, porches or weather protection enclosures projecting six feet or less into the required yard and totalling less than 60 square feet in floor area; awnings or canopies; steps four feet or less above grade which are necessary for access to a permanent structure or for access to a lot from a street or alley; one-story bay windows and overhanging eaves and gutters, and fireplaces projecting 30 inches or less into the required yard; arbors; flag poles; signs, when permitted by N.J.A.C. 19:4-6.18; and fences when permitted by N.J.A.C. 19:4-6.18.

2. (No change.)

(b) (No change.)

19:4-4.13 Marshland preservation zone; permitted uses

(a) Permitted uses in the marshland preservation zone include:

1. (No change.)

2. Walkways for nature observations*[;]**.*

[3. Restoration and environmental management of wetlands.]

19:4-4.23A Planned park zone 1; bulk regulations

(a) The bulk regulations for the planned park zone are:

1.-4. (No change.)

5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.28 Low density residential zone; special exceptions

(a) Special exceptions in the low density residential zone include:

1.-4. (No change.)

5. Mobile home parks not exceeding the density permitted for other single family dwellings and conforming with all other regulations applicable to development within the LDR district;

6. Any satellite antenna exceeding six feet in diameter.

19:4-4.30 Low density residential zone; bulk regulations

(a) Bulk regulations in the low density residential zone include:

1.-4. (No change.)

5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.36 Waterfront recreation zone; special exceptions

(a) When included with a marina meeting the minimum requirements set forth in N.J.A.C. 19:4-4.35(a), the following uses shall be special exceptions:

1.-2. (No change.)

3. Indoor recreational facilities;

4. Any satellite antenna exceeding six feet in diameter.

19:4-4.39 Waterfront recreation zone; bulk regulations

(a) The bulk regulations in the waterfront recreation zone are:

1.-4. (No change.)

5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

6. (No change.)

19:4-4.46 Highway commercial zone; special exceptions

(a) Special exceptions in the highway commercial zone include:

1.-3. (No change.)

4. Automobile service stations, no closer than 1,000 feet to each other;

5. Any satellite antenna exceeding 12 feet in diameter;

6. Any satellite antenna that must be located on a tower.

19:4-4.49 Highway commercial zone; bulk and density regulations

(a) The bulk and density regulations in the highway commercial zone are:

1.-6. (No change.)

7. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.56 Service—highway commercial zone; special exceptions

(a) Special exceptions in the service-highway commercial zone include:

1.-2. (No change.)

3. Funeral homes and mortuaries;

4. Any satellite antenna exceeding 12 feet in diameter;

5. Any satellite antenna that must be located on a tower.

19:4-4.59 Service—highway commercial zone; bulk regulations

(a) The bulk regulations for the service-highway commercial zone are:

1.-3. (No change.)

4. FAR: 0.75;

5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.66 Research park zone; special exceptions

(a) Special exceptions in the research park zone include:

1.-3. (No change.)

4. Light public utility uses;

5. Any satellite antenna exceeding 12 feet in diameter.

6. Any satellite antenna that must be located on a tower.

19:4-4.69 Research park zone; bulk regulations

(a) The bulk regulations in the research park zone are:

1. (No change.)

2. FAR: 2.5;

3.-4. (No change.)

5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

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19:4-4.75 Research distribution park zone; special exceptions
(a) Special exceptions in the research distribution park zone include:
1.-3. (No change.)
4. Light public utility uses;
5. Any satellite antenna exceeding 12 feet in diameter;
6. Any satellite antenna that must be located on a tower.

19:4-4.78 Research distribution park zone; bulk regulations
(a) The bulk regulations in the research distribution park zone are:
1.-2. (No change.)
3. FAR: 2.5;
4. (No change.)
5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.85 Light industrial zone A; special exceptions
(a) Special exceptions in light industrial zone A include:
1.-8. (No change.)
9. Hospitals, clinics and medical facilities;
10. Any satellite antenna exceeding 12 feet in diameter;
11. Any satellite antenna which must be located on a tower.

19:4-4.88 Light industrial zone A; bulk regulations
(a) The bulk regulations in light industrial zone A are:
1. (No change.)
2. FAR: 2.5;
3.-4. (No change.)
5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.95 Light industrial zone B; special exceptions
(a) Special exceptions in light industrial zone B include:
1.-7. (No change.)
8. Hospitals and clinics;
9. Any satellite antenna exceeding 12 feet in diameter;
10. Any satellite antenna which must be located on a tower.

19:4-4.96 Light industrial zone B; use limitations
(a)-(e) (No change.)
(f) Professional offices are not permitted uses in this zone.

19:4-4.98 Light industrial zone B; bulk regulations
(a) The bulk regulations in light industrial zone B are:
1. (No change.)
2. FAR: 2.5;
3.-4. (No change.)
5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.104 Heavy industrial zone; permitted uses
(a) Permitted uses in the heavy industrial zone include:
1.-15. (No change.)
16. Retail uses;
17. Bus garages.

19:4-4.105 Heavy industrial zone; special exceptions
(a) Special exceptions in the heavy industrial zone include:
1. (No change.)
2. Helistops;
3. Any satellite antenna exceeding 12 feet in diameter;
4. Any satellite antenna which must be located on a tower.

19:4-4.107 Heavy industrial zone; bulk regulations
(a) The bulk regulations in the heavy industrial zone are:
1.-2. (No change.)
3. FAR: 2.5;
4. (No change.)
5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.114 Airport facilities zone; special exceptions
(a) Special exceptions in the airport facilities zone include:
1. (No change.)
2. Business and professional offices;
3. Any satellite antenna exceeding 12 feet in diameter;
4. Any satellite antenna which must be located on a tower.

19:4-4.117 Airport facilities zone; bulk regulations
(a) The bulk regulations in the airport facilities zone include:
1.-3. (No change.)
4. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.123 Sports complex zone; land not exempt
(a) Land not exempt from the jurisdiction of the Commission under N.J.A.C. 19:4-4.122 herein shall be rezoned by the Commission from the sports complex zone classification within three months after the occurrence of any of the following:
1.-2. (No change.)

19:4-4.126 Public utilities zone; permitted uses
(a) Permitted uses in the public utilities zone include:
1. Manufacture of electric power by a public utility;
2.-3. (No change.)
4. Automobile service stations.

19:4-4.127 Public utilities zone; special exceptions
(a) Special exceptions in the public utilities zone include:
1. (No change.)
2. Helistops;
3. Any satellite antenna exceeding 12 feet in diameter;
4. Any satellite antenna which must be located on a tower.

19:4-4.129 Public utilities zone; bulk regulations
(a) The bulk regulations in the public utilities zone are:
1.-3. (No change.)
4. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.135 Review and approval of application for a zoning certificate
(a) Within two weeks after the receipt of the complete application, the Office of the Chief Engineer shall approve the application by letter to the applicant and to the municipality in which the development is located which shall serve as a zoning certificate, if the application complies with the following standards:
1.-4. (No change.)
5. The proposed drainage system will be adequate for the proposed use and structures, will not adversely affect any adjacent or adjoining lands and will be completely enclosed. Minimum final finished floor elevations *[shall comply with]* ***for structures within designated 100 year flood zones shall be established one foot above*** the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM). *[If no base flood elevation is provided by FEMA, then the final finished floor elevation shall not be less than 10 feet above mean sea level based on U.S. Coast and Geodetic datum.]*
(b) The zoning certificate so issued shall be deemed to incorporate the approved application, and any violation or departure from the approved application during construction of the facilities and structures therein shown shall be deemed a violation of these regulations as provided in N.J.A.C. 19:4-6.24. *[Any]* ***A substantial*** departure

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from the approved application as depicted on as-built plans shall also be deemed a violation of these regulations as provided in N.J.A.C. 19:4-6.24.

(c) (No change.)

19:4-4.149 Commercial Park Zone; Special exceptions

(a) The following are special exceptions in the Commercial Park Zone:

1. (No change.)
2. Helistops;
3. Hospitals;
4. Any satellite antenna exceeding 12 feet in diameter;
5. Any satellite antenna whic must be located on a tower.

19:4-4.152 Commerical Park Zone: Bulk regulations

(a) The following are bulk regulations in the Commercial Park Zone:

1.-4. (No change.)

5. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

6. (No change.)

19:4-5.10 Implementation Plan

(a) An applicant shall file an implementation plan or plans covering sections or subsections of a specially planned area for which a development plan or plans has already been approved as follows:

1.-3. (No change.)

4. Minimum final finished floor elevations for structures within designated 100 year flood zones shall be established one foot above the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-6.16 Wetlands buffer strip; water quality ***and enforcement of wetlands***

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

(c) Water dependent aspects of marinas within the Waterfront Recreation Zone are exempt from these regulations.

(d) Restoration and environmental management of wetlands is permitted in all zones and Specially Planned Areas within the District.

19:4-6.18 Design of structures; provision and design of other improvements, including parking and loading facilities, landscaping, lighting, fencing, signs and satellite antennas

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

(e) Parking design standards include:

1.-10. (No change.)

11. No parking or aisles serving such parking are permitted in required front yards.

(f)-(j) (No change.)

(k) Landscaping:

1.-2. (No change.)

3. Screening:

i.-ii. (No change.)

iii. All off-street loading areas shall be located or effectively screened with a decorative fence in accordance with (m) below supplemented by evergreen plant material capable of maturing to a height and width sufficient to screen such areas, and vehicles within the areas, from adjacent properties and public right of ways.

iv.-v. (No change.)

4.-9. (No change.)

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

(n) Satellite antennas shall be permitted in accordance with the following standards:

1. All satellite antennas shall comply with FCC regulations.

2. All satellite antenna foundation plans shall be submitted for review in plans signed and sealed by a professional engineer.

3. All satellite antennas shall be located in the same lot as the principal use and shall be an accessory use to the principal use.

4. No satellite antenna is to be located on the front yard nor shall it be visible from the front yard.

5. Minimum setback of 10 feet shall be maintained from the foundation of the satellite antenna to the side and rear property lines.

6. All satellite antennas shall be located and screened to minimize motor noise and visual impact from the street and adjacent properties. The screening shall be either landscaping or a fence.

7. The diameter of the satellite antenna shall be as follows:

i. A maximum of six feet in the Low Density Residential Zone and Waterfront Recreation Zone;

ii. A maximum of 12 feet in all the other zones;

iii. A special exception will be required for any satellite antenna exceeding the maximum permitted diameter.

8. No satellite antenna shall be located on the wall of a structure.

(o) Fill, excavation, regrading and surcharge standards are as follows:

1. No filling, excavation, regrading or surcharging of land shall commence without having first obtained zoning approval from the Office of the Chief Engineer. Such zoning approval may be granted as follows:

i. All filling, excavation or grading operations directly related to the construction of any structure shall be considered approved only if such filling, excavation and grading operations are clearly indicated with approximate quantities on the approved plans for the proposed structure.

ii. A zoning certificate for filling, excavation, grading and surcharge operations may be issued by the Office of the Chief Engineer if a schematic site plan showing the envisioned ultimate use of the property is submitted. This plan must meet all applicable bulk and use regulations.

2. Prior to the issuance of any zoning certificate which involves filling operations, a detailed geotechnical investigation report, prepared by a geotechnical engineer, must be submitted for approval. This report shall be prepared in accordance with the following Geotechnical Investigation Report Guidelines:

i. Description of existing soil and ground water conditions in the area to be filled, or built upon, including copies of all soil boring logs, test pit investigations and test reports;

ii. Proposed final/interim uses for the filled area; purpose of the fill or stockpile operation;

iii. Recommended fill operation, including, as required, excavation of existing fill/soils, site preparation, placement of fill, thickness of lifts, compaction, etc.;

iv. Recommended fill material, including type, moisture content, size grading, organic content, etc.;

v. Recommendations for the control of ground water during site work and/or foundation construction;

vi. Analysis of the effects of the proposed fill operation on future construction type/costs;

vii. Recommendations on the engineering properties of all soils subjected to loading condition;

viii. Recommendations for the protection of existing structures/utilities and adjacent property from settlement, mud waving, movement, etc.;

ix. Analysis of existing access roads and site ingress/egress and recommendations for any traffic control measures related to the earthwork operations;

x. Recommendations for dust control and street sweeping/road maintenance;

xi. Analysis of existing drainage patterns, including all upstream drainage, and recommendations for drainage during the operation and upon completion;

xii. Recommendations for soil erosion and sedimentation control; and

xiii. Recommendations for monitoring of the fill/stockpile operation, including quality control, settlement plates, inclinometers, etc.

3. All fill or excavation operations must comply with the recommendations of the approved geotechnical investigation report.

4. *[Under no circumstances shall fill]****Fill*** which does not conform with the New Jersey Department of Environmental Protection—Solid Waste Management (NJDEP-SWM) definition of "clean fill" ***(see N.J.A.C. 7:26-1.4)*** *[be utilized]* ***shall not be used unless the Office of the Chief Engineer grants a waiver from this requirement.***

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The applicant must show just cause for a waiver of this requirement based on engineering constraints. This waiver shall not relieve the applicant from obtaining all other Federal, state, or local permits which may be required to utilize such fill material*. Nothing in this section should be construed to allow the filling of wetlands without the required approvals of the governmental authorities with jurisdiction.

5. A copy of a Soil Erosion Plan permit which has been issued by the governing Soil Conservation District shall be submitted to the Office of the Chief Engineer prior to the start of earthwork operations.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
State Seals
Adopted Amendment: N.J.A.C. 19:46-1.24

Proposed: January 2, 1990 at 22 N.J.R. 24(a).
Adopted: March 8, 1990 by the Casino Control Commission, Valerie H. Armstrong, Acting Chair.
Filed: March 8, 1990 as R.1990 d.196, **without change.**

Authority: N.J.S.A. 5:12-63(c).
Effective Date: April 2, 1990.
Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement supports the proposed amendment to N.J.A.C. 19:46-1.24.
RESPONSE: Accepted.

Full text of the adoption follows.

19:46-1.24 State seals

(a) Each slot machine located within this State shall have a seal affixed to it by the Commission which shall be located on either side of the slot machine cabinet.

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

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Notice of Adoption of 1989-90 New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection (Department) hereby adopts the 1989-90 NJPDES Annual Fee Report and Fee Schedule (Annual Fee Report). In accordance with N.J.A.C. 7:14A-1.8, publication of this notice marks the completion of the 1989-90 budget-making process. The Department held a public hearing on the Annual Fee Report on December 20, 1989 at the Labor Education Center Auditorium, Cook College, Rutgers University in New Brunswick, New Jersey. Approximately 40 members of the public attended the public hearing and eight commenters presented oral testimony. Fifty-eight commenters submitted written comments prior to the close of the comment period on December 29, 1989. Many of these comments came from permittees which had specific questions regarding the permittee's fee assessment. The Department has included and responded to those comments which address either the Annual Fee Report or the NJPDES fee schedule rule in N.J.A.C. 7:14A-1.8. With respect to the specific questions for permittees on their fee assessment, the Department will be responding to each permittee on an individual basis in order to correct any errors that may have been made during the fee assessments. The Department has provided responses to the comments received which pertain to the Department's proposed amendments to N.J.A.C. 7:14A-1.8; these comments and responses can be found in this issue of the New Jersey Register.

Summary of Public Comments and Agency Responses:

COMMENT: A permittee stated that his NJPDES-SIU (significant indirect user) permit expired in 1987. The permittee felt that a permit fee should not be required for this discharge.

RESPONSE: Any person holding an individual NJPDES permit and planning to continue the regulated activity is required to file a complete application for renewal at least 180 days prior to the expiration date of the permit, pursuant to N.J.A.C. 7:14A-2.1(g)5. The Department has delegated the pretreatment program in N.J.A.C. 7:14A-13.1 to qualified publicly owned treatment works (POTWs) and these POTWs are required to issue permits to SIUs. Certain NJPDES/SIU permittees operating in a delegated POTW's service area may request to be relieved of the requirements for an individual NJPDES/SIU permit at the time of filing for renewal pursuant to N.J.A.C. 7:14A-10.5(g). If the Department fails to act upon a timely application for renewal or a request for relief of permit requirements prior to the expiration date of the permit, that permit is continued in full force and effect pending Department action in accordance with N.J.A.C. 7:14A-2.3. Therefore, where a permit is in full force and effect, a NJPDES permit is required until the permit is terminated. Upon termination, a permittee may request a recalculation of the fee in accordance with N.J.A.C. 7:14A-1.8(a)6, retroactive to the date of permit expiration.

COMMENT: A permittee felt that his fee assessment was extremely excessive since he was classified as a minor discharger by the United States Environmental Protection Agency (USEPA). The permittee uses water from the Elizabethtown Water Company in its industrial cooling process. The permittee had a laboratory compare the quality of the tap water and the non-contact cooling water discharged and the results were practically the same. As a result, the permittee feels that it is being overcharged and taken advantage of.

RESPONSE: All discharges, including non-contact cooling water, contribute pollutants to the receiving stream. The NJPDES permit specifies the monitoring and discharge limitations for each discharge. NJPDES permit fees for surface water discharges are based on the calculated environmental impact of the discharge as defined at N.J.A.C. 7:14A-1.8(c). The environmental impact of a discharge is based on the quantity of pollutants discharged, the risk associated with the pollutant, bioassay factor to evaluate the overall effect of the discharge on the receiving stream, and a stream rating factor which balances the water quality, water use and the attainment of water quality standards. The NJPDES rules at N.J.A.C. 7:14A-3.14(h) provide for net discharge limitations if the discharge occurs to the same waterbody as the intake water is obtained.

COMMENT: The Statewide application of a pollutant risk factor in N.J.A.C. 7:14A-1.8(c)1i is inappropriate. The risk associated with a pollutant such as BOD (biochemical oxygen demand) is not the same on a large waterway and a small waterway.

RESPONSE: On June 17, 1985 (see 17 N.J.R. 1551(b)) the risk factors in Table I of N.J.A.C. 7:14A-1.8 became effective. In Table I, each parameter has been assigned a risk factor based on potential toxicity to aquatic organisms, known toxicity to aquatic organisms, acutely toxic or suspected carcinogens, known carcinogens or neurotoxins and persistence in the environment. The inclusion of the pollutant risk factors was intended to evaluate the risk the individual pollutant posed to the environment as compared to other pollutants in a facility's discharge, not to evaluate the effect of the pollutant on the receiving water.

COMMENT: One commenter objected to the inclusion of chromium in his fee assessment since it is below the detection limit as established by their laboratory.

RESPONSE: All pollutants with effluent or discharge limitations in the NJPDES permit are included in the surface water environmental impact calculation. The Department utilizes one-half of the reported laboratory detection limit to calculate the pollutant load pursuant to N.J.A.C. 7:14A-1.8(c). In some cases, the Department may include the monitoring requirements and permit limitations for corrosion inhibitors such as copper, chromium and zinc, when those pollutants are utilized by the permittee at their facility. In these cases, the NJPDES permit specifies that if this pollutant is not used at the facility, then the requirement to monitor and report does not apply.

COMMENT: The Department has double counted chromium in its surface water fee assessments, by calculating loadings for total chromium, hexavalent chromium, and trivalent chromium.

RESPONSE: The Department assigns a risk factor of 100,000 to total chromium and hexavalent chromium. Trivalent chromium is assigned a risk factor of 100. It is not the Department's intention to include total chromium, trivalent chromium and hexavalent chromium pollutant loadings in the fee calculation. Permits which only limit the discharge of total chromium are assessed fees based on the total chromium loading at a risk of 100,000. Where limits have been established for both total chromium and hexavalent chromium, the Department calculates a trivalent chromium loading. Fees are based on trivalent chromium at a risk of 100 and hexavalent chromium at a risk of 100,000. In this situation, the pollutant loading for total chromium is zero, because hexavalent chromium plus trivalent chromium is equal to total chromium. By utilizing this formula the Department does not double count chromium.

COMMENT: My NJPDES permit establishes a discharge limitation for total chromium. Total chromium is comprised of both hexavalent and trivalent chromium. The Department has assigned a risk factor of 100,000 for total chromium and for hexavalent chromium. Trivalent chromium was assigned a risk factor of 100. All chromium discharged from my facility is in the trivalent chromium form; therefore, my environmental impact should be based on trivalent chromium, not total chromium.

RESPONSE: Permit fees are based on the total pollutant loadings for all pollutants with limitations in the NJPDES permit. The Department will utilize the loadings for trivalent and hexavalent chromium rather than total chromium where a permittee is required to monitor hexavalent chromium and total chromium. The permittee may request a change in its monitoring program to include testing for hexavalent chromium.

COMMENT: One commenter stated that charging $17 million to run the NJPDES permit program is unreasonable. The commenter thought that it should be done for less, and that many charges to be paid through the NJPDES system are not part of the administration, monitoring or issuance activities.

RESPONSE: The Fiscal Year (FY) 90 NJPDES budget of $17 million is intended to cover those personnel costs for staff directly involved with processing, monitoring and administering NJPDES permits plus a percentage of personnel costs for administrative support services provided at the Division of Water Resources level. In addition, the NJPDES budget includes fringe benefits at 24.21 percent of salary costs, indirect costs at 32.7 percent of salaries plus fringe benefits and NJPDES program operating costs. For the FY90 NJPDES budget, direct salary costs are $7 million, salary costs for support service are $1 million, fringe benefit costs

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are $2 million, indirect costs are $3.3 million and operating costs are $3.4 million. Please note that most of the personnel costs covered under administrative support is for the Fee Management Section and Permit Information Processing Section which only perform administrative work for the NJPDES permit program.

COMMENT: The Department's budget is not prepared as a business or authority would prepare its budget. An evaluation of changing program needs is not completed. For example, the actual expenditures for vehicles in FY88 was $72,000 compared with a budget proposal of $198,000 in FY90. Telephone expenditures in FY88 were only $52,000 yet the Department has budgeted $131,300 for FY90. There is no explanation for this increase.

RESPONSE: The NJPDES budget represents the anticipated program costs for FY90. The actual expenditures in the Annual Fee Report reflect payments made from the NJPDES surface water account in FY88, two years ago. In FY88, significant recalculation requests reduced the anticipated revenue and the Department was forced to implement spending restraints to prevent actual expenditures from exceeding the anticipated revenue. Therefore, the actual expenditures for FY88 were less than the amount budgeted for the same period. Further, the Department recently completed a major reassignment of funding sources for all Division of Water Resources telephones and vehicles. The budget represents an estimate of the costs and any adjustments which would entitle permittees to credits is based on the actual expenditures, not the budgeted amount.

COMMENT: The Department spent 363.5 hours on Rahway Valley Sewerage Authority in FY88. Using an average hourly rate of $91.32, the cost of processing, monitoring and administering this NJPDES permit was $33,198. Rahway Valley Sewerage Authority's fee was $78,000 last year. The fee any one facility is paying far outweighs the services the Department is providing to the facility. There is no backup as to how Rahway Valley Sewerage Authority profited from this type of regulation.

RESPONSE: In accordance with N.J.S.A. 58:10A-9, the sum total of NJPDES fee assessments is based on the estimated cost of processing, monitoring, and administering NJPDES permits. The distribution of the total program costs is based on individual environmental impacts, as defined at N.J.A.C. 7:14A-1.8, without considering the level of services provided in a specific period of time. NJPDES permits are issued for a five-year period. Therefore, over the course of the life of the permit, an individual permittee could receive more or less service than was paid by the permittee in NJPDES permit fees.

COMMENT: The Department's budget includes 134 people for the surface water program and a total of 27 or 20 percent are for staff in the Management Services Element. The Ground Water program has 74 positions while only four or five percent are assigned to the Management Services Element. The commenter requested that the Department explain this difference.

RESPONSE: The Management Services Element provides significantly more support for the surface water program. This element is responsible for all data processing activities including entering permit limitations and monitoring schedules, entering discharge monitoring reports (DMR's), application processing and performing routine compliance with reporting requirements. Staff geologists review ground water monitoring well reports to evaluate compliance with established permit limitations, and where appropriate, modify and/or upgrade existing permits for compliance monitoring and/or corrective action. As a result, most compliance activities are performed by staff geologists rather than Management Services Element staff.

COMMENT: This year the Department has budgeted $242,000 for temporary services or 14 percent of the total salaries for the surface water program. These temporary employees are used for data entry and receptionists. The Department should hire staff rather than pay for temporary services.

RESPONSE: The State-mandated hiring freeze has prevented the Department from filling vacant NJPDES clerical and data entry positions. Further, it is very difficult to recruit, hire and retain good clerical help.

COMMENT: One commenter stated that the NJPDES program must be audited by an outside agency to ensure that NJPDES fees are allocated appropriately. The lack of an outside audit is like "the fox watching the hen house."

RESPONSE: The Department agrees that the NJPDES program should be audited by an independent State auditor and that NJPDES fees should be used to pay the costs associated with an audit. The Department is presently exploring the possibility of contracting independent auditing services available from the Office of Legislative Services, the Department of Treasury and the Department of Environmental Protection, Office of Audits.

COMMENT: Local budgets must be received by the New Jersey Division of Local Government by November 1 of every year. Permittees must receive their proposed fee assessments by October to include these costs in their budget. Mailing the proposed fees on November 17 is just too late for us to incorporate the FY90 fee into our 1990 budget.

RESPONSE: This year's proposed fees were delayed because the Department proposed amendments to the NJPDES fee rules at N.J.A.C. 7:14A-1.8. The Department's intention is to publish the 1990-91 Annual Fee Report in July, 1990 which will include the FY91 fee assessments. The Department anticipates that it will hold a public hearing on the FY91 Annual Fee Report in August, 1990. If this schedule is met, payment of NJPDES fees will be due in January 1991.

COMMENT: One commenter stated that the Department's ability to charge fees for services imposed on public agencies has virtually become a situation of taxation without representation. The appropriateness of these fees are not reviewed and approved by the Assembly and the Senate. We would not object if these fees were a few dollars and only covered the costs of processing, monitoring and administering the NJPDES permits, but when fees become unreasonable charges to the public, they in effect become taxes which are out of control. Another commenter stated that the NJPDES program is functioning as a taxation program. There should be a total review of the budgeting procedure, because what is going on is just unacceptable and at one point the Legislature is going to hear what has happened.

RESPONSE: The NJPDES program is operating in accordance with statutory and regulatory procedures provided by the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the NJPDES rules in N.J.A.C. 7:14A-1.8. NJPDES permit fees are not taxes but administrative fees to defray the regulatory costs associated with the NJPDES permit program. Permits are issued to allow for the discharge of pollutants to the waters of the State in an effort to mitigate unacceptable environmental impacts. The Department is authorized to assess permit fees to cover the estimated costs of processing, monitoring and administering the NJPDES permits in accordance with N.J.S.A. 58:10A-9. Notice of the public hearing and the proposed amendments were sent to the Office of Administrative Law and published in the New Jersey Register. Copies of the public notice, the 1989-90 Annual Fee Report and Fee Schedule and the proposed amendments to the NJPDES fee rules were sent to the Assembly Committee on Environmental Quality and the Senate Energy and Environment Committee.

COMMENT: The Department is including the costs associated with activities not required by Title 4 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1251 et seq. (Clean Water Act), which is the permit section. Title 3 of the Clean Water Act covers planning activities and enforcement. Activities distantly connected to the NJPDES permits such as the development of wasteload allocations, water quality based effluent limitations, stream modeling, computer modeling, bioassay testing, supervising the installation of ground water monitoring wells, evaluating and approving ground water remediation alternatives, and enforcement are not part of processing, monitoring and administering the NJPDES permits. The Department is transferring the responsibility for activities other than permitting that is required by the Clean Water Act to the NJPDES program. Since these activities are not required under Title 4 of the Clean Water Act, they should not be included in the NJPDES budget.

RESPONSE: The Department has only included the costs associated with activities that directly involve NJPDES facilities or prerequisite activities for NJPDES permit issuance. Although the NJPDES program is a Federally delegated program, the NJPDES program operates under the authority of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the NJPDES rules, N.J.A.C. 7:14A. Stream modelling and computer modelling is used by the Department to establish the total maximum daily load (TMDL). The Department uses the TMDLs to develop wasteload allocations and water quality based effluent limitations which are used to establish individual NJPDES permit limits. Therefore, these planning activities are required by the Department to develop NJPDES permit limitations. Bioassay testing and supervision of monitor well installations are conducted to evaluate the compliance with permit requirements. The Department's Enforcement Element conducts compliance inspections to evaluate compliance with the terms and conditions of the NJPDES permit. These compliance inspections, although conducted by the Enforcement Element, are part of the permit monitoring activities and thus are appropriately included in the NJPDES budget. The

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evaluation and approval of ground water remediation activities are a necessary function in the permit modification process. All of these activities are a direct result of proper issuance, monitoring and administration of NJPDES permits.

COMMENT: The costs of programs such as stream modelling should not have to be borne by those permittees who do not benefit by such monitoring programs. One permittee suggested that the Department develop a separate cost-sharing system to cover activities that benefit certain permittees.

RESPONSE: Stream modelling is required to establish water quality based effluent limitations throughout the State and these costs are distributed among all surface water permittees. In accordance with N.J.A.C. 7:14A-1.8, NJPDES fees based on environmental impact allow the Department to properly regulate dischargers without having to determine the specific costs associated with each individual discharger.

COMMENT: Two commenters stated that the cost of permit enforcement should not be included in the NJPDES program budgets as it is not part of administering a permit. The Department should separate enforcement costs from the administrative costs so that the permittees do not have to pay for enforcement.

RESPONSE: The costs associated with the Department's enforcement program are for permit monitoring, not traditional enforcement activities. The Department only includes the costs associated with compliance monitoring and inspections, the issuance of Notices of Violation (NOVs), and the preparation of Administrative Orders and Administrative Consent Orders. NJPDES fees are used to pay for site inspections performed by our enforcement personnel to determine compliance with the terms and conditions of the NJPDES permit. In certain instances, discharge samples are collected and analyzed. Once the Department issues an Administrative Order for a violation, State enforcement funds are used. The use of NJPDES fees are limited to activities that are within the definition of processing, monitoring and administering NJPDES permits.

COMMENT: One commenter stated that if NJPDES fees must be used for enforcement activities, then the penalties received for NJPDES violations should be used to offset the cost of the NJPDES program.

RESPONSE: The Department agrees that penalties collected pursuant to NJPDES violations should be returned to the NJPDES program accounts. Penalties collected would be used to offset program increases. A request to have penalties returned to the NJPDES program has been submitted to the Legislature, but to date has not been approved. Under the proposed Clean Water Enforcement Act, presently in the Legislature, most of the penalties collected as a result of NJPDES permit violations would be returned to the Department.

COMMENT: It is not possible to conduct a thorough evaluation of the fee schedule and the total costs to be derived, as there is no breakdown between surface water dischargers or ground water dischargers or indirect dischargers, nor is there a breakdown of how many staff hours will be spent in each of those areas.

RESPONSE: The 1989-90 Annual Fee Report contained budgets for the Municipal Surface Water Program, the Industrial Surface Water Program, the Pretreatment Program, the Landfill Program, Industrial Ground Water Program and the Municipal Ground Water Program which included the projected salary costs to be incurred by each individual program. The supplemental budget documents which were available for inspection during the public comment period detailed the actual work hours by category of discharge, facility and type of work effort for the FY88 budget period.

COMMENT: An organizational chart showing where people work should be included so that the overall program may be evaluated. A brief description of each of the personnel and their relationship to the NJPDES program should be included so that their worth to the program may be evaluated.

RESPONSE: The Department will provide an organization chart in the 1990-91 Annual Fee Report and further detail on personnel and their relationship to the NJPDES program. The type of work activities to be performed for the various NJPDES programs were discussed in the 1989-90 Annual Fee Report. The supplemental information available for inspection during the comment period contained more detailed information concerning NJPDES personnel, which included the number of positions assigned to each element, the names and salary costs associated with each program.

COMMENT: A permittee objected to the use of stream rating factor in N.J.A.C. 7:14A-1.8(c) since it increased his fee and he has no control over it.

RESPONSE: The stream rating factor in N.J.A.C. 7:14A-1.8(c)1iv became effective on July 6, 1987 (see 19 N.J.R. 1191(a)). The stream rating factor takes into consideration the overall impact the discharge has on the environment. The stream rating factor evaluates water quality, water use and the attainment of water quality standards of the receiving watersheds and therefore is an appropriate factor in distributing the NJPDES program costs based on environmental impact.

COMMENT: The stream ratings assigned to the Hudson River and the Upper Hackensack River are both 1.42. However, the environmental impacts of a discharge to the Upper Hackensack River is not comparable to a discharge to the Hudson River. The Hudson River is similar to the Delaware River Zone 2 (Trenton to Northeast Philadelphia) and should be assigned a similar stream rating.

RESPONSE: The stream rating factor included in the surface water fee assessment methodology recognizes that risk is, in part, related to the receiving stream. The stream rating factor is comprised of three components which evaluate the receiving stream's water quality, water use, and the attainment of water quality standards as described at N.J.A.C. 7:14A-1.8(c)1iv. Although two waterways may be similar in terms of size, the ratings assigned to these three components may result in different values. Conversely, two receiving streams could be assigned the same stream rating factors, but have very different values associated with the three components like the Hudson River and the Upper Hackensack River. Specifically, the Hudson River has been assigned a stream rating of 1.49, a Water Quality Index of 47, Water Use Index of 1 and a Designated Use Factor of 1.0. The Upper Hackensack River receives a stream rating factor of 1.42, a Water Quality Index of 19, a Water Use Index of 24, and a Designated Use factor of .75. One watershed has poor water quality, very little use and does not meet water quality standards while the other watershed exhibits good water quality, a high level of use and sometimes meets one use or a small portion of the watershed meets the designated uses.

COMMENT: One commenter stated that the Department has recognized a need for a comprehensive plan for dealing with the contamination of ground water resources in the Newark metropolitan area. But the application of long-term ground water remediation by one facility in terms of accomplishing some regional water quality goal is not reasonable at this time. The Ironbound district is in the industrial area on reclaimed marshland. The ground water is heavily degraded by saline intrusion as well as man-induced pollutants. Based on this assessment, the aquifer rating of eight for the Brunswick formation in the Newark Ironbound section is inappropriate.

RESPONSE: The aquifer ratings established at N.J.A.C. 7:14A-1.8 Table II are based on the potential yield of the aquifer. The Brunswick formation has a very good yield potential and has appropriately been assigned an aquifer rating of eight. Since this facility is located on the Brunswick formation, the appropriate aquifer rating is eight.

COMMENT: The stream rating factor listed for Ocean Waters, Cape May County in the Annual Fee Report is not consistent with the calculation methodology.

RESPONSE: The commenter is correct. The stream rating factor for Ocean Waters, Cape May County and Ocean Waters, Atlantic County is listed in the 1989-90 Annual Fee Report as .72. The correct value is 1.12. The correct stream rating factor was used in the proposed fee calculations that were mailed to each permittee discharging in these watersheds.

COMMENT: One commenter stated that the use of a stream rating factor is wrong because it penalizes an industry because of its geographic location. Whether the discharge occurs to a pristine brook or a heavily polluted river should not affect the fee assessment. Meeting permit requirements and discharge limitations should be the basis of the fee assessment.

RESPONSE: The stream rating factor is simply one component of the overall facility environmental impact. The stream rating factor is intended to evaluate and balance complex conditions, such as water quality, water use, and the attainment of water quality standards at the receiving stream. Generally, watersheds with good water quality and low use that meet all designated uses are assigned the lowest stream rating factors. Those watersheds with poor water quality and high use that do not meet designated uses receive the highest stream rating factors. Although the stream rating factor has a theoretical range of 0 to 4, in reality the actual range is 0 to 1.72.

COMMENT: One commenter stated that their company would rather shut down than pay this ridiculous fee.

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RESPONSE: The NJPDES fee schedule distributes the costs associated with the NJPDES program based on the impact the discharge posed to the environment. Other alternatives to a direct discharge are available to business, including connecting to a local sewage authority, recycling, or instituting other treatment processes. A business that is unable or unwilling to comply with the requirements of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and/or the NJPDES rules in N.J.A.C. 7:14A will be subject to enforcement action by the Department.

COMMENT: Comparing our fee assessment to other dischargers indicates that facilities with higher flows and lower treatment levels are paying about the same.

RESPONSE: In accordance with N.J.A.C. 7:14A-1.8(c), individual permit fees are based on the actual loadings reported by the permittee, the risk associated with the pollutants, a bioassay factor and the stream rating factor. Therefore, the environmental impact for a facility with higher loadings, but lower bioassay factor and stream rating factor could be less than a facility with lower pollutant loadings.

COMMENT: A facility can be actively involved with several divisions within the Department. As a result, a facility could be required to pay ECRA fees, NJPDES fees, and any solid and hazardous waste management fees. The Department has designated a lead division for these types of reviews. The Department should include a provision to allow for fee reductions or exclusions in those instances where the Division of Water Resources defers review jurisdiction to another division. Another commenter stated that facilities going through an ECRA required cleanup must pay ECRA fees as well as establish financial assurance for the cleanup. The Department's oversight of ground water activities must already be covered by other fees. An additional NJPDES fee should not be required in these instances. Collecting multiple annual fees while only maintaining passive interest is unjustified.

RESPONSE: The NJPDES program is related to the discharge of pollutants. Other environmental programs within the Department are required by different statutes. ECRA reviews are authorized by N.J.S.A. 13:K-6 et seq., and required when a property transfer occurs. ECRA review fees are not assessed on an annual basis and only cover the ECRA review process. Financial assurance required by ECRA also meets the requirements of N.J.A.C. 7:14A-2.6(c), and as such are not considered program costs. The ECRA program provides the Division of Water Resources the funding for 14 geologists for geologic support. The UST program is authorized by N.J.S.A. 58:10A-21, and requires the registration of underground storage tanks and regulates the installation and modification of underground storage tanks. Residual ground water contamination requiring long-term monitoring and/or cleanup identified through ECRA or UST is covered by the NJPDES permit program.

COMMENT: The rate or multiplier used in the fee calculation appears to be of significant importance. However, we cannot find in the Annual Fee Report or the proposed rules the basis for the use of this number.

RESPONSE: The rate used in the fee calculation is determined in accordance with N.J.A.C. 7:14A-1.8(a)9. Individual category rates are established annually based on the sum total of the environmental impact for the category of discharge and the budget associated with the category of discharge. The rate is the cost associated with each unit of environmental impact discharged by an individual permittee. To calculate the rate, the adjusted budget is divided by the total environmental impact for the category of discharge. The adjusted budget is the NJPDES program cost to be distributed among permittees based on environmental impact after the minimum fees have been subtracted from the NJPDES program budget. To determine an individual permit fee, the facility environmental impact is multiplied by the appropriate rate for the billing period and discharge category. The appropriate minimum fee as listed at N.J.A.C. 7:14A-1.8(h) is added. The proposed rate is listed in the fee schedule in the heading for each discharge category.

COMMENT: The Department has established a risk factor for each pollutant. The commenter stated that the Department should re-evaluate these risk factors because the environmental impact would vary enormously depending on the size of the discharge as compared to the receiving stream.

RESPONSE: The risk factors presented in Table I of the NJPDES rules, N.J.A.C. 7:14A-1.8, provide a mechanism to compare similar quantities of very different pollutants. The risk factors are not intended to compare the impacts and dilution factors available at the individual discharge locations. Dilution is considered by the Department when the total maximum daily loads (TMDLs) are calculated by the Department before the individual effluent limitations are established by the Department.

COMMENT: The Department does not seem realistic in its goal to clean up New Jersey's waters. The stream which receives our wastewater discharge also receives stormwater runoff which is more polluted than our discharge.

RESPONSE: The Department's goal is to restore, enhance, and maintain the chemical, physical and biological integrity of the waters of the State. Issuance of permits for the discharge of pollutants to regulated facilities is one of the means by which this goal is accomplished. The Department issues NJPDES permits to all wastewater dischargers including those facilities which discharge industrial stormwater runoff. To issue permits with less restrictive limits would contravene the goals of the Water Pollution Control Act and the Clean Water Act.

COMMENT: The Department should not utilize factors in the environmental impact calculation that are beyond the control of the NJPDES permittee such as the POTW efficiency that is used in the SIU fee calculation.

RESPONSE: In accordance with N.J.A.C. 7:14A-1.8, individual permit fees are based upon the environmental impact. Permittees which discharge industrial wastewater to a POTW in accordance with their NJPDES permits are assessed a fee based upon the impact of their discharge. A credit for the level of treatment provided by the POTW is included in N.J.A.C. 7:14A-1.8(g)1ii. The greater the POTW treatment level, the less impact an SIU discharge has to the environment.

COMMENT: One commenter stated that his facility has paid over $100,000 in NJPDES permit fees over the past few years. His proposed fee for FY90 is $60,000 which places the company in the top five percent. If fees are based on environmental impact and according to our fee we have a significant impact, then why are we waiting since 1985 for a new permit? Are we paying for the Department to subsidize other permits or Department programs?

RESPONSE: The permit requirements established by the USEPA are becoming more complex. Section 304(l) of the Clean Water Act requires that the Department establish chronic toxicity limitations, and toxic pollutant limitations for a specified waterbody. All permits in the waterbody must be revoked, renewed or modified. These new requirements significantly reduce the number of permits that can be issued. The NJPDES fee schedule does distribute the cost based on environmental impact. Therefore, it is possible that one permittee may be paying for the Department to work on a complex discharge with very little environmental impact.

COMMENT: Small wastewater treatment plants, package plants, and community septic systems are paying high permit fees. The commenter stated that the fees should be based on the actual flow, not the design flow.

RESPONSE: Environmental impact is based on the actual pollutant loading or the actual quantity discharged if this information is known. For many new facilities, the initial bill is based on the design capacity of the treatment plant and the permittee is notified that the bill may be recalculated once actual discharge information is available. If the plant is not scheduled to discharge during the current billing period, the permittee will be assessed only the minimum fee.

COMMENT: The Department's fee schedule is punitive and does not recognize circumstances where another bureau is the lead for engineering work and the implementation of closure activities.

RESPONSE: The NJPDES program regulates the discharge of pollutants to the waters of the State. Closure activities required by other programs within the Department do not specifically control the discharge of pollutants. Where a pollutant discharge is present, the facility is required to obtain a NJPDES permit and is required to pay a NJPDES fee. The Department's NJPDES fee schedule is intended to cover the costs associated with the processing, monitoring and administering of the NJPDES permit program. The costs of the program are distributed among NJPDES permittees based on their environmental impact. The proposed fee schedule ensures that those who do the most to introduce pollutants into the environment bear a greater share of the administrative cost.

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(a)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that on October 24, 1989, 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 Atlantic County Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Egg Harbor City. The WMP makes provision for the construction of an interceptor through Galloway Township. The interceptor will connect the Egg Harbor City collection system to the Atlantic County Utilities Authority regional plant at City Island. The WMP additionally delineates the existing sewered area and a proposed sewer service area coinciding with the Pinelands Town designation. The remainder of the municipality is designated as a septic service area.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that on December 5, 1989, 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 Atlantic County Water Quality Management Plan was adopted by the Department. This amendment allows for an area in Egg Harbor Township at the western end of Somers Point-Longport Boulevard to tie-in to the Somers Point City Sewerage Authority lines. Total flows are projected to be 66,000 gallons per day. Treatment will be at the Atlantic County Utilities Authority's City Island Plant.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that the Washington Township Board of Education has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment would expand the sewer service area of the Hamilton Township Water Pollution Control Board Wastewater Treatment Plant to include Block 5, Lot 24 of Washington Township on which the Board of Education proposes to construct a Middle School.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Mercer County Planning Division, County Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Mercer County Planning Board will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, May 9, 1990, at 8:30 A.M. in Room 211 of the Mercer County Administration Building. **Interested persons** may submit written comments on the amendment to the Secretary, Mercer County Planning Board at the address cited above; and to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date (May 2, 1990) or until 15 days following the public hearing(s), whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would change the existing Clinton Township Wastewater Management Plan to allow the Department of Corrections (DOC) Mountain View Youth Correctional facility sewage treatment plant (STP) to remain in operation and expand to accommodate wastewater flows of 260,000 gallons per day. The sewer service area of the STP has been defined with the remainder of the DOC property being designated as an individual subsurface sewage disposal area.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HEALTH

(e)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Nurse Staffing Requirements for Long-Term Care Facilities

N.J.A.C. 8:39-25.2(b)1 and (b)2

Take notice that the Department of Health will suspend enforcement of the mandatory nurse staffing requirements for long-term care facilities found at N.J.A.C. 8:39-25.2(b)1 and (b)2 until subsequent notice in the New Jersey Register or July 15, 1990, whichever is earlier. These rules were scheduled to take effect April 1, 1990, together with N.J.A.C. 8:39-7.4(a), 17.4(a), and 39.3(a), which concern staffing levels for patient activities, dietary, and social work services, respectively (see 21 N.J.R. 3663(b)). Please note that N.J.A.C. 8:39-7.4(a), 17.4(a), and 39.3(a) are being implemented as scheduled. The Commissioner of Health has determined that the nurse staffing requirements at N.J.A.C. 8:39-25.2(b)1 and (b)2 cannot be enforced at this time due to the incomplete development of the reimbursement mechanism for Medicaid patients. Since Medicaid patients comprise a significant portion of the residents in long-term care facilities, the facilities will not be surveyed against these new standards at the present time.

This decision to delay implementation of the new nurse staffing requirements until subsequent notice or July 15, 1990, whichever is earlier, is

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based upon an agreement between the Division of Medical Assistance and Health Services of the Department of Human Services and the Department of Health. This agreement provides that Medicaid reimbursement commensurate with the new nurse staffing requirements will be offered to long-term care facilities no later than July 15, 1990. This delay recognizes the need for the Division of Medical Assistance and Health Services to adequately respond to public comment received regarding the proposed long-term care reimbursement methodology (see 22 N.J.R. 118(a)).

Until further notice, the interim mandatory nurse staffing requirements specified at N.J.A.C. 8:39-43.3(a) will continue to be used for purposes of licensing surveys and enforcement for all long-term care facilities.

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS

Notice of Action on Petition for Rulemaking

N.J.A.C. 13:35

Petitioner: New Jersey Optometric Association.
Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:9-2.

Take notice that on October 10, 1989 (see 21 N.J.R. 3676(b)), petitioner filed a petition with the Board of Medical Examiners requesting that it determine and declare the following:

Invasive surgical care is tertiary care and is the responsibility of the operating surgeon. The management of post-operative care is primary care and can be managed effectively by the patient's primary health care provider. The judgment on delivery of post-operative care shall be made in consultation with the patient, the operating surgeon, and the patient's primary health care provider. The post-operative care and patient co-management shall be rendered by the operating surgeon and the patient's primary health care provider.

The Board's preliminary response, published at 21 N.J.R. 3975(e), provided for the formulation of a Board Committee to study the petition and to make recommendations to the full Board.

Following a January 31, 1990 Committee meeting, the Board thoroughly considered the petition and the recommendations of the Committee and determined to deny the petition on the basis that the public health, safety and welfare is best served by maintaining its current policy in regard to post-surgical ophthalmological care. The Board believes that such care is the practice of medicine or surgery and that it should be managed by persons who are licensed to practice medicine for reasons which include the following:

(1) Itinerant surgery, the practice of performing surgery and leaving the post-surgical care to other health care professionals, is inappropriate and unethical in all areas of medicine. Surgery is composed of a three-pronged sequence: first, pre-operative diagnosis and selection of appropriate surgical treatment; second, performance of the appropriate surgery; and third, post-operative patient care. It is therefore the operating surgeon's responsibility to care for the patient until he or she is fully recovered from surgery. The petitioner has not presented compelling reasons to sacrifice this high standard of patient care in the ophthalmological area.

(2) Serious post-operative complications can arise that, unless treated appropriately and quickly, may result in severe consequences to the patient, including loss of vision in the affected eye and loss of vision in the other eye through sympathetic ophthalmia. The Board believes that the training of optometrists in post-surgical care is restricted to didactic programs with very little, if any, clinical experience. It is therefore in the best interests of the patient that post-surgical care be performed only by fully trained and licensed physicians.

The Board is currently preparing a proposal to promulgate a new regulation to formalize its policy regarding the delivery of ophthalmological surgical care, which proposal will more specifically address the issues raised by petitioner.

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Action Regarding Petition for Rulemaking Official Zoning Map

N.J.A.C. 19:4-6.28

Petitioner: Martin Santini, A.I.A., Architect for GEI Real Estate.

Take notice that a notice of petition for rulemaking to amend N.J.A.C. 19:4-6.28 so as to rezone Block 106, Lot 13.06 and Block 107, Lot 1 in the Borough of Little Ferry, New Jersey from Light Industrial "B" to Low Density Residential was published in the September 18, 1989 New Jersey Register at 21 N.J.R. 3030(d).

The Hackensack Meadowlands Development Commission has reviewed the petition and has concluded that the existing rezoning is reasonable and consistent with the neighboring uses. The applicant has not demonstrated any reason why the site cannot be developed within the existing zoning. There is a conforming facility constructed and operating on the subject site at the present time. Additionally, there is nothing physically unique about the subject site to prohibit its use under the current zoning.

By Commission resolution dated February 28, 1990, this petition for rezoning has been denied without prejudice based on staff's analysis of the proposal, data sources and inspection of the site in question.

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EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	3/19/95
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	4/2/95
2:32	6/1/92
2:33	3/6/94
2:34	1/2/95
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	7/31/94
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:3	1/11/95
3:6	3/3/91
3:7	9/16/90
3:11	5/1/94
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92
3:22	5/12/94
3:23	7/6/92
3:24	8/18/94
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/12/94
3:32	10/3/93
3:33	9/18/94
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/20/94
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:8	1/16/95
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/5/95
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	12/27/94
5:13	12/24/92
5:14	12/1/90
5:15	5/1/94
5:18	1/4/95
5:18A	1/4/95
5:18B	1/4/95
5:18C	2/5/95
5:19	2/1/93
5:22	2/5/95
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93

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N.J.A.C.	Expiration Date
5:31	12/1/94
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	5/12/95
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:7	1/2/95
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	11/22/94
6:22	9/30/90
6:22A	12/19/93
6:24	4/2/91
6:28	4/10/94
6:29	2/8/95
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	2/26/95
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:17	4/7/91
7:18	8/6/91
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:22A	2/5/95
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/90
7:45	2/6/94

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:18	11/6/94
8:19	6/28/90
8:20	3/2/95
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	1/16/95
8:31A	2/20/95
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	2/20/92
8:33B	10/7/90
8:33C	7/17/91
8:33E	6/23/92
8:33F	11/16/94
8:33G	7/17/94
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93

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N.J.A.C.	Expiration Date
8:43	1/21/91
8:43A	9/3/90
8:43E	12/11/92
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	2/7/95
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	9/29/94
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:66	3/5/95
8:66A	3/5/95
8:70	8/19/93
8:71	2/17/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	8/21/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:11	1/16/95
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	2/20/95
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/8/95
10:53	4/29/90
10:54	3/3/91
10:55	3/8/95
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/28/94
10:64	3/3/91
10:65	8/25/94
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	12/20/94
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:95	8/23/89
10:97	5/15/94
10:99	2/19/90
10:109	3/17/91
10:120	8/21/91
10:121	3/13/89
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:122B	9/10/89
10:123	7/29/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:2	2/5/95
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:22	7/5/93
10A:31	3/5/95
10A:32	3/4/90
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	2/5/95

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INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	10/26/94
11:16	2/3/91
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	8/14/94
12:35	8/5/90
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/15/94
12:100	9/22/94
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	4/1/90
13:19	8/18/94
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	5/26/94
13:24	9/27/94
13:25	3/18/90
13:26	9/26/93
13:27	2/20/95
13:28	5/16/93
13:29	6/3/90
13:30	3/12/95
13:31	12/12/91
13:32	10/23/92
13:33	3/12/95
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:61	3/5/95
13:62	3/19/95
13:70	1/25/95
13:71	1/25/95
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/29/90
14:25	3/5/95

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ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	1/16/95
14A:7	9/16/90
14A:8	1/16/95
14A:11	1/16/95
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	5/7/89
16:20A	2/20/95
16:20B	2/20/95
16:21	9/3/90
16:21A	11/20/94
16:22	2/3/91
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	2/8/95
16:41	7/28/92
16:41A	1/23/95
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:49	2/8/95
16:51	4/6/92
16:53	7/17/94
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	2/26/95
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	12/2/90
17:19	3/8/95
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
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18:36	3/19/95
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93

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N.J.A.C.	Expiration Date
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:20	2/5/95
19:25	1/9/91
19:30	10/7/90
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

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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 February 5, 1990 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.1990 d.1 means the first rule adopted in 1990.

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 JANUARY 16, 1990

NEXT UPDATE: SUPPLEMENT FEBRUARY 20, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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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
21 N.J.R. 811 and 954	April 3, 1989	21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 955 and 1036	April 17, 1989	21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 1037 and 1178	May 1, 1989	21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 1179 and 1474	May 15, 1989	21 N.J.R. 3689 and 3812	December 4, 1989
21 N.J.R. 1475 and 1598	June 5, 1989	21 N.J.R. 3813 and 3986	December 18, 1989
21 N.J.R. 1599 and 1762	June 19, 1989	22 N.J.R. 1 and 88	January 2, 1990
21 N.J.R. 1763 and 1934	July 3, 1989	22 N.J.R. 89 and 272	January 16, 1990
21 N.J.R. 1935 and 2148	July 17, 1989	22 N.J.R. 273 and 584	February 5, 1990
21 N.J.R. 2149 and 2426	August 7, 1989	22 N.J.R. 585 and 686	February 20, 1990
21 N.J.R. 2427 and 2690	August 21, 1989	22 N.J.R. 687 and 884	March 5, 1990
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)	R.1990 d.169	22 N.J.R. 916(a)
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)		
1:1-14.11	Transcripts of OAL hearings	21 N.J.R. 3587(a)	R.1990 d.68	22 N.J.R. 334(a)
1:1-19.2	Withdrawal of request for hearing or defense raised	21 N.J.R. 3589(a)	R.1990 d.71	22 N.J.R. 334(b)
1:6A	Special education hearings	21 N.J.R. 2693(a)	R.1990 d.169	22 N.J.R. 916(a)
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
1:13-1.1, 14.4	DMV cases involving excessive points, surcharges, and certain failures to appear	22 N.J.R. 91(a)		
	Most recent update to Title 1: TRANSMITTAL 1989-6 (supplement December 18, 1989)			
AGRICULTURE—TITLE 2				
2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)	R.1990 d.201	22 N.J.R. 1116(a)
2:5-2.2, 3.1	Equine infectious anemia; avian influenza: administrative corrections	———	———	22 N.J.R. 628(a)
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)	R.1990 d.202	22 N.J.R. 1116(b)
2:32-2.22	Sire Stakes qualifying times at pari-mutuel tracks	22 N.J.R. 3(b)	R.1990 d.203	22 N.J.R. 1116(c)
2:52	Milk processors, dealers and subdealers	22 N.J.R. 888(a)		
	Most recent update to Title 2: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
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3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:2	Advertising by financial institutions	22 N.J.R. 690(b)		
3:3-1.1	Department organization	Exempt	R.1990 d.103	22 N.J.R. 335(a)
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:42-2.2, 7	Pinelands Development Credit Bank: resale of bank-owned credits	21 N.J.R. 3691(a)	R.1990 d.119	22 N.J.R. 628(b)
	Most recent update to Title 3: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
PERSONNEL—TITLE 4A				
	Most recent update to Title 4A: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
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5:1-1.1, 2.1, 6, 7.4	Standards of conduct	21 N.J.R. 3693(a)	R.1990 d.99	22 N.J.R. 335(b)
5:2-1.1	Department organization	Exempt	R.1990 d.159	22 N.J.R. 920(a)
5:2-1.1	Department organization	Exempt	R.1990 d.199	22 N.J.R. 1117(a)
5:10-1.5, 1.8, 1.10, 1.11, 16.3	Hotels and multiple dwellings: administrative corrections	———	———	22 N.J.R. 921(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:10-1.6, 1.11, 1.12, 2.2	Hotels and multiple dwellings: retreat lodging facility registration and inspection certificates	22 N.J.R. 275(b)		
5:11-1.2, 6.2	Relocation assistance: definitions; relocation plans	21 N.J.R. 3694(a)	R.1990 d.113	22 N.J.R. 336(a)
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)	R.1990 d.68	22 N.J.R. 336(b)
5:14-4.1	Neighborhood Preservation Balanced Housing Program: administration of affordability controls	21 N.J.R. 3695(a)	R.1990 d.100	22 N.J.R. 337(a)
5:18	Uniform Fire Code	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18A	Fire Code Enforcement	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)	R.1990 d.114	22 N.J.R. 337(c)
5:18B	High Level Alarms	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)	R.1990 d.114	22 N.J.R. 337(c)
5:19-4.3	Continuing care retirement communities: administrative correction	———	———	22 N.J.R. 1117(b)
5:22	Exemptions from local property taxation	21 N.J.R. 3345(a)	R.1990 d.60	22 N.J.R. 350(a)
5:22-2.5	Rehabilitation of multiple dwellings: administrative correction	———	———	22 N.J.R. 632(a)
5:22-3	Urban enterprise zone municipalities: tax abatements for residential construction	22 N.J.R. 591(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12–4.15, 4.21, 4.22, 4.24–4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Mitigation Subcode	21 N.J.R. 3696(a)		
5:23-1.4	Uniform Construction Code: underground storage tank compliance	21 N.J.R. 3345(b)	R.1990 d.57	22 N.J.R. 350(b)
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.14–3.17, 3.20, 3.21	Uniform Construction Code subcodes	22 N.J.R. 909(a)		
5:23-3.15	UCC: plumbing subcode	21 N.J.R. 3346(a)	R.1990 d.58	22 N.J.R. 351(a)
5:23-4.5, 4.19, 4.20	UCC enforcing agencies: standardized forms; remittance of training fees	21 N.J.R. 3346(b)	R.1990 d.61	22 N.J.R. 351(b)
5:23-4.17	Dedication of fee revenue for UCC enforcement	21 N.J.R. 3348(a)	R.1990 d.115	22 N.J.R. 352(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2–7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55–7.57, 7.61, 7.67, 7.68, 7.71–7.73, 7.75, 7.76, 7.80–7.82, 7.87, 7.94–7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
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5:27-11.2	Rooming and boarding houses: administrative correction	———	———	22 N.J.R. 921(b)
5:29-1, 2.2	Landlord registration form for one and two-unit rental dwellings	21 N.J.R. 3349(a)	R.1990 d.59	22 N.J.R. 354(a)
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:80	New Jersey Housing and Mortgage Finance Agency	22 N.J.R. 277(b)		
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)		

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5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)		
5:91-1.2, 4.5, 6.2, 7.1–7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.2	Council on Affordable Housing: inclusionary development on environmentally sensitive lands	22 N.J.R. 730(a)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

Most recent update to Title 5: TRANSMITTAL 1990-1 (supplement January 16, 1990)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

5A:1	Department organization	Exempt	R.1990 d.200	22 N.J.R. 1117(c)

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

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6:11-6.1, 6.2	Certification of nursery teachers	21 N.J.R. 3209(a)	R.1990 d.134	22 N.J.R. 632(b)
6:21-7.6	Pupil transportation: administrative correction	———	———	22 N.J.R. 366(b)
6:22-1.1, 1.3, 1.4, 1.7, 1.8	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)	R.1990 d.110	22 N.J.R. 366(a)
6:22-2.5	Schools for handicapped pupils: school space sizes and capacity	22 N.J.R. 277(c)		
6:29	Health, safety and physical education	21 N.J.R. 3815(b)	R.1990 d.154	22 N.J.R. 793(a)
6:39-1.2	Levels of pupil proficiency: administrative correction	———	———	22 N.J.R. 366(b)
6:46-1.1, 4.6, 4.10, 4.12	Private vocational schools: instructional hours	21 N.J.R. 3700(a)	R.1990 d.150	22 N.J.R. 799(a)
6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)		
6:68	State Library Assistance Programs	21 N.J.R. 3822(a)	R.1990 d.179	22 N.J.R. 921(c)

Most recent update to Title 6: TRANSMITTAL 1990-1 (supplement January 16, 1990)

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7:1C	Ninety-day construction permits	22 N.J.R. 731(a)		
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)	R.1990 d.188	22 N.J.R. 1122(a)
7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)		
7:11-2.1, 2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates	21 N.J.R. 3836(a)		
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)		
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)		
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)		
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)	R.1990 d.197	22 N.J.R. 1124(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-6.15	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:19	Water supply allocation permits	21 N.J.R. 3594(a)	R.1990 d.180	22 N.J.R. 932(a)
7:19-3.8	Fees for water allocation permits: administrative correction	———	———	22 N.J.R. 1134(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:19A	Emergency water supply allocation	22 N.J.R. 102(a)	R.1990 d.163	22 N.J.R. 944(a)
7:19B	Water emergency surcharge schedule	22 N.J.R. 106(a)	R.1990 d.164	22 N.J.R. 947(a)
7:20-1	Dam safety standards	22 N.J.R. 279(a)		
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7:25-12.9	Surf clamming: administrative correction	———	———	22 N.J.R. 633(a)
7:25A	Oyster resource management	22 N.J.R. 283(a)		
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7:26-2A.8	Sanitary landfill requirements: administrative correction	———	———	22 N.J.R. 382(b)
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7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
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8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)	R.1990 d.93	22 N.J.R. 507(a)
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8:43G-14.2, 14.4	Infection control and sanitation (advisory)	21 N.J.R. 1618(a)		
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8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
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10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:18-6.4	Employee visits with incarcerated relatives	21 N.J.R. 3410(a)	R.1990 d.124	22 N.J.R. 662(a)
10A:22-2.6	Release of confidential inmate or parolee records	22 N.J.R. 898(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)	R.1990 d.140	22 N.J.R. 801(a)
10A:31	Adult county correctional facilities: public hearing	21 N.J.R. 3411(b)		
10A:32	Juvenile detention facilities	22 N.J.R. 313(a)		
10A:71	Parole Board rules	21 N.J.R. 3411(c)	R.1990 d.141	22 N.J.R. 825(a)
10A:71-1.3, 3.2, 3.21, 7.18	Parole Board rules	22 N.J.R. 899(a)		
10A:71-3.4	Parole release hearings: administrative correction	———	———	22 N.J.R. 356(a)

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INSURANCE—TITLE 11

11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:1-5.2	Cancellation and nonrenewal of fire and casualty coverage	21 N.J.R. 3240(b)	R.1990 d.107	22 N.J.R. 391(a)
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:1-28	Formation of property and casualty insurance corporation or reciprocal insurance exchange	21 N.J.R. 3607(a)	R.1990 d.162	22 N.J.R. 954(b)
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2-3.1, 3.12	Credit life insurance and credit accident and health insurance: clarification of public comments	———	———	22 N.J.R. 392(a)
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:3-1	Commercial Automobile Insurance Plan	21 N.J.R. 3613(a)	R.1990 d.118	22 N.J.R. 392(b)
11:3-8.2, 8.4	Nonrenewal of automobile policies	22 N.J.R. 316(a)		
11:3-8.4	Nonrenewal of automobile policies: administrative correction and extension of comment period	22 N.J.R. 769(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 2182(a)	R.1990 d.116	22 N.J.R. 399(a)
11:3-16A	Automobile coverage: flex rate percentage calculations	21 N.J.R. 3719(a)	R.1990 d.161	22 N.J.R. 963(a)
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 3422(b)	R.1990 d.109	22 N.J.R. 421(a)
11:3-19	Multi-tier and good driver rating plans	21 N.J.R. 3721(a)		
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:3-31	Private passenger automobile insurers: examination of financial experience	21 N.J.R. 3726(a)	R.1990 d.108	22 N.J.R. 425(a)
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-25	Medicare supplement minimum standards transition rule for 1990	22 N.J.R. 320(a)		
11:5-1.28	Approved real estate schools	22 N.J.R. 777(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commerical lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		
11:17-3.4	Insurance producer continuing education: delay of operative date	———	———	22 N.J.R. 662(b)
11:17D-2.6	Reinstatement of insurance producer license: administrative correction	———	———	22 N.J.R. 441(a)

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12:16	Unemployment Compensation and Temporary Disability: contributions, records and reports	22 N.J.R. 603(b)		
12:17-2.1	Unemployment insurance benefits: mail claims system	22 N.J.R. 901(a)		
12:19-1	Unemployment Compensation and Temporary Disability: program definitions	22 N.J.R. 605(a)		
12:40-1	Worker Adjustment and Retraining Notification (WARN) procedures	21 N.J.R. 3630(a)	R.1990 d.105	22 N.J.R. 357(a)
12:56-16	Payroll deductions for mass transit commutation tickets	22 N.J.R. 148(a)		
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)		
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:100-5.2	Public employee safety and health: excavations	22 N.J.R. 607(a)		
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)		
12:120	Asbestos training courses	22 N.J.R. 736(a)		
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)		
	Most recent update to Title 12: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
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12A:10-2.2	Minority and female construction subcontractors: administrative correction	———	———	22 N.J.R. 1150(a)
12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	22 N.J.R. 608(a)		
12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)		
12A:31-3	Development Authority: direct loans	22 N.J.R. 612(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)		
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		
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LAW AND PUBLIC SAFETY—TITLE 13				
13:18-1, 3–9, 11	Motor Vehicles: oversize and overwidth vehicles; Motor Fuels Use Tax; connecting devices; insurance termination; Bus Excise Tax; overhangs; uninsured motorists; Division organization	22 N.J.R. 614(a)		
13:18-2, 10	Motor Vehicles: Unsatisfied Claim and Judgment Fund rules (repeal)	21 N.J.R. 3432(a)	R.1990 d.121	22 N.J.R. 662(c)
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:22	Repeal (see 13:62)	21 N.J.R. 3646(a)	R.1990 d.175	22 N.J.R. 965(a)
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)		
13:25	Motorized bicycles	22 N.J.R. 323(a)		
13:27	State Board of Architects rules	22 N.J.R. 18(a)	R.1990 d.165	22 N.J.R. 974(a)
13:27-8.6	Landscape architect certification: experience requirement	22 N.J.R. 325(a)		
13:30	Board of Dentistry rules	22 N.J.R. 149(b)	R.1990 d.205	22 N.J.R. 1145(a)
13:30-8.2, 8.11	Parenteral conscious sedation in dental practice	21 N.J.R. 3060(a)	R.1990 d.174	22 N.J.R. 976(a)
13:30-8.3	Use of general anesthesia in dental practice	21 N.J.R. 3062(a)	R.1990 d.173	22 N.J.R. 975(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 783(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	22 N.J.R. 153(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)		
13:33	Practice of ophthalmic dispensers and technicians	22 N.J.R. 154(a)	R.1990 d.204	22 N.J.R. 1148(a)
13:34-1.1	Marriage counselor examination fee	21 N.J.R. 3854(a)	R.1990 d.152	22 N.J.R. 831(a)
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.3	Podiatric trainee: countersigning of orders and prescriptions	22 N.J.R. 905(a)		
13:35-6.5	Standards for patient records in medical practice	21 N.J.R. 3253(a)	R.1990 d.176	22 N.J.R. 978(a)
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:37	Board of Nursing rules	21 N.J.R. 3854(b)	R.1990 d.122	22 N.J.R. 663(a)
13:39A-5.1	Licensure of foreign-trained physical therapists	21 N.J.R. 3855(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists: extension of comment period	22 N.J.R. 326(a)		
13:39A-5.7	Licensure as physical therapist: language comprehension requirement	21 N.J.R. 3856(a)		
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:44-2.6	Continuance of veterinary practice	22 N.J.R. 326(b)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:44-4.1	Board of Veterinary Medical Examiners fee schedule	22 N.J.R. 18(b)	R.1990 d.151	22 N.J.R. 831(b)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:44C-4	Provisional licensure as audiologist or speech-language pathologist (repeal)	21 N.J.R. 3433(a)	R.1990 d.111	22 N.J.R. 358(a)
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)		
13:44C-7.2	Audiology and speech language pathology practice exemptions: extension of comment period	22 N.J.R. 327(a)		
13:45A-16.2	Home improvement contracts: written requirement	21 N.J.R. 3433(b)	R.1990 d.125	22 N.J.R. 662(d)
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)		
13:45A-25.2	Sellers of health club services: registration fee	21 N.J.R. 3657(a)	R.1990 d.104	22 N.J.R. 358(b)
13:45B-6.1	Private employment agencies and personnel services firms: license, registration, and other fees	22 N.J.R. 906(a)		
13:47A-10	Registration of securities	21 N.J.R. 2903(a)		
13:61	State Police: boat safety course	21 N.J.R. 3434(a)	R.1990 d.142	22 N.J.R. 831(c)
13:61	State Police boat safety course: extension of comment period	22 N.J.R. 149(a)		
13:62	Motor vehicle race tracks	21 N.J.R. 3646(a)	R.1990 d.175	22 N.J.R. 965(a)
13:62	Motor vehicle race tracks: extension of comment period	22 N.J.R. 149(a)		
13:70	Thoroughbred racing	21 N.J.R. 3856(b)	R.1990 d.127	22 N.J.R. 663(b)
13:70-29.19	Thoroughbred racing: elimination from place and show wagering	21 N.J.R. 3254(a)	R.1990 d.184	22 N.J.R. 1149(a)
13:71	Harness racing	21 N.J.R. 3861(a)	R.1990 d.126	22 N.J.R. 667(a)
13:71-27.18	Harness racing: elimination from place and show wagering	21 N.J.R. 3255(a)	R.1990 d.185	22 N.J.R. 1149(b)
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		

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PUBLIC UTILITIES—TITLE 14

14:0	Telecommunications for deaf: pre-proposal concerning Statewide 24-hour dual party relay center	21 N.J.R. 1653(a)		
14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-4.11	Meter tampering: extension of comment period	22 N.J.R. 327(b)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:18	Cable television rules: preproposal	22 N.J.R. 327(c)		
14:25	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)	R.1990 d.64	22 N.J.R. 832(a)

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ENERGY—TITLE 14A

14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)		
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		

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15A:2-1.1	Department organization	Exempt	R.1990 d.56	22 N.J.R. 557(a)
15A:2-1.1	Department organization	Exempt	R.1990 d.198	22 N.J.R. 1149(c)
15A:2-1.2	Petitions for rulemaking	22 N.J.R. 620(a)		

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16:20A	Federal Aid Urban System Substitution Program	21 N.J.R. 3716(a)	R.1990 d.128	22 N.J.R. 668(a)
16:20B	Transportation Trust Fund: municipal aid	21 N.J.R. 3716(b)	R.1990 d.130	22 N.J.R. 669(b)
16:23	Public hearings and route location approval	21 N.J.R. 2913(a)	R.1990 d.112	22 N.J.R. 358(c)
16:24-1	Public utility rearrangement agreements	21 N.J.R. 3435(a)	R.1990 d.52	22 N.J.R. 358(d)
16:25-1.1, 1.7, 2.2, 7A, 13	Installation of fiber optic cable along limited access highways	21 N.J.R. 2234(b)	R.1990 d.53	22 N.J.R. 359(a)

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16:27-1.1, 1.2, 2.1–2.4, 4.1–4.3, 4.5–4.7, 5.1	Traffic engineering and safety programs	21 N.J.R. 3866(a)	R.1990 d.138	22 N.J.R. 834(a)
16:28-1.10, 1.38, 1.42	Speed limit zones along U.S. 46 in Independence Township, Route 57 in Mansfield Township, and Route 152 in Somers Point and Egg Harbor	22 N.J.R. 787(a)		
16:28-1.12	School zone speed limit along Route 168 in Gloucester Township	21 N.J.R. 3868(a)	R.1990 d.129	22 N.J.R. 669(c)
16:28-1.14, 1.57, 1.66, 1.76, 1.103, 1.116, 1.118	Speed limit zones along Route 33, U.S. 30, Routes 175, 15, 91, 53, and 50	21 N.J.R. 3717(a)	R.1990 d.144	22 N.J.R. 835(a)
16:28-1.25	Speed limit zone along Route 23 in Riverdale Borough	22 N.J.R. 788(a)		
16:28-1.57	Speed limit zones along U.S. 30 in Atlantic County	22 N.J.R. 788(b)		
16:28-1.99, 1.108	Speed limit zones along Route 157 in Absecon and Route 82 in Union County	22 N.J.R. 328(a)		
16:28A-1.25, 1.28, 1.34, 1.41, 1.46, 1.51, 1.62	Restricted parking and stopping along Routes 35 in Red Bank, U.S. 40 in Franklin Township, 49 in Salem, 77 in Harrison Township, U.S. 130 in Pennsauken and Delran, 168 in Gloucester Township, and 12 in Flemington and Kingwood	22 N.J.R. 913(a)		
16:31-1.3	Left turns on U.S. 46 in Mount Olive	21 N.J.R. 3437(a)	R.1990 d.63	22 N.J.R. 362(a)
16:32	Designated routes for double trailer-truck combinations and 102-inch standard trucks	22 N.J.R. 19(a)	R.1990 d.155	22 N.J.R. 836(a)
16:40	Snow and ice control (repeal)	22 N.J.R. 20(a)	R.1990 d.158	22 N.J.R. 837(a)
16:41-2.4	Highway access by low and moderate income housing units: permit fees	22 N.J.R. 20(b)	R.1990 d.139	22 N.J.R. 837(b)
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
16:41A	Outdoor Advertising Tax Act rules	21 N.J.R. 3868(b)	R.1990 d.123	22 N.J.R. 670(a)
16:41A	Outdoor Advertising Tax Act rules: preproposal	22 N.J.R. 157(b)		
16:41A	Outdoor Advertising Tax Act rules: public meeting on preproposal	22 N.J.R. 621(a)		
16:48	Route location approval (repeal)	22 N.J.R. 621(b)		
16:49	Transportation of hazardous materials	22 N.J.R. 21(a)	R.1990 d.156	22 N.J.R. 837(c)
16:53A	Bus Operating Assistance Program (repeal)	21 N.J.R. 3633(a)	R.1990 d.54	22 N.J.R. 362(b)
16:62	Air safety and hazardous zoning	22 N.J.R. 158(a)	R.1990 d.178	22 N.J.R. 981(a)
16:77-1	Use or occupancy of NJ TRANSIT-owned property	21 N.J.R. 3259(b)	R.1990 d.143	22 N.J.R. 837(d)

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TREASURY-GENERAL—TITLE 17

17:3-6.16	Teachers' Pension and Annuity Fund: mandatory retirement	22 N.J.R. 329(a)		
17:4	Police and Firemen's Retirement System	22 N.J.R. 908(a)		
17:4-1.1	Board meetings, Police and Firemen's Retirement System	22 N.J.R. 909(a)		
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:14-1.2	Minority and female construction subcontractors: administrative correction	———	———	22 N.J.R. 1150(a)
17:16-17.3	Common Pension Fund A: individual stock holdings	22 N.J.R. 21(b)	R.1990 d.147	22 N.J.R. 840(a)
17:19	Classification and qualification of bidders for public works contracts	22 N.J.R. 329(b)	R.1990 d.193	22 N.J.R. 1150(b)
17:27-2.1, 5.2, 7.3	Affirmative action in public contracts	21 N.J.R. 3439(b)	R.1990 d.160	22 N.J.R. 981(b)
17:27-2.1, 5.2, 7.3	Affirmative action in public contracts: extension of comment period	21 N.J.R. 3869(a)		
17:32-3, 4	Municipal and county cross-acceptance of State Development and Redevelopment Plan	22 N.J.R. 621(c)		

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TREASURY-TAXATION—TITLE 18

18:1-1.3–1.8	Division of Taxation procedures and operations	22 N.J.R. 159(a)		
18:1-2	Division of Taxation: petitions for rules	22 N.J.R. 160(a)		
18:7-3.18	Corporation Business Tax: recycling equipment credit	22 N.J.R. 789(a)		
18:7-8.10	Corporation Business Tax: administrative correction	———	———	22 N.J.R. 363(a)
18:7-11.3	Corporation Business Tax: effect of deficiency notice	21 N.J.R. 3079(a)	R.1990 d.102	22 N.J.R. 363(b)
18:24-1.4, 12.5	Sales and Use Tax: receipts	21 N.J.R. 1107(a)	R.1990 d.74	22 N.J.R. 363(c)
18:26-2.12	Transfer Inheritance and Estate Tax: renunciation or disclaimer	21 N.J.R. 1822(a)	R.1990 d.73	22 N.J.R. 366(a)
18:36	Savings Institution Tax Act rules	22 N.J.R. 161(a)	R.1990 d.181	22 N.J.R. 982(a)

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TITLE 19—OTHER AGENCIES				
19:3-1.1–1.4, 1.6	Hackensack Meadowlands District: subdivision, zoning and permit fees	21 N.J.R. 2949(a)	R.1990 d.70	22 N.J.R. 557(a)
19:4-2.2, 4, 5.10, 6.16, 6.18	Hackensack Meadowlands District zoning	21 N.J.R. 3441(a)	R.1990 d.186	22 N.J.R. 1150(c)
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