

SUMMARY: DEPARTMENT 180-DAY SUBMISSIONS

Executive Order No. 2 (2010)¹ directed State departments to undertake a review of their administrative regulations to ensure that they comply with “Common Sense Principles” for rule-making. These principles seek to establish a new rule-making paradigm that will reverse New Jersey’s consistently low rankings in national surveys and studies that compare the business climate in this State with other states. State departments have complied with the 180-day review of their administrative rules directed in Executive Order No. 2. Those submissions are set forth in the accompanying appendix to this document, and are arranged by department in alphabetical order.

The internal review of administrative rules by State departments was completed in the 90-day period between the creation of the bi-partisan Red Tape Review Group, chaired by the Lieutenant Governor, and the 180-day deadline in Executive Order No. 2. This review resulted in recommendations that impacted 140 administrative rules. Of these, three new proposals were promulgated to clarify existing rules, 99 amendments were proposed to existing regulations, 31 proposals were made to repeal existing rules, one rule was permitted to expire and the abolition of six chapters of the *New Jersey Administrative Code* in their entirety.

While this internal review is significant and represents an evolution in State Government rule-making, this review did not take into account the views of those members of the public who operate under the requirements of such regulations. Although the expertise and views of State departments are important, it is equally important to provide a forum in which individuals can give their views of the regulatory process. Such a forum is needed in order to afford the public the opportunity to propose revisions and improvements to both specific regulations and general practices and processes.

The engagement of all of the stakeholders who participate in the regulatory process will be vital to sustaining the reform effort going forward. Such an approach is consistent with Governor Christie’s pledge to make regulatory reform a permanent feature of his administration. It also recognizes that the “Common Sense Principles” are not a static concept, but rather an approach to rulemaking that should be incorporated into future departmental actions.

Cognizant of the fact that the regulatory reform efforts do not cease at 180 days², it is therefore appropriate to establish an ongoing body to review the promulgation of administrative

¹ Executive Order No. 2 (2010) (Christie) <http://www.state.nj.us/infobank/circular/eocc2.pdf>

² As noted in the Red Tape Review Group 90-day report, a longer view to regulatory reform is consistent with the actions of other states. The report noted that the Virginia Government and Regulatory Reform Task Force took three years to accomplish its review of 8,700 pages of regulations in that state. In Massachusetts, a joint “Regulatory Review Initiative” by the Governor and Attorney General that began in October of 2007 is ongoing.

regulations. The Red Tape Review Group 90-day report contained such a recommendation, and called for the establishment of an “ongoing, transparent and bi-partisan body to continue the work started by the Group established pursuant to Executive Order No. 3 (2010).”³

The establishment of an ongoing review body will ensure that State departments have fully complied with their review of existing rules and regulations required under the provisions of Executive Order No. 2, and possibly foster new ideas for reform that have not yet been considered. This body should be confined to administrative rules already adopted under the “Administrative Procedure Act,” and the ongoing Red Tape Review body should not interpose itself in administrative adjudications or the hearing process for proposed rules established pursuant to current law. Finally, the 90-day report also noted that an ongoing commission could serve a useful function by advising the Lieutenant Governor on administrative rules and regulations that unnecessarily impede job creation, economic growth and investment in this State.

Significant Department/Agency Submissions

Guided by the “Common Sense Principles” set forth in Executive Order No. 2, State departments made a number of significant proposals for regulatory change. It should be noted that each proposal to amend a specific rule or regulation will still be subject to the comment and hearing process under the “Administrative Procedure Act”, whereby interested parties are afforded a reasonable opportunity to submit data, views, or arguments, orally or in writing, and that the Executive Branch agencies consider all written and oral submissions respecting the proposed rule or regulation.⁴

As noted above, one of the principles states that departments must detail and justify every instance when proposed rules exceed federal requirements. The Department of Agriculture has proposed the elimination of separate and duplicative state-level regulations for the control of invasive species and a pest that is already subject to a federal compliance agreement with the State.

Similarly, the Division of Gaming Enforcement (DGE) in the Department of Law and Public Safety (DL&PS) has a chapter of rules relating to suspicious activity reporting. The DGE has determined that because corresponding federal regulations now require the filing of suspicious activity reports (SARS), the federal rules satisfy the State’s needs. Accordingly, DGE recommends that the rule chapter be permitted to expire in November of 2010.

See *Red Tape Review Group Findings & Recommendations*, p. 50.

<http://nj.gov/governor/news/reports/pdf/20100419.pdf>

³ Ibid.

⁴ N.J.S.A. 52:14B-4.

Also within DL&PS, a number of professional boards under the jurisdiction of the Division of Consumer Affairs have proposed rule changes to make New Jersey consistent with federal standards in situations where a stricter regulation could not be justified in order to achieve a New Jersey-specific public policy goal. For example, the Board of Accountancy has proposed changing the regulatory criteria for “independence” at the State level because it is inconsistent with federal standards set by the Securities and Exchange Commission and the Government Accountability Office. The Board of Ophthalmic Dispensers and Ophthalmic Technicians has proposed amending their rules to be consistent with the federal “Fairness to Contact Lens Consumers Act,” which allows licensed dispensers to substitute generic for brand-name contact lenses when they fill prescriptions. The Board of Pharmacy proposes to amend rules relating to the licensure of pharmacists, the registration of pharmacy technicians, the approval of continuing education providers, and the permitting of pharmacies. They also propose repealing the State rules for the construction, operation and maintenance of clean rooms used to compound sterile preparations because the federal compounding standards are considered adequate by the board.

To conform to the “Common Sense Principles,” departments are encouraged to focus on performance-based outcomes, not with dictating the means to attain those outcomes. To emphasize performance-based outcomes, the BPU is contemplating an increase in the number of clean energy programs that hold back a portion of the final payment until post-installation energy performance has been demonstrated.

The Department of Community Affairs (DCA) proposed a revision to a regulation regarding lead paint abatement work. To prevent lead poisoning in children, the proposal would permit the combination of lead abatement measures (permanent measures) with interim cost control measures (temporary measures) to obtain the most protective product for least cost. Department of Education staff continues to conduct reviews of regulations that pertain to Standards and Assessment, Programs to Support Student Development, and Programs and Practices to Support Student Achievement, among others, to provide school districts with as much flexibility as possible to achieve their goals.

In the spirit of satisfying regulatory objectives with the least burden and cost to business (including the cost of time), several departments focused on eliminating unnecessary rules. For example, the Department of the Treasury repealed the bidding requirement that entities must provide proof of registration with the Division of Revenue. Inadvertently, vendors who bid for State contracts had been classified as “unresponsive” when they were, in fact, registered as tax-paying businesses in New Jersey, but had neglected to submit a copy of their registration form.

The Department of Health and Senior Services has moved to deem hospitals as compliant for certain licensure standards if the hospital has been accredited by the Centers for Medicare and Medicaid Services. Consequently, the State will forego its own separate and additional inspections of those facilities. The Department of Human Services will amend its regulations for

hospitals, Federally Qualified Health Centers, independent clinics, long-term care /nursing facilities and assisted living facilities so that separate Medicaid/NJFamilyCare provider numbers are not required for certain locations of the same institutions.

The professional licensing boards eased the requirements for continuing education credits and associated fees, along with the cost of re-activating licenses, across a broad swath of occupations.

As to Personnel Services, the rule that career consultants and employment, on-line job-matching and outplacement services file samples of their contracts with the Division of Consumer Affairs is unnecessary. The samples provide no evidence as to the ability of those entities to provide the contracted-for services. The Pharmacy Board is considering rules to increase the number of assistants and interns that pharmacists may supervise at one time. Without endangering client safety, the amendments could increase job opportunities for young professionals.

Notably, several rule changes were proposed in response to the 90-day Red Tape Review Group report. The Department of Environmental Protection (DEP) proposed to modify its public access rules to waterfront areas following testimony before the Group, which heard constituents catalogue their difficulties with rules that the Group characterized as “offending common sense.” Similarly, the Board of Public Utilities (BPU) and the Department of Labor and Workforce Development (DLWD) are in the process of revising regulations that address sub-metering in apartment buildings and persons licensed to service boilers. In both cases the Group described the rules in question as being “archaic and anachronistic.”

During public meetings, the Red Tape Review Group also heard complaints about the CACREP-accreditation for licensure with the Board of Marriage and Family Therapy. The Professional Counselor Examiners Committee is expected to provide an alternate pathway to licensure for graduates from non-CACREP-accredited programs. Similarly, the DLWD has proposed a rule that would bring State regulations in line with federal regulations as to time clocks and “rounding” (the practice of recording employees’ starting and stopping times to the nearest five minutes or quarter of an hour). This was also a matter raised before the Red Tape Review Group.

Background: A New Approach to Rule-making

On January 20, 2010, Governor Christie acted to revive New Jersey’s economy and make this State a home for growth, job creation and investment. By signing a series of executive orders on his first full day in office, the Governor moved to reform a regulatory process, which has been characterized as being unpredictable, complicated, often confusing and sometimes engaged in the pursuit of contradictory policy goals. Confronted with the concern that New Jersey has over time adopted an approach to regulation that has failed to strike the correct balance between the protection of the public interest and promotion of free enterprise, the

Governor signed a series of executive orders designed to reverse this trend and to counteract the effect it has had on this State's ability to compete in the national and international marketplace.

The purpose of these orders was to bring about a new approach to administrative rule-making that ensures that the substantive and procedural requirements for rules and regulations:

- Rely upon sound science or other technical data or information;
- Are consistent with broader State policy goals;
- Are consistent with the intent of the legislation under which they are promulgated where appropriate; and
- Protect and promote the public interest, including the urgent need to promote economic development and encourage private-sector job creation.

As a first step toward this new approach to the promulgation and adoption of administrative regulations, Executive Order No. 1 suspended or “froze” all administrative rule proposals that were pending when the Christie-Guadagno administration took office for a period of 90 days.⁵ Of the approximately 800 pages of rules pending at the time the administration took office, 128 were frozen, while an additional 70 rules were permitted to proceed because they impacted health, safety, compliance with federal mandates or the receipt of federal monies, or impinged upon essential State agency operations.⁶ The purpose of this freeze was to permit a bi-partisan group of Executive and Legislative Branch appointees to review the rules in question prior to their adoption and make recommendations thereon to ensure that the contemplated rules were not “unworkable, overly-proscriptive or ill-advised.”

The frozen rules were subsequently subjected to review by a bi-partisan “Red Tape Review Group” created by Executive Order No. 3.⁷ The Group was chaired by the Lieutenant Governor and was charged in part under the order with undertaking a “review of all pending and proposed rules and regulations ... in order to assess their effects on New Jersey's economy and to determine whether their burdens on business and workers outweigh their intended benefits.”

90-Day Red Tape Review Group

On April 19, 2010, the Red Tape Review Group presented Governor Christie with its findings and recommendations.⁸ The Group recommended the withdrawal or modification of 16 of the 128 rules (12.5%) that were frozen by Executive Order No. 1. Had this 12.5% been

⁵ Executive Order No. 1 (Christie) (2010) <http://www.state.nj.us/infobank/circular/eocc1.pdf>

⁶ *Ibid.* (Please refer to Appendices A & B for references to specific suspended rule proposals)

⁷ Executive Order No. 3 (Christie) (2010) <http://www.state.nj.us/infobank/circular/eocc3.pdf>

⁸ For a discussion of all the legislative, policy and regulatory recommendations of the Group, please see *Red Tape Review Group Findings & Recommendations* <http://nj.gov/governor/news/reports/pdf/20100419.pdf>

applied to the remaining 26,000 pages of rules in the New Jersey Administrative Code, a continuing the Red Tape Review process could result in the elimination of over 3,000 pages of rules. This is the equivalent of approximately 111 chapters from the administrative code.

“Common Sense Principles” for Rule-making

While Executive Order No. 1 froze for 90 days proposed rules and regulations and subjected them to review by the bi-partisan Red Tape Review Group, Executive Order No. 2 directed the 180-day review of existing regulations for compliance with “Common Sense Principles” for administrative rule-making. The “Common Sense Principles” set forth in Executive Order No. 2 directed State departments to:

- Engage in the “advance notice of rules” by soliciting opinions from knowledgeable sources outside State government before rules are proposed. This consultation should improve the quality of the rulemaking process;
- Adopt the “time of decision” rule, defined as the requirement that any permit or approval is governed by the rules in effect at the time of filing (unless specifically provided otherwise in a State or federal law). Applicants will therefore not experience the phenomenon of ‘moving goalposts’;
- Adopt rules for waivers to recognize that strict compliance can, at times, be unduly burdensome or conflicting. The waivers and the appropriate policy must be posted on the agency’s website;
- Employ cost/benefit analysis that may utilize scientific and economic research from other jurisdictions;
- Detail the justification for every instance when proposed rules exceed federal requirements. When promulgating proposed rules, agencies shall recognize federal standards unless specifically required by State statute or stricter regulation is necessary to achieve a specific policy goal for New Jersey; and
- Value performance-based outcomes and compliance over the punitive imposition of penalties for violations which are technical in nature.

Conclusion

The bi-partisan Red Tape Review group noted in its report that the State Government should not view the success of its regulatory framework through the prism of how many pages of complex paperwork it imposes on entrepreneurs and small business owners, or by the dollar

amounts of the fines and fees it collects. The success of the State's regulatory system should be measured by how well it achieves compliance with State policy goals in a manner that does not engender a "race to the bottom" with respect to public health, environmental and safety standards. The foregoing submissions from State departments and recommendations for further actions provide a framework for accomplishing meaningful regulatory reform for the people of this State.

APPENDIX

- I. Board of Public Utilities
- II. Civil Service Commission
- III. Department of Agriculture
- IV. Department of Banking and Insurance
- V. Department of Children and Families
- VI. Department of Community Affairs
- VII. Department of Education
- VIII. Department of Environmental Protection
- IX. Department of Health & Senior Services
- X. Department of Human Services
- XI. Department of Labor and Workforce Development
- XII. Department of Law and Public Safety
- XIII. Department of Military and Veterans Affairs
- XIV. Department of the Treasury
- XV. Department of Corrections, Department of State, Department of Transportation,
Division of Motor Vehicles

I. Board of Public Utilities

The Board of Public Utilities found that most of its regulations and procedures comported with Executive Order No. 2, but it proposed steps that the agency can take to clarify and cement that compliance. Significantly, BPU is now exploring whether it should permit sub-metering in rental housing, because the April 19th Red Tape Review report characterized the failure to implement sub-metering as “archaic and anachronistic.” With respect to internal policies, for example, as to early and broad stakeholder input, BPU recommends that each internal division compile a roster of stakeholders from sister agencies and parties outside Trenton who may be consulted on rulemakings, as appropriate. BPU also recommends that staff provide briefing materials to the Board that detail the stakeholder process and feedback. Stakeholder outreach for current proposals has been enhanced. Other recommendations include:

- The agency should better advertise existing waiver provisions;
- BPU is developing a checklist for staff to use for cost/benefit analysis;
- BPU will establish monitoring programs to review post-adoption information;
- The agency will encourage the staff's current practice of resolving complaints through negotiation;
- To emphasize performance-based outcomes, BPU is exploring whether to increase the number of Clean Energy programs that hold back a portion of the final payment until post-installation energy performance has been demonstrated;
- BPU is analyzing whether a reasonable increase in its penalty authority would result in better enforcement of its directives. Penalties are now inconsistent across utilities.

As to longer-term goals and recommendations:

- To ensure that its programs reflect the current economic climate and are flexible enough to allow future industry growth and subsequent energy demands, BPU is exploring new alternative ratemaking strategies for all utilities, such as Distribution System Improvement Charge, Full Decoupling, and Formula Rates;
- Since the Board only effectively regulates a portion of the telecommunications industry – television and land-based phones – BPU is analyzing whether deregulation of the industry will promote competition without jeopardizing consumer protection.

II. Civil Service Commission

The Civil Service Commission (CSC) amended several regulations since April that should produce efficiencies within State or local government, as briefly described below.

N.J.A.C. 4A:4-7.1 – Local Transfers. On May 26, 2010, the CSC proposed an amendment to permit a transfer of an employee from one department to another, within the same local jurisdiction, without the employee's consent. The public comment period ended on August 20, 2010.

N.J.A.C. 4A:8-1.5 – Layoff Units. This amendment would codify language providing for Judiciary layoff units established according to vicinage or Central Office. CSC proposed this amendment on May 26, 2010 and public comments were received through September 4, 2010.

N.J.A.C. 4A:2-6.3 – General Resignations. This new rule creates a category of "general resignation" from service in addition to "in good standing" or "not in good standing." CSC proposed the rule on May 26, 2010, and public comments were received until September 4, 2010.

III. Department of Agriculture

The Department of Agriculture reviewed the rules in its five divisions (Animal Health, Plant Industry, Marketing and Development, Agricultural and Natural Resources, and Food and Nutrition) and found that most conformed to the Common Sense Principles. The exceptions follow.

Division of Animal Health

N.J.A.C. 2:8 – Humane Treatment of Livestock. The State establishes the minimum standards for the humane treatment of domestic livestock. This regulation was challenged and upheld by the Supreme Court in recent litigation, with two exceptions. The Court sustained the challenges concerning the definition of “routine husbandry practices” and the reliance on “knowledgeable individual and in such a way as to minimize pain.” The division will amend the rules for clarification of these complex areas.

Division of Plant Industry

N.J.A.C. 2:9 – Pine Shoot Beetle. New Jersey is under federal quarantine for this pest, with movement of regulated materials under a federal compliance agreement. The division will propose the deletion of this rule because State quarantine and compliance are therefore unnecessary.

Division of Agricultural and Natural Resources

N.J.A.C. 2:90 – State Soil Conservation Committee (SSCC). The SSCC, in conjunction with the 15 Soil Conservation Districts, the State Agricultural Development Committee and the USDA-Natural Resources Conservation Service, is analyzing ways to streamline the application process and minimize processing times. The group is also considering the expansion of its list of cost-share eligible practices.

Division of Marketing and Development

N.J.A.C. 2:71-3.1 – Standards for Plant Material. The division is considering the deletion of this rule since it is redundant; it adopts the U.S. Standards for asparagus plumosa, Christmas trees and tomato plants as Official New Jersey Grades.

N.J.A.C. 2:74 – Controlled Atmosphere Storages. The division is considering the deletion of this unnecessary rule because no one is registered under this program.

N.J.A.C. 2:78-3.1 – Transitional Sustainable Requirements and *N.J.A.C. 2:78-4.2 – Transitional Sustainable Certification Mark.* The “Transitional” logo signifies that the application of prohibited substances, such as non-approved synthetic fertilizers, herbicides and/or insecticides was stopped at least 12 months prior to harvest, rather than the 36 months prior that is required for the “Organic” logo. The division is considering the deletion of these rules because the Transitional logo has not experienced a high enough level of consumer recognition to be an economically viable interim marketing tool.

The Department of Agriculture notes that its Organic Registration program is currently available on-line, consistent with the Common Sense Principle of leveraging information systems to increase efficiency and improve processes.

IV. Department of Banking and Insurance

The Department of Banking and Insurance (DOBI) submitted its 180-day review at the end of April and updated its progress in mid-July. The following rules will be proposed for amendment or repeal. DOBI has rulemaking authority with respect to the banking and insurance industries. The Real Estate Commission, the Individual Health Coverage and the Small Employer Health Benefit Program Boards that are housed within DOBI have their own rulemaking authority. Their rules were included as part of the Department's 180-day review.

Insurance – Life and Health

N.J.A.C. 11:4-21.3(b). Requires advertisements of limited death benefit policies to be filed with the Department before use. DOBI proposed repeal; published in the August 16, 2010 *New Jersey Register*.

N.J.A.C. 11:4-31. Requires insurers to annually submit data for the "Term Life Insurance Comparison Guide" published by DOBI. DOBI proposed repeal; published in the August 16, 2010 *New Jersey Register*.

N.J.A.C. 11:4-53.7(a) and (c). Require advertisements of critical illness and specific disease policies to be filed with DOBI for approval by the Commissioner before use. DOBI will propose repeal.

Insurance – Property & Casualty

N.J.A.C. 11:3-16. Rate filing requirements for all private passenger auto rate filings. DOBI proposes amendments to reduce the amount of data required.

N.J.A.C. 11:3-16.12. Requires private passenger auto insurers to semi-annually file a report on total written exposure in N.J. and the primary classification distribution of the policies written. DOBI will propose repeal.

N.J.A.C. 11:3-20.4. Specifies data to be included in excess profit reports. DOBI proposes amendments to reduce the amount of data required.

N.J.A.C. 11:4-29. Requires insurers to annually submit data to DOBI for the homeowners insurance price comparison guide. DOBI will propose repeal.

N.J.A.C. 11:25-2.6. Requires insurers to semi-annually submit reports to the Office of the Insurance Claims Ombudsman regarding the utilization of the insurer's internal appeals procedure for the review of disputed claims by consumers. DOBI proposed repeal; published in the August 16, 2010 *New Jersey Register*.

Insurance – Solvency Regulation

N.J.A.C. 11:24-11.1(d)3iii. Requires a minimum net worth of \$25 million for the guarantors of all HMOs. DOBI will propose amendments to reduce the minimum.

N.J.A.C. 11:24-11.4(a),(b) and (c). To receive a Certificate of Authority, HMOs must make an administrative expense deposit with the Commissioner and adjust the amount annually. DOBI will propose amendments to reduce the amount of the deposit.

N.J.A.C. 11:24-11.4(d). Requires excessively high insolvency claim deposits by HMOs. DOBI will propose amendments to reduce the amount of the deposits.

Insurance – Enforcement and Consumer Protection

N.J.A.C. 11:17(A)-1.2. Defines an inducement as consideration of \$25 or more. DOBI proposed amendments to increase the value; published in the July 19, 2010 *New Jersey Register*.

Real Estate Commission (“Commission”) – Real Estate Licensees

N.J.A.C. 11:5-2.2(x)7.ii. Bars pre-licensure schools from advertising in the help-wanted section of newspapers. The Commission will propose repeal.

N.J.A.C. 11:5-3.2 and 3.11(c). Limit the forms of payment for licensing and other fees. The Commission proposes amendments to permit electronic payments for Internet-based transactions.

N.J.A.C. 11:5-3.8(a). Implements and interprets statute that applicants for broker licensure work full-time in real estate sales for three years immediately prior to application. The Commission will propose amendments to relax what constitutes employment “on a full-time basis” during that time period.

N.J.A.C. 11:5-4.4(b). Requirements for brokers with their principal place of business at home. The Commission will propose amendments to replace specific restrictions on the home office structure.

N.J.A.C. 11:5-6.1(m). Permits real estate licensees to provide token gifts, valued at \$5 or less, to consumers. The Commission will propose amendments to increase the value to \$25 or less.

Real Estate Sales Full Disclosure Act

N.J.A.C. 11:5-9.3(a)(8). Permits acceptance of filings from other states with similar requirements, but does not detail an expedited procedure. The Commission will propose amendments to do so.

N.J.A.C. 11:5-9.4 and 9.5. Requirements for the application and public offering statement for regulated offerings that do not qualify for expedited filing. The Commission will propose amendments to clarify language and reflect current practice.

N.J.A.C. 11:5-9.11. Requires the filing of an annual report that consists of a form checklist. The Commission will propose amendments that no longer require accompanying audited financial statements. Instead, the Commission will require audited financials upon request.

N.J.A.C. 11:5-9.18. – Governs exemptions and procedures for filing exemption requests. The Commission will propose amendments to waive the exemption request procedure for certain statutory exemptions.

Individual Health Coverage Board (“IHC”)

N.J.A.C. 11:20-2.13. Requires carriers to concurrently file a notice in duplicate with the IHC of a request for deferral made to the Commissioner. The IHC will propose repeal.

N.J.A.C. 11:20-22.5(e)2ii. Requires carriers to identify the prior source of coverage. With carriers able to use age rating with standard plans, this onerous task is unnecessary. The IHC will propose repeal.

Small Employer Health Benefit Program Board (“SEH”)

N.J.A.C. 11:21-2.8(e) and *11:21-2.15.* Require a member to concurrently file a notice in duplicate with the SEH of a request for deferral of its assessment obligation made to the Commissioner. Members must also notify the SEH of the disposition. The SEH will propose amendments to eliminate the notices.

N.J.A.C. 11:21-4.2. Requires that certification of compliance be filed annually. The SEH will propose amendments to only require the filing of amendments to the standard plans.

V. Department of Children and Families

The Department of Children and Families (DCF) is responsible for 30 chapters in Title 10. The regulations are divided among three agency functions: child welfare, licensing and education. The child welfare regulations pertain to the Division of Youth and Family Services; licensing regulations govern the operation of resource family homes, child care facilities and other children's residences and treatment centers; and education regulations concern certain staff and student referrals.

DCF eliminated one of its chapters in June, when it determined that the rules governing Psychiatric Community Residences for Youth were largely duplicative of those regulations governing Children's Group Homes at N.J.A.C. 10:128. Subsequent to its review, DCF has proposed the elimination of another chapter:

N.J.A.C. 10:12 – Referral of Students with Disability for Adult Educational Services. This chapter was enacted over 20 years ago to comport with the statutory requirements of N.J.S.A. 18A:46-18.2 through 18.6. Since federal and state laws regarding special education have evolved and expanded considerably in those intervening years, DCF would ideally like to see the statute repealed and will let the regulations lapse.

VI. Department of Community Affairs

The Department of Community Affairs reviewed the rulemaking process for each of its seven divisions (Codes and Standards; Fire Safety; Housing and Community Resources; Local Government Services; Smart Growth; Women; and the Center for Hispanic Policy) and eight affiliates (New Jersey Housing and Mortgage Finance Company; New Jersey Meadowlands Commission; New Jersey Redevelopment Authority; Urban Enterprise Program; Council on Affordable Housing; Government Records Council; Local Unit Alignment, Reorganization and Consolidation Commission; and the New Jersey Historic Trust). It proposed changes to several regulations for greater consistency with the Common Sense Principles.

Division of Codes and Standards

Uniform Construction Code. In furtherance of the direction of the 90-day Red Tape Review Group report suggestion to examine the issue of mandatory installation of fire sprinkler systems in single- and two-family residences, Community Affairs chose not to mandate the installation at this time and amended the proposed regulation to that effect.

Division of Housing and Community Resources

Chapter 42 – State Rental Housing Assistance Program. Given impending changes to funding levels and affordable housing programs, substantive amendments will need to be made to this chapter in the near future. To be consistent with Executive Order No. 2, before the amendments are proposed, the Division will expand its stakeholder outreach beyond housing advocates, Legal Services and landlord groups.

Chapter 48 – Lead Hazard Control Act. This rules chapter is currently being revised. The proposed regulation implements cost containment measures that make optional any lead abatement work beyond that required by a local board of health to correct violations when a child has been poisoned. For prevention cases, the proposed rule permits the combination of lead abatement measures (permanent measures) with interim control measures (temporary measures), to obtain the most protective product for the least cost. The proposed rule also defines a “temporary” housing location as that not to exceed 180 days, which is consistent with other state and federal IRS definitions. The distinction between temporary and permanent was necessary because temporary placement (i.e., in hotels) has typically been extremely costly due to the immediate nature of the assistance.

VII. Department of Education

The Department of Education (DOE) had begun its review of existing regulations before the RTR issued its report in April. The report included the regulations and their suggested changes. At the conclusion of the 180-day review period, DOE updated its progress on those changes.

N.J.A.C. 6A:8-1.1(a) – Standards and Assessment. This broad rule outlines curriculum requirements, including those for world languages (K-8). DOE intends to amend this rule to allow the district board to have flexibility for implementation of the program (scope of program, grades, etc.) The chapter has expired and is in the process of adoption by the State Board of Education (State Board) and should be effective in early 2011. The amendment process will begin at that time.

N.J.A.C. 6A:8-5.1(a)1v – Financial Literacy Mandate for High School Seniors. Another subchapter of the Standards and Assessment rule concerned the financial literacy mandate for high school graduates. The requirement was scheduled to become effective with the 2010-2011 ninth-grade class, but the DOE has proposed a new effective date of 2013 for consideration by the State Board. Again, the amendment process will begin once the State Board finishes adopting the chapter.

N.J.A.C. 6A:9-14.1 – Professional Licensure and Standards. This rule limits the terms of acting administrators to three months, with three-month renewals as necessary. DOE recommends that retired administrators be given a waiver to serve for two years or more to give the district greater flexibility when making employment decisions. Amendments to this regulation are scheduled for a first reading before the State Board in October 2010.

N.J.A.C. 6A:13-3 – Programs and Practices to Support Student Achievement. This rule outlines the requirements for high poverty school districts with regard to class size, full-day kindergarten, language arts and mathematics literacy, and the time-line for implementation of programs. Since this chapter is tied directly to the school funding formula and N.J. Constitutional educational requirements, a comprehensive review is in order to determine whether any adjustments can be made to give the districts more flexibility. A DOE working group will present its findings in early 2011.

N.J.A.C. 6A:14 – Special Education. The legal authority for these regulations is the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1400 et seq. Since this chapter is scheduled for re-adoption before its August expiration date next year, the Division of Student Services and the Office of Special Education Services and Schools, have already begun to work on a re-adoption plan. As part of that plan, there will be a review of all parts of this chapter that exceed the federal mandate, including a review of any rationale for exceeding that mandate. DOE will use the conclusions to inform possible amendments for the re-adoption process.

N.J.A.C. 6A:16-9 – Programs to Support Student Development. This regulation details the requirements to establish an alternative education program. Since this chapter is scheduled for re-adoption before its September expiration date next year, the Division of Student Services and the Office of Student Support Services will shortly begin to develop a re-adoption plan. As part

of that plan, there will be a review of this subchapter to ascertain where flexibility can be granted without affecting the integrity of any educational programs. DOE will use the conclusions to inform possible amendments for the re-adoption process.

N.J.A.C. 6A:16-10 – Programs to Support Student Development. This regulation outlines the requirements for home or out-of-school instruction due to a temporary or chronic health condition. Since this chapter is scheduled for re-adoption before its September expiration date next year, the Division of Student Services and the Office of Student Support Services will shortly begin to develop a re-adoption plan. As part of that plan, there will be a review of this subchapter to ascertain where flexibility can be granted without affecting the integrity of any educational programs. DOE will use the conclusions to inform possible amendments for the re-adoption process.

VIII. Department of Environmental Protection

The Department of Environmental Protection has undertaken a partial review of existing rules and regulations pursuant to Executive Order No. 2 (2010) and has suggested that the following rules are candidates for repeal or revision.

N.J.A.C. 7:15 - Water Quality Management Planning Rules

These rules set forth where sewers may be placed throughout the state and the density of developments in other areas. We are already actively engaged in a series of stakeholder meetings to review and address the issues raised by the regulated and environmental communities.

N.J.A.C. 7:7E - Public Access

While the DEP has historically imposed public access requirements pursuant to development applications on lands adjacent to tidal waters, a '08 rule adoption significantly extended the DEP's regulatory reach by requiring municipalities and others to provide 24/7 access and other amenities and by imposing substantial monetary obligations to provide off-site access when on-site access was not feasible. The DEP has undertaken a stakeholder process on these issues to better define the public's need and right for access to tidal waters under the public trust doctrine and to seek a balance with the interests of those who are developing along those waters or seeking to enhance economic opportunities. A regulatory proposal will be made in the near future.

N.J.A.C. 7:38 - Highlands

In 2004 the Legislature enacted the "Highlands Water Protection and Planning Act." Major provisions of this law included designation of Preservation and Planning areas, creation of the Highlands Water Protection and Planning Council, directing the DEP to prepare rules for enhanced protection of the Preservation Area, providing 17 types of projects that were exempt for the rules, and specifically providing that agriculture was exempt from the rules. The act has been highly controversial because it essentially took away nearly all of the land values in the Preservation Area and did not provide a mechanism for adequate compensation. Additionally the Act was based on water supply and quality assumptions that have been questioned, did not provide adequate mechanisms for targeting growth in the Planning Area, further restricted any significant development in the Planning Area, and has been implemented in such a way by the Department and the Council so as to prevent or not easily allow even redevelopment projects. There are also several administrative issues between the DEP and the Council that need to be resolved.

The Department is studying some of the scientific and policy underpinnings of the Act and plans to make recommendations on measures to address the concerns expressed above as well as how best to ensure the protection of the resources of the Highlands Region.

N.J.A.C. 7:26C, 26B, 26D, 26E and N.J.A.C. 7:14B - Licensed Site Remediation Professional Program

Last legislative term the Legislature enacted the Site Remediation Reform Act. This law required the DEP to license site remediation professionals to be able to clean up contaminated sites without extensive oversight by the DEP. DEP is committed to ensuring that this program works as the Legislature intended so that the 20,000 known contaminated sites can be remediated as

quickly as possible and hopefully returned to productive economic use. A steering committee of approximately 25 external stakeholders has been established that will ensure success of the new LSRP program. Additionally, four workgroups with multiple subcommittees will focus on 1. near term priorities (to ensure success), 2. measures of success, 3. completely revamping our regulations for technical compliance and 4. the development of new technical guidance documents.

N.J.A.C. 7:27-19 - High Energy Demand Day compliance date extension

The existing regulatory requirement will be modified to provide an additional 20 months for certain electricity generating units (those with at least 30% control of NO_x) to comply with tighter NO_x emission limits (currently required by May 1, 2015). Extension of the compliance date was discussed in response to comments on the rule when adopted in 2009.

N.J.A.C. 7:31 - Toxic Catastrophe Prevention Act

This law was passed after the catastrophe in Bhopal, India where an explosion at a chemical plant killed thousands of persons living near the plant. The Act is intended to prevent similar incidents in New Jersey by proper planning to prevent an incident and to properly respond to it. Recent regulatory changes to this act changed the types of plans certain facilities had to supply, thus costing them significantly more money. Food processing plants were particularly impacted. DEP is looking at the impacts of these regulatory changes, that have gone beyond federal standards, to determine their impacts on the regulated community and if they are necessary for public health and safety.

N.J.A.C. 7:7 and N.J.A.C. 7:7E - Coastal Rules

DEP is currently drafting a rule proposal to combine the Coastal Permit Program Rules, N.J.A.C. 7:7-1 with the Coastal Zone Management Act rules at N.J.A.C. 7:7E-1 to form one comprehensive coastal rule. This will reduce confusion and provide clarity for people interacting with these rules. These rules expire in March 21, 2011 and July 7, 2011 respectively. In the re-adoption, DEP will remove the traffic and parking requirements, reduce the permitting process (general permits to permit by rules) for activities in manmade lagoons, remove other prohibitions such as restaurants on piers which have no environmental basis, clarify dock requirements, reduce the scope of dune regulation, and clarify the filled water's edge rule, streamline the Tidelands grant signature process, among other streamlining and efficiency changes, some recommended by the Permit Efficiency Task Force.

N.J.A.C. 7:13 - Flood Hazard Area Control Act

The DEP will be proposing amendments to the above rule to streamline and clarify application of these rules, adopted in 2007 which include but are not limited to: 1) Adding more General Permits, these help applicant to obtain permits faster. New GP's: trails and board walks, site remediation, forestry; 2) Adding more Permit by Rules which reduces staff work load. 3) Examining the Riparian Zone rules, looking into relaxing regulations for areas with previously disturbed riparian zone. 4) Adding buffer averaging and/or mitigation type of language for disturbance in riparian zone. 5) Comparing Coastal Rules to Flood Hazard rules to provide uniform requirements based on a particular activity. 6) Re-evaluate acid producing soils criteria; and 7) Unified application procedure for all Land Use permits.

N.J.A.C. 7:27 - Title V program streamlining

The DEP is considering revising existing generic air permit conditions to allow for use of some temporary equipment at major operating facilities. This approach, if approved by EPA, is intended to address industrial facilities' concerns regarding the need for a mechanism to allow facilities to periodically employ temporary equipment for short periods of time and on short notice.

N.J.A.C. 7:14A - Stormwater Management Permitting

Currently, the requirements of the New Jersey Stormwater Management Act are conducted at the local and state level resulting in redundant efforts. The DEP has developed a pilot program (including 27 towns) to determine if the stormwater reviews currently performed by the state can be eliminated allowing the function to be performed solely by the municipalities as part of their development project reviews. It is important to note that this is not a new responsibility for municipalities, but rather a strengthening of the existing relationship between the DEP and the municipalities.

Delegation of Permitting Authority

As with the stormwater permitting program outlined above, the DEP will explore other permits that we issue that can more easily be administered on the local level. These will likely encompass minor projects involving individual homeowners where the impacts to the environment are negligible. The DEP is also committed to reviewing its regulatory relationship to other regulatory and planning entities, in particular the Highlands Commission and the Pinelands Commission to ensure a consistency of approach to protecting natural resources while promoting economic growth and also to eliminate redundant and conflicting processes.

N.J.A.C. 7:8 - Municipal Stormwater Program

The DEP has adopted regulations requiring municipalities to adopt certain storm water ordinances and implement certain practices. The DEP has taken this action in accordance with federal mandates by the US Environmental Protection Agency. In certain instances municipalities have claimed that our rules are too proscriptive and costly. The Department is looking at the flexibility the federal law may allow us to implement our program and ways that we can make it easier and less costly for local governments to comply. To foster compliance, we are also committed to a continuing educational and outreach program to assist municipalities.

IX. Department of Health and Senior Services

The Department of Health and Senior Services (DHSS) is working with stakeholders to amend the following chapters to better balance regulatory objectives and burdens.

N.J.A.C. 8:26 – Public Recreational Bathing. Working with stakeholders, DHSS proposes to amend this rule to address beachfront safety and compliance with the Virginia Graeme Baker Pool and Safety Act (Baker Act), codified at 15 U.S.C. §§ 8001 through 8007.

N.J.A.C. 8:43F – Standards for Licensure of Adult Day Health Services Facilities and *N.J.A.C. 8:86 – Adult Day Health Services.* DHSS is reviewing licensing and eligibility requirements for proposed amendment.

N.J.A.C. 8:87 – Pediatric Medical Day Care Services. DHSS is reviewing licensing and eligibility requirements for proposed amendment.

DHSS published a notice of proposal (42 N.J.R. 1774(a)) for a regulation that would allow hospitals to be deemed compliant for certain licensure standards if the hospital was accredited by the Centers for Medicare and Medicaid Services. The State would therefore not perform a separate and additional licensure inspection.

For DHSS, the least developed aspect of the Common Sense principals is the application of cost/benefit analysis. DHSS will continue its own research of source documents and work with external partners and stakeholders to develop the criteria to fulfill this requirement. In addition, DHSS is in the process of developing a waiver form that will be uniform throughout the Department. In the interim, DHSS will list a summary of all waiver provisions, with cites, on its website.

X. Department of Human Services

Within the Department, most divisions (Catastrophic Illness in Children Relief Fund, Commission for the Blind and Visually Impaired, Addiction Services, Developmental Disabilities, Mental Health Services and Disability Services) proposed no changes to their regulatory schemes. The Division of Medical Assistance and Health Services (Medicaid), however, identified specific rules for amendment.

N.J.A.C. 10:49-1.2 – Organization and *N.J.A.C. 10:49-2.17 – Medicaid Application*. To provide better notice of its electronic resources, the Division will provide new notices of, and links to, a website that contains a list of its Medical Assistance Customer Centers.

N.J.A.C. 10:49-1.4 – Overview of Provider Manuals. The Division will provide new notices of, and links to, the website with electronic access to billing supplements used regularly by enrolled health service providers, and websites where the Division's newsletters to service providers and Eligibility and Service Manuals can be downloaded free of charge. A telephone number will be provided for service providers without Internet access to call for hard copies of the manuals and newsletters. To facilitate the ease of access and use by program participants, the Division will update the organizational listing of N.J.A.C. chapters that regulate the Medicaid/NJ FamilyCare program.

N.J.A.C. 10:49-2.15 (g) and (h) – Health Benefits Identification Card and Emergency Services Letter. The Division proposes to amend this rule to specifically allow the NJ Medicaid/FamilyCare programs to reimburse a provider for non-charity-care services rendered in good faith, in situations where the provider has verified the beneficiary's eligibility using a Division identification card or letter valid for the date(s) of service, but the claim is subsequently denied payment because the beneficiary was ineligible on the date of service. This amendment should prevent confusion and unintended negative consequences.

N.J.A.C. 10:49-3.3 – Providers with Multiple Locations. The Division will reduce needless and onerous regulation of hospitals, Federally Qualified Health Centers, independent clinics, long term care/nursing facilities, and assisted living facilities by proposing to amend this rule to exempt specific locations of such institutions from the requirement of a separate Medicaid/NJ FamilyCare provider number.

N.J.A.C. 10:49-5.5 – Services Not Covered by Medicaid or NJ FamilyCare Plan A Programs. The Division proposes to amend this rule to allow that in instances in which the probable existence of third liability cannot be established, or third party benefits are not available to pay a beneficiary's medical expenses at the time a provider files a claim, the Division may pay in full and seek post-payment recovery in accordance with 42 C.F.R. 433.139(c), (d)(2) and (d)3. This amendment should prevent confusion and unintended negative consequences.

N.J.A.C. 10:49-9.8 – Provider Certification and Recordkeeping. The Division will provide new notice of, and a link to, the New Jersey Division of Consumer Affairs website that contains the licensure status of individuals.

N.J.A.C. 10:49-11.1 – Program Participation. The Division will provide new notices of, and links to, websites that contain the list of individuals and entities that are excluded from participating in programs financed by State or federal authorities.

XI. Department of Labor and Workforce Development

After its initial review of existing regulations, the Department of Labor and Workforce Development will undertake additional review of several chapters to ensure consistency with Executive Order No. 2. Note that the issue of “rounding” was raised at RTR hearings and has led to new rule proposals.

N.J.A.C. 12:41 – Private Training Providers. (N.J.S.A. 18A:7A-1 et seq., N.J.S.A. 18A:54-1 et seq., and N.J.S.A. 18A:69-1 et seq., P.L. 2004, c. 39 and Reorganization Plan 001-2004.) This chapter is needed to implement the forgoing statutes, but is currently under review for possible revisions to ensure consistency with N.J.S.A. 34:15C-10.1, amended by P.L. 2005, c. 354.

N.J.A.C. 12:45 – Division of Vocational Rehabilitation Services. (N.J.S.A. 34:16-20 et seq.) This chapter is needed to implement the foregoing statute, but it will be examined in conjunction with Chapter 51: Vocational Rehabilitation Services, to determine if there are any redundancies. In addition, federal regulations (pursuant to 29 U.S.C. §701 et seq.) will be reviewed to see if they adequately regulate the subject matter and render the State regulations unnecessary.

N.J.A.C. 12:56 – Wage and Hour. (N.J.S.A. 34:11-56a et seq.) LWD will undertake an extensive review of this statute relative to the federal regulations (Fair Labor Standards Act) to ensure consistency, where appropriate. As a first step, LWD published a notice of proposal for new rules at N.J.A.C. 12:56-5.8 to ensure consistency between the federal and N.J. regulations with respect to time clocks and “rounding,” the practice of recording employees’ starting and stopping times to the nearest 5 minutes, or one-tenth or quarter of an hour. The comment period ended on September 4, 2010.

N.J.A.C. 12:57 – Wage Orders for Minors and N.J.A.C. 12:58 – Child Labor. (N.J.S.A. 34:2-1 et seq. Child Labor Law.) LWD recently conducted a review of Chapters 57 and 58 in light of the corresponding federal regulations. A draft notice of proposal for amendments is awaiting (internal) departmental approval.

N.J.A.C. 12:90 – Boiler, Pressure Vessels and Refrigeration. (N.J.S.A. 34:7-1 et seq.) LWD is reviewing this chapter in light of the RTR report that characterized certain boiler regulations as “antiquated.” As part of its examination, LWD will address the effectiveness of each of the requirements contained within the chapter.

XII. Department of Law and Public Safety

One Red Tape success occurred with the Division of Gaming Enforcement, within the Department of Law and Public Safety. DGE only has one chapter of rules, suspicious activity reporting. Now that the corresponding federal regulations require the filing of suspicious activity reports (SARS), as New Jersey had already required, DGE has determined that the federal rules satisfy the State's needs. DGE will allow the chapter to expire in November.

Division of Consumer Affairs

After its review of existing regulations, Consumer Affairs proposes the following amendments. Most were suggested to eliminate overly burdensome or inefficient requirements and/or procedures.

N.J.A.C. 13:27 – Board of Architects. The rules currently require licensees to apply to the board for seal presses and pay a fee. The board submits the order for the seals; the seals are then sent to the board and the board forwards the seals to the licensees. To eliminate an unnecessary step, the rules can be amended to permit licensees to obtain their own seals directly upon licensure.

N.J.A.C. 13:28 – Board of Cosmetology and Hairstyling. The requirement that an applicant who does not take or pass the licensing exam within three years of applying must take a refresher course before (re)sitting for the exam was found to be a barrier to entry in the field. The requirement that shops offering pedicure services must install a specific micron filter in the water line to the pedicure tubs was found to be financially burdensome in light of the Board's mandated disinfection procedures. These rules will be repealed.

N.J.A.C. 13:29 – Board of Accountancy. The criteria for "independence" at the State level are inconsistent with the federal standards, as set by the Securities and Exchange Commission and the Government Accountability Office. The rule will be amended.

N.J.A.C. 13:31 – Board of Examiners of Electrical Contractors. The requirement that sponsors of previously approved continuing education courses pay a \$100 sponsor review fee for every triennial period was found to be burdensome and costly to sponsors.

N.J.A.C. 13:31A – Fire Alarm, Burglar Alarm and Locksmith Advisory Committee. The rules require each licensee to complete 36 credits of continuing education for every Committee-issued license that they hold; most licensees hold more than one. The number of credits seems excessive, particularly because electrical contractors, regulated by the Committee's parent board, only need 34 credits. Moreover, only 12 credits earned for one license may be applied to another license. The rules will be amended to reduce the burden.

N.J.A.C. 13:33 – Board of Ophthalmic Dispensers and Ophthalmic Technicians. The rules need to be amended for consistency with the federal Fairness to Contact Lens Consumers Act to allow licensed dispensers to substitute generic for brand-name (prescribed) contact lenses.

N.J.A.C. 13:34 – Board of Marriage and Family Therapy Examiners. The requirement that carry-over continuing education credits must have been earned within the six months immediately prior to the renewal period was found to be unnecessary.

N.J.A.C.13:34-10 – Professional Counselor Examiners Committee. Consumer Affairs recommended that the rules be amended to provide an alternate pathway for students who have graduated from non-CACREP-accredited programs to qualify for licensure; to delete the requirement that the word “Counseling” or “Counselor” appear in the title of the graduate degree of applicants; and to permit rehabilitation counselors and professional counselors licensed in other states to qualify for licensure by endorsement.

N.J.A.C. 13:35 – Board of Medical Examiners. The standards in the rules for the prescription of amygdalin (Laetrile) are unnecessary because there is no particular medical concern with the drug (as with steroids, for example) and it is seldom used.

N.J.A.C. 13:35 – Midwife Liaison Committee. The rule requires an applicant for licensure to submit a curriculum vitae (CV) and three signed, dated, and notarized photographs. This was found to be unnecessary because the Committee does not need a CV to determine if the applicant has met the educational requirements and only one photograph is necessary – without the signature and notary.

N.J.A.C. 13:35-2B – Physician Assistant Advisory Committee. The rules should be amended to allow four assistants to be supervised by one physician in a non-hospital setting, rather than only one. With this amendment, the rule would then be consistent with the ratio in all other practice settings in which a physician may supervise up to four physician assistants. It would also increase access to patient care and job opportunities for physician assistants in non-hospital settings.

N.J.A.C. 13:35-12 – Electrologists Advisory Committee. A proposal to change the somewhat burdensome continuing education requirements was published in the July 6, 2010 *New Jersey Register*. The number of continuing education credits required for license renewal would decrease from 30 to 20 and only 10 of the 20 credits need be obtained through personally attended courses.

N.J.A.C. 13:35-13 – Perfusionist Advisory Committee. Consumer Affairs recommends that the rule requiring 30 credits of continuing education be amended so that more of those credits can be earned online or through writing articles or books.

N.J.A.C. 13:36 – Board of Mortuary Science. The rule that precludes the purchaser of an existing mortuary from operating until the final inspection has been completed was found to be needlessly burdensome. Also needlessly burdensome is the rule that limits to three the number of times a mortuary owner may use another registered mortuary, with notice to the Board. The amendment will not limit the number of notices, but the Board should continue to receive notice.

N.J.A.C. 13:37 – Board of Nursing. Consumer Affairs will amend several rules that apply to the requirements for licensure of advance practice nurses, licensed registered professional nurses, licensed practical nurses, the certification of homemaker home health aides, the accreditation of professional nursing programs and the approval of practical nursing programs. To retain accreditation, a nursing program must achieve a 75% pass rate on its examination. The amended rule would exclude students from the pass rate who take the exam one year or more after graduation.

A licensed nurse who applies for reinstatement after five years of inactivity must fully pay all past due renewal fees. The Board has found this requirement to be financially burdensome and it will be amended so that applicants will be required to pay only one biennial renewal fee.

Because on-line education is increasingly used, the rule that faculty in nursing education programs must be licensed in New Jersey should be amended.

In appropriate situations, registered professional nurses should be permitted to delegate the administration of medications to certified homemaker home health aides. The current prohibition is a barrier to practice that is unnecessary.

The rules should be amended to permit homemaker home health aide education programs to have the functions of program sponsor and program coordinator performed by the same person.

N.J.A.C. 13:38 – Board of Optometrists. Since the Board no longer charges an endorsement fee or continuing credit fee, the rules must be amended to remove these.

N.J.A.C. 13:39 – Board of Pharmacy. Consumer Affairs will amend several rules that apply to the requirements for licensure of pharmacists, the registration of pharmacy technicians, the approval of continuing education providers, and the permitting of pharmacies. The rules for the construction, operation and maintenance of clean rooms used to compound sterile preparations should be repealed because the less-stringent federal compounding standards are adequate.

The rules should be amended to increase the number of interns that a pharmacist may supervise from one to two. There is a shortage of approved practice sites where interns can obtain their training, so this amendment would allow interns to more quickly complete their internships and become licensed.

The rules should be amended to add providers to the list of pre-approved sponsors of continuing education courses so licensees do not have to submit as many courses on their own for Board pre-approval. Licensees would save time and money with this amendment.

Consumer Affairs recommends that the rules be amended to permit the initial inspection of a pharmacy after it opens, subject to the Board's review of the applicant's self-assessment. The post-opening inspection would provide the Board with practical information and compliance assessment, without unduly delaying the start of the business.

N.J.A.C. 13:40-15 – Home Inspection Advisory Committee. Consumer Affairs will amend several rules that apply to the requirements for licensure and govern the practice of home inspectors. The rules should be amended to repeal as unnecessary the requirement that the flame rollout shield be removed when inspecting a heating system because of the way newer furnaces are constructed.

The rules require a home inspector using a non-commercial vehicle to display a Division-issued plaque on the dashboard with the name of the business and individual inspector and the inspector's license number. This rule will be repealed because it is overly burdensome.

Consumer Affairs recommended that the needlessly burdensome rule that requires inspectors to save advertising records for five years be amended to one year.

N.J.A.C. 13:40A – Board of Real Estate Appraisers. Recommended amendment to remove a redundancy within the rules.

N.J.A.C. 13:43 – Board of Court Reporting. A rule that temporary registered reporters maintain logs of proceedings for five years was deemed unnecessary and should be amended to three years.

N.J.A.C. 13:44D – Public Movers and Warehousemen. It was determined that the sample forms and tariff formatting requirements in the rules are unnecessary and perhaps confusing because they force licensed public movers and warehousemen to use forms that have outdated information and reference services or rate schedules that they may not offer.

N.J.A.C. 13:44E – Board of Chiropractic Examiners. The requirements that a copy of advertising be kept for three years and that change of address notice be sent by certified mail, return receipt requested were found to be unnecessarily burdensome.

N.J.A.C. 13:44F – Board of Respiratory Care. Will amend several rules that apply to the requirements for licensure and govern the practice of respiratory care practitioners. Applicants for licensure at least three years after the completion of their education are required to take a refresher course before taking the examination. That provision should be deleted.

Consumer Affairs recommends that the list of permissible sources for continuing education expand by authorizing credit for the completion of performance-based competency assessments.

It was also recommended that the number of credits that licensees may obtain from online courses should be increased to 20 from 15 per biennial renewal period.

N.J.A.C. 13:45A-19 – Petition for Rulemaking. The rule specifies the requirements for filing a petition for rulemaking with Consumer Affairs. It was determined that Section 19.1(e), which requires the Director or a board to deny or act on a petition for rulemaking within 30 days of receiving the petition, should be amended. This section is inconsistent with the Department rule (N.J.A.C. 13:1D-1.3(c)) and with N.J.S.A. 14B-4(f)(3), which was amended by P.L. 2001, c.5 to permit an agency to refer a matter for further deliberation, in addition to grant or deny a petition, and increased from 30 to 60 days the time in which an agency must respond.

N.J.A.C. 13:45A-20 – Ticket Resales to Places of Entertainment. The rule that requires a registered broker to impress his or her exchange stamp on every ticket sold should be repealed. Registered brokers are a small minority of ticket resellers; moreover, most tickets are printed using a computer so a physical stamp is not feasible.

N.J.A.C. 13:45A-21 – Kosher. The rules contain disclosure, labeling and filing requirements. Changes have been recommended to remove redundant identification requirements.

N.J.A.C. 13:45A-25 – Health Clubs. The rules should be amended to exempt from the bond requirement health clubs that sell contracts for more than three months, but collect one fee at a time. This would remove a barrier to entry for smaller clubs, but also limits the amount of consumer losses to three months of membership fees if the club closes for more than 30 days. Also, to be consistent with the statute concerning general refund policies (N.J.S.A. 56:8-42), health clubs should be given 30 days to issue a refund to consumers, up from 20 days.

N.J.A.C. 13:45B – Personnel Services. It was recommended that the rules be amended to remove the requirement that employment agencies, career consultants, outplacement organizations and prepaid computer job matching or listing services file copies of contracts they use with job seekers with DCA. The contracts are not reviewed at Consumer Affairs and give no information that is critical to evaluating the ability of these entities to provide the contracted-for services. Consumer Affairs also recommends that agents who specialize in placements in the aeronautics field should not have to provide certification of knowledge from the State Department of Transportation. This certification is not necessary to protect the consumers of employment services.

N.J.A.C. 13:45D – Telemarketing: Do Not Call. In certain respects, New Jersey's rules are more restrictive than the commensurate federal rules; the Legislature's intent was to provide "the broadest possible protection..." Immediately after adopting the regulations, the State was sued by service companies who claimed federal preemption. The Court still has not rendered an opinion. In light of Executive Order No. 2 and few complaints from consumers in this area, DCA proposes amending the rules to conform to the federal rules, except where the State statute is explicit.

N.J.A.C. 13:45F – Identity Theft. The rules in Subchapter 2 permit a consumer to place a freeze on his or her consumer report and then lift the freeze. The rules require consumer reporting agencies to send DCA changes in the information for these procedures. The reporting agencies change this information fairly frequently and it is now just as easy for consumers to get that information on the services' websites, so this rule is not longer necessary.

N.J.A.C. 13:48 – Charitable Fund Raising. The rule that denied an extension of time to file a registration statement for charities that were not required to register, but elected to register, was found to be unfair and can be repealed.

The following chapters pertain to the professional licensing boards. They all contain rules that require professionals who apply for reinstatement after five years of inactivity to fully pay all past due renewal fees. The Boards have found this requirement to be financially burdensome and the rules will be amended so that applicants will be required to pay only one biennial renewal fee.

N.J.A.C. 13:35-8 – Hearing Aid Dispensers Examining Committee

N.J.A.C. 13:35-9 – Acupuncture Advisory Committee

N.J.A.C. 13:25-10 – Athletic Training Advisory Committee

N.J.A.C. 13:44C – Audiology and Speech-Language Pathology Advisory Committee

N.J.A.C. 13:44H – Orthotics and Prosthetics Board of Examiners

The *Board of Veterinary Medical Examiners, N.J.A.C. 13:44*, decided that the payment of two biennial fees instead of five was not burdensome, but provided sufficient incentive to avoid administrative suspension.

Within DL&PS, pursuant to its review of existing regulations, the Division of Alcoholic Beverage Control, the Division of Criminal Justice, the Division of State Police, the Office of the Attorney General, and the State Athletic Control Board had no amendments or more in-depth review to discuss at this time.

XII. Department of Military and Veterans Affairs

The Department suggested some modifications to existing chapters.

N.J.A.C. 5A:5-2.2 – Admission Eligibility Rule for Veterans’ Facilities. The Department will modify the Admission Eligibility Rule for out-of-state applicants.

N.J.A.C. 5A:9 – Veterans & Disabled Veterans Preference & Designation of Veterans Status for Pension Purposes. The current State rules are different and more stringent than Federal rules. Any modification would require legislative action.

XIV. Department of the Treasury

Treasury had finished its review of existing rules by the time the Red Tape Review report was issued on April 19, 2010, and the Department's proposed changes were included in that document. For its 180-day results, Treasury updated progress on these earlier proposals and added several other rule eliminations.

Treasury – General

N.J.A.C. 17:12-2.12(a) – Registration Form Requirement. Businesses that submit bid proposals to the State must include proof that they are registered with the Division of Revenue. Pursuant to P.L. 2009, c.315, Treasury repealed the division-wide bidding requirement of N.J.S.A. 52:32-44 so that bidders who are properly registered but forget to submit the business registration form will avoid an “unresponsive bid” designation.

N.J.A.C. 17:12-2.2(a) – MacBride Principles Requirement. To be considered for a State contract, a vendor must comply with the MacBride Principles of nondiscrimination for companies doing business in Northern Ireland set forth at ... N.J.S.A. 52:34-12.2. To eliminate red tape, Treasury seeks to modify the statute so that the RFP requirement for the form's completion and inclusion as part of a bidder's proposal can be simplified.

N.J.A.C. 17:15 – Central Motor Pool. These rules dated back to the 1960s and addressed the State vehicle pool. Since state vehicle matters are communicated via Circular Letters, the Division thought that there was no need to maintain motor pool rules and allowed them to expire.

N.J.A.C. 17:28 – Public Employee Charitable Campaign Rules. This Chapter can be modified to include rules from Chapter 29, which has expired. Chapter 29 provisions will be incorporated when this Chapter is up for re-adoption or change.

N.J.A.C. 17:31 – Dormitory Safety Trust Fund Rules. Since the application component of the program has concluded, this Chapter can expire. The Division will officially abolish.

Treasury – Taxation

N.J.A.C. 18:7-2.14 – Allocation of Payments Received with the CAR-100. This regulation deals with the allocation of payments between the corporate tax and the “Annual Report” registration fee filed using the CAR-100. Treasury recommends repeal of the regulation since the CAR-100 was eliminated and annual reports are filed online through the Division of Revenue.

N.J.A.C. 18:7-2.4 – Proof of Federal Accounting Period. This rule requires every corporation that acquires taxable status in New Jersey to submit proof of its accounting period for federal income tax purposes to the Division of Taxation. Corporations that acquire taxable status provide their accounting year information on forms used to register with the Division of Revenue, so this regulation can be repealed.

N.J.A.C. 18:7-2.5 – Proof of Accounting Other than Federal Basis. This regulation requires a corporation that is not required to file a Federal income tax return to submit proof to the Division

of Taxation of its accounting period for reporting purposes. Again, this information is provided to the Division of Revenue upon registration, so this rule can be repealed.

N.J.A.C. 18:32-1.2 – Written Protest. Protests must be in writing and include taxpayer identification items and the specific amount of taxes, interest and/or penalties under protest, any uncontested amounts, and the grounds for the protest with supporting facts. Subsection (b) of the regulation states that a protest that lacks the stated amount of the taxes under protest (or uncontested), the grounds for the protest and the facts supporting the protest will not be considered a valid protest. This subsection has been interpreted as exceeding the statute, however, and the Division proposes its repeal.

**XV. Department of Corrections, Department of State, Department of Transportation,
Division of Motor Vehicles**

Pursuant to their review of existing regulations, the Departments of Corrections, State and Transportation and the Division of Motor Vehicles found that their rules were consistent with the Common Sense Principals and they had no amendments or more in-depth review to discuss at the time. The Division of Motor Vehicles, however, noted that it will publish explicit waiver criteria on its website.