

TITLE 14A

ENERGY

CHAPTER 1

PRACTICE AND PROCEDURE

Authority

Unless otherwise expressly noted, all provisions of this chapter were adopted pursuant to authority of P.L. 1977, c.146, and were filed and became effective on July 25, 1977, as R.1977 d.264. See: 9 N.J.R. 442(b). Amended rules were filed and became effective on November 21, 1977, as R.1977 d.433. See: 9 N.J.R. 441(c), 9 N.J.R. 593(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 14A:1-1.1 Scope
- 14A:1-1.2 Construction and amendment
- 14A:1-1.3 Nature of proceedings
- 14A:1-1.4 Offices
- 14A:1-1.5 Hours
- 14A:1-1.6 Sessions
- 14A:1-1.7 Communications
- 14A:1-1.8 Official records
- 14A:1-1.9 Radio, television, photographs and sketches
- 14A:1-1.10 Transcripts expenses
- 14A:1-1.11 (Reserved)
- 14A:1-1.12 Payment of fees and charges

SUBCHAPTER 2. DEFINITIONS

- 14A:1-2.1 Definitions

SUBCHAPTER 3. APPEARANCE AND PRACTICE BEFORE THE DEPARTMENT

- 14A:1-3.1 Rights of parties
- 14A:1-3.2 Appearances
- 14A:1-3.3 Ethical conduct required
- 14A:1-3.4 Former employees

SUBCHAPTER 4. PARTIES

- 14A:1-4.1 Person or party
- 14A:1-4.2 Classification of parties
- 14A:1-4.3 Designation of other than parties

SUBCHAPTER 5. PLEADINGS; GENERALLY

- 14A:1-5.1 Pleadings enumerated and defined
- 14A:1-5.2 Formal requirements for pleadings
- 14A:1-5.3 Number of copies
- 14A:1-5.4 Defective pleadings
- 14A:1-5.5 Amendments
- 14A:1-5.6 Service and notice of proceedings
- 14A:1-5.7 Valid service
- 14A:1-5.8 Withdrawal of petition or dismissal of proceeding
- 14A:1-5.9 Verification
- 14A:1-5.10 Changes in facts or circumstances

SUBCHAPTER 6. PETITION

- 14A:1-6.1 Form and content
- 14A:1-6.2 Applications to other regulatory bodies

- 14A:1-6.3 Joinder of requests for relief
- 14A:1-6.4 Procedure of department on filing of a petition
- 14A:1-6.5 Ex parte or emergency relief
- 14A:1-6.6 Informal complaint in lieu of petition

SUBCHAPTER 7. ANSWERS AND REPLIES

- 14A:1-7.1 Form and content
- 14A:1-7.2 Time for filing

SUBCHAPTER 8. MOTIONS

- 14A:1-8.1 Form and content
- 14A:1-8.2 Time for filing
- 14A:1-8.3 Tolling of time for responsive pleading

SUBCHAPTER 9. INTERVENTION

- 14A:1-9.1 Motion to intervene
- 14A:1-9.2 Disposition of a motion to intervene
- 14A:1-9.3 Limits on the intervenor

SUBCHAPTER 10. HEARINGS

- 14A:1-10.1 Place and time of hearings
- 14A:1-10.2 Open hearings
- 14A:1-10.3 Before whom held
- 14A:1-10.4 Procedure at hearing
- 14A:1-10.5 Consolidation
- 14A:1-10.6 Joint hearing
- 14A:1-10.7 Witnesses
- 14A:1-10.8 Transcript

SUBCHAPTER 11. PREHEARING CONFERENCES

- 14A:1-11.1 Purpose
- 14A:1-11.2 Initiation of conference
- 14A:1-11.3 Stipulations of conference results
- 14A:1-11.4 Unaccepted offers of settlement privileged

SUBCHAPTER 12. DISCOVERY TECHNIQUES

- 14A:1-12.1 Discovery
- 14A:1-12.2 Depositions
- 14A:1-12.3 Interrogatories
- 14A:1-12.4 Subpoenas for witnesses and documents

SUBCHAPTER 13. HEARING EXAMINERS

- 14A:1-13.1 Designation
- 14A:1-13.2 Authority
- 14A:1-13.3 Hearing examiner's report and recommendations
- 14A:1-13.4 Waiver of hearing examiner's report and recommendation
- 14A:1-13.5 Effect of failure to appear at hearing
- 14A:1-13.6 Appeals to the commissioner from rulings of hearing examiner during hearing
- 14A:1-13.7 Exceptions to the commissioner from the report and recommendations of the hearing examiner
- 14A:1-13.8 Certification by the commissioner
- 14A:1-13.9 Review of hearing examiner's report and recommendations by the commissioner on his own motion
- 14A:1-13.10 Hearing examiner's report and recommendations not automatically ordered or decision of the commissioner
- 14A:1-13.11 Unavailability of the hearing examiner

SUBCHAPTER 14. EVIDENCE

- 14A:1-14.1 General
- 14A:1-14.2 Testimony under oath
- 14A:1-14.3 Stipulation as to facts
- 14A:1-14.4 Judicial notice
- 14A:1-14.5 Resolutions
- 14A:1-14.6 Official records
- 14A:1-14.7 Department files
- 14A:1-14.8 Records in other proceedings

SUBCHAPTER 15. PROPOSED FINDINGS, CONCLUSIONS OF PARTIES AND BRIEFS

- 14A:1-15.1 Proposed findings and conclusions of parties
- 14A:1-15.2 Briefs
- 14A:1-15.3 Specifications as to briefs

SUBCHAPTER 16. REOPENING OF HEARINGS, REHEARING, REARGUMENT OR RECONSIDERATION

- 14A:1-16.1 Method of reopening
- 14A:1-16.2 Motions to reopen
- 14A:1-16.3 Method of instituting rehearing, reargument, or reconsideration
- 14A:1-16.4 Motions and answers on rehearing

SUBCHAPTER 17. COMPLIANCE WITH ORDERS, DECISIONS, AND RECOMMENDATIONS

- 14A:1-17.1 Decisions and orders
- 14A:1-17.2 Compliance
- 14A:1-17.3 Recommendations
- 14A:1-17.4 Extension of time limits

SUBCHAPTER 1. GENERAL PROVISIONS**14A:1-1.1 Scope**

These rules shall govern practice and procedure before the Department of Energy of the State of New Jersey unless otherwise ordered by the department in any proceeding.

14A:1-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the department to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the department.

(b) In special cases and for good cause shown, the department may relax or permit deviations from these rules.

(c) The rules may be amended by the department from time to time.

14A:1-1.3 Nature of proceedings

The proceedings before the department may be investigative on the part of the department, legislative or quasi-judicial and may be conducted in the form of an adversary proceeding.

14A:1-1.4 Offices

The statutory office of the department is located at 101 Commerce Street, Newark, New Jersey.

14A:1-1.5 Hours

(a) All offices of the department are open on weekdays from 9:00 A.M. to 5:00 P.M., unless otherwise authorized by the department.

(b) The offices are closed on legal holidays, Saturdays and Sundays.

14A:1-1.6 Sessions

(a) The department will be in continuous session for the performance of administrative duties.

(b) Hearings will be held on such days, at such hours, and at such places as the department may from time to time designate.

14A:1-1.7 Communications

(a) All formal papers and correspondence should be addressed to the Department of Energy, 101 Commerce Street, Newark, New Jersey 07102, and not to individual members of the department's staff unless otherwise specifically authorized or directed by the department.

(b) All such papers and correspondence shall be deemed to be officially received when delivered at the office of the department at 101 Commerce Street, Newark, New Jersey 07102, but the commissioner or director may in his discretion receive papers and correspondence for filing.

14A:1-1.8 Official records

(a) The Office of the Commissioner shall have custody of the department's seal and its official records.

(b) Copies of rules and regulations and orders and decisions of the department will be furnished by the office upon payment of appropriate fees.

(c) The Chairman of the Advisory Council on Energy Planning and Conservation shall have custody of the council's official records, including the minutes of all meetings held.

14A:1-1.9 Radio, television, photographs and sketches

(a) Proceedings before the department shall be conducted with fitting dignity and decorum.

(b) The taking of photographs, or the making of sketches of the hearing room or any person in it during or between sessions of the department or recesses between sessions, and the broadcasting of department proceedings by radio or television shall be permitted.

14A:1-1.10 Transcripts expenses

(a) Every petitioner seeking affirmative relief, where a hearing is held, shall furnish the department with a copy of the transcript at the petitioner's cost and expense within 14 days of the date of the hearing, unless a different period is ordered by the presiding officer.

(b) Respondents to an order to show cause or investigative order initiated by the department shall furnish the department with a copy of the transcript at the respondent's cost and expense within 14 days of the date of hearing unless a different period is ordered by the presiding officer.

(c) The party responsible for providing the department with a copy of the transcript as set forth above shall also be responsible for the daily appearance fee charged by the department-designated court reporter, which fee must be satisfied within 14 days of the date of hearing unless a different period is ordered by the presiding officer.

(d) The department may waive or modify the application of this rule at any time for good cause shown.

14A:1-1.11 (Reserved)

14A:1-1.12 Payment of fees and charges

(a) No petition, report, notice, document or other paper will be accepted for filing, and no request for copies of any forms, pamphlets, documents or other papers will be granted, nor action taken by the department unless such filings and requests are accompanied by the required fees or charges, as provided by law.

(b) All checks for payment for such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Director of the Division of Energy Planning and Conservation, 101 Commerce Street, Newark, New Jersey 07102.

SUBCHAPTER 2. DEFINITIONS

14A:1-2.1 Definitions

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

"Commissioner" means the Commissioner of the Department of Energy.

"Department" means the Department of Energy of the State of New Jersey.

"Director" means the Director of the Division of Energy Planning and Conservation.

"Energy industry" means any person, company, corporation, business, institution, establishment or other organization of any nature engaged in the exploration, extraction, transportation, transmission, refining, processing, generation, distribution, sale or storage of energy.

"Presiding officer" means any member of the department or hearing examiner duly designated as such.

SUBCHAPTER 3. APPEARANCE AND PRACTICE BEFORE THE DEPARTMENT

14A:1-3.1 Rights of parties

(a) At any hearing, the parties named in subchapter 4 (Parties) of this chapter who are affected by the proceeding shall be entitled to enter an appearance personally as provided for in section 2 (Appearances) of this subchapter, to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceedings.

(b) In all instances where another energy industry that has received individual notice of a proceeding intends to enter an appearance, it shall file with the department and serve on the petitioner, at least five days before a hearing, a written notice of its intention to appear and it shall include in the written notice a brief statement of the reason for the appearance.

14A:1-3.2 Appearances

(a) No person or party as defined in subchapter 4 (Parties) of this chapter, except an individual appearing in his own behalf, shall be permitted to participate in any proceeding before the department unless such person or party is represented by an attorney of this State in good standing who is domiciled in this State. Any attorney or counselor from any other jurisdiction, of good standing there, may at the discretion of the department be admitted pro hac vice to participate in a proceeding in the same manner as an attorney of this State; provided, however, that all pleadings, briefs and other papers filed with the department shall be signed by an attorney of record authorized to practice in this State who shall be held responsible for them, who shall be present at all times during the proceedings unless excused by the presiding officer.

(b) Any attorney wishing to withdraw from a proceeding before the department shall, in writing, immediately notify

the department or the presiding officer, the party whom he represents, and all other parties of record.

(c) Any person appearing before or transacting business with the department in a representative capacity may be required by the department or the presiding officer to file evidence of his authority to act in such capacity.

14A:1-3.3 Ethical conduct required

(a) All attorneys appearing in proceedings before the department in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the State of New Jersey.

(b) If any such attorney does not conform to the standards specified in subsection (a) of this section, the department may decline to permit such attorney to appear in a representative capacity in any proceeding before the department.

14A:1-3.4 Former employees

Except with the written permission of the department, no former member or employee of the department or member of the Attorney General's staff assigned to the department may appear in a representative capacity or as an expert witness on behalf of other parties at any time within six months after severing his association with the department, nor may he appear after said six-month period in any proceeding wherein he previously took an active part when associated with the department.

SUBCHAPTER 4. PARTIES

14A:1-4.1 Person or party

"Person" or "party" when used in these rules means an individual, corporation, partnership, association, group of persons or organizations, or any body politic, political subdivision or governmental instrumentality.

14A:1-4.2 Classification of parties

(a) Parties to proceedings before the department shall be styled according to the relationship of the parties thereto as follows.

1. Petitioners: Parties applying to invoke the jurisdiction of the department;
2. Respondents: Parties against whom any petition is filed or investigation is started;
3. Intervenors: Parties to the proceeding other than the above permitted by the department to intervene.

14A:1-4.3 Designation of other than parties

Persons opposing petitions filed by energy industries shall be styled "objectors" unless permitted to intervene.

SUBCHAPTER 5. PLEADINGS; GENERALLY

14A:1-5.1 Pleadings enumerated and defined

(a) Pleadings before the department shall be petitions, answers, replies and motions which for purposes of these rules are defined as follows:

1. "Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the department;
2. "Answer" means the pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition;
3. "Reply" means the pleading filed by the petitioner or others in response to an answer;
4. "Motion" means the pleading filed incidental to an action before the department for the purpose of obtaining a rule or order directing that some action be taken in favor of the movant.

14A:1-5.2 Formal requirements for pleadings

(a) The form and size for pleadings shall be as follows:

1. Except where otherwise specifically provided, all pleadings and other papers filed under these rules shall be typewritten or printed, cut or folded to 8½ x 13 inches in size, with the left-hand margin 1½ inches, and shall be bound or fastened on the upper left-hand corner;
2. They shall be double-spaced except that quotations may be single-spaced and indented;
3. Where larger sheets are required for exhibits, they shall be folded substantially to the size herein prescribed;
4. Any process may be used for the reproduction of typewriting provided all copies are clear and permanently legible.

(b) Signature shall be as follows:

1. All pleadings must be signed in ink by the attorney of record, if any;
2. When a firm acts as attorney of record, the signature shall be in the name of the firm followed by the signature of the partner or associate acting for it;
3. When a party is authorized to act in his own behalf under these rules, signature shall be by the party;

4. Beneath the signature of every attorney of record, party or other person appearing on a paper to be filed, there shall be typed, stamped or printed his name and address.

(c) Caption and docket numbers shall be included as follows:

1. There shall be included at the head of the pleading or on a title page a caption setting forth the name of the department, the title of the action, the docket number, if known, and a designation as petition for the like;
2. Case titles must be brief and concise.

(d) Description of parties shall be as follows:

1. The title of the action shall include the exact name of all parties;
2. The first pleading of any party shall state his address, and if the party is a corporation, association or other organized group, there shall also be set forth the state in, and the law under which the party was incorporated or organized.

(e) Designation of person to whom communications shall be sent:

1. The first pleading filed by or on behalf of any party shall state the name, title, and address of the person to whom the correspondence or communications in the cause are to be addressed;
2. Notices, decisions, orders, and other papers may be served on the person so named and such service shall be deemed service upon such party.

14A:1-5.3 Number of copies

(a) Unless otherwise required by the department, there shall be filed with the department for its own use an original and three conformed copies of each pleading or other paper and amendment thereof.

(b) Where a pleading originating a proceeding is filed by a party other than an energy industry subject to the jurisdiction of the department, one additional conformed copy shall be filed for each respondent named therein, for service by the office in accordance with the provisions of section 6 (Service and notice of proceedings) of this subchapter.

14A:1-5.4 Defective pleadings

Pleadings will be liberally construed with a view to effect justice. The department may disregard errors or defects in pleadings which do not affect the substantial rights of the party; however, if the defect in a pleading prejudices a substantial right of any party, the department may, on notice, strike the pleading or take such other action as it deems appropriate.

14A:1-5.5 Amendments

The department may in its discretion before or after the conclusion of the hearing allow any pleadings to be amended or corrected or any omission therein to be supplied upon such terms as may be lawful and just, provided such amendment, correction, or addition does not prejudice a substantial right of any party.

14A:1-5.6 Service and notice of proceedings

(a) Unless otherwise provided for by statute or in these rules or unless otherwise ordered or permitted by the department, the following provisions shall govern:

1. A petition filed on behalf of the energy industry shall be served by such energy industry or its agent or attorney upon each respondent named in such petition;

2. A petition originating a proceeding filed by a party other than an energy industry shall be served by the department upon each respondent named in such petition;

3. Every other pleading, including all motions, answers, replies, notices, briefs, and other papers shall be served by the party filing the same (whether an energy industry or not) on all other parties of record concurrently with or prior to the filing thereof;

4. Except when service is made by the department, proof of service shall be by affidavit, by certificate of counsel or by acknowledgment of service, in every case indicating the parties served and the manner of service. Such proof of service shall be filed at the time of filing the pleading, or immediately after;

5. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice, and proof of such public notice shall be made and filed in accordance with paragraph 4 of this subsection.

14A:1-5.7 Valid service

(a) Service should be made as follows:

1. Unless otherwise directed by the department, service of pleadings, notices, decisions, orders and other papers shall be deemed valid if made by delivering one copy to each party or his attorney of record in person or depositing it in the United States mail, first class, postage prepaid, directed to the party or his attorney of record at his post office address.

2. Unless otherwise provided, when any party has appeared by attorney, service upon such attorney shall be deemed valid service upon the party of all future pleadings, until notice of withdrawal or dismissal of such attorney is received in writing by the department and served on all parties of record to the proceeding.

(b) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the serving of a notice or other paper upon

him, and notice or paper is served upon him by mail, three days from the date of mailing shall be added to the prescribed period.

14A:1-5.8 Withdrawal of petition or dismissal of proceeding

(a) A petition may be withdrawn without order of the department by filing a notice of withdrawal at any stage of the proceeding prior to the filing of the hearing examiner's report and recommendations, or where the proceeding is held before the commissioner, prior to entry of the commissioner's decision or other final disposition of the proceeding. A proceeding may also be terminated by filing a stipulation signed by all parties who have appeared in the proceeding prior to the entry of the commissioner's decision or order disposing of the proceeding. However, if the commissioner finds that the public interest so requires, the commissioner by order may continue such proceeding.

(b) The department may in its discretion sever matters so joined for hearing and determination or take such other action that may be in the public interest.

(c) Unless otherwise specified or ordered, a withdrawal or dismissal under this rule shall be without prejudice.

14A:1-5.9 Verification

All pleadings initiating proceeding or otherwise seeking affirmative relief shall be verified by the filing party, except for those matters brought upon the department's own motion or the motion of the Attorney General of the State of New Jersey.

14A:1-5.10 Changes in facts or circumstances

(a) Whenever, subsequent to the date of a pleading, there is any significant change with respect to matter contained in such pleadings, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.

(b) The filing of such amendments shall be considered a new filing as of the date of its filing unless otherwise ordered or permitted by the department.

SUBCHAPTER 6. PETITION

14A:1-6.1 Form and content

(a) All petitions shall comply with the provisions of subchapter 5 (Pleadings; Generally) of this chapter to the extent applicable and shall include at least the following:

1. A clear and concise statement of the authorization or other relief sought. The statement shall site the statutory provisions under which the authority or other relief is sought.

2. The exact legal name and post office address of each party seeking the authorization or relief, the address or principal place of business of such party, and the name and post office address of the attorney, if any.

3. A concise and explicit statement of the facts which said party is prepared to prove by competent evidence and upon which department is expected to rely in granting authorization or relief.

4. Said petition may also include other pertinent and relative data and there may be attached to said petition exhibits, illustrations and sworn testimony.

14A:1-6.2 Applications to other regulatory bodies

(a) Where the relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the department shall so state and include the following:

1. To take such other action as may be necessary and appropriate to the discharge of his duties, consistent not only with the statutory or other authority under which the department functions, but with the rules, regulations, and policies of the department.

14A:1-6.3 Joinder of requests for relief

(a) A petitioner may join in a single petition more than one independent or alternative relief for relief subjects, however, to the payment of the statutory filing fees applicable to each of the approvals sought.

(b) The department may in its discretion sever matters so joined for hearing and determination or take such other action as may be in the public interest.

14A:1-6.4 Procedure of department on filing of a petition

(a) If in the opinion of the department the petition complies substantially with these rules and appears on its fact to state a matter within this department's jurisdiction, and necessary copies have been received and fees paid, the department shall file the same.

(b) Unless otherwise directed by the department, petitions of subsequent pleadings shall be served by the parties as provided for in N.J.A.C. 14A:1-5.6 (Service and notice of proceedings) and N.J.A.C. 14A:1-5.7 (Valid service) of this chapter.

(c) If within the time allowed for answer the respondent makes an offer of satisfaction which is accepted by the petitioner, such offer and acceptance signed by the parties or their attorneys shall be filed by the department, and if not disapproved by the department within 20 days, the petition shall be deemed satisfied and the proceedings closed without further action.

(d) When the respondent has not satisfied the petition, the department may schedule a hearing thereon and issue such decision or order as the facts and circumstances appear to require.

14A:1-6.5 Ex parte or emergency relief

(a) If a petition seeks ex parte action or the granting of emergency relief pending full hearing, it shall set forth the necessity or emergency for such requested action, and must be supported by the affidavits sufficient to make out a prima facie case.

(b) The party presenting such a petition shall also present a draft of the decision or order proposed.

14A:1-6.6 Informal complaint in lieu of petition

(a) In lieu of filing a petition, an informal complaint may be made by letter or other writing.

(b) Complaints under this rule shall be set forth in numbered paragraphs:

1. The full name, post office address and telephone number of each complainant and his attorney, if any;
2. The full name, post office address and telephone number of each respondent against whom a complaint is made;
3. A clear, concise statement of the acts or things done or omitted to be done by energy industry, or the respects in which any rule, regulation, or charge fixed by or for any energy industry is in violation of any provision of law or of any order or rule of the department, or the respect in which any rule, regulation, or practice is unjust and unreasonable;
4. The particular relief desired.

(c) An original, plus three conformed copies of a complaint or amendment thereto, plus additional copies for each named respondent shall be presented to the department for filing.

(d) The department, upon receipt of a complaint which is in substantial compliance with these procedural rules and which appears to state a cause of action in its jurisdiction, shall cause a copy thereof to be served upon each respondent, accompanied by a notice from the department calling upon each respondent to satisfy the complaint, or to answer the same in writing, within such reasonable time as may be specified by the department in such notice. Service in all hearings, investigations, and proceedings pending before the department shall be by regular mail.

(e) Amendments to complaints shall comply with all requirements of a complaint as heretofore enumerated.

(f) If the respondent desires to satisfy the complaint, he shall submit to the department within the time allowed for satisfaction or answer, an original plus three copies of the statement relief which he is willing to give, a copy of which the commission will transmit forthwith to the complainant. On acceptance of this offer by the complainant with the approval of the department, no further proceeding need be taken.

(g) Informal complaints shall be without prejudice to the right of any party to file a petition or of the department to institute a formal proceeding.

(h) While informal complaints are recommended wherever practicable as a method designed for amicable adjustment of disputes, no mandatory or prohibitory order will be issued on an informal complaint.

(i) A party desiring a decision or order of the department must file a petition.

SUBCHAPTER 7. ANSWERS AND REPLIES

14A:1-7.1 Form and content

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the department in connection therewith shall file an answer in writing thereto with the department.

(b) The answer must admit or deny each material allegation of the complaint, or allege insufficient information on which to admit or deny the same. It shall set forth any new matter relied upon as a defense and shall be so drawn as to fully advise the complainant and the department of the particular grounds of defense. The filing of an answer will not be deemed an admission of the sufficiency of the complaint and shall be without prejudice to the rights of the respondent to file a motion to dismiss the complaint for failure to state the cause of action.

14A:1-7.2 Time for filing

(a) Unless otherwise provided in these rules or ordered by the department, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the department within 10 days after the service of the answer.

(b) Whenever the department believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(c) Upon motion on notice to all parties to the proceeding, the department may, in its discretion, extend or shorten the time to file an answer or reply.

SUBCHAPTER 8. MOTIONS

14A:1-8.1 Form and content

(a) Unless made during a hearing, motion shall be in writing and shall set forth the relief or order sought and the grounds or reasons therefor.

(b) The requirement of writing is fulfilled if the motion is stated in a written notice of the motion.

(c) Motions based on matter which does not appear on record shall be supported by affidavit.

14A:1-8.2 Time for filing

(a) Any motion directed to a petition must be filed before the answers do, or such grounds or objection must be raised in the answer.

(b) If a motion is directed to an answer, it must be filed before the reply is due, or such grounds of objection must be raised in the reply.

(c) If a motion is directed to a reply, it must be filed within 10 days after the service of the reply.

14A:1-8.3 Tolling of time for responsive pleading

The filing of a motion shall extend the time for the filing of a response of pleading until 10 days after service by the department of its decision on the motion, unless otherwise specifically ordered by the department.

SUBCHAPTER 9. INTERVENTION

14A:1-9.1 Motion to intervene

(a) Any person other than the original parties to the proceeding who shows that he may be substantially and specifically affected by the proceeding may move in writing for leave to intervene in the proceeding prior to or at the time it is called for hearing, or may make an oral motion for leave to intervene at the time of the hearing.

(b) Except for good cause shown, no such motion shall be granted after the proceeding is underway.

(c) Where a motion to intervene seeks to broaden the issues of the original proceeding, such motion shall be filed with the department and copies thereof shall be served upon the original parties to the proceeding at least 10 days prior to the date of the hearing.

(d) The motion to intervene must disclose the name and address of the party intervening; the name and address of his attorney, if any; his interest affected by the proceeding; the nature and quantity of evidence he will present if such motion is granted; and, if affirmative relief is sought, a clear and concise statement of the release sought and the basis therefor.

14A:1-9.2 Disposition of a motion to intervene

(a) Motions to intervene shall be considered first at all hearings or may be set for prior hearings; an opportunity shall be afforded to the original parties to be heard thereon.

(b) If it appears after such consideration that the person seeking to intervene has a substantial and specific interest in the subject matter which would be affected by the proceeding and whose interest with respect to the proceeding would not otherwise be adequately represented, the department or the presiding officer may grant the motion to intervene which may be done by oral order or decision at the time of the hearing, on such terms as the department or the presiding officer may prescribe.

(c) Whenever it appears during the course of a proceeding that an intervenor has no substantial and specific interest which would be affected by the proceeding, the department may dismiss him from the proceeding.

14A:1-9.3 Limits on the intervenor

Where two or more intervenors have substantial interest and positions, the presiding officer may at any time during the hearing, if he deems it advisable in order to expedite the proceeding, limit the number of intervenors who will be permitted to introduce evidence, cross-examine witnesses or to make or argue motions and objections, noting nonetheless the appearance of said intervenors, the names of the witnesses to be offered and the fact that their testimony is cooperative of the positions of the prior intervenors.

SUBCHAPTER 10. HEARINGS

14A:1-10.1 Place and time of hearings

(a) The time and place of holding formal hearings shall be set by the department and notice thereof served upon all parties as may be required by statute, but in no case less than 10 days in advance of the hearing date, unless the department finds that an emergency exists requiring the hearings to be held on less notice, an effort will be made to set all formal hearings sufficiently in advance so that all parties will have a reasonable time to prepare their cases, and continuances will be reduced to a minimum.

(b) Hearings shall be held as ordered by the department or pursuant to adjournment thereof.

(c) Where the hearing is presided over by hearing examiner, he shall not adjourn a matter more than 30 days without the approval of the commissioner.

(d) In any proceeding, the department may require a party to give notice of the hearing and its scope to persons who may be affected by the proceeding, which may include posting and publication of hearing, at such parties' expense, in such manner and for such time and in such newspapers as the department may designate.

14A:1-10.2 Open hearings

Hearings shall be open to the public.

14A:1-10.3 Before whom held

Hearings shall be held before the department, a member thereof, or a duly designated hearing examiner.

14A:1-10.4 Procedure at hearing

(a) The presiding officer shall call the proceeding for hearing, cause the appearances to be entered on the record and act upon pending motions.

(b) Evidence shall ordinarily be received in the following order, unless otherwise directed by the presiding officer:

1. Upon motion of the department:
 - i. Department staff;
 - ii. Respondent;
 - iii. Rebuttal by department staff.
2. In investigation proceedings:
 - i. Respondent;
 - ii. Department staff;
 - iii. Rebuttal by respondent.
3. Upon application or petition:
 - i. Applicant or petitioner;
 - ii. Department staff;
 - iii. Intervenors and protestants;
 - iv. Rebuttal by applicant or petitioner.
4. Upon formal complaints:
 - i. Complainant;
 - ii. Respondent;
 - iii. Department staff;
 - iv. Rebuttal of complainant.
5. Upon order to show cause:
 - i. Department staff;

ii. Respondent;

iii. Rebuttal by department staff.

6. In other hearings: At the discretion of the presiding officer.

(c) The order of presentation above prescribed for the several kinds of hearings, respectively, shall be followed; except where the presiding officer may otherwise direct.

(d) In hearing of several proceedings upon a consolidated record, the presiding officer shall designate who shall open or close. Intervenors shall follow the party on whose behalf intervention is made. If the intervention is not in support of either original party, the presiding officer shall designate at which stage such intervenors shall be heard.

14A:1-10.5 Consolidation

(a) The department may consolidate two or more proceedings for hearing where related questions of law or fact are involved provided that the rights of parties will not be prejudiced by such procedure.

(b) Where two or more proceedings are consolidated for hearing, the presiding officer shall determine the order in which the party shall be heard and introduce evidence.

14A:1-10.6 Joint hearing

(a) In any proceeding wherein the department participates jointly with any Federal regulatory agency, the rules of practice and procedure of such Federal agencies shall govern.

(b) In any proceeding wherein the department participates jointly with the administrative body of another state or states, the rule of the state where the hearing is held shall govern such proceeding, unless otherwise agreed upon by the participating agencies; provided that any person entitled to appear in a representative capacity before any of the agencies involved in the joint hearing may do so in such a joint hearing.

14A:1-10.7 Witnesses

(a) Witnesses shall be examined orally, and for good cause shown the department may permit their testimony to be taken by deposition in the manner provided for by the civil practice rules applicable in the Superior Court. Witnesses shall be sworn, or shall affirm, before their testimony is taken.

(b) Written testimony of any witness may be offered provided its author is produced at a hearing and swears or makes affirmation to the truth and accuracy thereof and is available for cross-examination; provided that copies of such written testimony shall have been served upon the department and all or such parties to the proceeding or their attorneys of record the department may direct, at least 10 days in advance of the session of the hearing at which such testimony is offered, unless all parties in attendance at said session of the hearing shall agree that all or any part of such 10 days' prior service be waived, except that the department or presiding officer, in the absence of such an agreement, may permit the introduction of such written testimony after giving all parties present a reasonable opportunity to examine it. Whenever, in the circumstances of a particular case it is deemed necessary or desirable, the department or the presiding officer may direct the testimony to be given upon direct examination be reduced to writing within a reasonable period of time and be served and offered in the manner hereinbefore set forth. Objections to the qualifications of the witness or to such written testimony or to any part thereof may be made by motions to strike.

(c) Witnesses appearing at a hearing may, in the discretion of the presiding officer, be given an opportunity to testify out of the usual order of presentation of the evidence.

14A:1-10.8 Transcript

(a) The department shall cause to be made a stenographic report of all public hearings by the official reporter designated by the department and the transcript thereof shall be a part of the record and the sole official transcript of the proceeding.

(b) Corrections in the official transcript may be made only to make it conform to the testimony actually presented at the hearing. Any party may propose corrections and the department or the presiding officer may call for submission of proposed corrections. No corrections or physical changes shall be made in or on the official transcript of the proceeding, even though agreed to by the parties or their counsel, unless authorized by the department or the presiding officer at appropriate times during the course of the proceeding.

(c) Any person desiring copies of the transcript may obtain the same from the official reporter upon payment of the fee therefor.

SUBCHAPTER 11. PREHEARING CONFERENCES

14A:1-11.1 Purpose

(a) Informal conferences of parties or their attorneys may be held at any time to provide opportunity for settlement, subject to approval of the department, of a proceeding or any of the issues therein, and for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment, as time, the nature of the proceeding and the public interest may permit.

(b) Prehearing conferences of parties or their attorneys may be held to expedite the orderly conduct and disposition of any hearing, and at such conferences there may be considered, in addition to the matters set forth in subsection (a) of this section, the possibility of the following:

1. Simplification of the issues;
2. The necessity or desirability of amendments to the pleadings;
3. Exchange and acceptance of service of exhibits and written testimony proposed to be offered in evidence;
4. Obtaining of admissions as to, or stipulation of, facts not remaining in dispute, or the authenticity of documents or other evidence;
5. Limitation of the number and consolidation of the examination of witnesses;
6. The procedure at the hearing;
7. The distribution of written testimony and exhibits to the parties prior to the hearing.

14A:1-11.2 Initiation of conference

(a) The department, or the presiding officer, with or without motion, may direct that a conference be held either prior to or at any state of a hearing.

(b) On motion of a party, the presiding officer designated to preside at the hearing, or such other officer as the commissioner may designate, may direct the parties or their attorneys to appear for a conference to consider the matter outlined in N.J.A.C. 14A:1-11.1(b).

(c) Due notice of the time and place of such conference will be given to all parties.

(d) Nothing contained in this rule shall be construed as precluding any party to a proceeding from submitting at any time offers of settlement or proposals of adjustment to all parties and to the commissioner, or from requesting conferences for such purposes.

14A:1-11.3 Stipulations of conference results

(a) Upon conclusion of a conference other than under N.J.A.C. 14A:1-11.1(b) (Purpose), the parties or their attorney shall reduce the results thereof to the form of a written stipulation reciting the matters agreed upon and three copies thereof shall be filed with the commissioner, within 10 days of the date of the conference.

(b) Such stipulations shall be signed by the parties or their attorneys, shall be received in evidence as part of the record and when so received, shall be binding on the parties with respect to the matters therein stipulated.

14A:1-11.4 Unaccepted offers of settlement privileged

Unaccepted offers of settlement or of adjustment or as to procedure to be followed and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any attorney or party.

SUBCHAPTER 12. DISCOVERY TECHNIQUES
14A:1-12.1 Discovery

Techniques of prehearing discovery permitted in State civil actions, such as interrogatories and depositions, may be employed subject to the approval of the department. Parties seeking such discovery must be able to demonstrate, upon request to the department, the reasonableness, appropriateness and necessity of the information requested. Upon experiencing any difficulties in obtaining discovery, the parties shall seek relief in the department.

14A:1-12.2 Depositions

(a) The department shall have the right to take the testimony of any witness in a proceeding before it by deposition and for that purpose the attendance of witnesses and the production of books, documents, papers, and accounts may be enforced in the same manner as in the case of hearing before the department.

(b) Any party to a proceeding may request that the department take by deposition the testimony of any witness. Such petition shall conform to the rules with respect to pleading and shall be filed with the department not later than 30 days prior to the date of the hearing. The petition shall set forth the facts petitioner seeks to establish by the requested deposition and his reasons for desiring to perpetuate such testimony. The petitioner shall give notice by serving a copy of the petition to each party to the proceedings as required by the service portion of these rules. If the party requesting the deposition desires written interrogatories, such interrogatories shall be included with the petition. If the department deems the request meritorious, it may make an order designating or describing the persons whose depositions may be taken, specifying the subject matter of the examination, and setting forth the time and place of such deposition and whether it shall be written or oral examination. All costs incidental thereto shall be paid by the parties desiring such deposition.

14A:1-12.3 Interrogatories

Any party may serve upon any adverse party written interrogatories to be answered by the party served. Interrogatories may be served after the commencement of any proceedings without leave of the department except that objections to answering an interrogatory may be filed in writing with the department. Interrogatories may be answered separately and fully in writing under oath except

where objections are entered. Written objections, if any, shall be filed within 10 days after service of any interrogatories. Interrogatories shall be submitted within 15 days after service or upon such time as is specified by the department upon notice of objections by any other party.

14A:1-12.4 Subpoenas for witnesses and documents

(a) Subpoenas requiring the attendance of witnesses (subpoenas ad testificandum), unless directed by the department upon its own motion, shall issue only by direction of the department or by one of its members upon written petition to the department with proof of service upon the parties to the proceeding at least 10 days prior to the hearing and accompanied by the statutory fee, which shall specify the general relevance, and scope of the testimonies sought.

(b) Subpoenas for the production of books, papers, or documents (subpoenas duces tecum), unless directed to be issued by the department on its own motion, shall only be issued by the department upon petition in writing at least 10 days before date of hearing, accompanied by the statutory fee. The petition shall describe the books, papers, and documents and the facts to be proved by them in sufficient detail to indicate the materiality and relevancy of the evidence sought. Copies of such petition shall be served by the petitioner on the persons to be subpoenaed prior to the filing thereof and proof of service to be filed. The department may require hearing on said petition upon notice of the parties.

(c) Witnesses subpoenaed shall be paid fees and mileage provided by L.1977, c. 146, section 9(p), eff. July 11, 1977. Witnesses subpoenaed at the instance of a party shall be paid the fees by the party whose instance the witness is subpoenaed; and the department before issuing any subpoena (ad testificandum or duces tecum) may require a deposit in the amount adequate to cover the fees and mileages.

(d) Subpoenas shall be subject to motions to quash filed with the department at least five days prior to the date of the hearing.

(e) No member or employee of the department shall be subpoenaed to give testimony or to produce records in any proceeding before the department unless called as a witness by the department or the presiding officer.

SUBCHAPTER 13. HEARING EXAMINERS
14A:1-13.1 Designation

The commissioner may by general order, in writing, designate as a hearing examiner such person or persons, as provided by statute, as his representative or representatives in, and on his behalf to conduct any hearing in any proceeding now or hereafter pending for the department.

14A:1-13.2 Authority

(a) The duly designated hearing examiner shall have authority within the department's powers and subject to its published rules, as follows:

1. To regulate the course and conduct of hearings in the assigned proceedings;
2. To administer oaths and affirmations;
3. To rule upon offers of proof and to receive evidence;
4. To hold appropriate conferences before or during hearings;
5. To dispose of procedural motions, requests and other similar matters; but he shall not except in his report and recommendation filed at the conclusion of the proceeding, pass upon a motion to dismiss the proceeding or other motion involving a final determination of the proceeding. Where a motion is made to dismiss a proceeding or other motion which would be dispositive of a proceeding, the hearing examiner shall determine whether to forthwith refer the motion to the commissioner for determination or to proceed with the hearing and refer the motion at the conclusion thereof. The commissioner, if he grants the motion, shall order the entire proceeding dismissed. In denying such motion, the commissioner may nevertheless, by his ruling, impose such terms or otherwise limit the scope of the hearing as, in his discretion, he deems appropriate, and either certify the entire proceeding for further hearing and adjudication before himself, or order the hearing examiner to proceed with the hearing, consistent with his ruling;
6. To fix the time and order for the filing and service of briefs; provided, however, that he may not allow more than 30 days for the filing and service of initial briefs nor more than 15 days for the filing and service of answering and reply briefs, if any;
7. To certify, within his discretion or upon direction of the commissioner, any question to the commissioner for his consideration and disposition; or upon direction of the commissioner, to cause the entire proceeding to be certified to him;
8. To take such other action as may be necessary and appropriate to the discharge of his duties, consistent not only with the statutory or other authority under which the department functions, but with the rules, regulations and policies of the department as well.

14A:1-13.3 Hearing examiner's report and recommendations

(a) Unless otherwise directed or permitted by the commissioner, the hearing examiner shall, not later than 30 days after completion of all steps and proceeding before him, certify to and file with the commissioner the record of the hearing and his report and recommendations which shall include his findings of fact and conclusions of law in his recommended decision and order.

(b) The hearing examiner's report and recommendations shall be served by the commissioner upon all parties of record.

(c) The provisions of this rule pertaining to the filing and serving of the hearing examiner's report and recommendations shall not apply in instances where the commissioner has certified the proceeding to itself under section 8 (Certification by commissioner) of this subchapter, or where the preparation and service of their report and recommendations have been waived by the parties.

14A:1-13.4 Waiver of hearing examiner's report and recommendation

(a) Where all parties of record waive preparation and service of the hearing examiner's report and recommendations, the hearing examiner shall certify the entire record directly to the commissioner for his determination.

(b) However, if any party of record does not waive the preparation and service thereof as is provided in this rule and if the commissioner does not certify the proceeding to itself under section 8 (Certification by commissioner) of this subchapter, then all parties of record shall be served with section 3 (Hearing examiner's report and recommendations) of this subchapter and the rights of all parties with respect thereto under these rules shall be preserved.

14A:1-13.5 Effect of failure to appear at hearing

(a) Unless a contrary intent has been expressed on the record, any party of record who fails to appear at the final day of hearing shall be deemed to have waived the preparation and service of the hearing examiner's report and recommendations, and to have agreed to this certification of the proceeding to the commissioner.

(b) Waiver by failure to appear shall have the same effect as a waiver and consent under section 4 (Waiver of hearing examiner's report and recommendations) of this subchapter.

14A:1-13.6 Appeals to the commissioner from rulings of hearing examiner during hearing

Rulings of the hearing examiner may not be appealed to the commissioner during the course of any hearing except in extraordinary circumstances when prompt decision by the commissioner is necessary to prevent detriment to the public interest.

14A:1-13.7 Exceptions to the commissioner from the report and recommendations of the hearing examiner

(a) Any party objecting to the report and recommendations of the hearing examiner shall within 15 days after service of a copy of the hearing examiner's report and recommendations file four copies of the notice of exceptions thereto, together with proof of service of such notice of exceptions on all parties of record.

(b) Within 15 days after filing of the notice of exceptions, the party filing the same shall file and serve his exceptions, which shall specify the particular statements or parts to which exception is taken; shall designate by special references the portions of the record relied upon in support of such exceptions; shall set out specific findings of fact and conclusions of law proposed in lieu thereof; and shall include any proposed additional findings of fact and conclusions of law. Exceptions to conclusions of law shall be specific; shall briefly cite the statutory provisions or principal relied upon; shall set forth conclusions suggested in lieu thereof; and shall include any proposed additional conclusions. Exceptions to the recommended order shall specify the portions thereof accepted to, and shall set forth a form of orders suggested in lieu of the recommended order. Supporting reasons for exception shall be submitted in the same document or in an accompanying brief. Four copies of such exceptions and briefs shall be filed with the commissioner together with proof of service of such exceptions on all parties of record.

(c) Failure to file notice of exception or exceptions within the time allowed shall constitute a waiver of all objections to the hearing examiner's report and recommendations. Unless permitted by the commissioner any matter that is not included in the exceptions filed as provided in this rule may not thereafter be objected to for the commissioner upon brief or oral argument or upon application for rehearing, and any matter of record not included in such exceptions shall be deemed waived. Exceptions to the hearing examiner's report and recommendations based upon admission of evidence not objected to at the time the hearing examiner's ruling was made will be unavailing unless permitted by the commissioner.

(d) If exceptions to the hearing examiner's report and recommendations and accompanying briefs have been filed and served, other parties of record may file an answer thereto and supporting brief within 15 days of service of the exceptions. The number of copies of the answer and the brief to be filed with the commissioner, and the filing of proof of service, shall conform to the provision of subsection (b) of this section.

(e) The exceptions and answers thereto, if any, will be disposed of by the commissioner on the exceptions, answers and briefs filed unless the commissioner in his discretion requires or permits oral argument, in which case the commissioner will schedule the matter for argument before him.

14A:1-13.8 Certification by the commissioner

The commissioner may on petition or on a party or on joint petition by all of the parties within 10 days after the closing of the hearing, for good cause shown, or at anytime on his own motion, certify the proceedings to himself.

14A:1-13.9 Review of hearing examiner's report and recommendations by the commissioner on his own motion

The commissioner may institute on his own motion a review of any aspect of the hearing examiner's report and

recommendations and he may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

14A:1-13.10 Hearing examiner's report and recommendations not automatically ordered or decision of the commissioner

If there are no exceptions to the report and recommendations and the commissioner proposes to reject or modify the report and recommendations and the provisions of N.J.A.C. 14A:1-13.9 (Review of hearing examiner's report and recommendations by the commissioner on his own motion) are applicable.

14A:1-13.11 Unavailability of the hearing examiner

If a hearing examiner becomes unavailable to the commissioner, the commissioner will either designate another qualified officer to serve in his place who shall read the record theretofore made or will cause the matter to be certified to him, or take such other action as may be deemed appropriate, giving notice to the parties or their attorneys of record.

SUBCHAPTER 14. EVIDENCE

14A:1-14.1 General

Subject to other provisions of this rule, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard to its necessity, availability, and trustworthiness. In passing upon the admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound to follow the rules of evidence governing civil procedures in courts of this State.

14A:1-14.2 Testimony under oath

All testimony to be considered by the department in formal hearings, except matters judicially noticed or entered by stipulation, shall be sworn testimony.

14A:1-14.3 Stipulation as to facts

The parties to any proceeding or investigation before the department may, by stipulation in writing filed by the department or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties thereto and may be regarded and used by the department as evidence at the hearing. It is desirable that the facts be thus agreed upon wherever practical. The commissioner may, however, require proof of evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

14A:1-14.4 Judicial notice

(a) In addition to matters concerning which courts of this State take judicial notice, the department may take official notice of the following matters:

1. Rules, regulations, administrative rulings, published reports and orders, exclusive of findings of fact, the department and other governmental agency;
2. Contents of certificates, permits and licenses issued by the department;
3. Tariffs, classifications, and schedules regularly established by or filed with the department as required or authorized by law;
4. State and Federal statutes;
5. The decisions of State and Federal courts;
6. Generally recognized and scientific facts.

(b) In addition, the department may, in its discretion, upon being requested by all parties to the proceedings so to do, take official notice of the results of its own inspection of any physical conditions involved, and may, with or without being requested by a party so to do, take official notice of the results of its previous experience in similar situations and general information concerning a subject within its expert knowledge. Where official notice is taken of any matter, the findings of fact shall so specify and shall state the basis upon which notice is taken.

14A:1-14.5 Resolutions

Resolutions, properly authenticated, of the governing bodies of cities, towns, counties, and other municipal corporation and of chambers of commerce, boards of trade, commercial, mercantile agricultural or manufacturing societies and other civic organizations shall be received in evidence if offered by the president, secretary, or other proper officer or person at the hearing. Such resolutions shall be received in, subject to rebuttal by adversely affected parties as to either the authenticity of resolution or the circumstances surrounding its procurement. Recital of facts contained in resolutions shall not be deemed proof of these facts.

14A:1-14.6 Official records

An official rule, report, order, record, or other document, prepared and issued by any governmental authority, when admissible for any purpose may be evidenced by an official publication thereof, by a publication by a nationally recognized reporting service deemed by the presiding officer to constitute a sufficient guarantee of trustworthiness, or by a copy attested by the officer having the legal custody thereof, or his deputy, and accomplished by a certificate that such officer has the custody, made by any public official having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. In cases where such official record, otherwise admissible, are contained in official publications or publications by nationally recognized recording services, and are in general circulation and readily accessible to all parties, they may be introduced by reference, providing that proper and definite reference to the record in question is made by the party offering the same.

14A:1-14.7 Department files

Papers and documents on file with the department, if otherwise admissible and not designated as confidential, and whether or not the department has authority to take judicial notice of the same, may be introduced by reference to number, date, or by any other method of identification and satisfactory to the presiding officer. If only a portion of any such paper or document is offered in evidence, the part so offered shall be clearly designated.

14A:1-14.8 Records in other proceedings

In case any portion of the record in any other proceeding is admissible for any purpose and is offered in evidence, a true copy of such portions shall be presented in the record in the form of an exhibit.

SUBCHAPTER 15. PROPOSED FINDINGS, CONCLUSIONS OF PARTIES AND BRIEFS

14A:1-15.1 Proposed findings and conclusions of parties

(a) The presiding officer may require all parties of record to file proposed findings and fact and conclusions of law at the close of testimony at the proceeding. The presiding officer shall immediately fix the time in which such proposed findings and conclusions shall be filed. No decision, report or recommended order shall be made until the expiration of the time so fixed.

(b) Each proposed finding of fact and conclusion of law shall be clearly and concisely stated and numbered. Each statement shall so show specifically testimony by appropriate transcript which supports that proposed finding of fact.

(c) An original and three copies accompanied by a certificate of service shall be filed with the department and one copy shall be filed with each attorney of record or each party.

(d) Any party may petition the presiding officer for an enlargement of time in which to file the proposed findings of fact and conclusions of law.

14A:1-15.2 Briefs

(a) The commissioner or the presiding officer may in his discretion require the filing of briefs in any proceeding.

(b) The commissioner or the presiding officer shall fix the time for the filing and service of briefs with due regard to the size of the record, the nature, complexity and importance of the proceedings or of the issues involved, provided, however, that a hearing examiner may not allow more than 30 days for the filing and service of initial briefs and 15 days for the filing and service of answering and reply briefs, if any.

(c) The commissioner or the presiding officer may fix the order in which briefs shall be filed. Unless otherwise specifically directed by the commissioner or the presiding officer, briefs shall be filed simultaneously.

(d) All briefs shall be accompanied by proof of service upon all parties or their attorneys of record.

(e) Unless otherwise permitted or directed by the commissioner or the presiding officer, four copies of each brief shall be furnished for use of the department.

(f) Requests for extension of time in which to file briefs shall be in writing served upon parties of record or their attorneys, and submit it to the commissioner at least five days before the time fixed for filing such briefs.

14A:1-15.3 Specifications as to briefs

(a) All briefs shall be as concise as possible and shall in all respects conform to the requirements of N.J.A.C. 14A:1-5.2 (Briefs), except that the paper used shall not exceed 8½ x 11 inches in size and the binding shall be on the left margin.

(b) Briefs should contain a table of contents and an alphabetical list of cases and authority cited with appropriate page references; a statement of questions involved; a concise statement of facts with references to the testimony or other exhibits where the evidence appears; the argument divided under appropriate headings into as many parts as there are points to be argued; proposed or requested findings and conclusions; and if directed, a proposed form of decision or order.

(c) Exhibits may be analyzed but should not be reproduced in the brief. If desired, exhibits may be reproduced in an appendix to the brief.

SUBCHAPTER 16. REOPENING OF HEARINGS, REHEARING, REARGUMENT OR RECONSIDERATION

14A:1-16.1 Method of reopening

(a) At any time after the conclusion of a hearing in a proceeding or adjournment thereof sine die, but before the entering and issuance of the commissioner of his final decision or order, any party to the proceeding may file with the commissioner a motion to reopen the hearing for the purpose of taking additional evidence. Such motion shall set forth clearly the reasons for reopening of the hearing, including any material changes of fact or of law alleged to have occurred during the last hearing.

(b) If, after the hearing in a proceeding, the commissioner shall have reason to believe that conditions of fact or law have so changed as to require, or that the public interest

requires, the reopening of such hearing, the board will issue an order to the reopening of the same.

14A:1-16.2 Motions to reopen

(a) Upon filing by any party of a motion for the reopening of a hearing, appropriate notice thereof shall be given forthwith by the moving party to all other parties, or their attorneys of record, by service of a copy of the motion for reopening.

(b) Within 10 days following the service of a motion to reopen, any party to the proceeding may serve upon the moving party and file with the commissioner his answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such motion.

(c) As soon as practicable after filing of answers to a motion to reopen or default thereof, as the case may be, the commissioner will grant or deny such motion. The action by the commissioner may be conditioned on reasonable terms.

14A:1-16.3 Method of instituting rehearing, reargument, or reconsideration

(a) A motion for rehearing, reargument, or reconsideration of a proceeding may be filed by any party within 15 days after the issuance of any filed decision or order by the commissioner.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing, or further hearing is requested and whether ultimate relief sought is reversal, modification, vacation, or suspension of the action taken by the commissioner or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The commissioner at any time may order a rehearing, reargument, or reconsideration of his own motion and extend, revoke or modify any decision made by him.

14A:1-16.4 Motions and answers on rehearing

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. The moving parties shall also give such notice, as the commissioner may direct, of the filing of the motion to all of the persons to whom notice of the original hearing had been given.

(b) Any answer to the motion shall be filed within 10 days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection of the granting of the motion.

(c) Any motion hereunder which is not granted or otherwise expressly acted upon by the commissioner within 60 days after the filing thereof, shall be deemed denied.

(d) The filing or granting of any motion under this rule shall not operate as the stay of the commissioner's decision or order. A stay will be granted only for good cause shown.

SUBCHAPTER 17. COMPLIANCE WITH ORDERS, DECISIONS, AND RECOMMENDATIONS

14A:1-17.1 Decisions and orders

An order or decision in writing by the commissioner will be issued in every proceeding.

14A:1-17.2 Compliance

Upon issuance of the order or decision of the department, the party to whom the same is directed must notify the department on or before the date specified in said order or decision whether or not compliance has been made in conformity therewith.

14A:1-17.3 Recommendations

Upon the making of any recommendation by the department, the party to whom the same is directed must within 15 days after the making of the recommendation, unless otherwise specifically required, notify the department of the acceptance or rejection thereof. Failure to comply with this rule will be deemed acceptance of the recommendation.

14A:1-17.4 Extension of time limits

In instances where the department's decision or order contains a specific time or date for compliance, and the petitioner desires extension of such time, petition to the department shall be made in writing at least five days before the expiration of the time limit.