

established through the Every Student Succeeds Act of 2015, for paraprofessionals. N.J.A.C. 6A:13A-4.3(f) meets but does not exceed the Federal mandate.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6A:13A.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FORESTRY

NEW JERSEY BOARD OF TREE EXPERTS

Board of Tree Experts Rules

Adopted New Rules: N.J.A.C. 7:3A

Proposed: June 20, 2016, at 48 N.J.R. 995(a).

Adopted: December 29, 2016, by New Jersey Board of Tree Experts, Steve Chisholm, President.

Filed: March 16, 2017, as R.2017 d.065, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:15C-11 et seq., specifically, 45:15C-15.h.

Effective Date: April 17, 2017.

Expiration Date: April 17, 2024.

Summary of Public Comments and Agency Responses:

Comments on the notice of proposed new rules were received from various individuals involved in the tree care industry in New Jersey and other states, as well as from the Tree Care Industry Association (TCIA) and the International Society of Arboriculture (ISA). The comment period closed on August 26, 2016. The Board received and considered all comments that were received by the August 26, 2016, deadline. The following is a summary of comments received during the public comment period and the Board's responses.

Douglas Hunt

1. COMMENT: The commenter asked about the situation where a licensed tree care operator (LTCO) also holds a Commercial Pesticide Applicator License, since under the Tree Expert and Tree Care Operator Licensing Act, N.J.S.A. 45:15C-11 et seq. (the Act) and this chapter, LTCOs cannot treat diseases and insects.

RESPONSE: The Pesticide Applicator and Operator License predates the Tree Experts and Tree Care Operators Licensing Act, and is required to apply pesticides in New Jersey. Persons holding an appropriate pesticide license or certification, including any person also licensed as a tree care operator, are authorized to apply pesticides in New Jersey, in accordance with the terms of their pesticide license. If an LTCO with a pesticide license is determined to have improperly applied pesticides in a manner that violates the Act or this chapter, the Board may impose the applicable penalty as set forth at N.J.A.C. 7:3A-9.6(a).

Scott Cullen

2. COMMENT: The commenter asked whether the listing of substantially equivalent certifications and licenses referenced at N.J.A.C. 7:3A-3 would be posted during the public review period.

RESPONSE: The Board will not compile a listing of substantially equivalent licenses or certifications during the public review period. The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis once the rules are in effect and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness.

3. COMMENT: The commenter stated that the Board should consider flexibility in interpreting and applying the rules where rigidity does not advance the purpose of the Act or the public interest and welfare, is duplicative of other credentials that effectively advance the purpose of the Act, or results in unnecessary expenditure of the Board's volunteer resources or incurs unnecessary expenses for the State of New Jersey.

RESPONSE: The purpose of the Act is to ensure safety, competency, and ethics in the tree care industry through mandatory licensure and registration, as well as enforcement authority. The Board cannot allow for flexibility in the rules beyond what is authorized by the Act, but reciprocity (N.J.A.C. 7:3A-3.9), grandfathering (N.J.A.C. 7:3A-3.4), CLE requirement hardship waivers (N.J.A.C. 7:3A-7.1), and the two tiers of licensure are examples of flexibility in the rules. There is no other credential in New Jersey that is duplicative of the licenses administered by the Board, but the rules do provide an opportunity for reciprocity at N.J.A.C. 7:3A-3.9. In accordance with the Act, the Board will only expend money collected through penalties and fees as necessary to effectuate the purposes of the Act. While the Board is comprised of volunteers, and will likely utilize other volunteers to assist in certain tasks, the Board notes that paid staff will also be employed to help carry out the Act to decrease the load on the volunteers.

4. COMMENT: The commenter asked whether the intent of the exemption at N.J.A.C. 7:3A-1.1(b)2 is to include underground facilities, but exclude aboveground facilities from the exemption for employers and employees doing work for a public utility.

RESPONSE: Any employee whose employer is under contract with a public utility and who is engaged in the performance of tree trimming or other utility vegetation management practice, such as line clearance for aboveground facilities or for the installation of underground facilities or site construction associated with installation of underground facilities for the public utility, is exempt from the Act and the rules because these activities are regulated by the New Jersey Board of Public Utilities. This exemption implements the exemption found in the Act at N.J.S.A. 45:15C-31.b.

5. COMMENT: The commenter asked whether loggers are subject to the Act.

RESPONSE: Any forestry activities that are conducted under the forest management and stewardship programs approved by the State Forester are exempt from the Act, provided that tree climbing is not performed, and aerial lifts, cranes, or rope and rigging operations are not used.

6. COMMENT: The commenter notes that in N.J.A.C. 7:3A-1.1(b)4, the exemption for landscape construction activities seems to impose compliance with certain provisions of the chapter as a condition of being exempt from the chapter, which seems circular.

RESPONSE: The language of this provision is the same as the language in the Act at N.J.S.A. 45:15C-31.d and f, which states that ground-based maintenance activities are exempt but still require compliance with Occupational Safety and Health Administration (OSHA) and American National Standards Institute (ANSI). The rules must follow the intent of the Act.

7. COMMENT: The commenter stated that consulting, diagnosis, and tree risk assessment may sometimes meet the definition of "ground based landscape maintenance" and such a circumstance should be exempt from the Act.

8. COMMENT: The commenter stated that the Board should consider adding to the rule that consulting - as an exclusive business line - can satisfy the characteristics of a ground-based activity under N.J.A.C. 7:3A-1.1(b)4, so that these consultants do not have to comply with requirements, such as insurance coverage minimums, documentation of employee safety training, and maintenance of a written comprehensive safety policies, as such requirements are unnecessary and burdensome.

RESPONSE TO COMMENTS 7 AND 8: The rules cannot create an exemption not contained in the Act. As set forth in the Act at N.J.S.A. 45:15C-12, consulting shall be a service of LTEs. The exemption for ground-based landscape maintenance and landscape construction only applies to those activities listed in N.J.A.C. 7:3A-1.1(b)4 and specifically does not exempt consulting or consulting services. The Act does not provide for an exemption from employee safety training requirements for any licensee.

9. COMMENT: The commenter asked about the definition of "service vehicle" as referenced in the rules, and asked if that term includes trucks, aerial lifts, cranes, and similar vehicles that actually perform tree care services?

RESPONSE: All service vehicles must have the New Jersey tree company (NJTC) identifier on them. A service vehicle is any vehicle

operated by a tree care business to perform tree care services in New Jersey. This includes, but is not limited to, trucks, aerial lifts, cranes, and similar vehicles.

10. COMMENT: The commenter asked when the rules will go into effect and expressed concern that individuals and businesses will not have adequate time to come into compliance.

RESPONSE: The rules will be in effect upon publication in the New Jersey Register, April 17, 2017. As updated upon adoption, under N.J.A.C. 7:3A-2.4(c), every business engaged in providing tree care services for hire in New Jersey shall have until April 12, 2018, or until the Board has administered and certified the results of the licensure examination four times, whichever is later, to comply with the requirement to have at least one licensee as an employee at each principal and branch office providing tree care services in New Jersey.

11. COMMENT: The commenter asked for clarification of "continuous employment" as it is set forth at N.J.A.C. 7:3A-3.2.

RESPONSE: The Act states that an applicant must be continuously employed in the practice of arboriculture for at least three years preceding the date of his or her application. The Board will consider circumstances such as maternity leave, military leave, etc., in implementing this provision of the Act and the rules on a case-by-case basis.

12. COMMENT: The commenter asked whether licenses from other states and other credentialing bodies, such as the International Society of Arboriculture (ISA) Master Arborist, Board Certified Master Arborist (BCMA), American Society of Consulting Arborists (ASCA) Registered Consulting Arborist have been considered by the Board for reciprocity. He asked when the list of equivalent credentials would be posted.

RESPONSE: Once the rules are promulgated, the Board will then accept official applications for reciprocity. The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness. The Board will consider licenses from other states, as well as from other credentialing bodies. A committee of the Board is responsible for evaluating other credentials and licenses for reciprocity. This committee will then present its findings to the Board for a full Board vote.

13. COMMENT: The commenter asked about development of the examination subject matter, validation of questions, independent oversight of exam development, or publication of the examination subject matter for applicant preparation.

RESPONSE: As required under N.J.S.A. 45:15C-16, the Board shall develop an examination or designate examinations to evaluate the knowledge, ability, and fitness of applicants to perform as tree experts or tree care operators. The Board will develop the examinations based upon input from industry professionals with decades of experience, and will review the examinations regularly to ensure the questions are up-to-date with current industry standards and practices. The Board is discussing the use of third-party vendors to assist in ensuring the validity and reliability of the licensing examinations. In an effort to address any feelings that the current testing instruments are in any way unfair or biased, the Board will be carefully analyzing other industry voluntary certifications and mandatory licenses to see if there are opportunities for reciprocity. Though most other tests are more expensive, ideally there will be other options for candidates to use to demonstrate substantially equivalent knowledge and experience without sitting for the Board's examination.

14. COMMENT: The commenter stated it would be beneficial to both licensees and the Board if the Board would accept a Continuing Education Unit (CEU) report from the International Society of Arboriculture (ISA), which can be easily obtained from the ISA website.

RESPONSE: Once the rules are promulgated, CEU approval will be determined by committee and presented for a full Board vote. While no organizations have been approved as of the effective date of the chapter, it is anticipated that credits approved by the ISA will be approved by the Board. The Board will consider ISA CEU transcripts during the audit process. Credits will be accepted by the Board provided the programs meet the criteria set forth at N.J.A.C. 7:3A-7.2(a).

15. COMMENT: The commenter notes that the citation to the Dictionary of Standard Definitions for the Green Industry at N.J.A.C. 7:3A-8.1(a)1 is incorrect and also points out that the most current definitions and standards of practice should be cited in the rules.

RESPONSE: The Board appreciates this comment. The Board has allowed for amendments and supplements to the standards of practice set forth in the rule. The rule includes the language "incorporated by reference as amended and supplemented" to reflect this.

16. COMMENT: The commenter stated that the correct citations to the standards set forth at N.J.A.C. 7:3A-8.1(a)2 are: ANSI A300 Tree Care Industry Standard Practices, The American National Standards for Tree Care Operations - Tree, Shrub, and Other Woody Plant Management - Standard Practices, ANSI A300 which includes Pruning (Part 1)-2014 confirm latest revision date, Soil Management (Part 2)-2011 (fertilization), Supplemental Support Systems (Part 3)-2013, Lightning Protection Systems (Part 4)-2014, Management of Trees and Shrubs During Site Planning, Site Development, and Construction (Part 5)-2012, Planting and Transplanting (Part 6)-2012, Integrated Vegetation Management IVM, (Part 7)-2012, Root Management (Part 8)-2013, Tree Risk Assessment (Part 9)-2011, and Integrated Pest Management IMP (Part 10)—2016.

RESPONSE: The Board appreciates this comment. The Board has corrected the citation to the ANSI A300 standards in accordance with this comment.

17. COMMENT: The commenter asked whether licensees and registered businesses are bound to adhere to current OSHA and other regulations, or only those specifically named in the rule text.

RESPONSE: Licensees and registered businesses are bound to adhere to the OSHA regulations and ANSI standards in effect at the time the tree care services are performed. The rule text includes the language "incorporated by reference as amended and supplemented" to reflect this.

Askconsumeraffairs@dca.lps.nj.us

18. COMMENT: The commenter asked how all tree experts can have the required knowledge and stated the Board is not providing training in tree expert services.

RESPONSE: The licensure examination or the Board's review and grant of reciprocity verify that each licensee meets a minimum threshold of competency. Continuing education requirements ensure ongoing training. The Board does not offer its own prep course for the exam. All licensees and businesses performing tree work are required to comply with national standards.

Jean Public

19. COMMENT: The commenter expressed the following concerns: 1) Letters of reference should come from someone in the field and should not pertain to moral character; 2) when determining whether to grant reciprocity, the Board should take into account the climate in the region from which the applicant obtained his or her proposed equivalent credential; 3) only a New Jersey driver's license should be accepted to take the licensure examination; 4) the fees are too low and taxpayers will have to fund the licensing program; 5) the Board should require licensees to submit all CEU information to the Board and the Board should track this information for each licensee rather than using the audit process; 6) the rule language should state that licensees "remain very well informed about current advances in arboriculture" rather than "reasonably" well informed; 7) language regarding logging should be added to N.J.A.C. 7:3A-9.2; and 8) penalties should be increased.

RESPONSE: Portions of this comment pertain to requirements in the Act, which was enacted in 2010, not the Board's rules. The Board responds to those portions of this comment that pertain to the rules as follows, with reference to the numbers set forth in the comment summary above:

1) N.J.A.C. 7:3A-3.2 requires letters of reference come from professionals in the field of arboriculture or in a closely related field, who have first-hand knowledge of the candidate's work and moral character, including, but not limited to, the candidate's adherence to the canons of professional ethics and standards of conduct set forth at N.J.A.C. 7:3A-8.2(a), by which the Board will determine whether a candidate meets the requirement of good moral character. N.J.S.A. 45:15C-17 sets forth the requirement that licensees possess "good moral character" and, therefore, must be implemented by the Board. 2) The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity

has been granted to ensure consistency and fairness. 3) N.J.A.C. 7:3A-4.1(d) requires that each candidate for the examination produce a government-issued photo identification, which includes, but is not limited to, a passport or driver's license. The Act's requirements cannot be altered by the rules. 4) The Board responds that the fees set forth in the rulemaking were designed to be sufficient to defray expenses and allow the Board to effectuate the purposes of the Act. The Board has been careful not to make the requirements for licensure overly burdensome, while ensuring applicants for licensure meet certain minimum requirements for proficiency and safety. 5) Continuous tracking of such records would be an inefficient use of the Board's resources. The audit process is an efficient means to ensure compliance with continuing education requirements. 6) The Board discerns no difference between "reasonably well informed" and "very well informed" and will continue to use the language "reasonably well informed." 7) Adding this language to the rules would be beyond the scope and intent of the Act. 8) The penalties set forth in the chapter were designed to be sufficient to allow the Board to effectuate the purposes of the Act. The Board believes the proposed penalties are reasonable to deter violations and encourage compliance.

Christian Plunkett

20. COMMENT: The commenter stated that the ISA poses some good questions, but thinks the ISA should restrain itself from furthering its own agenda by attempting to delay these rules because they are important to public safety and the integrity of New Jersey's tree resource.

RESPONSE: The Board acknowledges the commenter's support for the proposed rules.

Thomas Hall

21. COMMENT: The commenter expressed support for the new rules and wants to see them promulgated quickly and shared with his home state of Florida.

RESPONSE: The Board acknowledges the commenter's support for the proposed rules.

Robert Koczela

22. COMMENT: The commenter stated that ISA's comments should be responded to and stated that he thinks the rules have fairness issues, as well as other weaknesses.

RESPONSE: The Board addresses the ISA's comments in full elsewhere in this notice of adoption. The Board acknowledges the commenter's general concern about fairness and weaknesses in the rules but without more specificity cannot further respond thereto.

Rodney Wagner

23. COMMENT: The commenter expressed the following concerns: 1) The Board should use the same testing and CEU procedures as the ISA and the Board's CEU process is too onerous; licensees should not have to take a specialized New Jersey update session; 2) the Board should accept the "Business Registration Certificate" required of all business ventures in New Jersey instead of requiring separate registration; 3) the ISA Certified Arborist exam is sufficient to operate a tree care company and the other ISA classifications are a better means of classifying the work force than the Board's two-tiered approach; 4) the select few are pushing for change in the industry to make it more difficult, such as the difficult exam and "specialized training sessions"; and 5) the Maryland Tree Expert program makes it easier for workers to take and pass the examination so there is a high level of involvement.

RESPONSE: Portions of this comment pertain to requirements in the Act, which was enacted in 2010, not this rulemaking. The Board responds to those portions of this comment that pertain to the rulemaking as follows, with reference to the numbers set forth in the comment summary above: 1) The ISA is a voluntary credentialing body. These rules implement a legally enforceable licensing program established by the Act. The Act requires 32 credits every two years. The Board is unaware of any "specialized New Jersey update session." Credits issued by ISA and the Tree Care Industry Association will likely count toward the CEU requirement. 2) The Business Registration listed in the rules is a significant aspect of the intent of the Act and will be enforced by the Board. The general Business Registration Certificate that the commenter

cites as being required of all New Jersey businesses is not issued by the Board and is not a substitute for registering as required by the Act and this chapter. 3) The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness. 4) There are no courses specifically required in order to sit for the CTE exam, and there will be no courses specifically required to sit for the LTE or LTCO exam. 5) The Board acknowledges this comment about the Maryland tree care licensing program.

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24. COMMENT: The commenter asked how the Act and rules affect members of a municipal shade tree department.

RESPONSE: State, county, and municipal employees are exempt under the legislation. The Public Employee Occupational Safety and Health Act governs safe work practices for these employees.

Stuart Niven

25. COMMENT: The commenter expressed support for the rules and also expressed concern that certain tree care companies will benefit from the new rules as they were involved in creating the Act.

RESPONSE: The Board acknowledges the commenter's support for the proposed rules and notes that the entire tree care industry in New Jersey will benefit from the Act.

Doug McGaw

26. COMMENT: The commenter expressed support for the proposed rules.

RESPONSE: The Board acknowledges the commenter's support for the proposed rules.

Jim Baker

27. COMMENT: The commenter expressed concern that no licenses should be granted unless the individual has taken and passed the examination, and that the Board should not exempt individuals from taking the examination based upon experience.

RESPONSE: Existing certified tree experts (CTEs) have already met the same level of expertise required of new LTE applicants, which is why the Act provides for grandfathering of existing CTEs in good standing.

Malcolm McBurney

28. COMMENT: The commenter notes that the two-tiered licensing program may create confusion for consumers regarding which services can be provided by each license.

RESPONSE: The Board cannot change the two-tiered system because it was established by the Act signed January 16, 2010. The Board hopes to streamline the program to make it as clear and easy as possible for consumers and providers.

29. COMMENT: The commenter stated that independent consulting arborists should be exempted from the Act and rules since they only engage in ground-based activities and could play a role in disputes with the Board.

RESPONSE: As set forth in the Act at N.J.S.A. 45:15C-12, consulting shall be a service of LTEs. The exemption for ground-based landscape maintenance and landscape construction only applies to those activities listed in N.J.A.C. 7:3A-1.1(b)4 and specifically does not exempt consulting or consulting services. The rules cannot create exemptions that do not exist in the Act.

30. COMMENT: The commenter expressed concern that some classes may not qualify for CEUs with the Board and the individual may not know until he or she is audited. The commenter suggested the Board make available a depository for storage and review of valid CEUs.

RESPONSE: The Board will not be responsible for tracking the CEU history of all licensees. To do so would create unnecessarily burdensome costs to the licensees. The Board recognizes that CEU histories are often easily accessible from industry associations. The onus shall be on licensees to provide their histories if randomly called upon to do so. There is a waiver process for the CEU requirement "for good cause" at N.J.A.C. 7:3A-7.1.

31. COMMENT: The commenter stated that there should be a grace period to hire a replacement licensee in the event a registered business unexpectedly loses its licensee.

RESPONSE: There is a grace period of 60 days (see N.J.A.C. 7:3A-2.10) for a business to replace the licensee. It is recommended that businesses have several of its staff qualified in advance, in case the current licensee of record leaves the employ of the business on short notice.

Kevin Tode

32. COMMENT: The commenter expressed that the Act is ineffective and confusing to consumers and will make the CTE credential less respected.

RESPONSE: This comment pertains to requirements in the Act, which was enacted in 2010, not the rulemaking.

John Wickes, on behalf of Wickes Arborists

33. COMMENT: The commenter expressed that the Board should grant reciprocity to current credential holders from industry groups such as International Society of Arboriculture (ISA) Certified Arborist (CA) and Tree Risk Assessment Qualification (TRAQ), American Society of Consulting Arborist (ASCA) Registered Consulting Arborist (RCA), the Tree Care Industry Association (TCIA) Accredited Tree Care Company, and Certified Tree Care Safety Professional (CTSP), and the New York Nursery and Landscape Association (NYSNLA) Certified Nursery and Landscape Professional (CNLP), and should accept CEUs from those industry groups. The commenter also asked that the Board respond to ISA's comments.

RESPONSE: The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness. Credits issued by the above organizations will be accepted by the Board if the Board determines the program meets the criteria set forth at N.J.A.C. 7:3A-7.2(a). ISA's comments have been addressed elsewhere in this notice.

Hunter Adams

34. COMMENT: The commenter expressed concern that the two-tiered licensing system would be confusing to consumers.

RESPONSE: The Board cannot change the two-tiered system because it was established by the Act signed into law on January 16, 2010. The Board hopes to streamline the program to make it as clear and easy as possible for consumers and providers.

35. COMMENT: The commenter expressed concern that the fees could increase and become overly burdensome.

RESPONSE: The Board has been careful not to make the requirements for licensure overly restrictive while ensuring applicants for licensure meet certain minimum requirements for proficiency and safety. Fee structures for the proposed LTE and LTCO exams and Business Registration were carefully analyzed based on costs to the Board and through comparison to other State licensing examinations.

36. COMMENT: The commenter stated that the Act duplicates some of the fees and requirements of the Home Improvement Contractors License.

RESPONSE: Once individuals are licensed and tree care companies are registered by the Board, they will no longer need to comply with the Home Improvement Contractors Act.

37. COMMENT: The commenter stated that several members of the Board are also members of the ISA board and expressed concern that this is a conflict of interest.

RESPONSE: This comment does not relate to the rulemaking, but the Board responds that the local chapter of ISA, the New Jersey Arborists-Chapter ISA (NJISA), does not administer examinations, collect fees, or certify individuals for the ISA credentialing program. The two boards share the common goals of advancing professionalism and safety in the tree care industry. All Board members complete annual ethics training or briefing and should the need for recusal from certain decisions arise, Board members will comply.

Lee Gilman

38. COMMENT: The commenter stated that the Board's website and e-mail notice incorrectly stated that the comment deadline was August 26, 2016, when it was really August 19, 2016. The commenter asked if the comment submission deadline would be extended.

RESPONSE: The Board obtained and posted a copy of the proposed rules from the Office of Administrative Law on June 20, 2016. This was provided on the Board's website as the "unofficial" copy of the rules and contained the deadline of August 19, 2016. The Board was notified by the Office of Administrative Law on June 24, 2016, that the comment deadline period for the Rules was to be extended one week to August 26, 2016. The Board then posted the date of the new comment period deadline on its home page in red above the existing link for the "unofficial" copy of the rules. The Board considered and responded to all comments received by the August 26, 2016, deadline.

39. COMMENT: The commenter expressed concern that there should be a public directory of licensees published by the Board.

RESPONSE: The Act requires the Board, at N.J.S.A. 45:15C-15.f and k, to make available a registry of licensees and businesses. Once the rules are promulgated, the Board will provide a searchable database on the Board's website.

40. COMMENT: The commenter asked how regulated "tree pruning" for LTEs differs from exempted "pruning" for ground-based landscape maintenance activities.

RESPONSE: Tree expert services and tree care operator services are regulated by the Board and set forth by the Act at N.J.S.A. 45:15C-12. Ground-based landscape maintenance activities are exempted by the Act and defined by the Act at N.J.S.A. 45:15C-31.d and the rules at N.J.A.C. 7:3A-1.4 as operations that do not involve climbing, the use of aerial lifts, cranes, rope and rigging operations, or the removal of trees over six inches D.B.H.

41. COMMENT: The commenter asked why "tree pruning" is allowed for LTEs but not LTCOs.

RESPONSE: Tree pruning is not disallowed for LTCOs. The regulation of tree pruning is the same for both licenses.

42. COMMENT: The commenter asked how regulated "fertilization" for LTEs differs from exempted "fertilization" for ground-based landscape maintenance activities.

RESPONSE: Tree expert services and tree care operator services are regulated by the Board and set forth in the Act at N.J.S.A. 45:15C-12. Ground-based landscape maintenance activities are exempted by the Act and defined by the Act at N.J.S.A. 45:15C-31.d and the rules at N.J.A.C. 7:3A-1.4 as operations that do not involve climbing, the use of aerial lifts, cranes, rope and rigging operations, or the removal of trees over six inches D.B.H.

43. COMMENT: The commenter asked how regulated "fertilization" for LTEs differs from what is disallowed for LTCOs.

RESPONSE: The two-tiered system was established by the Act signed January 16, 2010. The Act at N.J.S.A. 45:15C-12 and the rules at N.J.A.C. 7:3A-1.4 define the services that may be performed by LTEs and LTCOs.

44. COMMENT: The commenter asked how regulated "tree establishment" for LTEs differs from exempted "planting" and "transplanting" for ground-based landscape maintenance activities.

RESPONSE: Tree expert services and tree care operator services are regulated by the Board and set forth in the Act at N.J.S.A. 45:15C-12. Ground-based landscape maintenance activities are exempted by the Act and defined by the Act at N.J.S.A. 45:15C-31.d and the rules at N.J.A.C. 7:3A-1.4 as operations that do not involve climbing, the use of aerial lifts, cranes, rope and rigging operations, or the removal of trees over six inches D.B.H.

45. COMMENT: The commenter asked how regulated "tree establishment" for LTEs differs from what is disallowed by LTCOs.

RESPONSE: The two-tiered system was established by the Act signed into law on January 16, 2010. The Act at N.J.S.A. 45:15C-12 and the rules at N.J.A.C. 7:3A-1.4 define the services that may be performed by LTEs and LTCOs.

46. COMMENT: The commenter asked how regulated "diagnosis and treatment of tree problems or diseases" for LTEs differs from exempted

“insect and disease control” for ground-based landscape maintenance activities.

RESPONSE: Tree expert services and tree care operator services are regulated by the Board and set forth in the Act at N.J.S.A. 45:15C-12. Ground-based landscape maintenance activities are exempted by the Act and defined by the Act at N.J.S.A. 45:15C-31.d and the rules at N.J.A.C. 7:3A-1.4 as operations that do not involve climbing, the use of aerial lifts, cranes, rope and rigging operations, or the removal of trees over six inches D.B.H.

47. COMMENT: The commenter asked how regulated “diagnosis and treatment of tree problems or diseases” for LTEs differs from what is disallowed by LTCOs.

RESPONSE: The two-tiered system was established by the Act signed into law on January 16, 2010. The Act at N.J.S.A. 45:15C-12 and the rules at N.J.A.C. 7:3A-1.4 define the services that may be performed by LTEs and LTCOs.

48. COMMENT: The commenter asked what other credentials have been considered for reciprocity and inquired about the process of determining reciprocity.

RESPONSE: No licenses or certifications have been considered at this time. The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness.

49. COMMENT: The commenter stated that the Board’s website does not include reference to the safety standards licensees are required to follow and inquired how the Board will ensure that candidates become familiar with these standards.

RESPONSE: Once the rules are promulgated, the Board will develop an examination or designate examinations to evaluate whether applicants meet all requirements set forth in the Act to become licensed. Reference materials will be updated as necessary on the Board’s website.

50. COMMENT: The commenter asked the identity of the Board’s Testing Subcommittee referenced in the Board’s March 17, 2015, minutes.

RESPONSE: The CTE Board’s March 17, 2015, minutes do not pertain to the rulemaking.

51. COMMENT: The commenter asked what steps are taken to ensure that licensing exams for LTEs or LTCOs are developed in a fair and unbiased manner.

RESPONSE: As required under N.J.S.A. 45:15C-16, the Board shall develop an examination or designate examinations to evaluate the knowledge, ability, and fitness of applicants to perform as tree experts or tree care operators. The Board will develop the examinations based upon input from industry professionals with decades of experience, and will review the examinations regularly to ensure the questions are up-to-date with current industry standards and practices. The Board is discussing the use of third-party vendors to assist in ensuring the validity and reliability of the licensing examinations.

52. COMMENT: The commenter asked what steps are taken to ensure that licensing exams and test questions are kept secure in light of today’s digital security risks.

RESPONSE: The comment does not relate to the rules; however, the Board keeps the exam questions confidential, and going forward will discuss digital security risks as needed.

Ted Szczawinski

53. COMMENT: The commenter expressed concern that the proposed two-tiered licensing system will confuse consumers, who will not know which type of licensee can perform which services. The commenter also believes exempting government employees and contractors will put trees on public property in peril.

RESPONSE: The Board cannot change the two-tiered system, as it was established by the Act as signed into law on January 16, 2010. The Board hopes to streamline the program to make it as clear and easy as possible for consumers and providers. The Act, at N.J.S.A. 45:15C-31, also exempts government employees and utility contractors from the Act.

54. COMMENT: The commenter expressed concern that the Board’s past several examinations have not focused on safety and the ANSI standards, despite the Act being passed in 2010.

RESPONSE: Once the rules are promulgated, the Board will develop an examination or designate examinations to evaluate whether applicants meet all requirements for licensure. Included in these examinations will be safety content and standards compliance. Reference materials will be updated as necessary on the Board’s website.

55. COMMENT: The commenter expressed concern that to be effective in preventing injuries and fatalities, the rules must provide for onsite enforcement.

RESPONSE: The Act and N.J.A.C. 7:3A-9 provide that the Board can conduct such work site inspections as may be necessary to enforce the Act.

56. COMMENT: The commenter stated that the Board’s website and e-mail notice of the rule proposal first stated that comments were to be received on August 26, 2016, and then it changed to August 19, 2016.

RESPONSE: The Board obtained and posted a copy of the proposed rules from the Office of Administrative Law on June 20, 2016. This was provided on the Board’s website as the “unofficial” copy of the rules and contained the deadline of August 19, 2016. The Board was notified by the Office of Administrative Law on June 24, 2016, that the comment deadline period for the rules was to be extended one week to August 26, 2016. The Board then posted the date of the new comment period deadline on its home page in red above the existing link for the “unofficial” copy of the rules. The Board considered and responded to all comments received by the August 26, 2016, deadline.

57. COMMENT: The commenter expressed concern that if a small business employing arborists is suspended by the Board from operating until it completes a comprehensive safety policy that the Board deems satisfactory it will suffer negative economic impacts due to the need to utilize professional services and interrupt operations until the policy is approved.

RESPONSE: The Board cannot change the safety program requirement because it is required by the Act. The Board, through the rules, permits a tree care company to develop its own safety and health program that can be tailored to fit the size of the company and to blend with its unique operation and culture. It is hoped that the cost savings of operating a safe tree care business will outweigh any costs associated with complying with the Act’s safety requirements. If a tree care company needs assistance, outside organizations, such as OSHA, offer free programs and insurance companies offer loss prevention programs. Modestly priced templates of safety programs are available to tree care companies to help satisfy this requirement.

58. COMMENT: The commenter asked whether Board members are qualified and/or have the time to evaluate a comprehensive safety policy for compliance with the standards set forth at N.J.A.C. 7:3A-8.1, and wondered whether Board members would be paid for this service.

RESPONSE: The Board members have been appointed to oversee and implement the Act, including the review, evaluation, and determination of comprehensive safety policies, as well as to process the submissions of safety policy documents. Board members must serve without compensation. However, any fees and penalties collected pursuant to the Act can be authorized by the Board for the purpose of carrying out the provisions of the Act.

Peter Gerstenberger, TCIA

59. COMMENT: The commenter expressed support for the proposed rules on behalf of the Tree Care Industry Association (TCIA).

RESPONSE: The Board acknowledges the commenter’s support for the proposed rules.

60. COMMENT: The commenter expressed concern that the rules do not provide for sufficient enforcement and without random worksite inspections, the rules will be ineffective to prevent injuries and fatalities. The commenter asked that the Board provide more information about enforcement procedures in the future.

RESPONSE: As authorized by the Act and provided for by N.J.A.C. 7:3A-9, the Board will conduct such work site inspections as may be necessary to enforce the Act. The Board intends to enforce the provisions of the Act.

61. COMMENT: The commenter expressed concern that the term used in the proposed rules, “Model Tree Safety Program Checklist,” is similar to TCIA’s “Model Safety Program Checklist,” which is part of a

copyrighted program, and suggested the Board change its defined term to “Model Tree Safety Training Checklist.”

RESPONSE: The Board appreciates the commenters concern and has changed the name in the rules to “Model Tree Safety Training Checklist” upon adoption.

62. COMMENT: The commenter recommends that the Board offer reciprocal tree expert or tree care operator licensure to one designated employee of a TCIA-accredited company who otherwise meets the requirements of the rules, without the employee having to take the licensure examination.

RESPONSE: This situation will be handled through an application to the Board for reciprocity. The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness.

63. COMMENT: The commenter recommended that the Board accept either ISA-Certified Arborist CEU transcripts or TCIA-Certified Treecare Safety Professional (CTSP) transcripts in lieu of more detailed documentation to obtain CEU approval from the Board.

RESPONSE: The Board will consider ISA CEU transcripts or TCIA-CTSP transcripts during the audit process. Credits issued by the above organizations will be accepted by the Board provided the programs meet the criteria set forth at N.J.A.C. 7:3A-7.2(a).

64. COMMENT: The commenter noted that the citation to the Dictionary of Standard Definitions for the Green Industry at N.J.A.C. 7:3A-8.1(a)1 is incorrect and also pointed out that the citation to the ANSI standards should be revised.

RESPONSE: The Board appreciates this comment. With regard to the Dictionary of Standard Definitions for the Green Industry, the Board has allowed for amendments and supplements in the rule text. The rule includes the language “incorporated by reference as amended and supplemented” to reflect this. The Board has changed the citation to the ANSI A300 standards in accordance with this comment.

Kevin Martlage, ISA

65. COMMENT: The commenter asked how the Board will ensure the examinations are developed in a fair and unbiased manner.

RESPONSE: The Board will develop the examinations based upon input from industry professionals with decades of experience and will review the examinations regularly to ensure the questions are up-to-date with current industry standards and practices. The Board is discussing the use of third-party vendors to assist in ensuring the validity and reliability of the licensing examinations.

66. COMMENT: The commenter asked whether there will be an audit of the Board’s work regarding exam development and performance.

RESPONSE: There is no “audit” process provided for in the Act. The Board will develop the examinations based upon input from industry professionals with decades of experience and will review the examinations regularly to ensure the questions are up-to-date with current industry standards and practices. The Board is discussing the use of third-party vendors to assist in ensuring the validity and reliability of the licensing examinations. Further, in an effort to assuage any feelings that the current testing instruments are in any way unfair or biased, the Board will be carefully analyzing other industry voluntary certifications and mandatory licenses to see if there are opportunities for reciprocity. Though most other tests are more expensive, ideally, there will be other options for candidates to use to demonstrate substantially equivalent knowledge and experience without sitting for the Board’s examination.

67. COMMENT: The commenter asked the basis for exam development for the licensing exams and the process for ensuring the exams remain relevant to the industry.

RESPONSE: The current exams were developed by industry professionals and questions are pulled from banks based on weighted percentages in several different domains as voted on by the Board. The Board will develop the examinations based upon input from industry professionals with decades of experience, and will review the examinations regularly to ensure the questions are up-to-date with current industry standards and practices. The Board is discussing the use of third-party vendors to assist in ensuring the validity and reliability of the licensing examinations.

68. COMMENT: The commenter asked whether there is an accepted standard the licensing exams will follow, requiring a job task analysis for industry acceptance.

RESPONSE: The Board will develop the examinations based upon input from industry professionals with decades of experience and will review the examinations regularly to ensure the questions are up-to-date with current industry standards and practices. The Board is discussing the use of third-party vendors to assist in ensuring the validity and reliability of the licensing examinations.

69. COMMENT: The commenter asked how the passing score is determined for the licensing examination.

RESPONSE: The licensure examination for LTEs consists of a written section and a field section. An overall grade of 70 percent when the candidate’s grades on the written and field sections are averaged is required to pass the examination. The licensure examination for LTCOs consists of a written section only. A grade of 70 percent is required to pass the written examination. The cut score for the Board’s former voluntary certification was based on Board discussion and approval. Moving forward, the Board is looking for third-party contractors to assist in refining the cut-score based on the latest standards.

70. COMMENT: The commenter asked which licenses or certifications are considered equivalent.

RESPONSE: No licenses or certifications have been submitted for consideration for reciprocity at this time. The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness.

71. COMMENT: The commenter asked how another credentialing body obtains reciprocity status.

RESPONSE: Once the proposed rules are promulgated, the Board will then accept official applications for reciprocity. The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis. A committee of the Board is responsible for evaluating other credentials and licenses for reciprocity. This committee then will present their findings to the Board for a full Board vote.

72. COMMENT: The commenter asked how other programs could receive reciprocity, and whether there would be follow-up from the Board to explain why the program does or does not qualify for reciprocity.

RESPONSE: Once the proposed rules are promulgated, there will be a form available on the Board’s website www.njtreeexperts.org to apply for reciprocity. All industry organizations and lawful regulatory bodies are encouraged to present their testing instruments and supporting documentation to demonstrate to the Board the equivalency of their credentials or licenses. The Board will remain in communication with applicants after the determination has been made.

73. COMMENT: The commenter asked whether applicable ISA credentials, such as the Certified Tree Worker™, Certified Arborist™, Board Certified Master Arborist™ credentials will be accepted for reciprocity.

RESPONSE: ISA credential holders cannot be assured their credentials will be considered reciprocal as of the effective date of this rulemaking. Once the proposed rules are promulgated, the Board will then accept official applications for reciprocity. The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis. A committee of the Board is responsible for evaluating other credentials and licenses for reciprocity. This committee then will present their findings to the Board for a full Board vote. The Board hopes ISA will be willing to work with the Board in providing testing instruments and backup documentation to support their credentials and credential holders.

74. COMMENT: The commenter asked about the process of obtaining reciprocity.

RESPONSE: Once the proposed rules are promulgated, the Board will then accept official applications for reciprocity. The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis. A committee of the Board is responsible for evaluating other credentials and licenses for reciprocity. This committee will then present their findings to the Board for a full Board vote.

75. COMMENT: The commenter asked how the rules will impact tree care companies from surrounding states who may do business in New Jersey.

RESPONSE: The rules affect all companies doing business in New Jersey the same way, whether they operate from inside or outside the State.

76. COMMENT: The commenter asked whether companies from other states can register to do business in New Jersey.

RESPONSE: Every business engaged in providing tree expert or tree care operator services in New Jersey shall register biennially with the Board.

77. COMMENT: The commenter asked whether companies from other states must have a business office located in New Jersey to do business in New Jersey.

RESPONSE: An out-of-State tree care company that does not have an office located in New Jersey can do business in New Jersey, as long as it registers with the Board and complies with the Act and the rules.

78. COMMENT: The commenter asked whether individuals with existing credentials, such as ISA certification, are required to pay a \$75.00 reciprocity application fee plus the \$75.00 license fee, or if there is discount for holding multiple credentials.

RESPONSE: Under the Act, applicants are required to pay the fees set forth in the rules. There is no discount for holding multiple credentials.

79. COMMENT: The commenter asked which organizations are approved to offer CEUs and inquired about the process of CEU approval.

RESPONSE: Once the rules are promulgated, there will be a form on the Board's website to have CEUs approved by the Board in advance. CEUs will be accepted by the Board provided the programs meet the criteria set forth at N.J.A.C. 7:3A-7.2(a). It is anticipated that CEUs approved by the ISA and TCIA will be approved by the Board.

80. COMMENT: The commenter asked which practices and theories of arboriculture are being referenced in the rules on CEU criteria.

RESPONSE: Those practices and theories relevant to services to be provided by licensees.

Forest***@gmail.com (e-mail redacted)**

81. COMMENT: The commenter stated that the Board should respond to ISA's comments and asked that the Nebraska Arborist Association be considered for reciprocity.

RESPONSE: The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness. ISA's comments are addressed in this notice of adoption.

Pep*@aol.com (e-mail redacted)**

82. COMMENT: The commenter expressed that the ISA Certified Arborists credential should be accepted by the Board.

RESPONSE: The Board will review each application for reciprocity under N.J.A.C. 7:3A-3.9 on a case-by-case basis and will maintain a list of those credentials for which reciprocity has been granted to ensure consistency and fairness. ISA's comments are addressed in this notice of adoption.

mvbl***@yahoo.com (e-mail redacted)**

83. COMMENT: The commenter stated that after reviewing the rules, it seems a business owner needs to be his own attorney and expressed hope that the rules are in the best interest of the State.

RESPONSE: In proposing these rules, the Board strived to execute the intent of the Act without making the requirements on businesses unnecessarily burdensome.

St*@shreintreecare.com (e-mail redacted)**

84. COMMENT: The commenter expressed concern that the rules will be poorly enforced and will not prevent fly-by-night operations because consumers will still want to hire these companies due to their lower rates for services.

RESPONSE: This comment pertains to the Act, which was enacted in 2010, not the current rule proposal. However, the intent of the legislation is not to limit competition or the free market, but rather to protect consumers and industry workers. The Division of Consumer Affairs in

the Department of Law and Public Safety has been a strong supporter of the legislation and reports that the largest number of complaints the Division receives are about fly-by-night tree care companies. The New Jersey Department of Health has documented 25 fatalities since the law was signed in January 2010: 13 tree care workers and 12 landscapers performing tree care services.

J@ddcinc.com (e-mail redacted)**

85. COMMENT: The commenter asked whether tree care workers and businesses from other states will be allowed to respond to an emergency, such as Hurricane Sandy without having to become licensed and/or register with the Board.

RESPONSE: If a state of emergency is declared by the Governor, tree care companies from other states and the Board must abide by the terms of any executive order issued by the Governor.

Marc Kiefer

86. COMMENT: The commenter expressed concern that the Board's licensing program is duplicative of the ISA's credentials.

RESPONSE: This comment pertains to the Act, which was enacted in 2010, not the current rulemaking. This legislation provides the only licensing program available for those providing tree care services in New Jersey. The ISA is not a licensing body.

Kjpa***@verizon.net (e-mail redacted)**

87. COMMENT: The commenter expressed concern that without a licensee on each job site, the Board will not be able to ensure quality and safety.

RESPONSE: This comment pertains to the Act, which was enacted in 2010, not the current rulemaking. The Act requires at N.J.S.A. 45:15C-22.f that at least one employee be licensed as an LTE or LTCO at the principal office and at each branch office of the tree care company. N.J.S.A. 45:15C-23 requires every tree care company to provide training for its employees on a regular basis and adhere to approved industry standards for safety and practice. N.J.S.A. 45:15C-15.j and N.J.A.C. 7:3A-9 provide that the Board may conduct such worksite inspections as may be necessary to enforce the Act.

Summary of Agency-Initiated Changes:

1. The Board changed N.J.A.C. 7:3A-7.2(a) to state that not all continuing education credits must be approved in advance by the Board. The Board removed the qualifying phrase, "Provided that the activity is approved in advance by the Board" before listing the types of activities for which credits may be issued. The Board also changed the cross-reference in N.J.A.C. 7:3A-7.2(b) to more specifically refer to N.J.A.C. 7:3A-7.5(a), which is the subsection that sets forth how certain activities may be approved by the Board for continuing education credits at the request of a licensee. This change better demonstrates that licensees may obtain credits by participating in pre-approved activities or by requesting and receiving Board approval for a specific activity that has not been pre-approved. The intent of the rule remains the same.

2. N.J.A.C. 7:4A-10.1(k) contained a typographical error, which stated that appeals from Board action should be taken in the Superior Court of the United States, when it should have provided that appeals should be taken in the Superior Court of the State of New Jersey.

3. The Board changed N.J.A.C. 7:3A-2.13(e) to correct the cross-reference from "(c) above" to "(d) above."

4. The Board changed N.J.A.C. 7:3A-4.1(j) to make the language more clearly convey that a candidate who takes the previously failed section of the licensure examination a second time but does not score an average combined score of 70 percent with the previously passed section of the exam shall be required to take and pass both the written and field sections at the next examination for which he or she registers. This was the intent of the initial language, but the changed language is clearer.

5. Throughout the chapter, the Board made minor typographical and grammatical corrections.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

A Federal standards analysis is not required because the Federal regulations contain no comparable licensure requirement.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER 3A
BOARD OF TREE EXPERTS

SUBCHAPTER 1. GENERAL PROVISIONS

7:3A-1.1 Scope and authority

(a) Unless otherwise provided by statute, this chapter shall constitute the rules of the Tree Expert and Tree Care Operator Licensing Act, N.J.S.A. 45:15C-11 et seq. (the Act) and shall govern the licensing of tree experts and tree care operators and the registration of businesses engaging in tree care services. The rules are promulgated pursuant to the Act.

(b) The provisions of this chapter do not apply to:

1. Any public utility or any employee of a public utility while engaged in the actual performance of his or her duties as an employee;

2. Any employer under contract with a public utility who is engaged in tree trimming or any other utility vegetation management practice for purpose of line clearance, or any employee of the employer while engaged in the actual performance of duties in regard to tree trimming or other utility vegetation management practice or for the installation of underground facilities or associated construction;

3. Any forestry activities that are conducted under the forest management and stewardship programs approved by the State Forester, provided that tree climbing is not performed, nor are aerial lifts, cranes, or rope and rigging operations;

4. Landscape construction activities, including those performed by, or under the direction of, a landscape architect, or ground based landscape maintenance activities such as pruning, fertilization, insect and disease control, planting, transplanting, and all other forms of ground based landscape maintenance, in compliance with the sections of the American National Standards Institute practice standards set forth by the Board by rule, with applicable safety standards and regulations promulgated by the Federal Occupational Safety and Health Administration, and with any pesticide regulations promulgated by the Department of Environmental Protection. For the purposes of this paragraph, ground based landscape maintenance means operations that do not involve climbing, the use of aerial lifts, cranes, rope, and rigging operations, or the removal of trees over six inches diameter at breast height;

5. Any person or employer that does not offer tree care services for hire;

6. Any trees being removed pursuant to an approved site plan or subdivision approval, provided that the tree removal activities are performed in compliance with the sections of the American National Standards Institute practice standards set forth by the Board by rule, with applicable safety standards and regulations promulgated by the Federal Occupational Safety and Health Administration, and with applicable safety standards of the American National Standards Institute as designated by the Board by rule;

7. Any employee of the State or any of its political subdivisions while engaged in the actual performance of his or her duties as an employee; and

8. Any individual engaging only in the application of pesticides pursuant to a valid pesticide applicator license recognized in this State, and who does not perform any other tree expert services.

7:3A-1.2 Purpose

The purpose of this chapter is to govern the Board's licensing of individuals as Licensed Tree Experts and Licensed Tree Care Operators and registration of businesses offering tree care services for hire in the State of New Jersey, and to regulate the safety and practice standards of individuals and businesses offering tree care services for hire within the State of New Jersey.

7:3A-*[1.4]* *1.3* Definitions

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

"Act" means the Tree Expert and Tree Care Operator Licensing Act, N.J.S.A. 45:15C-11 et seq.

"Advertising" or "advertisement" means the description or presentation of a product or service in some medium or communication to induce the public to support, purchase, or enter into an agreement to utilize tree care services, including, but not limited to, telephone directory listings, letterhead, business cards, pamphlets, flyers, lettering on vehicles, television and radio advertisements, e-mail and internet websites, newspapers, magazines, billboards, signs, telephone for the purpose of solicitation, and any other written, oral, verbal, visual, or other media.

"ANSI" means the American National Standards Institute.

"Applicant" means an individual who has submitted an application to take the examination for licensure.

"Arboriculture" means the art, science, technology, and business of utility, commercial, and municipal tree care.

"Board" or "Board of Tree Experts" means the Board established by the Department pursuant to N.J.S.A. 45:15C-13.

"Branch office" means any location of a business, other than its principal office, that holds its own mailing address and from which the business offers tree care services for hire in the State of New Jersey, including the location of any subsidiary company that is under the same ownership as the principal office.

"Business" means any corporation, company, partnership, firm, sole practitioner or association that either wholly, or in part, holds itself out for hire to perform tree care services in the State of New Jersey.

"Candidate" means an individual who has submitted an application to take the examination for licensure, which has been approved by the Board.

"Commissioner" means the Commissioner of the Department.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits, or other legal relations of specific parties are required by Constitutional right or by statute to be determined by the Board by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for a hearing in the Office of Administrative Law pursuant to N.J.S.A. 52:14B-2. The contested case hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits, or other legal relations of specific parties over which there exist disputed questions of fact, law, or disposition relating to past, current, or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

"Continuing education" means professional development activities whose purpose is academic and professional instruction to advance a tree expert or tree care operator's professional knowledge or skill.

"Continuing education credit" means a unit that indicates a quantity of continuing education undertaken by a licensee. One continuing education credit shall be equivalent to one hour of instruction.

"Department" means the Department of Environmental Protection.

"Duly authorized representative" means, with respect to the Board of Tree Experts, an individual or company retained by the Board to perform administrative, investigative, or testing functions.

"Employee" means an individual who works full-time or part-time in the service of a person or business entity providing tree care services in New Jersey under an express or implied contract of hire for a specific wage or salary and under which the employer has the right to control the details of work performance.

"Employer" means an individual or business engaged in providing tree care services for hire in the State of New Jersey, which employs the services of others and pays their wages or salaries.

"Examination" or "licensure examination" means an examination to evaluate the knowledge and competence of a candidate to perform as a licensed tree expert or licensed tree care operator.

“Good moral character” means the possession of honesty and truthfulness and a commitment to the canons of professional ethics and standards of conduct set forth at N.J.A.C. 7:3A-8.2(a).

“Good standing with the Board” means that a licensed individual or registered business is current with all required fees and not currently the subject of any disciplinary action by the Board, meaning a currently suspended or revoked license or business registration, and does not have any outstanding penalty payments.

“Ground-based landscape maintenance” means operations that do not involve climbing, the use of aerial lifts, cranes, rope, and rigging operations, or the removal of trees over six inches diameter at breast height.

“License” means a document issued to an individual by the Board of Tree Experts indicating that the Board has determined that the individual is licensed and qualified to perform or supervise the provision, as applicable, of LTE or LTCO services for hire in New Jersey.

“Licensed tree care operator” or “LTCO” means an individual licensed by the Board to provide or supervise the provision of tree care operator services for hire in New Jersey.

“Licensed tree expert” or “LTE” means an individual licensed by the Board to provide or supervise the provision of tree expert services for hire in New Jersey.

“Licensee” means an individual who ***has*** been licensed by the Board as a licensed tree expert or licensed tree care operator.

“Model Tree Safety ***[Program]* *Training*** Checklist” means a document filed annually with the Board identifying the type of safety training the business provides for its employees.

“NJTC” means a New Jersey tree company.

“Principal office” means the primary location from which a business offering tree care services for hire in the State of New Jersey operates.

“Quarantine” means a restraint upon the activities of persons or the transport of goods designed to prevent the spread of plant disease or pests.

“Registered business” means, for the purpose of this chapter, any business that provides tree care services for hire within the State of New Jersey and is registered with the Board pursuant to this chapter.

“Registration” means a document issued by the Board pursuant to N.J.S.A. 45:15C-11 et seq. which must be obtained by a business as a condition precedent to the business performing tree care services for hire in the State of New Jersey.

“Revocation” means the cancellation or annulment by the Board of an individual’s license or a business’s registration.

“Suspension” means a temporary termination by the Board of an individual’s license or business registration.

“Tree care operator services” means and includes tree pruning, repairing, brush cutting or removal, tree removal, and stump grinding or removal.

“Tree care services” means tree care operator services and tree expert services as established by N.J.S.A. 45:15C-11 et seq.

“Tree expert services” means and includes tree pruning, repairing, brush cutting or removal, tree removal, stump grinding or removal, tree establishment, fertilization, cabling and bracing, lightning protection, consulting, diagnosis, and treatment of tree problems or diseases, tree management during site planning and development, tree assessment and risk management, and application of pesticides or any other form of tree maintenance.

SUBCHAPTER 2. BUSINESS REGISTRATION

7:3A-2.1 Business registration required

(a) Every business engaged in providing tree care services for hire in New Jersey which does not fall under the exemptions set forth at N.J.A.C. 7:3A-1.1(b) shall register biennially with the Board as a condition of doing business in New Jersey. This shall include a business that provides tree care services in New Jersey, even though its principal office and/or some or all of its branch offices are located out-of-State.

(b) Only one registration per business is required; if a business includes branch offices, those branch offices need not separately register with the Board.

7:3A-2.2 General duty to the public

(a) Every registered business engaged in providing tree care services for hire in New Jersey shall ensure that all tree expert services or tree care operator services it performs are done in accordance with this chapter and the canons of professional ethics and standards of conduct at N.J.A.C. 7:3A-8.3(a).

(b) Every registered business engaged in providing tree care services for hire in New Jersey shall assign at least one licensee, who may be the employer or an employee engaged in the performance of or supervision of employees who provide the tree care services, to any office location from which tree care services are provided in New Jersey.

7:3A-2.3 At least one licensed employee required

(a) Each registered ***[business]* *business’s*** principal office and any branch office providing tree care services for hire in New Jersey shall have at least one licensee as an employee.

(b) If the registered business engages in tree expert services, the licensee must be a licensed tree expert. If the business only engages in tree care operator services, the licensee may be a licensed tree expert or a licensed tree care operator.

7:3A-2.4 Business registration

(a) No business shall advertise, enter into, or engage in the provision of tree care services for hire in New Jersey unless the business has first registered with the Board, and until such business has hired at least one licensee as an employee at its principal office and at any branch office(s) providing tree care services in New Jersey. A single licensee cannot be assigned to more than one business location.

(b) Every business engaged in providing tree care services for hire in New Jersey shall submit a completed initial business registration form and the required documentation as set forth in N.J.A.C. 7:3A-2.5 by ***[(60 days of the effective date of this chapter)]* *June 16, 2017***.

(c) Every business engaged in providing tree care services for hire in New Jersey shall have until ***[(360 days from the effective date of this chapter)]* *April 12, 2018***, or until the Board has administered and certified the results of the licensure examination four times, whichever is later, to comply with the requirement to have at least one licensee as an employee at each principal and branch office providing tree care services in New Jersey as set forth at N.J.A.C. 7:3A-2.2.

(d) Except for an initial business registration as set forth in N.J.A.C. 7:3A-2.5(b), a business registration shall be valid for a period of two years from the date of its issuance.

7:3A-2.5 Initial business registration documentation and procedures

(a) Businesses shall apply for initial registration on forms that are available at the Board’s offices and on the Board’s website at www.njtreeexperts.org. In addition to a completed initial registration application form, the application shall include the following:

1. Proof that the business carries at least the minimum required liability insurance, as set forth at N.J.A.C. 7:3A-2.11(a);

2. Proof that the business satisfies the applicable worker’s compensation insurance obligation, as set forth at N.J.A.C. 7:3A-2.11(b);

3. The business biennial registration fee set forth at N.J.A.C. 7:3A-6.1(a); and

4. Signed certification stating that the business acknowledges that it has the responsibility to ensure that at least one employee assigned to the ***[business]* *business’s*** principal office and to each branch office is a licensed tree expert or licensed tree care operator. The certification shall be provided on a certification form that is available at the Board’s office and on the Board’s website at www.njtreeexperts.org. The certification form shall establish that the business is obligated to fulfill this employment requirement by the date that is the later of the following:

i. ***[(360 days from promulgation of this chapter)]* *April 12, 2018***;

ii. The date upon which the Board completes the administration and certified the results of the licensure examination four times; or

iii. The date that is 60 days after the business submits its initial registration application.

(b) An initial business registration shall be valid until the end of the calendar year following its issuance.

7:3A-2.6 Board review of business registration applications

(a) The Board shall review each initial business registration application submitted and determine whether the business has provided all the items required at N.J.A.C. 7:3A-2.5. If the Board determines that the business has met the requirements, it will issue a registration certificate to the business.

(b) If the Board determines that the business does not meet the requirements, the Board shall deny the application and notify the business of its denial in writing. Denial of its application shall not prevent a business from remedying the application's deficiencies and resubmitting the application.

(c) If the Board determines that the business meets the requirements, the Board shall assign the business an NJTC number and issue an initial registration certificate to the business that specifies the business's assigned NJTC number.

(d) A business shall conspicuously display the registration certificate for public view in its principal office. If the business has one or more branch offices providing tree care services in New Jersey, the business shall conspicuously display a duplicate registration certificate, issued by the Board, at each branch office.

7:3A-2.7 Business registration biennial renewal

(a) Prior to the expiration of the initial registration period and to each registration period thereafter, to continue providing tree care services for hire in New Jersey, the registered business shall apply for renewal of its registration.

(b) A business shall apply for renewal of its registration on a business registration biennial renewal application form which is available at the Board's office and on the Board's website at www.njtreeexperts.org. In addition to a completed business registration biennial renewal application form, the application shall include the following:

1. Proof that the business continues to carry at least the minimum required liability insurance as set forth at N.J.A.C. 7:3A-2.11(a);

2. Proof that the business continues to satisfy the applicable worker's compensation insurance obligation, as set forth at N.J.A.C. 7:3A-2.11(b);

3. The business biennial registration fee set forth at N.J.A.C. 7:3A-6.1(a); and

4. Signed certification stating that at least one employee assigned to the *[business']* ***business's*** principal office and to each branch office *[who]* is a licensed tree expert or licensed tree care operator in good standing with the Board. The certification shall be provided on a certification form that is available at the Board's office and on the Board's website at www.njtreeexperts.org.

(c) The business shall submit the business registration biennial renewal application to the Board's office prior to the expiration of the current registration period.

(d) If a business does not apply for renewal of its registration prior to the expiration of the current registration period, the business may renew the license within 30 days of its prior registration's expiration date by submitting a completed business registration biennial registration application form along with both the business biennial registration fee and the business registration late fee set forth in N.J.A.C. 7:3A-6.1(a). During this 30-day period, the *[business']* ***business's*** prior registration shall remain valid, and the business shall not be deemed in violation of N.J.A.C. 7:3A-2.4(a).

(e) If the Board does not receive a completed business registration biennial renewal application form together with payment of the business biennial registration fee and late fee within 30 days after the expiration of the current registration period, the business's registration is automatically suspended. Any business engaged in providing tree care services when its business registration is suspended is in violation of N.J.A.C. 7:3A-2.4(a) and is subject to civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

(f) The Board is not responsible for providing notification to any business that its registration is about to expire.

7:3A-2.8 Change in status of registered business

(a) A registered business shall notify the Board in writing, within 30 days of the change, of any change to any information that is required to be provided on a registration form or a change of status or structure of the business. This shall include, but is not limited to:

1. The business altering or changing its name;
 2. The business opening or closing a principal office or branch office;
- or
3. The business creating a subsidiary company that provides tree care services for hire in the State of New Jersey.

7:3A-2.9 Licensees employed by registered businesses

(a) All licensees shall abide by industry standards for arboriculture and safety as set forth at N.J.A.C. 7:3A-8.1 when performing tree care services and/or when supervising or training other employees in the performance of tree care services.

(b) All licensees employed by a registered business shall be responsible for assisting the principal or branch office to which he or she is assigned in complying with the current accepted standards of practice and safety, as well as the canons of professional ethics and standards of conduct.

(c) The Board shall not hold a licensee responsible for tree care services that are carried out by the business at which the licensee is employed that *[has]* ***have*** not been performed in accordance with industry standards for arboriculture and safety if:

1. The licensee did not perform the work in question and is not the assigned supervisor of the employee who performed the work in question;

2. The licensee is not personally able to inspect or oversee work due to health issues, vacations or any other reasonable cause that prevents him or her from being at work; and

3. The licensee's supervisor or other person of higher rank within the business has superseded the direction or instructions given by the licensee and thereby caused the non-conformance with standards.

7:3A-2.10 Change of licensees employed by registered businesses

(a) A registered business shall notify the Board in writing if any of its licensees leave the employment of the business. Such notice shall be provided to the Board within three days of the last day the licensee is employed by the business.

(b) A business that has only one licensee assigned to its principal office or a branch office shall have 60 days from the last day the licensee was employed at or assigned to the office to assign another licensee and notify the Board in writing of the identity of the new licensee. During this 60-day transition period, the business registration shall remain valid and the business shall not be deemed in violation of N.J.A.C. 7:3A-2.4(a).

(c) Any business that fails to notify the Board of a change in employment of a licensee pursuant to (a) above and/or fails to hire or assign another licensee to an office and notify the Board within the 60-day transition period pursuant to (b) above shall be in violation of this chapter and is subject to suspension or revocation of its business registration and the assessment of civil administrative penalties pursuant to N.J.A.C. 7:3A-9.6(a).

7:3A-2.11 Insurance; general liability, worker's compensation

(a) A business engaged in providing tree care services for hire in New Jersey is required either to carry a minimum of \$1,000,000 of general liability insurance or submit to the Board a letter of credit in the amount of \$1,000,000 issued by a bank or lending institution licensed to do business in the State of New Jersey.

(b) A business engaged in providing tree care services for hire in New Jersey is required to either secure and maintain worker's compensation insurance coverage for its employees or be approved for self-insurance by the New Jersey Compensation Rating and Inspection Bureau, in conformance with the provisions of N.J.S.A. 34:15-1 et seq. Businesses offering tree care services shall have worker's compensation insurance based upon the applicable New Jersey Compensation Rating and Inspection Bureau code.

7:3A-2.12 Recordkeeping

(a) A registered business shall keep on file for at least four years, documentation of its liability insurance coverage and worker's compensation insurance coverage, if applicable.

(b) A registered business shall keep on file for at least four years, a copy of the letter of credit if a letter of credit is substituted for the liability insurance requirement as set forth at N.J.A.C. 7:3A-2.11(a).

(c) A registered business shall keep on file documentation of employee safety training for each employee for at least as long as the individual is an employee of the business.

(d) All records and information required to be kept pursuant to this section shall be provided to the Board within 10 days of the Board's written request.

7:3A-2.13 Registered business safety policies

(a) A registered business shall develop, establish, and/or adopt from other industry sources a written comprehensive safety policy within 90 days of initially registering with the Board. The policy shall be given to each new employee and be available to every employee of the registered business, and the registered business must comply with the policy. Guidelines for developing a comprehensive safety policy are available from the Board and are posted on the Board's website at www.njtreeexperts.org.

(b) The Board may request from a business a copy of its comprehensive safety policy for review.

(c) The registration of a business that fails to develop and establish a written comprehensive safety policy within the first three months of registering the business with the Board may be suspended until such time as the business establishes its comprehensive safety policy.

(d) The Board may invalidate a business's comprehensive safety policy if it determines that it fails, in its scope or any of its standards, to meet the industry standards for arboriculture and safety set forth at N.J.A.C. 7:3A-8.1. The business shall have three months to revise a comprehensive safety policy invalidated by the Board.

(e) Following invalidation of a business's comprehensive safety policy under ***[(c)]*** ***(d)*** above, the business's registration may be suspended if it fails to establish a revised comprehensive safety policy within three months or if the Board invalidates the revised policy because it fails, in its scope or any of its standards, to meet the industry standards for arboriculture and safety set forth at N.J.A.C. 7:3A-8.1. In such case, the business's registration shall continue to be suspended until the business again revises the policy, submits the revised policy to the Board for review, and the Board finds that the revised policy meets in full the industry standards for arboriculture and safety set forth at N.J.A.C. 7:3A-8.1.

7:3A-2.14 Mandatory employee safety training

(a) A registered business shall provide instruction and training for its employees per the requirements of ANSI Z133-2012 Safety Requirements for Arboricultural Operations, incorporated herein by reference, as amended and supplemented, which includes the applicable OSHA, Federal Motor Carrier Safety Administration, and Federal Highway Administration regulations.

(b) A registered business shall, at least annually, provide instruction and training on its comprehensive safety policy, including the job briefing policy and procedures, and the personal protective equipment policy. The comprehensive safety policy shall conform to ANSI Z133 Safety Requirements for Arboricultural Operations, which is incorporated herein by reference, as amended and supplemented, which includes the applicable OSHA, Federal Motor Carrier Safety Administration, and Federal Highway Administration regulations.

(c) A registered business shall submit to the Board by January 31st of the year following completion, documentation of its employee safety training, including the Model Tree Safety ***[Program]* *Training*** Checklist Form as set forth at N.J.A.C. 7:3A-2.15.

7:3A-2.15 Employee safety training documentation

(a) A registered business shall submit documentation of its safety training completed during the preceding year to the Board by January 31st of the following year. Employee safety training may be done either in-house or by an outside company. If an outside company is used, the registered business shall obtain and submit documentation of its safety training from the outside company by the January 31st deadline.

(b) Documentation for employee safety training shall consist of the following:

1. Employee attendance forms setting forth the names of individuals attending each training course;

2. Training course information forms setting forth the subject matter and format of each training course; and

3. The Model Tree Safety ***[Program]* *Training*** Checklist ***Form*** identifying the type of safety training the company provides for its employees.

(c) All forms for documentation of safety training shall be available on the Board website at www.njtreeexperts.org and at the Board office. Additional information describing the content of any training session may be submitted to the Board at the discretion of the registered business. The Board may, at its discretion, request more detailed information regarding the content of any training sessions.

7:3A-2.16 Duty to cooperate with quarantine restrictions

In addition to adhering to all applicable Federal, State, and local laws, if a quarantine area is established by an authorized State or Federal agency having jurisdiction within the State for the purpose of controlling, managing, or preventing the spread of an injurious or harmful insect or disease, registered businesses and licensees shall cooperate fully and adhere to all mandated restrictions. Any business or licensee that fails to cooperate or adhere to such restrictions shall be in violation of N.J.S.A. 45:15C-20 and this chapter and subject to penalties as set forth at N.J.A.C. 7:3A-9.6(a).

7:3A-2.17 Vehicle business registration number

(a) A registered business shall prominently display the NJTC number assigned to that business by the Board on every service vehicle operated by that business to perform tree care services in New Jersey.

(b) The NJTC number shall be in figures each measuring at least three inches high.

(c) The NJTC number shall be located on at least two sides of each vehicle.

(d) The NJTC number shall be in a color that contrasts with the background color of the vehicle.

SUBCHAPTER 3. LICENSING

7:3A-3.1 Tree expert initial license and renewals

(a) No individual shall represent himself or herself to the public as a licensed tree expert or use any title, designation, word(s), letter, or abbreviations tending to indicate that such individual is a licensed tree expert without obtaining licensure as a tree expert by the Board. Licenses shall be issued to individuals only; no license shall be issued in the name of a corporation, firm, partnership, or other form of business organization.

(b) An initial license issued under this section shall be valid from the date of issuance until the end of the calendar year in which it was issued.

(c) A license renewal issued under N.J.A.C. 7:3A-3.10 shall be valid for a period of two years.

(d) A licensee shall notify the Board in writing within 30 days of any change to the address on record with the Board.

(e) A licensee shall notify the Board in writing, e-mail or facsimile at the Board office within 30 days if he or she leaves the employment of a business.

7:3A-3.2 Licensed tree expert examination application

(a) To apply for licensure as a licensed tree expert, an individual shall complete an application form, available on the Board's website at www.njtreeexperts.org, and submit the application to the Board together with:

1. Documentation showing that the applicant is at least 18 years of age;

2. Three letters of reference from professionals in the field of arboriculture or in a closely related field, who have first-hand knowledge of the candidate's work and moral character, including, but not limited to, the candidate's adherence to the canons of professional ethics and standards of conduct set forth at N.J.A.C. 7:3A-8.2(a), by which the Board will determine whether a candidate meets the requirement of good moral character;

3. Documentation that the applicant has satisfied the following education and/or experience requirements:

i. A degree from a four-year college in forestry, arboriculture, ornamental horticulture, botany, nursery production, plant biology, plant

physiology, ecology, horticulture, environmental planning and design, landscape architecture, natural resources, or an alternative curriculum together with a request that the Board find the alternative curriculum sufficient to satisfy the educational requirement;

ii. Two years of college with passing grades in at least three college courses related to arboriculture, such as botany, soils, plant science, plant biology, plant pathology, plant physiology, entomology, forestry, natural resources, ecology, horticulture, plant propagation, landscape construction or dendrology, and evidence of continuous employment in the practice of arboriculture for at least three years preceding the date of application; or

iii. Continuous employment in the practice of arboriculture for five years immediately preceding the date of application for licensure; and

4. Payment of the license application fee.

(b) To qualify to take the licensure examination on any scheduled examination date, the applicant shall submit a completed application, together with the other accompanying items required pursuant to (a) above, at least 90 days prior to the examination date.

7:3A-3.3 Board review of Licensed Tree Expert Examination applications

(a) The Board shall administer the processing of the applications. The Board shall notify a candidate in writing when his or her application is received and is deemed complete.

(b) The Board shall review each complete application received and determine whether the application indicates that the candidate meets the requirements set forth at N.J.A.C. 7:3A-3.2(a) and, therefore, qualifies to take the licensed tree expert licensure examination.

(c) If the Board, based on its review of an application, determines that the candidate qualifies to take the licensure examination, the Board shall notify the candidate in writing of this determination. Upon receipt of the notification, the candidate shall register on the Board's website at www.njtreeexperts.org for a scheduled licensure examination and submit to the Board the applicable examination fee set forth at N.J.A.C. 7:3A-6.1(a).

(d) The candidate shall register for an examination and pay the applicable examination fee at least 30 days prior to the examination date.

(e) If the Board is unable to verify by at least 10 days before the examination date that a candidate has registered and paid the examination fee in full, the candidate will not be admitted to the examination.

(f) If the candidate takes the licensure examination and receives a passing grade determined in accordance with N.J.A.C. 7:7A-4.1(e), the Board shall notify the candidate in writing, after voting to certify the examination results, that he or she has qualified for licensure as a licensed tree expert and that upon payment of the license initial fee listed at N.J.A.C. 7:7A-6.1(a), the Board shall grant the candidate a license.

(g) Upon receipt of the license initial fee, the Board shall assign the candidate a license number and issue to the candidate a license certificate and a license card that display the license number and evidence his or her licensure as a licensed tree expert.

(h) If the Board, based on its review of an application completed pursuant to N.J.A.C. 7:3A-3.2(a), determines the candidate does not meet one or more of the requirements set forth at N.J.A.C. 7:3A-3.2(a), or that the application is incomplete, the Board shall deny the application and notify the candidate in writing of the reasons for the denial. A denial of an application shall not prevent a candidate from correcting an application's deficiency(ies) and resubmitting it within 30 days or subsequently submitting a new application and payment of a new license application fee.

(i) The Board's determination as to a candidate's qualification to take the licensed tree expert licensure examination, shall constitute a final agency action for purposes of review under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. unless the candidate elects to request an adjudicatory hearing pursuant to N.J.A.C. 7:3A-10.1 and the adjudicatory hearing procedure results in the Board's original determination not being upheld.

7:3A-3.4 Exemption from Licensed Tree Expert Examination

(a) Until *[(360 days after the effective date of this chapter)]* **April 12, 2018***, the Board shall grant any individual licensure as a tree expert, without requiring that *[that]* the individual sit for the licensure

examination, provided that the individual submits an application for licensure as a *[Tree Expert]* ***tree expert*** pursuant to (b) below and the Board determines that the individual is of good moral character and has received certification as a tree expert pursuant to N.J.S.A. 45:15C-1 prior to *[(the effective date of this chapter)]* ***April 17, 2017***, that was valid and in force as of *[(the effective date of this chapter)]* ***April 17, 2017***, and is in good standing with the Board.

(b) An applicant for licensure under this section shall submit a copy of his or her most recent Certified Tree Expert (CTE) Certification Card to the Board's address along with a completed application on a form, which can be found on the Board's website at www.njtreeexperts.org.

(c) Upon receipt of the application together with a copy of the CTE Certification Card, the Board will determine whether the applicant meets the criteria set forth in (a) above and is, therefore, qualified for licensure under this section and shall notify the individual in writing of its decision. If the Board determines that an applicant is qualified, the Board shall notify the individual in writing of this determination and advise that the Board shall grant him or her licensure as a tree expert upon receipt of the license initial fee listed at N.J.A.C. 7:3A-6.1(a), less any fee the certified individual paid pursuant to N.J.A.C. 7:3A-4.3 during Fiscal Year *[(effective fiscal year of this chapter)]* ***2017***.

(d) Upon receipt of the payment of the fee amount due, the Board shall assign the individual a license number and issue to the individual a license certificate and a license card that display the license number and evidence of his or her licensure as a licensed tree expert.

(e) An initial license issued under this section shall be valid from the date of issuance until the end of the calendar year in which it was issued.

(f) If the Board determines that an applicant is not qualified for licensure under this section, the Board shall notify the individual in writing of this determination, give the reasons for its determination, and advise the individual that he or she may request an adjudicatory hearing pursuant to N.J.A.C. 7:3A-10.1.

7:3A-3.5 Tree care operator initial license and renewals

(a) No individual shall represent himself or herself to the public as a licensed tree care operator or use any title, designation, word(s), letter, or abbreviations tending to indicate that such an individual is a licensed tree care operator without being licensed by the Board. Licenses shall be issued to individuals only; no license shall be issued in the name of a corporation, firm, partnership, or other form of business organization.

(b) An initial license issued under this section shall be valid from the date of issuance until the end of the calendar year in which it was issued.

(c) A license renewal issued under N.J.A.C. 7:3A-3.10 shall be valid for a period of two years.

(d) A licensee shall notify the Board in writing within 30 days of any change of the address on record with the Board.

(e) A licensee shall notify the Board in writing, e-mail, or facsimile at the Board office within 30 days if he or she leaves the employment of a business.

7:3A-3.6 Licensed Tree Care Operator Examination application

(a) To apply for initial licensure as a licensed tree care operator, an individual shall complete an application form, available on the Board's website at www.njtreeexperts.org, and submit the application to the Board together with:

1. Documentation showing that the applicant is at least 18 years of age;

2. Three letters of reference from professionals in the field of arboriculture or in a closely related field, who have first-hand knowledge of the candidate's work and moral character, including, but not limited to, the candidate's adherence to the canons of professional ethics and standards of conduct set forth at N.J.A.C. 7:3A-8.2(a), by which the Board will determine whether a candidate meets the requirement of good moral character;

3. Documentation that the applicant has satisfied the following education and/or experience requirements:

i. A degree from a four-year college in forestry, arboriculture, ornamental horticulture, botany, nursery production, plant biology, plant physiology, ecology, horticulture, environmental planning and design, landscape architecture, natural resources, or an alternative curriculum together with a request that the Board find the alternative curriculum

sufficient to satisfy the educational requirement, and evidence of continuous employment in the practice of arboriculture for at least one year preceding the date of the application;

ii. Completed two years of college with passing grades in at least three college courses related to arboriculture, such as botany, soils, plant science, plant biology, plant pathology, plant physiology, entomology, forestry, natural resources, ecology, horticulture, plant propagation, landscape construction or dendrology, and evidence of continuous employment in the practice of arboriculture for at least two years preceding the date of application; or

iii. Evidence of continuous employment in the practice of arboriculture for three years immediately preceding the date of application for licensure; and

4. Payment of the license application fee.

(b) To qualify to take the licensure examination on any scheduled examination date, the applicant shall submit to the Board a completed application together with the other accompanying items required pursuant to (a) above, at least 90 days prior to the examination date.

7:3A-3.7 Board review of Licensed Tree Care Operator Examination applications

(a) The Board shall administer the processing of the applications. The Board shall notify a candidate in writing when his or her application is received and is deemed complete.

(b) The Board shall review each complete application received and determine whether the application indicates that the candidate meets the requirements set forth at N.J.A.C. 7:3A-3.6(a) and, therefore, qualifies to take the licensed tree care operator licensure examination.

(c) If the Board, based on its review of an application, determines that the candidate qualifies to take the licensure examination, the Board shall notify the candidate in writing of this determination. Upon receipt of the notification the candidate shall register on-line on the Board's website at www.njtreeexperts.org for a scheduled forthcoming licensure examination and submit to the Board the applicable examination fee, set forth at N.J.A.C. 7:3A-6.1(a). The candidate shall register for an examination and pay the examination fee at least 30 days prior to the examination date.

(d) If the Board is unable to verify by at least 10 days before the examination date that a candidate has registered and the examination fee has been paid in full, the candidate will not to be admitted to the examination.

(e) If the candidate takes the licensure examination and receives a passing grade determined in accordance with N.J.A.C. 7:3A-4.1(f), the Board shall notify the candidate in writing, after voting to certify the examination results, that he or she has qualified for initial licensure as a licensed tree care operator and that upon payment of the license initial fee listed at N.J.A.C. 7:3A-6.1(a), the Board shall grant the candidate a license.

(f) Upon receipt of the payment of the license initial fee, the Board shall assign the individual a license number and issue to the individual a license certificate and a license card that display the license number and evidence his or her licensure as a licensed tree care operator.

(g) If the Board, based on its review of an application carried out pursuant to N.J.A.C. 7:3A-3.6(a), determines the candidate does not meet one or more of the requirements set forth at N.J.A.C. 7:3A-3.6(a), the Board shall deny the application and notify the candidate in writing of the reasons for the denial. A denial of a candidate's application shall not prevent a candidate from correcting an application's deficiency(ies) and resubmitting it within 30 days, or subsequently submitting a new application and payment of a new license application fee.

(h) The Board's determination as to a candidate's qualification to take the licensed tree care operator licensure examination shall constitute a final agency action for purposes of review under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., unless the candidate elects to request an adjudicatory hearing pursuant to N.J.A.C. 7:3A-10.1 and the adjudicatory hearing procedure results in the Board's original determination not being upheld.

7:3A-3.8 Exemption from Licensed Tree Care Operator Examination

(a) Until *[(360 days after promulgation of this chapter)]* ***April 12, 2018***, the Board shall grant any individual licensure as a tree care

operator, without requiring *[(that)]* that the individual sit for the licensure examination, provided that the individual submits an application for licensure as a tree care operator pursuant to (b) below and the Board determines that the individual is of good moral character and has documented in the application that he or she has been engaged in the practice of arboriculture since *[(seven years preceding the effective date of this chapter)]* ***April 17, 2010***.

(b) An applicant for licensure under this section shall submit a completed application on a form which can be found on the Board's website at www.njtreeexperts.org, and submit the application to the Board together with:

1. State or Federal income tax returns, with Social Security number redacted, since *[(seven years preceding the effective date of this chapter)]* ***April 17, 2010***, listing the individual's occupation and the name of the employer.

i. If exempt from paying taxes, the applicant may make a written request to the Board to submit alternative documentation of employment;

2. Three letters of reference from professionals in the field of arboriculture or in a closely related field, who have first-hand knowledge of the candidate's work and moral character; and

3. Payment of the license application fee.

(c) Upon receipt of the application and required accompanying documentation, the Board will determine whether the applicant meets the criteria set forth in (a) above and is, therefore, qualified for licensure under this section and shall notify the candidate in writing of its decision. If the Board determines that an applicant is qualified, the Board shall notify the individual in writing of this determination and advise that the Board shall grant him or her licensure as a tree care operator upon receipt of the license initial fee listed at N.J.A.C. 7:3A-6.1(a).

(d) Upon receipt of the payment of the license initial fee the Board shall assign the individual a license number and issue to the individual a license certificate and a license card that display the license number and evidence of his or her licensure as a licensed tree care operator.

(e) If the Board determines that an applicant is not qualified for licensure under this section, the Board shall notify the individual in writing of this determination, give the reasons for its determination, and advise the candidate that he or she may request an adjudicatory hearing pursuant to N.J.A.C. 7:3A-10.1.

7:3A-3.9 Reciprocity

(a) The Board may, in its discretion, grant a license to an individual who is the lawful holder of a substantially equivalent license or certification issued by another jurisdiction. The Board shall post on its website at www.njtreeexperts.org a listing of those certifications and licenses issued by other jurisdictions that it has determined to be substantially equivalent to either the tree expert or tree care operator license. The Board's considerations in making this determination shall include, but not be limited to, the requirements to be granted the subject certification or license, and the subjects, format, length, and question structure of the examination an individual must pass to obtain the certification or license.

(b) To apply for licensure based on reciprocity, an individual shall complete an application form, available on the Board's website at www.njtreeexperts.org, and submit the application to the Board together with:

1. Proof that he or she holds a valid certification or license that is recognized by the Board as being substantially equivalent to either the tree expert or tree care operator license; and

2. Payment of the reciprocity license application fee.

(c) The Board shall review each complete application received and determine whether the applicant qualifies to be granted licensure based on reciprocity. The Board shall not deem an applicant to qualify for licensure based on reciprocity unless:

1. The application includes proof that the applicant holds a valid certification or license issued by another jurisdiction that the Board recognizes as being substantially equivalent to either the tree expert or tree care operator license; and

2. The applicant is in good standing with the licensing agency for the issuing jurisdiction.

(d) If the Board determines that an individual qualifies for licensure under this section, the Board shall notify the candidate in writing that he or she is determined to qualify for initial licensure as a licensed tree expert or licensed tree care operator, as applicable, and that upon payment of the license initial fee listed at N.J.A.C. 7:3A-6.1(a), the Board shall grant the applicant a license.

(e) Upon receipt of the license initial fee, the Board shall assign the individual a license number and issue to the individual a license certificate and a license card that display the license number and evidence of his or her licensure. Upon the issuance of a license under the reciprocity process, the individual shall be considered licensed under this chapter.

(f) An initial license issued under this section shall be valid from the date of issuance until the end of the calendar year in which it was issued.

7:3A-3.10 License renewals

(a) Prior to expiration of the initial license, a licensee must apply for license renewal to retain his or her license. A licensed individual who seeks to renew his or her license shall submit a completed license renewal application, on a form available on the Board's website at www.njtreeexperts.org, together with documentation showing that **[that]** he or she has successfully satisfied the continuing education requirements set forth at N.J.A.C. 7:3A-7.1(a) and payment of the license biennial renewal fee as set forth in N.J.A.C. 7:3A-6.1(a).

(b) Upon receipt of an application for license renewal, the Board will determine if the licensee qualifies for license renewal. The Board shall notify the licensee in writing if the application is renewed. If the license is renewed, the Board shall issue the licensee a new license card. If the renewal is denied, the notice shall state the reasons for the denial and advise the licensee that he or she may request an adjudicatory hearing pursuant to N.J.A.C. 7:3A-10.1.

(c) A license renewed by the Board under this section shall be valid for a period of two years. A licensee must apply biennially for license renewal in the manner set forth in this section.

(d) If a licensee does not renew his or her license prior to its expiration date, the licensee may renew the license within 30 days after its expiration date by submitting a renewal application, license biennial renewal fee, and license late fee as set forth at N.J.A.C. 7:3A-6.1(a). During this 30-day period, the license shall remain valid and the licensee shall not be deemed to be unlawfully representing himself or herself to the public as a licensee.

(e) A license that is not renewed within 30 days of its expiration shall be automatically suspended. An individual who holds himself or herself out as a licensed tree expert or licensed tree care operator when his or her license is suspended shall be in violation of N.J.S.A. 45:15C-11 and shall be subject to civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

7:3A-3.11 License reinstatement

(a) A licensee whose license has been suspended pursuant to N.J.A.C. 7:3A-3.10(d) due to failure to renew may be considered for reinstatement by the Board if the individual:

1. Submits a letter requesting reinstatement by the Board within three years of the expiration date of the individual's license;

2. Documents that he or she has successfully completed the continuing education requirements set forth at N.J.A.C. 7:3A-7.1(a) both for license period prior to the license's suspension and for each biennial license period during which the license was suspended;

3. Makes payment of the license reinstatement fee and any and all license late fee(s) as set forth at N.J.A.C. 7:3A-6.1(a); and

4. Makes payment of the license biennial renewal fee, if the deadline for license renewal passed during the individual's period of suspension.

(b) Upon receipt of request for reinstatement, the Board will consider whether the individual qualifies for reinstatement of his or her license.

(c) If the Board determines that the individual qualifies for reinstatement, the Board shall reissue to the individual his or her original license certificate returned to the Board pursuant to N.J.A.C. 7:3A-3.12(b) or, in accordance with N.J.A.C. 7:3A-3.12(c), a duplicate thereof, and provide him or her with a license card that displays the individual's original license number and evidences his or her licensure.

(d) If the Board determines that the individual is not qualified for reinstatement, the Board shall so notify the individual and include the reasons for its determination and shall advise that he or she may request an adjudicatory hearing pursuant to N.J.A.C. 7:3A-10.1.

(e) An individual whose license has been suspended for more than three years may not apply for reinstatement. To acquire licensure, the individual must reapply in accordance with N.J.A.C. 7:3A-3.2 to become licensed as a licensed tree expert, or in accordance with N.J.A.C. 7:3A-3.6 to become licensed as a licensed tree care operator.

7:3A-3.12 License certificate retention and replacement

(a) A licensed tree expert or licensed tree care operator shall retain his or her license certificate throughout the period of licensure. If the licensee is employed by a registered business, the licensee shall allow the business to display his or her license certificate at the office location where he or she is assigned. However, if the licensee is no longer employed at the location, the certificate shall be retained by the licensee as he or she leaves.

(b) A license number and the license certificate containing such license number issued by the Board, though conferred on a licensed tree expert or licensed tree care operator for his or her period of licensure, remain the property of the State of New Jersey. If the Board suspends, refuses to renew, or revokes an individual's license, the individual shall return the license certificate to the Board within 30 days of his or her receipt of written notice of the Board's decision and shall remove the license number from all advertising and anywhere else the license number is displayed or otherwise communicated. Failure to comply with this requirement shall subject the individual to civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

(c) The Board shall issue a duplicate certificate to a licensed tree expert or licensed tree care operator upon receipt by the Board of an affidavit or certified statement in which the licensee attests that the original was either lost, destroyed, mutilated, or is otherwise no longer in the custody of and cannot be recovered by the licensee.

7:3A-3.13 Possession of license card; replacements

(a) The Board shall issue to a licensee:

1. Upon initial licensure, a license card valid for the initial license period; and

2. Upon a licensee's renewal of his or her license pursuant to N.J.A.C. 7:3A-3.10(a) and (b), the Board will issue to the licensee a new license card valid for two years.

(b) The license card shall identify the licensee's name, license number, and type of license held by the licensee and give the expiration date of the license period. The license card may be used by the licensee as proof of holding a valid license.

(c) If the Board suspends, revokes, or refuses to renew a license, the licensee shall return the license card to the Board within 30 days of his or her receipt of written notice of the Board's decision. Failure to comply with this requirement shall subject the individual to civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

(d) The Board shall issue a duplicate license card to a licensed tree expert or licensed tree care operator upon receipt by the Board of an affidavit or certified statement in which the licensee attests that the original was either lost, destroyed, mutilated, or is otherwise no longer in the custody of, and cannot be recovered by, the licensee.

SUBCHAPTER 4. EXAMINATIONS

7:3A-4.1 Examination notices; procedure

(a) The Board shall determine whether an individual is qualified to take the licensure examination based upon the application and documentation submitted by the individual pursuant to N.J.A.C. 7:3A-3.2 for LTE candidates or N.J.A.C. 7:3A-3.6(a) for LTCO candidates.

(b) A candidate who has received written notice from the Board that he or she is qualified to take a licensure examination shall consult the Board's website at www.njtreeexperts.org to determine the dates on which the applicable examination is scheduled to be offered and shall register to take the examination on a specific date by completing and submitting a registration form also found on the Board's website. A

candidate shall submit a registration form no later than 30 days prior to the examination date.

(c) The Board shall issue each eligible candidate who timely registers to take a licensure examination an identification number to be used on the examination in place of his or her name.

(d) To be admitted to the examination room on the date of the examination, a candidate shall produce at the examination location valid government-issued photo identification, such as a driver's license or passport.

(e) The licensure examination for tree expert licensure consists of a written section and a field section. An overall grade of 70 percent when the candidate's grades on the written and field sections are averaged is required to pass the examination.

(f) The licensure examination for tree care operator licensure consists of a written section only. A grade of 70 percent is required to pass the written examination.

(g) After an examination has been administered, each candidate who took the examination will be notified of his or her grade in writing.

(h) A candidate who scores less than 70 percent on the written section of the tree expert licensure examination or on the tree care operator licensure examination may again register, in accordance with (b) above, and retake the examination, on a date that is no sooner than 30 days after the date of the previously-taken examination.

(i) A candidate is eligible to take and, if applicable, retake a licensure examination for one year from the date the Board notifies him or her in writing that he or she is qualified to take the examination. If, after a year from the date of notice, the individual wishes to sit for the licensure examination he or she must submit a new application in accordance with N.J.A.C. 7:3A-3.2(a) or 3.6(a) and again pay the license application and examination fees as set forth in N.J.A.C. 7:3A-6.1(a).

(j) A candidate for tree expert licensure must receive a combined passing grade on both the written and field sections of the exam that averages 70 percent. A minimum score of 70 percent is needed on the written section of the exam and a minimum of 65 percent is needed on the field section of the exam. A candidate who fails either the written or field section of the exam may elect to retake only the section of the exam *[on which]* he or she did not pass at the next examination for which he or she registers. A candidate who passes the previously failed section on the second testing date and scores an average combined score of 70 percent with the previous passing section of the exam shall have met the examination requirements. A candidate who *[fails and did not score a]* **takes the previously failed section a second time but does not score an average** *[average]* **score** of 70 percent with the previously failed section *[for a second time]* **of the exam** shall be required to take and pass both the written and field sections at the next examination for which he or she registers.

SUBCHAPTER 5. ADVERTISING

7:3A-5.1 Constraints on advertising by individuals

(a) An individual shall not advertise or represent himself or herself to the public, or practice as a licensed tree expert or licensed tree care operator, or use any title, designation, word(s), letter, or abbreviations tending to indicate that such an individual is licensed, unless the individual has been licensed by the Board and he or she is in good standing with the Board as defined at N.J.A.C. 7:3A-1.5.

(b) If an individual fails to comply with (a) above, and if the individual is a licensee but not in good standing with the Board, the Board may suspend or revoke the individual's license, and/or assess civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a). If the individual is not a licensee, the Board may refuse to issue a license to the individual or to admit the individual to take a licensure examination.

7:3A-5.2 Advertising by licensee

(a) Any licensed tree expert who wishes to use the licensed tree expert designation in advertising shall include his or her name and license number in any form of advertisement relating to tree care services, using the following format:

1. Name of licensed individual;
2. The abbreviation LTE or the words "Licensed Tree Expert"; and
3. The licensee's license number, preceded by the "#" symbol.

(b) An example of the correct advertisement form for a licensed tree expert is:

1. John Doe, LTE #100; or
2. John Doe, Licensed Tree Expert #100.

(c) Any licensed tree care operator who wishes to use the licensed tree care operator designation in advertising shall include his or her name and license number in any form of advertisement relating to tree care services, using the following format:

1. Name of licensed individual;
2. The abbreviation LECO or the words "Licensed Tree Care Operator"; and
3. The licensee's license number, preceded by the "#" symbol.

(d) An example of the correct advertisement form for a licensed tree care operator is:

1. John Doe, LECO #100; or
2. John Doe, Licensed Tree Care Operator #100.

(e) A licensee whose license is revoked or suspended shall, within 30 days of his or her receipt of written notice of the Board's decision, change all of his or her existing forms of electronic advertising to remove any reference to licensing by the Board, and shall, before the next publication or renewal date, change all of his or her existing forms of print advertising to remove any reference to licensing by the Board.

(f) All forms of advertisement shall conform to the requirements of this section within 30 days following the promulgation of this chapter.

7:3A-5.3 Advertising by businesses

(a) No business shall advertise or represent itself to the public as offering tree care services within the State of New Jersey or use any title, designation, word(s), letter, or abbreviations tending to indicate that a business is a registered business unless it in fact is registered with the Board of Tree Experts.

(b) A registered business shall advertise only those tree care services which its licensee(s) is/are licensed to perform. For example, if a registered business employs only LECOs, it shall not advertise services that are exclusively LTE services.

(c) Failure to comply with this section may result in the suspension or revocation of the *[business']* **business's** registration, refusal by the Board to register the business, and/or the issuance of civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

(d) Any registered business that wishes to advertise shall include its name and its registration number in any form of medium of advertisement relating to tree care services. The registered business shall identify its registration number in the following way:

1. The words "NJTC Registration"; and
2. The *[business']* **business's** registration number, preceded by the "#" symbol.

(e) An example of the correct advertisement form for businesses is:

1. John Doe Tree Experts, NJTC Registration #100.

SUBCHAPTER 6. FEE SCHEDULE

7:3A-6.1 Fee schedule

(a) The following fees shall be charged by the Board. All fees are nonrefundable.

1. License application fee	\$50.00
2. Examination fees	
i. LECO written exam fee	\$100.00
ii. LTE written exam fee	\$100.00
iii. LTE field exam fee	\$100.00
3. License initial fee	\$75.00
4. License biennial renewal fee	\$150.00
5. License late fee	\$25.00
6. License reinstatement fee	\$25.00
7. Reciprocity license application fee	\$75.00
8. Business biennial registration fee	\$200.00
9. Business registration late fee	\$25.00

SUBCHAPTER 7. CONTINUING EDUCATION

7:3A-7.1 Continuing education requirements; criteria; waiver of requirements

(a) A licensed tree expert or licensed tree care operator shall earn 32 credits or more of continuing education during the first two-year license period in which the individual obtains licensure and each succeeding two-year license period.

(b) A licensed tree expert or licensed tree care operator may earn continuing education credit for seminars, courses, programs, presentations, continuing education quizzes, or lectures administered by approved arboricultural organizations successfully completed during the biennial licensure period in which the continuing education was completed as set forth at N.J.A.C. 7:3A-7.5. No continuing education credits may be carried over into a succeeding biennial period. However, in the case of qualifying for reinstatement of a suspended license, credit earned in a successive biennial period may be applied toward qualifying for reinstatement.

(c) A licensee may request that the Board grant a waiver of the continuing education requirement for any of the following reasons: illness certified by a physician, disability, military deployment, or other good cause deemed acceptable by the Board. Any licensee seeking a waiver of the continuing education requirements shall submit a request to the Board in writing specifying the reasons for the request by October 31 of the second year of the two-year biennial license period. The licensee shall also provide the Board with such information as it may reasonably request in support of a waiver request. The Board shall notify the licensee in writing whether it approves the licensee's waiver request. In the case of a denial, the Board shall explain its reasons for denying the request and shall advise the candidate that he or she may request an adjudicatory hearing pursuant to N.J.A.C. 7:3A-10.1.

(d) Participants will receive one continuing education credit for each hour of attendance or teaching that includes at least 50 minutes of instructional content.

7:3A-7.2 Continuing education programs and courses

(a) * [Provided that the activity is approved in advance by the Board, a] * *A* licensee may obtain continuing education credit for the following types of educational activities:

1. Attendance at or teaching of courses or programs approved by the Board pursuant to (b) below; and

2. Attendance at or teaching of seminars, courses, conferences, or other programs, if the Board is satisfied that it is appropriate for the purpose of keeping the licensee apprised of advancements and new developments in the profession.

i. A suitable program for a licensed tree expert might, for example, be a program focused on any subject covered in the tree expert licensure examination, such as pruning, insects and diseases, planting, fertilization, lightning protection, tree identification, diagnosing tree problems, and cabling and bracing; and

ii. A suitable program for a licensed tree care operator might, for example, be a program focused on any subject covered in the tree care operator licensure examination, such as general workplace safety, tree identification, tree physiology, and safe use of equipment;

3. Attendance or teaching and successful completion of undergraduate or graduate course work relevant to arboriculture or urban forestry beyond that required for professional licensure and approved by the Board, at an accredited university with a maximum of nine credits allowed for each course;

4. Attendance at or teaching of courses, programs, or seminars offered by universities that are directly related to the practice of arboriculture;

5. Completion of a continuing education quiz published by an arboricultural organization approved by the Board as a provider of quizzes. A participant who completes the quiz with a minimum score of 70 percent may receive the number of credits assigned to the quiz by the organization that offers the quiz. A list of approved organizations is posted on the Board's website at www.njtreeexperts.org; and

6. Preparation of a paper, publication or presentation, provided the subject matter of the paper, publication, or presentation is directly related to the practice or theory of arboriculture or urban forestry, as determined by the Board. One credit will be awarded for every two pages of

arboricultural content. The paper, publication, or presentation shall be submitted to the Board's e-mail address or to its physical mailing address as posted on the Board's website at www.njtreeexperts.org for its review to determine the number of credits to be granted.

(b) If an educational activity is not one that has been pre-qualified pursuant to N.J.A.C. 7:3A-7.5*(a)*, at the request of a licensee, the Board will make a determination as to whether it will approve continuing education credit for participation in the activity and the maximum number of credits it will allow to be taken for the activity.

1. To obtain advance approval, the licensee shall submit to the Board, at least 45 days prior to the activity, or the initiation of the activity, as applicable, a description of the activity, such as an announcement of the activity published by its sponsor, including the dates and hours of the activity; and

2. To obtain approval after the activity has occurred, the licensee shall submit to the Board a description of the activity, such as the description provided by its sponsor, including dates and hours of the program, together with written verification by the sponsor of the licensee's attendance or participation.

(c) Once the Board has pre-qualified an offering pursuant to N.J.A.C. 7:3A-7.5 or approved an educational activity for continuing education credit at the request of licensee pursuant to (b) above, the Board will post notice on its website at www.njtreeexperts.org that the event has been approved for continuing education credit. Such posting indicates that any licensee may obtain continuing education credit for participating in the activity.

7:3A-7.3 Compliance with continuing education requirements; audits

(a) A licensee applying for license renewal shall confirm on the renewal application that he or she has earned 32 continuing education credits as required during the preceding biennial period as set forth at N.J.A.C. 7:3A-7.1(a).

(b) A licensee's confirmation of fulfillment of the continuing education requirement shall be subject to audit by the Board. A licensee shall, upon request of the Board, submit documentation, in accordance with N.J.A.C. 7:3A-7.4, of his or her completion of the continuing education activities as claimed. Failure to provide, or falsification of, the documentation submitted to the Board may result in immediate suspension of the individual's license and/or civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a), and may result in the denial of the application for license renewal until the submitted documentation has been corrected to the satisfaction of the Board.

(c) A licensee shall retain documentation of completed continuing education activities for a period of five years.

7:3A-7.4 Continuing education documentation

(a) A licensee shall provide documentation as follows to be credited by the Board with completion of continuing education credits:

1. For documentation of attendance at an offering that has been pre-qualified by the Board, the verification of attendance furnished by the provider to each attendee as set forth at N.J.A.C. 7:3A-7.5(c);

2. For documentation of attendance at a seminar, conference, or other program for which the licensee received advanced or subsequent approval by the Board, a description of the program prepared by the sponsor, including the dates and hours of the program, and written verification by the sponsor of the licensee's attendance;

3. For documentation of completion of a continuing education quiz, verification by the publishing organization that the licensee took and completed the quiz, and received a score of at least 70 percent. The verification must be on official organization letterhead and signed by an officer of the organization or an official print-out generated by that organization's website;

4. For documentation of preparation of a publication, a copy of the final published publication; and

5. For documentation of preparation of a presentation, a copy of the presentation, the date, time, and location that the presentation was given, and written verification that the presentation was given from the sponsoring organization on official letterhead and signed by an officer of the organization.

(b) The Board may disallow any continuing education credit claimed by a licensee if the activity on which it is based is not relevant to the practice or theory of arboriculture or urban forestry.

7:3A-7.5 Procedures for pre-qualification of continuing education offerings

(a) The Board may, at its discretion, review an educational offering, such as a seminar, course, program, presentation, lecture, or quiz to be offered by a college, university, and other institution or organization, to determine whether a licensee may utilize completion of the offering as a basis for earning continuing education credits.

(b) If a provider wants to have a seminar, course, program, presentation, lecture, quiz, or other offering be considered for pre-qualification by the Board as eligible to be used by a licensee to earn continuing education credits, the provider shall, at least 45 days prior to the date of the offering, submit a request for pre-qualification to the Board, together with:

1. A detailed description of the offering, its content, and the number of hours of instruction it will entail; and

2. A summary of the qualifications of the instructor, presenter, and/or content preparer, as applicable.

(c) Upon receipt of a request for pre-qualification of an educational offering, the Board will review the material submitted and determine whether the offering is eligible for use by licensees as a basis for earning continuing education credits*, as set forth at N.J.A.C. 7:3A-7.2(a)*. The Board shall notify the provider in writing of its decision and, if the request is denied, give the reason therefor and advise the provider that he or she may request an adjudicatory hearing pursuant to N.J.A.C. 7:3A-10.1.

(d) If a request for pre-qualification of an educational offering is approved by the Board, the Board shall inform the provider as to the maximum number of continuing education credits it will allow for participation and that, for credit to be granted to attendees, the provider must monitor the attendance at or participation in the offering and must furnish to each successful participant a document verifying his or her attendance and completion. This document shall include at least the following information:

1. The title, date, and location of the offering;
2. The number of hours of attendance or participation, and the maximum number of continuing education credits that the Board will allow for participation;
3. The name and address of the provider; and
4. The name and signature of the provider's representative who is responsible for monitoring attendance.

(e) A provider shall not exclude from the course or program any licensee who is not a member of the sponsoring group or association but may impose a reasonable differential in course or program fees based upon membership within a group or association.

SUBCHAPTER 8. STANDARDS OF PRACTICE AND ETHICS

7:3A-8.1 Conformance with certain industry standards and applicable OSHA regulations

(a) Each licensee and each registered business providing tree care services for hire in New Jersey shall adhere to the version of the following standards in effect at the time the tree care services in question were performed:

1. The Dictionary of Standard Definitions for the Green Industry, 2009-2010 edition, which is incorporated herein by reference, as amended and supplemented, and available from the Tree Care Industry Association, 136 Harvey Road, Suite 101, Londonderry, NH 03053 shall be the reference standard for nomenclature and terminology for all practices that fall under this chapter unless otherwise defined at N.J.A.C. 7:3A-1.5;

2. The following standards of practice, available from the Tree Care Industry Association, 136 Harvey Road, Suite 101, Londonderry, NH 03053 and the International Society of Arboriculture, PO Box 3129, Champaign, IL 61826, shall be incorporated by reference, as amended and supplemented:

i. *[ANSI A300 Tree Care Industry Standard Practices, which includes Pruning (2014), Soil Management (modification, fertilization, and

drainage) (2011), Supplemental Support Systems (2013), Lightning Protection Systems (2014), Management of Trees and Shrubs During Site Planning, Site Development, and Construction (2012), Planting and Transplanting (2012), Integrated Vegetation Management (Electric Utility Rights-of-Way) (2012), Root Management (2013), and Tree Risk Assessment (Tree Structure Assessment) (2011);]* *ANSI A300 American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Management, which includes: 2014 Pruning (Part 1), 2011 Soil Management (modification, fertilization, and drainage) (Part 2), 2013 Supplemental Support Systems (Part 3), 2014 Lightning Protection Systems (Part 4), 2012 Management of Trees and Shrubs During Site Planning, Site Development, and Construction (Part 5), 2012 Planting and Transplanting (Part 6), 2012 Integrated Vegetation Management (Electric Utility Rights-of-Way) (Part 7), 2013 Root Management (Part 8), 2011 Tree Risk Assessment (Tree Structure Assessment) (Part 9), and 2016 Integrated Pest Management (Part 10);*

ii. ANSI Z60.1-2014, American Standards for Nursery Stock;

iii. ANSI Z133-2012, Safety Standards for Arboricultural Operations; and

iv. The applicable OSHA, Federal Motor Carrier Safety Administration, and Federal Highway Administration regulation, which are set forth in ANSI Z133-2012.

3. Each of the Best Management Practices in the series published by the International Society of Arboriculture, incorporated herein, as amended and supplemented, including Tree Planting (2005), Tree Lightning Protection Systems, Second Edition (2008), Tree and Shrub Fertilization (2007), Integrated Pest Management (2007), Managing Trees During Construction (2008), Tree Support Systems: Cabling, Bracing, Guying, and Propping Second Edition (2007), Utility Pruning of Trees (2004), Tree Pruning Second Edition (2008), Tree Inventories Second Edition (2013), Integrated Vegetation Management Second Edition (2013), and Tree Risk Assessment (2011), as applicable to the practices being performed.

(b) Failure to conform to the standards of practice and safety requirements set forth in (a) above shall constitute a violation of the Tree Expert and Tree Care Operators Licensing Act and this chapter and may result in suspension or revocation of the business's registration or the licensee's license and/or imposition of civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

7:3A-8.2 Canons of professional ethics and standards of conduct applicable to licensees

(a) The canons of professional ethics and standards of conduct for licensees is set forth in this section. A licensee shall:

1. Adhere to the highest standards of integrity, honesty, and skill to inspire and instill public trust and confidence;

2. Remain reasonably informed about current advances in technology and arboricultural techniques, practice, and standards of practice within the professional community;

3. Honestly and accurately describe to prospective clients the likely results of contemplated services, to the extent reasonably necessary to permit a client to make an informed decision regarding the retention of services;

4. Undertake to perform professional services only when he or she, together with those who may be engaged as consultants, are qualified by education, training, and experience in the specific scope of contractual obligations and technical areas involved;

5. Base expert testimony on information found in publications typically relied upon in the profession and/or well-accepted standards and practices of the profession;

6. Maintain a high regard for the safety, health, and welfare of the general public in the performance of his or her professional duties;

7. Render professional services in a manner that is not misleading, false, fraudulent, or grossly negligent;

8. When making any public statement on an arboricultural matter disclose when he or she is being compensated for making such statements; and

9. Accurately disclose his or her qualifications to prospective clients for any contracted work, if asked.

(b) Failure to abide by the canons of professional ethics and standards of conduct set forth in (a) above shall result in suspension*[,] or revocation of the offender's license, refusal by the Board to renew the offender's license*[,] or to admit the individual to sit for a licensing examination as set forth at N.J.A.C. 7:3A-9.4 and 9.5, and/or imposition of civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

(c) Wrongful conduct in the practice of professional services by licensees includes:

1. Handling or neglecting to handle professional services in such a manner that the conduct constitutes gross negligence, malpractice, or gross incompetence;

2. Exhibiting a pattern or repeated acts of neglect, negligence, malpractice, or incompetence in the performance of professional services;

3. Engaging in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the performance of professional services;

4. Using or approving the use of false, fraudulent, or deceptive advertising;

5. Charging a fee for work not done or hours not spent in the performance of professional services; or

6. Failing to comply with a standard set forth at N.J.A.C. 7:3A-8.1(a) or (b).

(d) Engaging in wrongful conduct shall result in suspension or revocation of the offender's license, refusal by the Board to renew the offender's license*[,] or to admit the individual to sit for a licensing examination for licensure as set forth at N.J.A.C. 7:3A-9.4 and 9.5, and/or imposition of civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

7:3A-8.3 Canons of professional ethics and standards of conduct applicable to registered businesses

(a) The canons of professional ethics and standards of conduct for registered businesses is set forth in this section. A registered business shall:

1. Adhere to established standards of advertising and selling;

2. Honestly represent products and services;

3. Conduct business in an honest manner and abide by the law;

4. Openly identify the principal office, any branch office, and the ownership of the business;

5. Abide by all written agreements and verbal representations;

6. Address marketplace disputes quickly, professionally, and in good faith;

7. Protect any data collected against mishandling and fraud;

8. Approach all business dealings, marketplace transactions, and commitments with integrity, and conduct business in a fair and just manner in dealing with the public, employees, and other businesses;

9. Provide for the safety and training of employees to ensure a healthy work environment;

10. Stay current and educate employees and clients in the most current research and practices available to the industry;

11. Comply with all applicable laws and rules including quarantine restrictions established by a State or Federal agency having jurisdiction in New Jersey; and

12. Adhere to the industry standards set forth at N.J.A.C. 7:3A-8.1(a).

(b) Failure to abide by the canons of professional ethics and standards of conduct set forth in (a) above shall result in suspension or revocation of the offender's registration as set forth at N.J.A.C. 7:3A-9.2 and 9.3, refusal by the Board to renew the offender's business registration and/or imposition of civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

(c) Wrongful conduct by a registered business shall include:

1. Failure to demonstrate that at least one licensee, who may be the employer, or an employee engaged in the performance of or supervision of employees who provide LTE or LTO services, is assigned to the principal office and to each branch office of the business from which tree care services are provided for hire in New Jersey. If services that are exclusively LTE services are performed, the licensee shall be in possession of a tree expert license;

2. Failure to reasonably ensure the safe operation of all equipment used in the performance of tree expert or tree care operator services;

3. Allowing work to be conducted in a manner not in compliance with the standards set forth at N.J.A.C. 7:3A-8.1(a) and (b);

4. Failure to provide instruction and training for its employees as required by N.J.A.C. 7:3A-2.14;

5. Failure to hold the requisite amount of worker's compensation and general liability insurance or a letter of credit as required at N.J.A.C. 7:3A-2.11;

6. Engaging in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his or her business;

7. Having been found guilty by a court of law of gross negligence or incompetence in the rendering of tree care services;

8. Having had its authority to engage in tree expert or tree care operator services revoked or suspended by any other state, agency, or authority;

9. Failure to comply with the provisions of the Tree Experts and Tree Care Operators Licensing Act and this chapter;

10. Engaging in any form of false or misleading advertising or promotional activities; and

11. Failure to maintain records as required at N.J.A.C. 7:3A-2.12.

(d) Engaging in wrongful conduct shall result in suspension or revocation of the offender's registration as set forth at N.J.A.C. 7:3A-9.2 and 9.3, refusal by the Board to renew the offender's business registration and/or imposition of civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

7:3A-8.4 Duty to cooperate

(a) All licensees and registered businesses have the duty to cooperate fully with the Department and the Board in any investigation or adjudication of an alleged violation of the Tree Experts and Tree Care Operators Licensing Act and this chapter. All licensees and registered businesses shall provide copies of any documents requested by the Department and/or the Board in connection with such investigation or adjudication.

(b) For a licensee, failure to comply with the requirements of this section shall result in suspension or revocation of the offender's license as set forth at N.J.A.C. 7:3A-9.4 and 9.5, refusal by the Board to renew the offender's license, and/or the imposition of civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a). For a registered business, failure to comply with the requirements of this section shall result in suspension or revocation of the offender's registration as set forth at N.J.A.C. 7:3A-9.2 and 9.3 or refusal by the Board to renew the offender's registration, and/or the imposition of civil administrative penalties as set forth at N.J.A.C. 7:3A-9.6(a).

SUBCHAPTER 9. COMPLIANCE AND ENFORCEMENT

7:3A-9.1 Inspection and investigation of unlawful activity

(a) Whenever it appears to the Board that a licensee or a business, whether or not it is a registered business, has engaged in, or is engaging in, any activity that is unlawful under the provisions of the Tree Experts and Tree Care Operators Licensing Act and this chapter, the Board may require the licensee or business to file a written statement, under oath, as to the facts and circumstances concerning the alleged violation. The form to be used in preparing such a statement is available on the Board's website at www.nitreeexperts.org.

(b) The Board may examine any person in connection with any act or practice that is subject to the Tree Experts and Tree Care Operators Licensing Act and this chapter.

(c) The Board or its representative may inspect any premises upon which a violation of the Tree Experts and Tree Care Operators Licensing Act and this chapter is alleged to have taken place, as well as the place of business of the licensee or business alleged to have violated the Tree Experts and Tree Care Operators Licensing Act and this chapter. This inspection may include questioning individuals, photographing work operations, documenting business registration numbers, vehicle identification numbers, and other information relevant to the Board's inspection. The Board will provide at least 24 hours notice to the licensee or business prior to an inspection. During an inspection under this section, the licensee or business shall allow the Board or its representative access to all areas of the place of business and comply with

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any reasonable request for records or documents pertaining to the alleged violation, and shall make available for inspection any equipment relevant to the alleged violation.

7:3A-9.2 Suspension of business registration

(a) The Board may suspend the registration of any registered business, after notice as set forth at N.J.A.C. 7:3A-9.7 and a hearing as set forth at N.J.A.C. 7:3A-10.1, where:

1. The business is found in violation of the canons of professional ethics and standards of conduct set forth at N.J.A.C. 7:3A-8.3(a);

2. The business is found in violation of the industry standards of practice or safety requirements as set forth at N.J.A.C. 7:3A-8.1(a);

3. The business has engaged in wrongful conduct as defined at N.J.A.C. 7:3A-8.3(c);

4. The business has failed to demonstrate that the employer, or at least one employee in each principal office and branch office location who is responsible for the supervision of workers in the performance of tree expert or tree care operator services, is in possession of a tree expert license or a tree care operator license;

5. The business has failed to ensure the safe operation of all equipment used in the performance of tree expert or tree care operator services;

6. The business has failed to provide instruction and training for its employees as required by the Act and this chapter;

7. The business has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of business;

8. The business has been found guilty of gross negligence or incompetence;

9. The business has had the authority to engage in tree expert or tree care operator services revoked or suspended by any other state, agency, or authority;

10. The business has failed to comply with the provisions of the Act or this chapter;

11. The business has engaged in any form of false or misleading advertising or promotional activities; or

12. The business has failed to maintain records required by the Board.

(b) In determining whether to suspend a registration and, if so, the length of suspension, the Board will consider the facts and circumstances of the particular case, as well as the severity, frequency, and duration of the violation.

(c) The notice of suspension issued by the Board shall set forth the violation and the length of time for which the suspension will be in effect.

(d) Any business that has had its registration suspended must surrender its registration certificate to the Board within 10 business days from the date the suspension takes effect.

(e) Any business that has had its registration suspended may not advertise, operate, or perform any tree care services for hire in New Jersey while its registration is suspended.

(f) Any business that has had its registration suspended, may reapply for registration on or after the date, if any, set forth in the notice of suspension issued by the Board when the business is eligible to reapply for registration. The reapplication process shall include the submission of all forms and fees required by N.J.A.C. 7:3A-2 and 6.

7:3A-9.3 Revocation of business registration

(a) The Board may revoke the registration of any registered business, after notice as set forth at N.J.A.C. 7:3A-9.7 and a hearing as set forth at N.J.A.C. 7:3A-10.1, where:

1. The business is found in violation of the canons of professional ethics and standards of conduct set forth at N.J.A.C. 7:3A-8.3(a);

2. The business is found in violation of the industry standards of practice and/or safety requirements as set forth at N.J.A.C. 7:3A-8.1(a);

3. The business has engaged in wrongful conduct as defined at N.J.A.C. 7:3A-8.3(c);

4. The business has failed to demonstrate that the employer, or at least one employee in each principal office and branch office location who is responsible for the supervision of workers in the performance of tree expert or tree care operator services, is in possession of a tree expert license or a tree care operator license;

5. The business has failed to ensure the safe operation of all equipment used in the performance of tree expert or tree care operator services;

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6. The business has failed to provide instruction and training for its employees as required by the Act and this chapter;

7. The business has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of business;

8. The business has been found guilty of gross negligence or incompetence;

9. The business has had its authority to engage in tree expert or tree care operator services revoked or suspended by any other state, agency, or authority;

10. The business has failed to comply with the provisions of the Act or this chapter;

11. The business has engaged in any form of false or misleading advertising or promotional activities; or

12. The business has failed to maintain records required by the Board.

(b) In determining*[to]* whether to revoke a business registration, the Board will consider the facts and circumstances of the particular case, as well as the severity, frequency, and duration of the violation.

(c) The notice of revocation issued by the Board shall set forth the violation and the date, if any, on or after which the business will be eligible to reapply for registration.

(d) Any business whose registration is revoked may not advertise, operate, or perform any tree care services for hire in New Jersey.

(e) Any business that has had its registration revoked shall surrender its registration certificate to the Board within 10 business days from the date the revocation takes effect.

(f) Any business that has had its registration revoked, unless the revocation is final, may reapply for registration on or after the date, if any, set forth in the notice of revocation issued by the Board when the business is eligible to reapply for registration. The reapplication process shall include the submission of all forms and fees required by N.J.A.C. 7:3A-2 and 6.

7:3A-9.4 Suspension of license

(a) The Board may suspend an individual's license, after notice as set forth at N.J.A.C. 7:3A-9.7 and a hearing as set forth in N.J.A.C. 7:3A-10.1, where:

1. The individual is found in violation of the canons of professional ethics and standards of conduct set forth at N.J.A.C. 7:3A-8.2(a);

2. The individual is found in violation of the industry standards of practice and/or safety requirements as set forth at N.J.A.C. 7:3A-8.1(a);

3. The individual has engaged in wrongful conduct as defined at N.J.A.C. 7:3A-8.2(c);

4. The individual has obtained a license or authorization to sit for an examination through fraud, deception, or misrepresentation;

5. The individual has conducted work, or allowed work to be conducted under his or her supervision, in a manner not in compliance with standards approved by the Board;

6. The individual has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his or her business;

7. The individual has engaged in gross negligence or gross incompetence;

8. The individual has engaged in repeated acts of negligence or incompetence;

9. The individual has engaged in occupational misconduct, as determined by the Board;

10. The individual has been convicted of any crime involving moral turpitude, any crime related adversely to the activities regulated by the Board, or any crime of the first, second, third, or fourth degree;

11. The individual has had his or her authority to engage in the activities regulated by the Board revoked or suspended by any other state, agency*[;]* * * or authority;

12. The individual has failed to comply with the provisions of the Act or any rule promulgated pursuant thereto;

13. The individual is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the health, safety, and welfare of the public;

14. The individual has engaged in any form of false or misleading advertising or promotional activities, including, but not limited to,

[hold] *holding* himself or herself out to be a licensed tree expert, an arborist, licensed tree care operator, a tree surgeon, a tree care business, or any similar designation, or using the abbreviation "L.T.E." or "L.T.C.O." without being licensed as a tree expert or a tree care operator; or

15. The individual has failed to maintain records required by the Board.

(b) In determining whether to suspend a license and, if so, the length of the period of suspension, the Board will consider the facts and circumstances of the particular case, as well as the severity, frequency, and duration of the violation.

(c) The notice of suspension issued by the Board shall set forth the violation and the length of time for which the suspension will remain in effect.

(d) An individual who has had his or her license suspended must surrender his or her certificate to the Board within 10 business days from the date the suspension takes effect.

(e) Any individual who has had his or her license suspended may not represent himself or herself to the public to be licensed, including in any advertisement, and may not serve as a business's assigned licensee at its primary office or branch office during the period of suspension.

(f) The Board will notify the business that employs an individual whose license is suspended that the business may not, during the period of license suspension, consider its employment of the individual to satisfy its obligation under N.J.A.C. 7:3A-2.2(b) and 2.3(a) to assign at least one licensee to each principal office and to any branch office providing tree care services in New Jersey.

(g) Any individual that has had his or her license suspended may reapply for reinstatement on or after the date, if any, set forth in the notice of suspension issued by the Board when the individual is eligible to reapply for reinstatement. The reapplication process shall include the submission of all forms and fees required by N.J.A.C. 7:3A-3.2 and 3.6.

7:3A-9.5 Revocation of license

(a) The Board may revoke an individual's license, after notice as set forth at N.J.A.C. 7:3A-9.7 and a hearing as set forth in N.J.A.C. 7:3A-10.1, where:

1. The individual is found in violation of the canons of professional ethics and standards of conduct as set forth at N.J.A.C. 7:3A-8.2(a);

2. The individual is found in violation of the industry standards of practice and/or safety requirements as set forth at N.J.A.C. 7:3A-8.1(a);

3. The individual has engaged in wrongful conduct as defined at N.J.A.C. 7:3A-8.2(c);

4. The individual has obtained a license or authorization to sit for an examination through fraud, deception, or misrepresentation;

5. The individual has conducted work, or allowed work to be conducted under his or her supervision, in a manner not in compliance with standards approved by the Board;

6. The individual has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his or her business;

7. The individual has engaged in gross negligence or gross incompetence;

8. The individual has engaged in repeated acts of negligence or incompetence;

9. The individual has engaged in occupational misconduct, as determined by the Board;

10. The individual has been convicted of any crime involving moral turpitude, any crime related adversely to the activities regulated by the Board, or any crime of the first, second, third, or fourth degree;

11. The individual has had his or her authority to engage in the activities regulated by the Board revoked or suspended by any other state, agency, or authority;

12. The individual has failed to comply with the provisions of the Act or any rule promulgated pursuant thereto;

13. The individual is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the health, safety, and welfare of the public;

14. The individual has engaged in any form of false or misleading advertising or promotional activities, including but not limited to, hold himself or herself out to be a licensed tree expert, an arborist, licensed tree care operator, a tree surgeon, a tree care business, or any similar designation, or using the abbreviation "L.T.E." or "L.T.C.O." without being licensed as a tree expert or a tree care operator; or

15. The individual has failed to maintain records required by the Board.

(b) In determining whether to revoke an individual's license and, if so, the length of the period until the individual may reapply for licensure, the Board will consider the facts and circumstances of the particular case, as well as the frequency and duration of the violation.

(c) The notice of revocation issued by the Board shall set forth the violation and the date, if any, on or after which the individual will be eligible to reapply for licensure.

(d) Any individual who has had his or her license revoked shall surrender his or her license to the Board within 10 business days from the date the revocation takes effect.

(e) Any individual whose license is revoked may not represent himself or herself to the public to be licensed, including in any advertisement, and may not serve as a business's assigned licensee at its primary office or a branch office.

(f) The Board will notify the business that employs an individual whose license is revoked that the business may not consider its employment of the individual to satisfy its obligation under N.J.A.C. 7:3A-2.2(b) and 2.3(a) to assign at least one licensee to each principal office and to any branch office providing tree care services in New Jersey.

(g) Any individual who has had his or her license revoked, unless the revocation is final, may reapply for licensure on or after the date, if any, set forth in the notice of revocation issued by the Board when the individual is eligible to reapply for licensure. The reapplication process shall include the submission of all forms and fees required by N.J.A.C. 7:3A-3.2 for a licensed tree expert candidate or N.J.A.C. 7:3A-3.6 for a licensed tree care operator candidate.

7:3A-9.6 Penalties

(a) If, upon investigation, the Board determines that there has been a violation of N.J.A.C. 7:3A-8.1(a), 8.2(a), and/or 8.3(a), the Board may issue civil administrative penalties pursuant to this section. The Board shall determine the amount of the administrative penalty based on the applicable Civil Administrative Base Penalty Matrix below, the type of violation, and whether it is the first, second, third, or subsequent time the business or licensee has incurred that type of violation:

Civil Administrative Base Penalty Matrix Applicable to Businesses			
Type of Violation	First Violation	Second Violation	Third and Each Subsequent Violation
Engaging in the business of providing tree care services for hire in New Jersey without first registering with the Board	\$1,000	\$2,000	\$2,500
Failure to demonstrate that at least one licensee, who may be the employer or an employee engaged in the performance of or in the supervision of employees who provide LTE or LECO services, is assigned to the principal office and to each branch from which tree care services are provided for hire in New Jersey	\$1,000	\$2,000	\$2,500

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Failure to comply with the standards of practice and safety requirements set forth at N.J.A.C. 7:3A-8.1(a)	\$1,000	\$2,000	\$2,500
Failure to comply with quarantine restrictions as set forth in N.J.A.C. 7:3A-2.16	\$1,000	\$2,000	\$2,500
Failure to provide instruction and training of employees as required by N.J.A.C. 7:3A-2.14	\$1,000	\$1,000	\$1,000
Failure to ensure the safe operation of all equipment used in the performance of tree care services	\$1,000	\$1,000	\$1,000
Engaging in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of business, or in obtaining a business registration	\$1,000	\$1,000	\$1,000
Engaging in any form of false or misleading advertising or promotional activities	\$1,000	\$1,000	\$1,000
Failure to maintain records required by the Board	\$500.00	\$1,000	\$2,000
Failure to abide by the canons of professional ethics and/or standards of conduct set forth at N.J.A.C. 7:3A-8.3(a)	\$500.00	\$1,000	\$2,000
Engaging in wrongful conduct in the practice of professional services set forth at N.J.A.C. 7:3A-8.3(c)	\$500.00	\$1,000	\$2,000
Failure to cooperate fully with the Department of Environmental Protection or the Board in an investigation or adjudication of an alleged violation of this chapter	\$1,000	\$2,000	\$2,500

Civil Administrative Base Penalty Matrix Applicable to Licensees			
Type of Violation	First Violation	Second Violation	Third and Each Subsequent Violation
Failure to comply with the industry standards of practice and safety requirements set forth at N.J.A.C. 7:3A-8.1(a)	\$500.00	\$1,000	\$2,000
Engaging in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of business, in obtaining the authority to sit for an examination, or in obtaining a license	\$500.00	\$1,000	\$1,000
Engaging in any form of false or misleading advertising or promotional activities	\$500.00	\$1,000	\$2,000
Failure to maintain records required by the Board	\$100.00	\$250.00	\$500.00
Failure to abide by the canons of professional ethics and/or standards of conduct set forth at N.J.A.C. 7:3A-8.2(a)	\$500.00	\$1,000	\$2,000
Failure to cooperate fully with the Department of Environmental Protection or the Board in an investigation or adjudication of an alleged violation of this chapter	\$500.00	\$1,000	\$2,000
Engaging in wrongful conduct in the practice of professional services set forth at N.J.A.C. 7:3A-8.2(c)	\$500.00	\$1,000	\$2,000
Failure to comply with the requirement to return the license certificate to the Board within 30 days *of* receipt of written notice of revocation, suspension, or non-renewal of the license	\$500.00	\$1,000	\$2,000
Representing oneself to the public as a licensee without holding a valid license or during a period of suspension or revocation	\$500.00	\$1,000	\$2,000

(b) In levying penalties, the Board shall consider each violation to be a separate and distinct violation. If the violation is of a continuing nature, each day during which a violation continues shall be deemed to constitute an additional, separate, and distinct violation and shall subject the violator each day to the penalty amount set forth in the applicable matrix above.

(c) The Board may, in its discretion, decrease the penalty amount levied from that listed in the Civil Administrative Base Penalty Matrices above on the basis of any of the following factor or combination of factors:

1. The compliance history of the violator;
2. The number, frequency, and severity of the violations;
3. Any measure taken by the violator to mitigate the violation or to prevent future violations;

4. The cooperation of the violator in correcting the violation and ensuring the violation does not occur again; and/or

5. Any other extenuating or mitigating circumstances.

(d) None of the factors set forth in (c) above shall constitute a defense to any violation.

7:3A-9.7 Enforcement procedures

(a) For any notice of revocation, suspension, denial, or non-renewal of a license or a business registration, the Board will:

1. Serve the notice by certified mail, return receipt requested, or by personal service upon the individual or business that is subject to the order or notice;
2. Identify the individual or business subject to the notice;
3. Set forth a concise statement of the facts that are the grounds for the denial, suspension, revocation, or non-renewal;

4. Identify each of the specific provisions of this chapter under which the denial, suspension, revocation, or non-renewal is authorized; and

5. Notify the person or persons named in the notice of the right to request a contested case hearing pursuant to the provisions of N.J.A.C. 7:3A-10.1(a).

(b) For any notice of violation and/or assessment of civil administrative penalty, the Board will:

1. Serve the notice by certified mail, return receipt requested, or by personal service upon the individual or business which is subject to the order or notice;

2. Identify the individual or business that is subject to the notice;

3. Set forth a concise statement of the facts constituting the violation;

4. Identify each of the specific provisions of this chapter alleged to have been violated;

5. In a case where the civil administrative penalty assessment is reduced from the amount in the penalty matrix, and the reduction is based in whole or part on a commitment by the violator to implement one or more remedial actions, describe each remedial action that shall be implemented, or cause***d*** to be implemented, by the violator, and the time period within which such implementation shall commence and be completed; and

6. In the case of a civil administrative penalty assessment, specify the amount of the civil administrative penalty to be imposed in accordance with the Civil Administrative Base Penalty Matrices at N.J.A.C. 7:3A-9.6(a), as well as any factor or combination of the factors set forth at N.J.A.C. 7:3A-8.3(c)1 through 7 the Board took into consideration in determining the amount.

(c) If a civil administrative penalty is assessed against more than one person for the same violation or violations, each shall be jointly and severally liable for the penalty assessed.

SUBCHAPTER 10. HEARING REQUESTS

7:3A-10.1 Procedures to request a contested case hearing

(a) An individual aggrieved by a decision made by the Board, including a notice of assessment of civil administrative penalty, notice of denial, non-renewal, suspension, revocation of a license or business registration, or any other Board decision may request a contested case hearing pursuant to this section and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq. A written request for a contested case hearing shall be submitted to the Board.

(b) All requests for a contested case hearing shall be received by the Board no later than 20 business days after written notice of any decision in (a) above was received by the individual requesting a hearing.

(c) A request for a contested case hearing shall be submitted in writing to the Board in accordance with (b) above and shall contain:

1. The name, address, and telephone number of the person making the hearing request;

2. A copy of the notice or other document conveying the decision being contested;

3. A brief and clear statement of the requester’s interest in such decision;

4. A statement of all facts alleged to be at issue and their relevance to the Board’s decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue shall also be included;

5. An admission or denial of each of the Board’s findings of fact;

6. A description of the facts and/or issues that the person believes constitutes a defense to any finding or assertion of the Board;

7. Information and documentation supporting the assertions and appeals of the person requesting the hearing and specific reference to, or copies of, other written documents relied upon to support the assertions and appeals;

8. An estimate of the time required for the hearing (in days or hours); and

9. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(d) If a request for a hearing fails to provide all the information required by (c) above, the Board may deny the request.

(e) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(f) The Board shall determine whether any request for a contested case hearing should be granted. In making such determination, the Board shall evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Board’s decision. Where a hearing request sets forth only issues of law, and does not set forth issues of fact, the request will be denied. Denial by the Board of a request for a contested case hearing shall constitute a final agency action of the Board for the purposes of judicial appeal pursuant to the Rules of New Jersey Civil Practice.

(g) If the Board determines a hearing should be granted, the Board shall refer the matter to the Office of Administrative Law (OAL) for an Administrative Law Judge (ALJ) to conduct the hearing. The Board shall affirm, reject, or modify the ALJ’s initial decision within 45 days of its receipt thereof by issuing its own final decision. The Board’s final decision shall constitute a final agency action for purposes of judicial review under the Administrative Procedure Act, N.J.S.A. 52:14B-12.

(h) The Board shall inform the individual who requested the hearing in writing whether the request for a hearing was granted. If the Board determines not to grant a hearing, it shall provide the reason for its denial in writing.

(i) If no hearing is requested, the assessment of civil administrative penalty; notice of denial, non-renewal, suspension, or revocation of a certificate or business permit; or any other Board decision from which a contested case hearing is to be provided pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., becomes a final order on the 21st day following receipt of the notice by the person.

(j) If a hearing request that has been submitted to the Board is subsequently withdrawn by the requester, the Board action for which the hearing request was requested becomes a final order upon such withdrawal.

(k) The jurisdiction of an appeal of a final agency decision lies with the Appellate Division of the Superior Court of the *[United States]* ***State of New Jersey***, and only arises after the aggrieved individual has exhausted all administrative appeals.

(l) No license or business registration, which is the subject of a final order of suspension, revocation, non-renewal, or denial, shall be valid during the pendency of any action on appeal to a court of competent jurisdiction from that order, unless a stay of the final order has been granted by the court.

HEALTH

(a)

**OFFICE OF THE COMMISSIONER
OFFICE OF LEGAL AND REGULATORY
COMPLIANCE
CRIMINAL INVESTIGATION UNIT**

**Notice of Readoption
Criminal Background Investigations: Nurse Aides,
Personal Care Assistants and Assisted Living
Administrators**

Readoption: N.J.A.C. 8:43I

Authority: N.J.S.A. 26:2H-7.19 and 26:2H-86.

Authorized By: Cathleen D. Bennett, Commissioner, New Jersey Department of Health.

Effective Date: March 17, 2017.

New Expiration Date: March 17, 2024.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 8:43I, Criminal Background Investigations: Nurse Aides,