



National Armored
Car Association

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VIA ELECTRONIC SUBMISSION [REDACTED]

December 19, 2014

Colonel Joseph R. Fuentes
Superintendent
New Jersey State Police
P.O. Box 7068
West Trenton, NJ 08628-0068

Dear Colonel Fuentes:

On behalf of the National Armored Car Association (NACA), I write to petition your office, pursuant to N.J.S.A. 52:14B-4(f), N.J.A.C. 1:30-4.1, and N.J.A.C. 13:1D et seq. requesting you amend the existing rules at N.J.A.C. 13:55A-1 et seq., which implement the requirements of N.J.S.A. 45:19A-1 et seq., the Security Officer Registration Act (SORA). Your office announced on July 17, 2014, that it now believes the requirements of SORA apply to armored car companies. In the same announcement, you set forth various SORA-related compliance deadlines for the industry. This is the first official notice by any agency of the state of New Jersey that SORA would apply to the armored car industry. Under N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30 et seq., however, the application of SORA to our industry must be made via the rulemaking process rather than simply being announced. In addition, the existing training requirements set forth in N.J.A.C. 13:55A-4 are inconsistent with safe practices in our industry. As such, NACA respectfully requests that if you wish to extend the application of SORA to armored car companies, you do so through the appropriate rulemaking mechanisms pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30 et seq. In addition and as part of the same rulemaking, NACA requests you amend N.J.A.C. 13:55A-1 et seq. so that any training required of armored car guards under SORA is consistent with recognized safe practices within the industry and designed to mitigate the unique risks associated with the secure collection, transportation and delivery of currency and other valuables.

Formed in 1929, NACA is a business association that brings together the four major companies of the armored car industry—Brinks, Dunbar Armored, Garda, and Loomis—with a focus on protecting and promoting the common interests of the industry. Our members are national and international publicly traded corporations and privately held companies that provide secure transportation and cash management services for the Federal Reserve, financial institutions, state and local governments, and private businesses and individuals across the nation. These four organizations comprise approximately 90% of the armored car industry in the United States and approximately 98% in New Jersey. NACA members have handled virtually every dollar and coin in circulation.

NACA considers appropriate and germane training a critical issue for both the industry and the safety of the public and strongly believes that the functions of armored car guards are

substantially different from the duties of other security officers. Any regulation of training for armored car guards, therefore, must reflect such differences in order to minimize risk to armored car guards and the public.

I. Legal Requirements for a Petition for Rulemaking

Under N.J.S.A. 52:14B-4(f), N.J.A.C. 1:30-4.1 and N.J.A.C. 13:1D-1.2, an interested person may petition an agency to adopt a new rule or amend or repeal an existing rule. Such a petition may be submitted to the agency through mail, email, electronic mailing list or other means. The petition shall state clearly and concisely:

- (1) The substance or nature of the rulemaking which is requested;
- (2) The reasons for the request and the petitioner's interest in the request;
- (3) References to the authority of the agency to take the requested action; and
- (4) Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

The necessary information is set forth below.

II. The Substance and Nature of the Requested Rulemaking

NACA respectfully requests that if you wish to extend the application of SORA to armored car companies, you do so through the appropriate rulemaking mechanisms pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.1. In addition, as part of the same rulemaking, NACA requests you amend N.J.A.C. 13:55A-1 et seq. so that any training required of armored car guards under SORA is consistent with recognized safe practices within the industry and designed to mitigate the unique risks associated with the secure collection, transportation and delivery of currency and other valuables.

Specifically, we request you amend N.J.A.C. 13:55A-1.3 to provide definitions for armored car companies and armored car guards and make conforming changes throughout N.J.A.C. 13:55A-1 et seq. In addition, we request you amend N.J.A.C. 13:55A-4 to create separate training requirements for armored car guards. This program should mirror NACA's *Armored Car Security Employee Safe Driver Training Program Trainer's Guide* (attached as EXHIBIT 1) and *Armored Car Security Employee Firearms Training Program Trainer's Guide* (attached as EXHIBIT 2) and should exclude requirements inconsistent with safe practices in our industry, such as training tailored for security guards on homeland security and counter-terrorism, communications/emergency response, theft protection and detention of suspects.

III. The Reasons for the Request and the Petitioners' Interest in the Request

As an association that represents the four major companies of the armored car industry, all of which have operations in the state of New Jersey and would be subject to SORA, we have

interest in this petition. As stated above, NACA's members comprise approximately 90% of the armored car industry in the United States and approximately 98% in New Jersey.

Your office announced on July 17, 2014, it now believes the requirements of SORA apply to armored car companies. In the same announcement, you set forth various SORA-related compliance deadlines for the industry. This was the first official notice by any agency of the state of New Jersey that SORA would apply to the armored car industry. Under N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 17:27 et seq., however, the application of SORA to our industry must be made through and subjected to the rulemaking process. In addition, the existing training requirements set forth in N.J.A.C. 17:27A-4 are inconsistent with safe practices in our industry. If armored car guards will be required to follow SORA training, the curriculum must be amended to better mitigate risk to armored car guards and the general public.

SORA was enacted in 2004 as an update to the Private Detective Act of 1939 (PDA). The PDA did not apply to armored car companies, and we have found no indication in the legislative history that the state legislature intended the 2004 revisions to the PDA contained in SORA to extend the law's requirements to the armored car industry. Your office issued a proposed rule implementing SORA on November 7, 2005, which was released in final form in 2006. On June 3, 2013, your office issued a second proposed rule amending the 2006 regulations implementing SORA. Neither the 2006 nor 2013 rulemaking specifically mentioned the armored car industry. Nor did your office reach out to armored car companies or their representatives to participate in the 2006 or 2013 rulemakings (N.J.S.A. 52:14B-4(a)(1) states, "in order to inform those persons most likely to be affected by or interested in the intended action, each agency shall distribute notice of intended action to interested parties..."). In addition, to our knowledge, your office has not taken any enforcement actions against armored car companies under SORA.

In short, there is no indication in SORA's legislative history or actions by the State of New Jersey prior to July of this year that SORA would apply to armored car companies. Nor was our industry mentioned or included in the 2006 or 2013 rulemakings implementing SORA.

On July 17, 2014, Major David Acevedo issued a notice on your behalf to armored car agencies operating in New Jersey (notice is attached as EXHIBIT 3). The notice states that the "New Jersey State Police, with the guidance from the New Jersey Department of Law and Public Safety, Division of Law, **now** advise that SORA applies to armored car companies maintaining a full-time office in New Jersey, as well as to armored car employees who are primarily employed in New Jersey" (emphasis added). The notice also advises that out-of-state armored car companies that "employ an individual required to comply with SORA... would also be required to comply with SORA, regardless if [the company] maintains an office in New Jersey or not."

In the notice, Major Acevedo states he is "optimistic that a smooth transition to SORA can be accomplished for both armored car agencies and crew members, and full industry compliance can be attained by March 1, 2015." The notice states that "[e]ffective immediately, the New Jersey State Police Private Detective Unit will accept applications from armored car company owners[,] the license process for individual security officers (armored car guards) will commence on January 1, 2015[, and t]he Private Detective Unit expects this part of the process to be complete by March 31, 2015."

The notice is a new statement of general applicability of SORA to our industry and an attempt to modify the existing SORA regulations at N.J.A.C. 13:55A1 et seq. As such, the notice is a rule under N.J.S.A. 52:14B-1 et seq., the Administrative Procedure Act, and thus must meet the requirements for rulemaking set forth under N.J.S.A. 52:14B-4. N.J.S.A. 52:14B-2 defines an Administrative rule or rule as follows:

when not otherwise modified, means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases.

The notice does not meet the requirements set forth in N.J.S.A. 52:14B-4 for rulemaking and should therefore be withdrawn. If you wish to extend the application of SORA to armored car companies, you must do so through the appropriate rulemaking mechanisms pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30 et seq.

In addition, the existing training requirements set forth in N.J.A.C. 13:55A-4 are inconsistent with safe practices in our industry. Certain current requirements for training under SORA go against the most basic instincts for our armored car guards, and obeying the training would actually put the safety of our guards and the general public in jeopardy. As a result, you should amend N.J.A.C. 13:55A-4 to provide a separate training program for armored car guards based on NACA's *Armored Car Security Employee Safe Driver Training Program Trainer's Guide* (EXHIBIT 1) and *Armored Car Security Employee Firearms Training Program Trainer's Guide* (EXHIBIT 2).

Over 99% of armored car attacks involve the use of deadly force. Oftentimes attackers use tactics to distract the armored car crew and the public in order to provide an opportunity to attack the crew and/or rob the vehicle. As a result, unlike law enforcement and other security guards, NACA member guards are taught to disengage from the public while on duty and not to participate in events outside of these duties. This is designed to protect both the armored car guards themselves and the general public.

Because the duties of armored car guards differ significantly from those of law enforcement or other security guard professions, both public and private sector experts recommend distinct training regimens for armored car employees. The International Association of Chiefs of Police (IACP) in their "*Private Security Officer Selection, Training and Licensing Guidelines*" established a separate classification for armored car guards. They concluded that training "should be based upon a needs analysis related to job function." Similarly, American Society for Industrial Security (ASIS) International provided a specific exemption for armored car guards when they developed their "*Private Security Officer Selection and Training Guideline*," which recognizes that armored car guard and security guard training are significantly different. Thus, both public and private sector experts, after substantial review, have urged separate training

regimens for armored car guards. The states of Arizona, Virginia, North Carolina and Utah have taken similar approaches to training.

Several topics within the training curriculum under SORA would not be relevant to armored car guards and may, in fact, put crews, customers and the public at risk. These requirements include, but are not limited to, engaging the public as part counter-terrorism efforts, emergency response, detaining subjects or providing first aid. As stated previously, experience has shown that faked security incidents or healthcare emergencies are often used as a method to stop our trucks prior to a robbery. The armored car industry should, therefore, be exempt from those requirements. Training should instead focus on more pertinent instruction, including safe driving an armored truck and how to evade involvement in certain circumstances. NACA's *Armored Car Security Employee Safe Driver Training Program Trainer's Guide* (EXHIBIT 1) and *Armored Car Security Employee Firearms Training Program Trainer's Guide* (EXHIBIT 2) provides an excellent basis for separate armored car guard training under SORA.

IV. References to the Authority of the Agency to take the Requested Action

Under SORA, N.J.S.A. 45:19A-12, the Superintendent of the Division of State Police has the obligation to promulgate rules and regulations to carry out the statute's requirements.

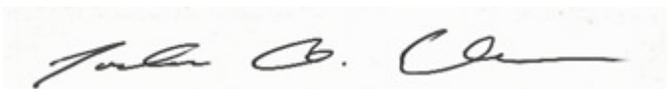
V. Existing Federal or State statutes and Rules That Are Pertinent to the Requested Action

Pertinent statutes include SORA, N.J.S.A. 45:19A-1 et. seq. and the Armored Car Industry Reciprocity Act, 15 U.S.C. Section 5902.

VI. Conclusion

Thank you for your assistance on this matter. We are looking forward to your response and working with you on this important issue. In the meantime, please feel free to contact me at (202) 642-1970 or at julman@nationalarmoredcar.org with any questions or concerns.

Sincerely,



Josh Ulman
Executive Director
National Armored Car Association

Cc: