

Jobs Impact

The proposed amendments will have no impact on jobs.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments regulate only the members of the PFRS and will have no effect on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the affordability of housing in the State of New Jersey and will not have any impact on the average cost of housing in the State, as the rules simply clarify the long-standing policy of the Board, as required by the Court.

Smart Growth Development Impact Analysis

The proposed amendments are not anticipated to have an impact on housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, as the rules simply clarify the long-standing policy of the Board, as required by the Court.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 1A. DEFINITIONS

17:4-1A.1 Definitions

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

... **“Child,” for purposes of determining a survivor’s benefit under N.J.S.A. 43:16A-12.1 and 43:16A-1(21), shall mean a deceased member’s or retirant’s unmarried child that is:**

- 1. Under the age of 18;**
 - 2. Eighteen years of age or older and enrolled in a secondary school;**
 - 3. Under the age of 24 and enrolled in a degree program in an institution of higher education for at least 12 credit hours in each semester, provided that the member died in active service as a result of an accident met in the actual performance of duty at some definite time and place, and the death was not the result of the member’s willful misconduct; or**
 - 4. Of any age, when, at the time of the member’s or retirant’s death, the child is disabled because of an intellectual disability or physical incapacity, is unable to do any substantial, gainful work because of the impairment and his or her impairment has lasted, or can be expected to last, for a continuous period of not less than 12 months, as affirmed by the medical review board of the Board. For purposes of determining whether a child qualifies under this paragraph, the child’s disability must have developed before the child’s emancipation.**
- ...

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:4-3.7 Survivor benefits; establishing dependency

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

(c) For purposes of determining eligibility for survivor’s benefits under N.J.S.A. 43:16A-12.1 and 43:16A-1(21), the child’s disability must have developed before the child was emancipated by operation of law to be eligible for survivor’s benefits.

(a)

**POLICE AND FIREMEN’S RETIREMENT SYSTEM
WORLD TRADE CENTER ACCIDENTAL DISABILITY
World Trade Center Accidental Disability Benefits
Proposed New Rules: N.J.A.C. 17:4-8**

Authorized By: The Board of Trustees of the Police and Firemen’s Retirement System of New Jersey, Ed Donnelly, Chair.

Authority: N.J.S.A. 43:16A-13 and P.L. 2019, c. 157.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-037.

Submit comments by June 19, 2020, to:

Robert S. Garrison, Jr., Esq.
50 West State Street-9th Floor
Trenton, NJ 08608
Attn: Board of Trustees of the Police and Firemen’s Retirement System of New Jersey
Robert.Garrison@treas.nj.gov

The agency proposal follows:

Summary

The Board of Trustees of the Police and Firemen’s Retirement System of New Jersey (Board) is responsible for maintaining the administrative rules at N.J.A.C. 17:4. When the Board becomes aware of a change in the laws or a court decision that could affect the Police and Firemen’s Retirement System (PFRS), the Board reviews the administrative rules to determine where changes, if any, are required. Amendments to the affected rules are then proposed, in order to uphold the new statute or court decision effectively.

On July 8, 2019, Governor Murphy signed P.L. 2019, c. 157, the Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act, which permits certain members of the PFRS, State Police Retirement System (SPRS), or the Public Employees’ Retirement System (PERS) to receive accidental disability retirement allowance for disability resulting from participation in 9/11 World Trade Center rescue, recovery, or cleanup operations. The law, which became effective on July 8, 2019, states the Board shall promulgate rules necessary to implement the provisions of the law. Chapter 157 creates four categories of eligibility: 1. active members who participated for eight or more hours in the one-month period following September 11, 2001, and now manifest an injury or condition resulting from the event; 2. active members who sustained an injury between September 11th and September 12th, 2001, that is a qualifying condition and prevented them from working eight hours; 3. retired members who worked for eight or more hours in the one-month period following September 11, 2001, who have already retired and have now manifest a qualifying condition or disability, and will be eligible to have their benefits recalculated; and 4. retired members who sustained an injury between September 11th and September 12th 2001, that is a qualifying condition and prevented them from working eight hours and will be eligible to have their benefits recalculated.

Therefore, the Board proposes to adopt the following new rules, which affect retirements within the PFRS.

Subchapter 8. 9/11 World Trade Center Accidental Disability

The Board proposes to add new Subchapter 8, 9/11 World Trade Center Accidental Disability, in order to include provisions of P.L. 2019, c. 157, permitting certain members of the PFRS to receive an accidental disability retirement allowance for disability resulting from participation in 9/11 World Trade Center rescue, recovery, or cleanup operations. The new subchapter will set forth: the purpose of the subchapter, definitions, eligibility, and filing requirements.

As the Board has provided a 60-day comment period on the notice of proposal, the notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules at N.J.A.C. 17:4-8 benefit certain PFRS members, retirees, and survivors of members who participated in the

World Trade Center rescue, recovery, or clean-up operations between September 11 and October 11, 2001, and who developed, or later develop, a qualifying condition or impairment as outlined under the statute. It does so by increasing the level of retirement benefit from that of an ordinary disability or retirement allowance based upon number of years of service to an accidental disability allowance.

Economic Impact

The proposed new rules will result in an increase in contributions by the State and local government employers to the PFRS. According to the fiscal estimate produced by the Office of Legislative Services, “the cost increase cannot be estimated because it will depend on the number of members or retirees who incurred an illness, who can prove participation in the rescue, recovery, and cleanup operations, and who submit an application for the benefit. It is likely that the increase in costs will not be significant.” There should be no direct impact on members or retirees based on the proposed new rules, other than the impact of any potential tax implications receiving an accidental disability retirement could hold.

Federal Standards Statement

The proposed new rules meet the applicable Federal standards, that is, 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of this subchapter.

Jobs Impact

As the proposed new rules concern retirement benefits for active members or retirees who already are, or may become disabled, as a result of having participated in rescue, recovery, and cleanup operations at the World Trade Center in the approximately one-month period between September 11, and October 11, 2001, it is not anticipated to have any effect upon the generation or loss of jobs in the future.

Agriculture Industry Impact

The proposed new rules will not have any impact on the agriculture industry.

Regulatory Flexibility Statement

N.J.A.C. 17:4 affects members, retirees, and survivors of the PFRS. Thus, the proposed new rules do not impose any reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The proposed new rules will have no impact on the affordability of housing in New Jersey, nor will they involve a change in the average costs associated with housing, because the rules pertain only to administration of the PFRS for members, retirees, and survivors of members and retirees as it pertains to P.L. 2019, c. 157.

Smart Growth Development Impact Analysis

The proposed new rules will not have any impact on the achievement of smart growth; nor will they involve a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules pertain to administration of the PFRS for members, retirees, and survivors of members and retirees as it pertains to P.L. 2019, c. 157.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

SUBCHAPTER 8. WORLD TRADE CENTER ACCIDENTAL DISABILITY

17:4-8.1 Purpose of this subchapter

The Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act (Act), P.L. 2019, c. 157, permits certain members or retirees of the Police and Firemen’s Retirement System of New Jersey (PFRSNJ), State Police Retirement System (SPRS), and Public

Employees’ Retirement System (PERS) to receive an accidental disability retirement allowance for disability resulting from participation in 9/11 World Trade Center rescue, recovery, or cleanup operations. The purpose of this subchapter is to establish the rules necessary to implement the provisions of this law.

17:4-8.2 Definitions

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

“Qualifying condition or impairment of health” shall include:

1. Diseases of the upper respiratory tract and mucosae, including conditions of conjunctivitis, rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, upper airway hyper-reactivity, and tracheo-bronchitis, or a combination of such conditions;

2. Diseases of the lower respiratory tract, including, but not limited to, bronchitis, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic;

3. Diseases of the gastroesophageal tract, including esophagitis and reflux disease, either acute or chronic, caused by exposure or aggravated by exposure;

4. Diseases of the psychological axis, including post-traumatic stress disorder, anxiety, depression, or any combination of such conditions;

5. Diseases of the skin, such as contact dermatitis or burns, either acute or chronic in nature, infectious, irritant, allergic, idiopathic, or non-specific reactive in nature, caused by exposure or aggravated by exposure; and

6. New onset diseases resulting from exposure, such as diseases occurring in the future including cancer, chronic obstructive pulmonary disease, asbestos-related disease, heavy metal poisoning, musculoskeletal disease, and chronic psychological disease.

“World Trade Center Health Program” means the program created by the James Zadroga Health and Compensation Act of 2010, including the Clinical Centers of Excellence administered by the Centers for Disease Control/National Institute for Occupational Safety and Health.

“World Trade Center rescue, recovery, or cleanup operations” means the rescue, recovery, or cleanup operations at the World Trade Center site between September 11, 2001, and October 11, 2001.

“World Trade Center site” means any location below a line starting from the Hudson River and Canal Street, east on Canal Street to Pike Street, south on Pike Street to the East River, and extending to the lower tip of Manhattan.

17:4-8.3 Eligibility

(a) The event(s) on which an application for accidental disability benefits is based shall be presumed to have occurred during, and as a result of, the performance of a member’s regular or assigned duties and not the result of a member’s willful negligence, if the member is:

1. Totally and permanently disabled by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations;

2. Passed a physical examination for entry into public service that failed to disclose evidence of a qualifying condition or impairment of health that formed the basis for the total and permanent disability; and

3. Either under (a)3i or ii below, the member participated in World Trade Center rescue, recovery, or cleanup operations for:

i. A minimum of eight hours; or

ii. Less than eight hours, and the member sustained a documented physical injury at the World Trade Center site between September 11, 2001 and September 12, 2001, that prevented the member from continuing to participate in World Trade Center rescue, recovery, or cleanup operations for a minimum of eight hours, and the documented physical injury is a qualifying condition or impairment of health that resulted in a total and permanent disability for which the member seeks a presumption under this subsection.

(b) A retiree who retired on a service retirement, special retirement, or an ordinary disability retirement shall be eligible to apply to the Board of Trustees to have the retiree’s retirement allowance recalculated as an accidental disability retirement allowance for benefit payments on or after the application for recalculation, if the retiree:

1. Participated in the World Trade Center rescue, recovery, or cleanup operations;
2. Is totally and permanently disabled by a qualifying condition or impairment of health, as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations;
3. Passed a physical examination for entry into public service that failed to disclose evidence of a qualifying condition or impairment of health that formed the basis for the total and permanent disability; and
4. Filed an application for such recalculation within 30 days of the date that the retiree knew, or should have known, of the existence of such disability and its relation to the World Trade Center rescue, recovery, or cleanup operations.

17:4-8.4 Filing requirements

(a) A member or retiree must file a written and sworn Eligibility Registration Form with the retirement system indicating the dates, locations of service, and number of hours of participation in World Trade Center rescue, recovery, or cleanup operations by July 8, 2021, to qualify for the presumption or recalculation pursuant to N.J.A.C. 17:4-8.3. If a retiree files an application for recalculation, pursuant to N.J.A.C. 17:4-8.3(b) before July 8, 2021, the application shall serve as the Eligibility Registration form. The filing of this form, and the information required on it, allows eligible PFRS members or retirees the right to file for an Accidental Disability Retirement should they become disabled at a later date due to participation in the rescue, recovery, or cleanup operations at the WTC site.

(b) A retiree seeking recalculation of a retirement allowance pursuant to N.J.A.C. 17:4-8.3(b) shall take the steps required under this subsection.

1. A member or retiree must file an application for recalculation, on a form prescribed by the Board, within 30 days of the date that the member knew, or should have known, of the existence of a total and permanent disability caused by a qualifying condition or impairment of health and its relation to World Trade Center rescue, recovery, or cleanup operations. Retirees who knew, or should have known, of the existence of a total and permanent disability caused by a qualifying condition or impairment of health and its relation to World Trade Center rescue, recovery, or cleanup operations before July 8, 2019, must file an application for recalculation, on a form prescribed by the Division, within 30 days from the date members and retirees are notified of the enactment of P.L. 2019, c. 157.

2. A member or retiree with an Eligibility Registration Form on file with the Division must file an application with the prospective date of retirement pursuant to N.J.A.C. 17:5-5.1.

3. A member or retiree who applies for accidental disability retirement must have a medical examination, pursuant to N.J.S.A. 43:16A-7.

4. If a member or retiree who is enrolled in the World Trade Center Health Program provides medical documentation for treatment provided, or paid, by the World Trade Center Health Program sufficient to allow the Medical Review Board to certify that the member or retiree is totally and permanently disabled by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations, then no further evaluation is necessary. If the medical documentation is not sufficient to establish a total and permanent disability caused by a qualifying condition or impairment of health as a direct result of participation in World Trade Center rescue, recovery, or cleanup operations after review by the Medical Review Board, then an independent medical examination shall be required.

17:4-8.5 Calculation of accidental disability benefits

If a member or retiree is approved for accidental disability retirement under the provisions of P.L. 2019, c. 157 and this subchapter, the annual allowance shall be 66 2/3 percent of the salary at the time of September 11, 2001, or the time of retirement, whichever provides the largest benefit to the member.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Hearings and Appeals

Proposed Readoption: N.J.A.C. 19:42A

Authorized By: Casino Control Commission, James T. Plousis, Chairman.

Authority: N.J.S.A. 5:12-63, 69, 80, 86, 89, 94, 95, 107, and 108.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-040.

Submit written comments by June 19, 2020, to:

Teresa M. Pimpinelli, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401
email: dianna.faultlerov@ccc.state.nj.us

The agency proposal follows:

Summary

N.J.S.A. 5:12-1 et seq., as amended by P.L. 2011, c. 19, effective February 1, 2011, effectuated significant changes in the structures and procedures for the regulation of casino gaming in New Jersey, including the reallocation of the duties and responsibilities between the Casino Control Commission (Commission) and the Department of Law and Public Safety, Division of Gaming Enforcement (Division). The Commission adopted new rules, which were effective on April 15, 2013, establishing hearing procedures for the conduct of contested case hearings within the Commission's revised jurisdiction and governing the adjudication of appeals from certain actions of the Division Director, a new authority granted to the Commission pursuant to P.L. 2011, c. 19. (see 44 N.J.R. 2993(b); 45 N.J.R. 946(b).) In accordance with N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 19:42A were scheduled to expire on April 15, 2020. In accordance with N.J.S.A. 52:14B-5.1c(2), the filing of this notice of proposal with the Office of Administrative Law extended the expiration date by 180 days to October 12, 2020.

The Commission is proposing to readopt the rules at N.J.A.C. 19:42A, which address standards and procedures for the conduct of hearings and appeals before the Commission. The Commission has reviewed the existing rules and has determined them to be reasonable, necessary, and proper for the purpose for which they were originally promulgated.

A summary of N.J.A.C. 19:42A follows.

Subchapter 1 sets forth the general provisions of the Commission's hearing and appeal process.

Subchapter 2 sets forth the procedure to follow for the commencement of contested case hearings.

Subchapter 3 sets forth the conduct of contested case hearings, including establishing the burden of proof for each party in a contested case hearing; how settlements reached prior to hearings are handled, and the circumstances under which a wage execution is required of an applicant, licensee, or petitioner.

Subchapter 4 sets forth the manner in which an appeal before the Commission is commenced; who may appeal a final action; the types of appeals the Commission is authorized to hear; how notice of a party's right to appeal will be provided; establishing the procedure for requesting extensions of the time to file an appeal; requiring the Division to provide a statement of the items comprising the appeal record; defining the record on appeal and the process to settle any disputes regarding its correctness; providing procedures for supplementing the appeal record; establishing procedures for supplementing the appeal record; establishing the format and requirements for filing a Case Information Statement, briefs, and motions, as well as the time for filing appellate briefs; addressing the dismissal of an appeal and the effect of a request to withdraw or entry into a subsequent stipulation of settlement on an appeal.