

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Fees, License Terms and Annual Reports for Licensees

Proposed Readoption: N.J.A.C 3:23

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 8.1 and 15e; 17:15C-9(c); 17:15A-40; 17:16C-8 and 82; 17:16D-4 and 45:22-4; and 11.

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

Proposal Number: PRN 2007-380

Submit comments by February 15, 2008 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:23, its rules governing fees and annual reports for all licensees as defined by N.J.A.C. 3:5-2. Pursuant to N.J.S.A. 52:14B-5.1c, the rules in this chapter are scheduled to expire on May 16, 2008. The Department has reviewed the rules, including recent amendments to N.J.A.C. 3:23-1.1 and 2.2 which were adopted effective October 1, 2007 (see 39 N.J.R. 4111(a)) and has

determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Subchapter 1 sets forth the purpose and the scope of the chapter.

Subchapter 2 sets forth license terms and application fees. N.J.A.C. 3:23-2.1(a) states that all licensees governed by N.J.S.A. 17:11C-1 et seq., shall be subject to the application fees specified in N.J.A.C. 3:15-4.2. N.J.A.C. 3:23-2.1(b) sets forth the application fees other than those specified in N.J.A.C. 3:15-4.2. N.J.A.C. 3:23-2.1(c) states that all application fees are nonrefundable. N.J.A.C. 3:23-2.2(a) states that all newly issued licenses shall run from the date of issuance to the end of the license term during which the initial license was issued. N.J.A.C. 3:23-2.2(b) states that commencing with the license term that began July 1, 2007, the license term of the licenses shall be two years beginning on July 1 of each odd year and ending on June 30 of the next odd numbered year.

Subchapter 3 sets forth rules concerning money transmitters.

N.J.A.C. 3:23-3.1 states that each applicant for a license to conduct business as a money transmitter shall fill out a form supplied by the Commissioner of Banking and Insurance (Commissioner) which complies with the mandates of N.J.S.A. 17:15C-7. The section further states that a nonrefundable fee of \$ 700.00 shall accompany an application for a license as a money transmitter or a foreign money transmitter but such a fee is not required to be paid for a renewal application.

N.J.A.C. 3:23-3.2(a) states that each money transmitter, including foreign money transmitters, shall file an annual report on or before April 1 of each year, on a form supplied by the Commissioner. The form shall include information indicating the adequacy of net worth, demonstrating the timely transmission of funds, confirming bonding requirements, summarizing

activity, and any other relevant information which the Commissioner may require concerning the conduct of the licensee's business. N.J.A.C. 3:23-3.2(b) states that in accordance with N.J.A.C. 3:1-7.6, the Department shall assess a penalty against any licensee for each report filed late.

Subchapter 4 sets forth the annual reporting requirements for licensees.

N.J.A.C. 3:23-4.1 states that unless otherwise prescribed by a statute applicable to a particular license type, each licensee listed in N.J.A.C. 3:23-2.1, including licensed lenders, shall file an annual report on or before April 1 on a form supplied by the Commissioner. The form shall include the licensee's name, address, volume of business(es), bonding information, if any, and may include any other information that the licensee is required by rule or statute to maintain or report. The filing of annual reports by check cashers, insurance premium finance companies and pawnbrokers shall be governed by the provisions of N.J.S.A. 17:15A-45, 17:16D-7 and 45:22-12, respectively.

N.J.A.C. 3:23-4.2 sets forth the regulations for the electronic filing of annual reports.

N.J.A.C. 3:23-4.2(a) states that all annual reports shall be filed electronically. N.J.A.C. 3:23-4.2(b) states that licensees unable to file electronically may apply to the Department for an exemption from electronic filing. N.J.A.C. 3:23-4.2(c) states that all exemption applications shall be forwarded to the Department by January 15 of the year in which the report is to be filed and shall include a statement certifying to the applicant's inability to file electronically and the reasons for that inability.

N.J.A.C. 3:23-4.3 sets forth the regulations regarding the late filing of annual reports.

N.J.A.C. 3:23-4.3(a) states that all annual reports shall be filed in accordance with N.J.A.C. 3:1-7.6. N.J.A.C. 3:23-4.3(b) states that all annual reports filed late shall be subject to penalties as provided in N.J.A.C. 3:1-7.6. N.J.A.C. 3:23-4.3(c) states that a final annual report shall be

required for the calendar year in which the licensee discontinues its licensed business operations in New Jersey.

The rules proposed to be readopted will continue to provide the regulatory framework to enable the Commissioner to collect the appropriate application fees, properly monitor licensees and ensure a fair and equitable allocation of the dedicated funding assessment applicable to licensees pursuant to N.J.S.A. 17:1C-33 et seq.

The Department is currently considering the inclusion of e-mail addresses in the annual report requirements enumerated in this chapter. This contemplated change may be the subject of a future proposal to amend the rules.

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for re Adoption will continue to have a beneficial social impact on the general public and the entities licensed by the Division of Banking. The re Adoption of the rules is necessary for the continuation of the dedicated funding mechanism. The use of dedicated funding ensures that the Division of Banking has adequate funding to effectively protect and educate consumers and to regulate licensees and depositories in an efficient and timely manner.

Economic Impact

The Department does not expect that the rules proposed for re Adoption will have a significant economic impact on most entities licensed by the Division of Banking. Under the

dedicated funding mechanism implemented in part by these rules, licensees will not pay any licensing or renewal fees but will continue to pay application fees. These fees defray some of the added costs of regulating an entity in its first year. The Department believes that these application fees are a reasonable cost of doing business.

In addition, the Department believes that entities will not incur significant additional costs in continuing to compile the information necessary for the implementation of the dedicated funding assessment mechanism which is forwarded to the Department by licensees in their annual reports. While some entities may use professional services such as accountants and attorneys to comply with the annual reporting requirements, the maintenance of the information required is consistent with good business practice. The costs of professional services will vary depending on the professional used and the services requested but in most cases such assistance should not be necessary.

Federal Standards Statement

The rules proposed for readoption are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption. Licensees in most circumstances will use existing staff and should need to employ professional services only in rare circumstances to meet the application, reporting and other compliance requirements.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for readoption.

Regulatory Flexibility Analysis

Many of the licensees affected by the readoption are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption will continue to impose compliance requirements on these entities, including requiring licensees to submit annual reports. The rules on application fees proposed for readoption were crafted to ensure that the economic burden on smaller entities that generally impose a more modest regulatory burden on the Department are less than those borne by entities whose regulation requires a greater expenditure of Department's resources, while being fair to all entities and being adequate to recover the expenses of the Division of Banking. The costs for compliance are set out in the Economic Impact statement above. The Department believes that generally compliance with the rules can continue to be handled by existing staff and in most cases licensees will not have to use professional services in order to continue to comply with the rules proposed for readoption.

The Department does not believe that these requirements are unduly burdensome. Moreover, they are consistent with prudent financial service industry practice. The businesses

covered by the rules engage either in the handling of monies belonging to others or the making and fulfillment of loan commitments. The obligations of such businesses to remain properly credentialed and fiscally strong exist regardless of the size of the business. Accordingly, no differentiation in reporting, recordkeeping or compliance requirements based on business size is provided.

Smart Growth Impact

The rules proposed for re adoption will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:23.