

Regulatory Flexibility Statement

The rules proposed for readoption do not impose any reporting, recordkeeping, or compliance requirements on 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. The rules proposed for readoption govern major disciplinary procedures for certain law enforcement officers and firefighters.

Housing Affordability Impact Analysis

The rules proposed for readoption will have no impact on the affordability of housing in this State, nor will they have any impact on the costs of housing. The rules set forth procedures for contested case hearings.

Smart Growth Development Impact Analysis

The rules proposed for readoption will have no impact on the number of housing units or the availability of affordable housing in the State, and will have no effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules set forth procedures for contested case hearings.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:27.

BANKING

(a)

DEPARTMENT OF BANKING AND INSURANCE**DIVISION OF BANKING****Governmental Unit Deposit Protection****Proposed Readoption with Amendments: N.J.A.C. 3:34**

Authorized By: Richard J. Badolato, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8, 8.1, and 15 and 17:9-41 et seq.

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

Proposal Number: PRN 2017-250.

Submit comments by December 15, 2017, to:

Denise Ilies, Chief
Office of Regulatory Affairs
New Jersey Department of Banking and Insurance
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legisregs@dobi.nj.gov

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 3:34 were scheduled to expire on November 1, 2017. In accordance with N.J.S.A. 52:14B-5.1.c(2), the filing of this notice of proposal with the Office of Administrative Law extended the expiration date by 180 days to April 30, 2018.

The Department of Banking and Insurance (Department) is proposing to readopt the rules at N.J.A.C. 3:34, which implement the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq. ("Act" or "GUDPA"), which establishes the collateral requirements for depositories that accept deposits of New Jersey governmental unit funds. The Department has reviewed the existing Governmental Unit Deposit Protection rules and has determined them to be reasonable, necessary, and proper for the purpose for which they were originally promulgated. The rules are proposed for readoption with amendments.

N.J.A.C. 3:34-1.1 sets forth the purpose and scope of the chapter.

N.J.A.C. 3:34-1.2 sets forth necessary definitions. The terms defined include: "Act" or "GUDPA"; "adequately capitalized"; "association";

"call report"; "capital funds"; "Commissioner"; "credit union"; "critically undercapitalized"; "custodial depository" or "custodian"; "Department"; "eligible collateral"; "governmental unit"; "public depository"; "public funds"; "significantly undercapitalized"; "uninsured"; "valuation date"; and "well capitalized."

N.J.A.C. 3:34-1.3 sets forth the general requirements, to comply with the Act and this chapter.

N.J.A.C. 3:34-1.4 requires that each public depository electronically file a quarterly report with the Department. The report is due the same day as the call reports, which all depositories are required to file with Federal regulators. The existing rule sets forth the information to be included in the report and along with the report. On November 16, 2016, the Department issued Bulletin No. 16-07 as a reminder to financial institutions of their obligations under the Act, and to advise those institutions of a certification required for the quarterly GUDPA filing mandated by N.J.A.C. 3:34-1.4. The Department is proposing to amend the section to add a new subsection (c) to codify the requirement that a public depository must also file a certification attesting to the accuracy and completeness of the filed report, and that said certification be signed by a member of the public depository's audit committee, its Chief Financial Officer, or an equivalent officer. The certification must be filed with the Department upon the filing of a call report.

Pursuant to the Act, at N.J.S.A. 17:9-43i, non-exempt public depositories are required to pay an annual fee to be prescribed by the Commissioner and to be dedicated to the operations of the Department in connection with the administration and enforcement of the Act. N.J.A.C. 3:34-1.5 sets forth the fees required of such public depositories. If a public depository pays assessments pursuant to N.J.A.C. 3:5, the dedicated funding rules, it is exempt from paying the annual fee.

N.J.A.C. 3:34-1.6 establishes collateral obligations for public depositories holding uninsured public funds. These collateral obligations are security for the public deposits. The amount of required collateral is determined by the amount of uninsured public deposits, New Jersey capital as set out in N.J.A.C. 3:34-1.6(b), and capital category as listed in N.J.A.C. 3:34-1.6(a).

N.J.A.C. 3:34-1.7 sets forth the type of eligible collateral that is permitted.

N.J.A.C. 3:34-1.8 sets forth the web address that can be used to determine if a depository is an approved public depository. It is proposed to be amended to update that address.

N.J.A.C. 3:34-1.9 provides the scope of the following terms in the subchapter: "surplus," "undivided profits," "reserves," and "capital deposits."

N.J.A.C. 3:34-1.10 provides requirements related to public depositories, substitution of collateral.

N.J.A.C. 3:34-1.11 provides requirements related to public depositories and custodial depositories concerning collateral. It also specifies actions that the Commissioner may take in the event that a public depository fails to meet its minimum regulatory capital requirements or reasons grounded in other safety and soundness concerns arise with respect to a public depository.

N.J.A.C. 3:34-1.12 provides the requirement that each public depository shall have a written agreement with a custodial depository, that must indicate that the collateral pledged is to be held subject to the order of the Commissioner and is held as security for public funds as required under the Act.

N.J.A.C. 3:34-1.13 addresses the securing of public deposits that are otherwise required to be secured by law.

N.J.A.C. 3:34-1.14 provides for records to be maintained by the Commissioner and the posting on the Department's website of a listing of public depositories eligible to act as a depository for public funds.

N.J.A.C. 3:34-1.15 sets forth the application process, including required information to be provided, for depositories to seek approval from the Commissioner to act as a public depository and accept public funds.

N.J.A.C. 3:34-1.16 sets forth reporting requirements of certain credit unions that qualify as a public depository related to financial education programs.

Throughout the subchapter, the Department also proposes to replace the existing website address, www.state.nj.us/dobi/index.html, with the one currently in use which is <http://www.nj.gov/dobi/index.html>.

This notice of proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments provide an increased level of protection, beyond Federal Deposit Insurance Corporation (FDIC) insurance, to the public funds of New Jersey county and municipal governments, school districts, and public bodies (local governmental units). In the event of a failure of a depository holding such public funds, there would be enhanced collateral to minimize the loss of public funds, so that the local governmental units affected would be able to continue to provide their services to the public. The rules proposed for readoption with amendments also provide the Department with the tools to monitor and support the program and to collect fees necessary to do so. Therefore, the rules proposed for readoption with amendments should have a beneficial social impact.

Economic Impact

The rules proposed for readoption with amendments require some depositories to pay fees for GUDPA participation to enable the Department to maintain and monitor the program. However, the fees are reasonable for the value of services provided and are not burdensome to the depositories that voluntarily choose to accept public funds for deposit. Depositories that pay assessments under dedicated funding pay no additional GUDPA fees.

Depositories that choose to accept public funds will have to comply with the reporting requirements, undertake the posting of any required collateral, and monitor the public funds they have on deposit to ensure that the proper type and amount of collateral is maintained. The expenses incurred will be in staff time to the depository; however, depositories are generally required to maintain records and interact with their government regulators and have existing trained staff for compliance purposes. Consequently, the cost of the additional recordkeeping and reporting requirements imposed by the rules proposed for readoption with amendments will be minimal. The benefits of the system established by GUDPA and the rules proposed for readoption with amendments are received by New Jersey governmental units and their taxpayers because the system established by GUDPA and the rules proposed for readoption with amendments will reduce the risk of loss of government funds in the event of the failure of a public depository. The proposed amendment requiring a certification will be completed by existing staff of the institution with no major additional cost.

The Department invites commenters to submit any data or studies in the nature of a cost-benefit analysis on the rules proposed for readoption with amendments.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are consistent with, but do not exceed, Federal standards. Federal standards applicable to, but not exceeded, by the rules proposed for readoption with amendments are subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub. L. 81-797 (12 U.S.C. § 1831o(b)) and subsections (q) and (r) of section 3 of the "Federal Deposit Insurance Act," Pub. L. 81-797 (12 U.S.C. § 1813(q) and (r)).

Jobs Impact

The Department does not anticipate that any jobs will be lost or generated as a result of the rules proposed for readoption with amendments. The Department invites commenters to submit any data or studies concerning the jobs impact of the rules proposed for readoption with amendments together with their written comments on other aspects of this rulemaking.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments impose compliance requirements on "small business." The Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., defines a "small business" as any business resident in this State that employs fewer than 100 full-time employees, is independently owned and operated, and is not dominant in its field. Some of the depositories affected by the rules proposed for readoption with amendments are small businesses. It is not expected that professional services will be needed to comply with the rules proposed for readoption with amendments. Monitoring by the Department of the collateral and the overall financial condition of public depositories is necessary for the protection of governmental unit deposits regardless of the size of the public depository. Therefore, no differing requirements based on business size have been made in the rules. However, the fee schedule and varying collateral requirements based upon the amount of public funds held by a public depository generally translate into reduced amounts for smaller depositories.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on the affordability of housing in New Jersey and are unlikely to evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments concern governmental unit deposit protection.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no impact on smart growth and there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke 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 proposed for readoption with amendments concern governmental unit deposit protection.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:34.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GOVERNMENTAL UNIT DEPOSIT PROTECTION

3:34-1.4 Required reports

(a) A public depository shall file electronically with the Department a report as set out on the Department's website at www.state.nj.us/dobi/index.html | <http://www.nj.gov/dobi/index.html>. The report is due on a quarterly basis and is to be filed on or before the due date for the filing of a call report. The report shall include the following information:

1.-16. (No change.)

(b) (No change.)

(c) Each public depository must also certify that the information filed in connection with the report is complete and accurate and that all public funds on deposit have been reported and sufficient eligible collateral is in place and that its valuation meets the requirement of the Act. The certification must be signed by a member of the public depository's audit committee, its Chief Financial Officer, or an equivalent officer and is due upon the filing of the report required by subsection (a) above.

[(c)] (d) (No change in text.)

3:34-1.5 Fees

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

(c) Payment shall be made by electronic means as directed by the Commissioner on the Department's website at www.state.nj.us/dobi/index.html | <http://www.nj.gov/dobi/index.html> at the time of the filing in accordance with (a) above and (d) and (e) below.

(d)-(g) (No change.)

3:34-1.8 Notice of approval of an eligible public depository

The Department will maintain a listing on its website at www.state.nj.us/dobi/index.html | <http://www.nj.gov/dobi/index.html> of all depositories it has approved as public depositories.

3:34-1.14 Records maintained by Commissioner; eligibility

The Commissioner shall maintain such records as he or she shall deem necessary in order to determine which public depositories have complied with the Act. After receipt of each quarterly report, the Commissioner shall post a listing of public depositories eligible to act as a depository for public funds on the Department's website at www.state.nj.us/dobi/index.html <http://www.nj.gov/dobi/index.html>.

3:34-1.15 Requirements for first time public depositories

(a) Before initially accepting public funds, a depository shall submit a complete application to the Department for approval as a public depository on a form found on the Department's website at www.state.nj.us/dobi/index.html <http://www.nj.gov/dobi/index.html>. The information to be provided on the form shall include the depository's identifying information, chartering agency, a certified copy of board resolution(s) authorizing participation in GUDPA and designating the depository's GUDPA custodian, total capital funds, and the name of the approved custodian. Upon receipt of a complete application, the Commissioner shall publish notice of the submission of the application on the Department's website at www.njdobi.org <http://www.nj.gov/dobi/index.html>. After review of the application, the Commissioner shall approve the application within 30 days of the Department's acceptance of all required materials and confirmation of compliance with all requirements set forth in this chapter and shall prescribe the amount of eligible collateral required to be maintained.

(b) Upon the Commissioner approving the application and prescribing the required collateral amount and the collateral being properly pledged with the custodian and proof of that being provided by the custodian to the Department, the approved status of the public depository will be published on the Department's website at www.njdobi.org <http://www.nj.gov/dobi/index.html>. After approval by the Department of the first valuation report filed by the public depository in accordance with N.J.A.C. 3:34-1.4, the public depository will be added to the electronic list of approved public depositories referenced in N.J.A.C. 3:34-1.8.

(c) (No change.)

CHILDREN AND FAMILIES

(a)

OFFICE OF LICENSING

Manual of Requirements for Residential Child Care Facilities

Proposed Amendments: N.J.A.C. 3A:55-1.1, 1.2, 1.3, 2.1 through 2.6, 3.3, 3.5, 3.6, 3.7, 3.8, 4.1, 4.3, 4.4, 4.5, 5.1 through 5.7, 6.1, 6.2, 6.5, 6.6, 6.7, 6.11, 6.13, 6.14, 6.15, 6.17, 7.1 through 7.5, 7.7, 8.1, 8.4, 9.1, 9.2, 9.3, 9.4, 9.13, 9.20, 10.2 through 10.7, 10.9, 10.10, 10.12, 10.13, 10.16, 10.17, 10.19, and 10.21

Proposed Repeal: N.J.A.C. 3A:55-8.2

Authorized By: Allison Blake, Ph.D., L.S.W., Commissioner, Department of Children and Families.

Authority: N.J.S.A. 9:3A-7.g and 9, 30:1-14 and 15, and 30:4C-4.

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

Proposal Number: PRN 2017-191.

Submit written comments by December 15, 2017, to:

Pamela Wentworth, M.S.W., L.S.W.,
Department of Children and Families
Office of Policy and Regulatory Development
PO Box 717
Trenton, New Jersey 08625 or
Rules@dcf.state.nj.us

The agency proposal follows:

Summary

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

The Office proposes to remove N.J.A.C. 3A:55-1.1(a), as it is redundant. The remaining subsections are recodified. At recodified N.J.A.C. 3A:55-1.1(a), (b), (d), and (e), the Office proposes to add references to N.J.S.A. 9:3A-9, which transfers the authority of the Department of Human Services to the Department of Children and Families (DCF). The Office is also proposing to clarify the citation to N.J.S.A. 30:4C-4 to 4(d) in recodified subsection 1.1(a).

Because the Division of Mental Health and Hospitals in the Department of Human Services became the Division of Mental Health and Addiction Services, a reference to that Division in recodified N.J.A.C. 3A:55-1.1(b)1 has been modified accordingly, as well. The Office is also proposing to remove reference to the Division of Developmental Disabilities in paragraph (b)1 since that Division no longer licenses children's residential facilities.

Because the Division of Youth and Family Services became the Division of Child Protection and Permanency (CP&P) in 2012, the definition of "Division" and reference to the former have been changed to the latter in recodified N.J.A.C. 3A:55-1.1(b)2 and (d)1 and 1.3. The Office proposes to change "approved" to "permitted" at N.J.A.C. 3A:55-1.1(b)2 to be more accurate.

The Office is proposing to update a number of references that are either no longer accurate or obsolete. Because responsibility for this chapter was assumed by the newly created Department of Children and Families (DCF) in 2006, references to the Department of Human Services in recodified N.J.A.C. 3A:55-1.1(a), (c), and (d), 1.3, 3.5, 5.6, and 8.1 are no longer correct and the Office proposes to change those sections to reference the Department of Children and Families instead.

Also, because DCF has opted to spread many of the functions relevant to this chapter across two divisions—the Division of Child Protection and Permanency and the Division of Children's System of Care—it is frequently more appropriate to make reference to the Department rather than to an individual division; references to "Division" have been corrected to refer to the "Department" in N.J.A.C. 3A:55-1.1, 1.2, 2.3, 2.4, 2.5, 3.3, 3.5, 3.7, 3.8, 5.1, 5.7, and 6.13. At recodified N.J.A.C. 3A:55-1.1(b)2, the Office has replaced the Division of Youth and Family Services with both the Division of Child Protection and Permanency and the Division of Children's System of Care in order to be specific. At N.J.A.C. 3A:55-2.5(d), the Office is adding a reference to the Department to cover organizational changes now and in the future. For example, the Office of Licensing is part of the Department, not part of the Division of Child Protection and Permanency at this time. At N.J.A.C. 3A:55-5.7(b) and (f), the Office is replacing the reference to Division and replacing it with the Office of Licensing to be accurate, as the Office of Licensing is no longer part of the Division.

The Office has made corrections of grammar and punctuation throughout the chapter to improve clarity.

Under DCF, the former Bureau of Licensing has also been renamed the Office of Licensing, and the Office therefore proposes to change references to the former in N.J.A.C. 3A:55-1.3, 2.1 through 2.6, 3.3, 3.7, 3.8, 4.1, 4.3, 4.4, 5.1, 5.6, 6.13, 6.15, 6.17, 7.7, 9.3, 10.10, 10.19, and 10.21. The Office is deleting the definition of the term "Bureau of Licensing" at N.J.A.C. 3A:55-1.3.

The Office proposes to define in N.J.A.C. 3A:55-1.3 "certificate of approval" or "certificate," a term used throughout the chapter to describe the license issued under this chapter, which was not previously defined. The Office also proposes to remove "regular certificate of approval" or "regular certificate" from the definitions and from N.J.A.C. 3A:55-2.1(c), 2.2(a), (b) and (d), and 3.8(b). This term is replaced by the newly-defined certificate of approval.

The Office proposes to eliminate in N.J.A.C. 3A:55-1.3 the definition for "temporary certificate of approval." The Office has ceased to provide temporary certificates for substantial compliance, and this chapter is modified to reflect that. Provisions related to the issuance of certificates in N.J.A.C. 3A:55-2.2(b) have been modified in furtherance of this change, and the provision at N.J.A.C. 3A:55-2.2(c) and (d)1 is proposed for revision. Under the new proposed language, an initial certificate of