RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

LABOR AND WORKFORCE DEVELOPMENT

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Minimum Wage

Proposed Amendments: N.J.A.C. 12:56-2.1, 3.1, and 3.2

Proposed New Rules: N.J.A.C. 12:56-3.2, 3.3, 3.4, and 3.5

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:11-56a5 and P.L. 2019, c. 32.

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

Proposal Number: PRN 2020-011.

A **public hearing** on the proposed amendment will be held on the following date at the following location:

Friday, February 21, 2020
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 777-2960 if you wish to be included on the list of speakers.

Submit written comments by April 3, 2020, to:

David Fish, Executive Director
Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development
PO Box 110-13th Floor
Trenton, New Jersey 08625-0110
david.fish@dol.nj.gov

The agency proposal follows:

Summary

The Department of Labor and Workforce Development (Department) is proposing amendments to N.J.A.C. 12:56-2.1, 3.1, and 3.2 and proposing new rules at N.J.A.C. 12:56-3.2, 3.3, 3.4, and 3.5, in order to implement P.L. 2019, c. 32, which amends N.J.S.A. 34:11-56a et seq., the New Jersey Wage and Hour Law, increasing the State minimum hourly wage to $15.00 incrementally over a span of years. The law sets forth separate methods for calculation of the incremental increase in the State minimum hourly wage, as well as the time-frame for phase-in of the increase to $15.00 for: (1) employees generally; (2) employees of a small employer and employees who are engaged in seasonal employment; and (3) employees engaged on a piece-rate or regular hourly basis to labor on a farm. The law also permits employers of tipped employees to take a tip credit up to a certain specified amount (which increases incrementally until 2024) against the State minimum hourly wage the employer would otherwise be required to pay in cash under the section of the law that applies to employees generally (the first category listed above). In addition, P.L. 2019, c. 32, allows employers to pay an employee who is enrolled in an "established employer on-the-job or other training program" a training wage of not less than 90 percent of the State minimum hourly wage required to be paid to employees generally (the first category listed above). Finally, P.L. 2019, c. 32, (1) changes the definition of "wages," so as to exclude gratuities received by the employee for services rendered for an employer or customer of an employer; (2) changes the definition of "employer," so as to include the State and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality of any such entity; and (3) defines the following new terms: "seasonal employment," "seasonal employer," and "small employer."

In order to implement these changes to the State Wage and Hour Law, the Department is proposing the following:

1. Amendments at N.J.A.C. 12:56-2.1 would incorporate the above-referenced changes to the statutory definitions for the terms "wages" and "employer"; would add the above-referenced statutory definitions for the new terms "seasonal employment," "seasonal employer," and "small employer"; and would define, for the first time, the following term and phrase, respectively, each of which is used within the body of the proposed new rules: "tipped employee" and "established employer on-the-job or other training program";

2. Amendments at N.J.A.C. 12:56-3.1 would address the incremental increase in the State minimum hourly wage for employees generally and update the Department's website;

3. Proposed new N.J.A.C. 12:56-3.2 would address the incremental increase in the State minimum hourly wage for employees of a small employer and employees who are engaged in seasonal employment;

4. Proposed new N.J.A.C. 12:56-3.3 would address the incremental increase in the State minimum hourly wage for employees engaged on a piece-rate or regular hourly rate basis to labor on a farm;

5. Proposed new N.J.A.C. 12:56-3.4 would address the payment by employers of a "training wage" to employees who are enrolled in an established on-the-job or other training program during the first 120 hours of work after having been hired;

6. Proposed new N.J.A.C. 12:56-3.5 would address the minimum hourly wage requirement for tipped employees; and

7. Recodified N.J.A.C. 12:56-3.6(a)1 is proposed for amendment to insert the word "applicable" between "effective" and "minimum wage rate" and to remove the phrase "effective March 1, 1979." The first of these amendments reflects a change to the State Wage and Hour Law and

is intended to ensure consistency between the law and the rules. The second of the amendments is a technical change, since the 1979 date is no longer relevant.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements of N.J.A.C. 1:30-3.3(a)5.

Social Impact

The vast majority of what is contained within the proposed amendments and new rules is expressly mandated by P.L. 2019, c. 32. Therefore, whatever social impact might be felt, positive or negative, by citizens of the State, including business owners throughout the State, would derive in the first instance from P.L. 2019, c. 32, and not from the proposed amendments or new rules. It is the Department's belief that the proposed amendments and new rules would have a positive social impact in that they would clarify exactly what the State minimum hourly wage is for any particular year or type of employee, and specify exactly how and when the State minimum hourly wage rates will change and by what amount. This will allow workers to adjust their expectations as to what they will receive in pay for the type of work they perform and for employers to plan for increases in pay to workers. The well-being of workers will generally be advanced by increases in the State minimum hourly wage, as workers will be better able to meet their financial needs and the financial needs of their families. Employee productivity may also increase in response to the higher State minimum hourly wage resulting in social benefits to employers as well.

Economic Impact

As indicated in the Social Impact above, the vast majority of what is contained in the proposed amendments and new rules is necessitated by the enactment of P.L. 2019, c. 32. Therefore, whatever economic impact might be felt, positive or negative, by citizens of the State, including business owners throughout the State, would derive in the first instance from the enactment of P.L. 2019, c. 32, not from the proposed amendments or new rules. It is the Department's belief that the proposed amendments and new rules would have a positive economic impact in that they would provide clarity and certainty concerning what the State minimum hourly wage is and to whom it applies, allowing workers and businesses to adjust their expectations based on a specific set of rules setting forth the State minimum hourly wage and the adjustments thereto in detail. It is the Department's hope that minimizing confusion as to these issues will avoid costs for employees and employers of unnecessary litigation, which might otherwise result.

Federal Standards Analysis

Section 6 of the Federal "Fair Labor Standards Act of 1938" (29 U.S.C. § 206), contains a minimum hourly wage rate of $7.25 per hour, effective July 24, 2009, with no scheduled adjustments, annual or otherwise; whereas N.J.A.C. 12:56-3, as proposed for amendment and with the proposed new rules, would contain a minimum hourly wage rate for the State of New Jersey, effective January 1, 2020, of $11.00 per hour, with annual increases of $1.00 per hour until January 1, 2024, when the State minimum wage would be at least $15.00 per hour. The existence of a minimum hourly wage rate in New Jersey which exceeds the Federal minimum hourly wage rate will most certainly have an economic impact on all of the citizens of this State, whether those citizens are minimum wage earners who will receive a pay raise, business owners who will be required to pay the increased State minimum hourly wage to their employees, or citizens of the State who are neither minimum wage earners, nor business owners, who will be impacted in one way or another (whether positively or negatively) by the existence of a State minimum hourly wage that exceeds the Federal minimum hourly wage rate. However, as explained in the Summary, Social Impact, and Economic Impact statements above, the Department has no discretion to deviate from P.L. 2019, c. 32, which, effective July 1, 2019, increased the State minimum hourly wage rate to $10.00 per hour and requires that the rate be increased again on January 1, 2020, to $11.00 per hour, and again on January 1 of each year for four years thereafter, when the State minimum wage will reach a rate of, at minimum, $15.00 per hour.

Jobs Impact

As explained in the Social Impact and Economic Impact statements above, to the degree that the proposed amendments would have an impact on the generation or loss of jobs within the State, a question much debated with an answer as of yet still unknown, such impact would result in the first instance from P.L. 2019, c. 32, which increases the State minimum hourly wage and requires an annual adjustment of that rate until the rate reaches a projected minimum of $15.00 per hour. The Department has no discretion to deviate from the changes in N.J.S.A. 34:11-56a4 resulting from the enactment of P.L. 2019, c. 32.

Agriculture Industry Impact

As explained in the Jobs Impact statement above, to the degree that the proposed amendments might have an impact on the agriculture industry within the State, such impact would result in the first instance from the changes in N.J.S.A. 34:11-56a4 brought about by P.L. 2019, c. 32. The minimum hourly wage for seasonal and farm employees increases at a slower rate than the State minimum hourly wage for employees in New Jersey, generally. For example, although the minimum hourly wage increases to $11.00 on January 1, 2020, for employees generally, the minimum hourly wage for seasonal and farm employees on January 1, 2020, is $10.30; and when, on January 1, 2024, the minimum hourly wage for employees, generally, reaches $15.00, the minimum hourly wage for seasonal employees will be $13.50 and $12.50 for farm employees. It is manifest that the Legislature afforded relief to the agriculture industry in terms of lesser increases in the minimum wage over a longer time period, and those provisions are reflected in the proposed amendments and new rules.

Regulatory Flexibility Analysis

The proposed amendments and new rules would impose no reporting or recordkeeping requirements on small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As to compliance requirements, small employers are afforded relief in the increases in the State minimum hourly wage in that the minimum hourly wage is increased to $10.30, as opposed to $11.00, effective January 1, 2020, and the minimum hourly wage for those employed by small employers continues to increase at a slower rate than for employees generally, until both rates reach $15.00. Thus, the proposed amendments and new rules reflect the relief that P.L. 2019, c. 32 affords small employers. As to the impact of the increases in the State minimum hourly wage on small employers, as indicated in the impact statements above, the requirement that employers pay covered employees no less than the State minimum hourly wage described within the proposed amendments and new rules is due in the first instance to changes to N.J.S.A. 34:11-56a4 resulting from P.L. 2019, c. 32, from which the Department has no discretion to deviate.

Housing Affordability Impact Analysis

As indicated in the impact statements above, to the degree that the proposed amendments might have an impact on the average costs associated with housing or on the affordability of housing, such impact would result in the first instance from P.L. 2019, c. 32, which increases the State minimum hourly wage to $11.00 and requires an annual adjustment of that rate according to a set schedule to at least $15.00. The Department has no discretion to deviate from P.L. 2019, c. 32.

Smart Growth Development Impact Analysis

As indicated in the impact statements above, to the degree that the proposed amendments might evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan, such impact would result in the first instance from P.L. 2019, c. 32, which increases the State minimum hourly wage according to a set schedule. The Department has no discretion to deviate from P.L. 2019, c. 32.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner 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; deletions indicated in brackets [thus]):

SUBCHAPTER 2. DEFINITIONS

12:56-2.1 Definitions

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

...

"Employer" includes any individual, partnership, association, corporation, **and the State and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality thereof,** or any person, or group of persons, acting directly or indirectly in the interest of an employer in relation to an employee.

"Established employer on-the-job or other training program" means an existing on-the-job or other training program that, when completed by the employee, either results in the employee earning an industry-valued credential or results in the employee being awarded credit that may be directly applied toward the earning of an industry-valued credential.

...

"Seasonal employment" means employment during a year by an employer that is a seasonal employer, or employment by a non-profit or government entity of an individual who is not employed by that employer outside of the period of that year commencing on May 1 and ending September 30, or employment by a governmental entity in a recreational program or service during the period commencing on May 1 and ending September 30, except that "seasonal employment" does not include employment of employees engaged to labor on a farm on either a piece-rate or regular hourly rate basis.

"Seasonal employer" means an employer who exclusively provides its services in a continuous period of not more than 10 weeks during the months of June, July, August, and September, or an employer for which, during the immediately previous calendar year, not less than two-thirds of the employer's gross receipts were received in a continuous period of not more than 16 weeks or for which not less than 75 percent of the wages paid by the employer during the immediately preceding year were paid for work performed during a single calendar quarter.

"Small employer" means any employer who employed less than six employees for every working day during each of a majority of the calendar workweeks in the current calendar year and less than six employees for every working day during not less than 48 calendar workweeks in the preceding calendar year, except that, if the employer was newly established during the preceding calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during all of the weeks of that year, and during a majority of the calendar workweeks in the current calendar year, and, if the employer is newly established during the current calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during a majority of the calendar workweeks in the current calendar year.

"Tipped employee" means any employee engaged in an occupation in which he or she customarily and regularly receives more than $30.00 a month in tips. The definition of tipped employee does not require that the calendar month be used in determining whether more than $30.00 a month is customarily and regularly received as tips. Any appropriate recurring monthly period beginning on the same day of the calendar month may be used.

...

"Wages" means any monies due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus, and piecework compensation and including [any gratuities received] **the fair value of any food or lodgings supplied** by an employer to an employee.

...

SUBCHAPTER 3. MIMIMUM WAGE RATES

12:56-3.1 Statutory minimum wage rates for specific years; **general**

(a) Except as provided [in] **at** N.J.A.C. 12:56-3.2, **3.3, 3.4, and 3.5,** every employee shall, effective January 1, [2019] **2020**, be paid not less than $[8.85]**11.00** per hour[,] **or** the minimum wage rate set by section 6(a)(1) of the Federal "Fair Labor Standards Act of 1938" (29 U.S.C. § 206(a)(1), [or the rate provided under N.J.S.A. 34:11-56a4,] whichever is [greatest] **greater.**

(b) For the period from January 1, 2020 through January 1, 2024, on an annual basis, on or about September 30, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above, so as to be the greater of either an amount based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics, or the following:

1. For January 1, 2020, $11.00;
2. For January 1, 2021, $12.00;
3. For January 1, 2022, $13.00;
4. For January 1, 2023, $14.00; and
5. For January 1, 2024, $15.00.

[(b)] **(c)** [On] **Beginning January 1, 2025,** on an annual basis, on or about September 30, the Department shall revise the minimum hourly wage set forth in (a) above based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics. Annually, the Department shall, through a public notice published in the New Jersey Register, provide the new CPI-W, U.S. City Average, adjusted minimum hourly wage.

[(c)] **(d)** The Department shall, no later than September 30 of each year, publish a notice, as set forth in (b) **and (c)** above, on the Department's website, [http://lwd.dol.state.nj.us/labor] **https://www.nj.gov/labor/.**

12:56-3.2 Statutory minimum wage rate for specific years; small and seasonal employees

(a) Except as provided at N.J.A.C. 12:56-3.3 and 3.4, every employee of a small employer and every employee who is engaged in seasonal employment shall, effective January 1, 2020, be paid not less than $10.30 per hour or the minimum wage rate set by section 6(a)(1) of the Federal Fair Labor Standards Act of 1938, 29 U.S.C. §206(a)(1), whichever is greater.

(b) For the period from January 1, 2020 through January 1, 2026, on an annual basis, on or about September 30, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above, so as to be the greater of either an amount based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics, or the following:

1. For January 1, 2020, $10.30;
2. For January 1, 2021, $11.10;
3. For January 1, 2022, $11.90;
4. For January 1, 2023, $12.70;
5. For January 1, 2024, $13.50;
6. For January 1, 2025, $14.30; and
7. For January 1, 2026; $15.00.

(c) For January 1, 2027, on or about September 30, 2026, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2026 to January 1, 2027, for employees covered under N.J.A.C. 12:56-3.1, plus one half of the difference between $15.00 per hour and the minimum hourly wage in

effect on January 1, 2026, for employees covered under N.J.A.C. 12:56-3.1.

(d) For January 1, 2028, on or about September 30, 2027, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2027 to January 1, 2028, for employees covered under N.J.A.C. 12:56-3.1, plus one half of the difference between $15.00 per hour and the minimum hourly wage in effect on January 1, 2026, for employees covered under N.J.A.C. 12:56-3.1.

(e) Beginning January 1, 2029, on an annual basis, on or about September 30, the Department shall revise the minimum hourly wage set forth in (a) above based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics. Annually, the Department shall, through a public notice published in the New Jersey Register, provide the new CPI-W, U.S. City Average, adjusted minimum hourly wage.

(f) The Department shall, no later than September 30 of each year, publish a notice, as set forth in (b), (c), (d), and (e) above, on the Department's website, https://www.nj.gov/labor/.

12:56-3.3 Statutory minimum wage rate for specific years; labor on a farm

(a) Every employee engaged on a piece-rate or regular hourly rate basis to labor on a farm shall, effective January 1, 2020, be paid not less than $10.30 per hour or the minimum wage rate set by section 6(a)(1) of the Federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), whichever is greater.

(b) For the period from January 1, 2020 through January 1, 2024, on an annual basis, on or about September 30, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above, so as to be the greater of either an amount based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics, or the following:

1. For January 1, 2020, $10.30;
2. For January 1, 2021, $10.30;
3. For January 1, 2022, $10.90;
4. For January 1, 2023, $11.70; and
5. For January 1, 2024, $12.50.

(c) For the period from January 1, 2025 through January 1, 2027, on an annual basis, on or about September 30, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above, so as to be the greater of either an amount based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics, or the following:

1. For January 1, 2025, $13.40;
2. For January 1, 2026, $14.20; and
3. For January 1, 2027, $15.00.

(d) For January 1, 2028, on or about September 30, 2027, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2027 to January 1, 2028, for employees covered under N.J.A.C. 12:56-3.1, plus one-third of the difference between $15.00 per hour and the minimum hourly wage in effect on January 1, 2027, for employees covered under N.J.A.C. 12:56-3.1.

(e) For January 1, 2029, on or about September 30, 2028, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2028 to January 1, 2029, for employees covered under N.J.A.C. 12:56-3.1, plus one-third of the difference between $15.00 per hour and the minimum hourly wage in effect on January 1, 2027, for employees covered under N.J.A.C. 12:56-3.1.

(f) For January 1, 2030, on or about September 30, 2029, the Department shall, through a public notice in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2029 to January 1, 2030, for employees covered under N.J.A.C. 12:56-3.1, plus one-third of the difference between $15.00 per hour and the minimum hourly wage in effect on January 1, 2027, for employees covered under N.J.A.C. 12:56-3.1.

(g) Beginning January 1, 2031, on an annual basis, on or about September 30, the Department shall revise the minimum hourly wage set forth in (a) above based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics. Annually, the Department shall, through a public notice published in the New Jersey Register, provide the new CPI-W, U.S. City Average, adjusted minimum hourly wage.

(h) The Department shall, no later than September 30 of each year, publish a notice, as set forth in (b), (c), (d), and (e) above, on the Department's website, https://www.nj.gov/labor/.

(i) The method for determining the minimum hourly wage rates set forth in (c), (d), (e), and (f) above may be subject to change pursuant to N.J.S.A. 34:11-56a4(d)(3), which directs the Commissioner of the Department and the Secretary of Agriculture not later than March 31, 2024, to issue a recommendation either approving the method for determining increases set forth in (c), (d), (e), and (f) above, disapproving the method for determining increases set forth in (c), (d), (e), and (f) above, or suggesting an alternative to the method for determining increases set forth in (c), (d), (e), and (f) above; and which states that the method for determining the minimum hourly wage rates set forth in (c), (d), (e), and (f) above shall take effect unless the Commissioner of the Department and the Secretary of Agriculture issue a recommendation either disapproving the method for determining increases set forth in (c), (d), (e), and (f) above or suggesting an alternative to the method for determining increases set forth in (c), (d), (e), and (f) above, and the Legislature, not later than June 30, 2024, enacts a concurrent resolution approving the implementation of the recommendation of the Commissioner and the Secretary of Agriculture.

12:56-3.4 Statutory minimum wage rate; training wage

(a) Commencing on January 1, 2020, an employee enrolled in an established on-the-job or other training program may, for the first 120 hours of work after having been hired, be paid a training wage of not less than 90 percent of the minimum hourly wage specified at N.J.A.C. 12:56-3.1, provided the following conditions are met:

1. The employee has been hired in, and is receiving training for, an occupation in which the employee has no previous similar or related experience;

2. The employer is not utilizing the employee being paid the training wage in a manner that causes, induces, encourages, or assists any displacement or partial displacement of any currently employed worker, including any previous recipient of the training wage, by reducing hours of a currently employed worker, replacing a current or laid off employee with a trainee, or by relocating operations resulting in a loss of employment at a previous workplace, or in a manner that replaces, supplants, competes with, or duplicates any approved apprenticeship program;

3. The employer makes a good faith effort to continue to employ the employee after the period of the training wage expires; and

4. The employer shall not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment, paying at or above the effective minimum wage, for the trainee upon the successful completion of the period of the training wage.

(b) As an alternative to, or in addition to, sanctions provided at N.J.A.C. 12:56-1.3 for any violation of N.J.S.A. 34:11-56a et seq., the New Jersey Wage and Hour Law, and/or this chapter, if an employer has made repeated, knowing violations of the provisions of this section regarding the payment of a training wage, the Department shall suspend the employer's right to pay a training wage.

(c) The employer's right to pay a training wage shall not be suspended for a period beyond three years. However, in determining the length of time for which an employer's right to pay a training wage shall be suspended, the following criteria shall be considered:

1. The seriousness of the violation;
2. The past history of previous violations by the employer;
3. The good faith of the employer; and
4. Any other factors that the Commissioner deems appropriate in determining the length of the suspension of the employer's right to pay a training wage.

(d) Whenever the Department shall find cause to suspend the right of an employer to pay a training wage, it shall notify the employer of the reason therefor, in writing, and provide the opportunity for a hearing in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) All requests for hearings shall be filed within 10 business days from the date of receipt of the notice.

(f) In the absence of a timely request for a hearing, pursuant to (e) above, the determination of the Department shall be deemed the final administrative action in the matter.

(g) All requests for hearings shall be reviewed by the Division of Wage and Hour Compliance in order to determine whether the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law as a contested case.

12:56-3.5 Tipped employees

(a) With respect to tipped employees, in determining the minimum hourly wage an employer is required to pay such an employee, only the employer who is paying its employee the minimum hourly wage set forth at N.J.A.C. 12:56-3.1 may take a credit for tips received by the employee against that minimum hourly wage (set forth at N.J.A.C. 12:56-3.1) in the following amounts:

1. For January 1, 2019 through June 30, 2019, $6.72 per hour;
2. For July 1, 2019 through December 31, 2019, $7.37 per hour;
3. For calendar year 2020, $7.87 per hour;
4. For calendar year 2021, $7.87 per hour;
5. For calendar year 2022, $7.87 per hour;
6. For calendar year 2023, $8.87 per hour; and
7. Commencing January 1, 2024, $9.87 per hour.

(b) The employer who takes a tip credit under (a) above, shall pay to each employee against whom such tip credit has been applied, a cash wage equal to the difference between the minimum hourly wage set forth at N.J.A.C. 12:56-3.1 and the tip credit taken under (a) above.

(c) With respect to tipped employees for whom the employer does not take the tip credit set forth in (a) above, the employer must pay the employee a cash wage equal to the full amount of the minimum hourly wage to which the employee is entitled under either N.J.A.C. 12:56-3.1 (employees, generally), 3.2 (employees of a small employer and employees who are engaged in seasonal employment), 3.3 (employees engaged on a piece-rate or regular hourly rate basis to labor on a farm), or 3.4 (training wage).

(d) The tip credit permitted under (a) above may be taken only with respect to those employees whose occupations in the workweeks for which such payments are made are those of tipped employees.

(e) A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him or her. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, who has the right to determine who shall be the recipient of the gratuity.

(f) Tips are the property of the employee whether or not the employer has taken a tip credit under (a) above.

(g) The employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than as wages or in furtherance of a valid tip pool; this includes, a prohibition against the employer using an employee's tips to pay any portion, however small, of the fee charged to the employer by a credit card company or other financial institution for the use of credit or debit cards in its business, including the processing of such credit or debit card transactions.

(h) Only tips actually received by the employee as money belonging to the employee may be counted in determining whether the person is a "tipped employee."

(i) In addition to cash sums presented by customers that an employee keeps as his or her own, tips received by an employee include amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money, or its equivalent, as described in this section, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of this section.

(j) Where employees practice tip splitting, such as where waiters give a portion of their tips to busboys, both the amounts retained by the waiters and those given to the busboys are considered tips of the individuals who retain them. Similarly, where an accounting is made to an employer for his or her information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as his or her own are counted as his or her tips.

(k) An employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

(l) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to its employees, cannot be counted as a tip received in applying the provisions of this section. Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to employees of the hotel, the amounts so distributed are not counted as tips received.

(m) An employee must himself or herself customarily and regularly receive more than $30.00 per month in tips in order to qualify as a tipped employee. The fact that he or she is part of a group that has a record of receiving more than $30.00 per month in tips will not qualify him or her.

(n) Where an employee is employed in a dual job, for example, where a maintenance person in a hotel also serves as a waiter or waitress, if he or she customarily and regularly receives at least $30.00 per month in tips for his or her work as a waiter or waitress, he or she is a tipped employee only with respect to his or her employment as a waiter or waitress. He or she is employed in two occupations, and no tip credit may be taken for his or her hours of employment in his or her occupation of maintenance person. Such a situation is distinguishable from that of a waiter or waitress who spends part of his or her time cleaning and setting tables, toasting bread, making coffee, and occasionally washing dishes or glasses. It is likewise distinguishable from the counterperson who also prepares his or her own short orders or who, as part of a group of counterpeople, takes a turn as a short order cook for the group. Such related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips. However, where a tipped employee

spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties, no tip credit may be taken for the time spent in such duties.

(o) The employee must receive more than $30.00 per month in tips "customarily and regularly" in the occupation in which he or she is engaged in order to qualify as a tipped employee. If it is known that he or she always receives more than the stipulated amount each month, as may be the case with many employees in occupations, such as those of waiters, bellhops, taxicab drivers, barbers, or beauty operators, the employees will qualify and the tip credit may be applied. On the other hand, an employee who only occasionally or sporadically receives tips totaling more than $30.00 per month, such as at Christmas or New Years' when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customary and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which he or she normally and recurrently receives more than $30.00 per month in tips, he or she will be considered a tipped employee even though occasionally because of sickness, vacation, seasonal fluctuations, or the like, he or she fails to receive more than $30.00 in tips in a particular month.

(p) An exception to the requirement that an employee will qualify as a tipped employee under (o) above is made in the case of initial and terminal months of employment. In such months, the purpose of the provision for tipped employees would be fulfilled if qualification as a tipped employee is based on his or her receipt of tips in the particular week or weeks of such month at a rate in excess of $30.00 per month, where the employee has worked less than a month because he or she started or terminated employment during the month.

(q) An employer is not eligible to take the tip credit set forth in (a) above, unless it has informed its tipped employees in advance of the employer's use of the tip credit of the following:

1. The amount of the cash wage that is to be paid to the tipped employee by the employer;

2. The amount of the tip credit, which will be claimed by the employer, which amount may not exceed the value of the tips actually received by the employee;

3. That all tips received by the tipped employee must be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and

4. That the tip credit shall not apply to any employee who has not been informed of the requirements of this section.

(r) The credit allowed on account of tips may be less than that permitted under (a) above; it cannot be more.

(s) In order for the employer to claim the maximum tip credit set forth in (a) above, the employer must demonstrate that the employee received at least that amount in actual tips. If the employee received less than the maximum tip credit amount in tips, the employer is required to pay the balance, so that the employee receives at least the minimum hourly wage under N.J.A.C. 12:56-3.1 with the defined combination of wages and tips.

12:56-[3.2]**3.6** Exemptions from the statutory minimum wage rates

(a) Employees in the following occupations shall be exempt from the statutory minimum wage rates:

1. Full-time students employed by the college or university at which they are enrolled at not less than 85 percent of the effective **applicable** minimum wage rate[, effective March 1, 1979];

2.-4. (No change.)

5. Minors under 18 years of age except as provided [in] **at** N.J.A.C. 12:56-11, [12:56-]13, **and** [12:56-]14, and [N.J.A.C.] 12:57, Wage Orders for Minors; and

6. At summer camps, conferences, and retreats operated by any nonprofit or religious corporation or association during the months of June, July, August, and September.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES
Energy Competition
Energy Licensing and Registration
Proposed Amendments: N.J.A.C. 14:4-1.2 and 5

Authorized By: The New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Authority: N.J.S.A. 48:2-1 et seq., and P.L. 2019, c. 100 and 101.

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

BPU Docket Number: AX19091003.

Proposal Number: PRN 2020-013.

Comments may be submitted through April 3, 2020, by e-mail **in Microsoft Word format**, or in a format that can be easily converted to Word, to: rule.comments@bpu.nj.gov, or on paper to:

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
ATTN: BPU Docket Number: AX19091003
44 S. Clinton Ave.
PO Box 350
Trenton, NJ 08625-0350

The agency proposal follows:

Summary

The Board of Public Utilities ("BPU" or "Board") is proposing amendments at N.J.A.C. 14:4, which generally concern energy competition, specifically to Subchapter 5, Energy Licensing and Registration. On May 10, 2019, Governor Phil Murphy signed bills S. 604 and S. 605 (2018) (P.L. 2019, c. 100 and 101) (the Act) providing that third-party electric power and natural gas supplier licenses issued by the Board may be renewed without expiring if certain conditions are met. The effective date of the Act was July 9, 2019.

The purpose of the rule amendments is to conform the rules to the new laws. The Board's amendments reflect that a license shall not expire, so long as the licensee pays, to the Board, a license renewal fee accompanied by a timely and complete annual information update on a form prescribed by the Board. The renewal fee and annual information update form must be submitted within 30 days prior to the anniversary date of the last approved licensing application. In addition, the amendments are also applied to registrants, for consistency. The amendments also reflect other updates to reflect current Board policies. To this end, the Board proposes the following amendments:

N.J.A.C. 14:4-1.2

The Board proposes to add definitions for "self-supply load serving entity end-user customer" and "self-supply gas end-user customer" and remove the definition for "clean power marketer" because clean power marketers have been removed entirely from this chapter as a result of the termination of the Clean Power Choice Program under the BPU New Jersey Clean Energy Program.

N.J.A.C. 14:4-5.1(c)

Proposed new subsection (c) allows self-supply load serving entity end-user customers and self-supply gas end-user customers to seek a waiver of filing for a license as a third-party supplier provided certain conditions are met.

Recodified N.J.A.C. 14:4-5.1(i)

Recodified paragraph (i)3 is proposed for amendment to incorporate references to energy consultant registration because this subsection sets forth the requirement to providing surety bonds, which applies to third-party suppliers, as well as energy consultants.