

Jobs Impact

The proposed amendment will not result in the generation or loss of any jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment to the rules does not impose requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment to the rule pertains strictly to public and publicly funded independent colleges and universities in New Jersey, none of which qualify as a small business as they employ more than 100 full-time employees.

Housing Affordability Impact Analysis

The proposed amendment does not have an effect on the affordability of housing, nor does it evoke a change in the average costs associated with housing because the proposed amendment governs how the EOF Board will determine the financial eligibility amounts of the EOF undergraduate and graduate grant awards.

Smart Growth Development Impact Analysis

The Office of the Secretary of Higher Education staff believes there is an extreme unlikelihood that the proposed amendment to the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules govern how the EOF Board will determine the financial eligibility amounts of the EOF undergraduate and graduate grant awards.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The EOF Board has, after consideration, determined the proposed amendment will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

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

SUBCHAPTER 2. UNDERGRADUATE EOF ACADEMIC AND FINANCIAL ELIGIBILITY

9A:11-2.3 Financial eligibility for initial Article III student grants

(a)-(g) (No change.)

(h) Where there is evidence that strict adherence to the maximum income **and asset** eligibility cut-off will not serve the purpose of the Fund, the campus EOF administrator/director has the discretion to admit, up to a maximum of 10 percent of the annual class of [first-year] **initial** students with family incomes as high as, but [nor] **no** more than, 281 percent of the Federal poverty guidelines **and whose assets do not exceed 20 percent of the maximum income allowance as per the 281 percent of the Federal poverty guidelines per household size**, as published annually by the Federal government. These discretionary admit students, however, shall also meet all eligibility provisions of N.J.A.C. 9A:11-2.2.

(i) Institutions shall obtain permission from the EOF Executive Director before exceeding the 10 percent discretionary, [over-income] **financial eligibility** waiver set forth in (h) above.

(j) (No change.)

(k) Notwithstanding provisions of (g) and (h) above, priority shall be given to students whose incomes **and assets** are within the limits of (a) above.

TREASURY—GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS**STATE POLICE RETIREMENT SYSTEM****State Police Retirement System Rules****Proposed Readoption with Amendments: N.J.A.C. 17:5****Proposed New Rules: N.J.A.C. 17:5-1.7 and 5.6**

Authorized By: State Police Retirement System Board of Trustees,
Mary Ellen Rathbun, Secretary.

Authority: N.J.S.A. 53:5A-30.h.

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

Proposal Number: PRN 2019-024.

Submit written comments by May 3, 2019, to:

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Trenton, NJ 08625-0295
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The agency proposal follows:

Summary

The Board of Trustees of the State Police Retirement System (Board) is responsible for maintaining the rules within N.J.A.C. 17:5. When the Board becomes aware of a change in the laws or a court decision that could affect the State Police Retirement System (SPRS), the Board reviews the rules to determine where changes, if any, are required. Amendments to the affected rules are then proposed, in order to comply with the new statute or court decision effectively. Additionally, the rules are periodically reviewed by the Division of Pensions and Benefits (Division) and the Board's staff to determine whether the existing rules are necessary, are cost-efficient, reflect the current policies and procedures of the Division, and maintain qualified-plan status in compliance with Federal Internal Revenue Service (IRS) regulations. When clarification or revision is required, the affected rules are amended accordingly. Finally, when the rules in N.J.A.C. 17:5 are about to expire, they must be reviewed, amended as needed, and re-promulgated.

The Board proposes to readopt N.J.A.C. 17:5, which were scheduled to expire on January 24, 2019, with the following amendments and new rules. As the Board has filed this notice of readoption prior to the expiration date, that date is extended 180 days to July 23, 2019, pursuant to N.J.S.A. 52:14B-5.1.c(2). The rules proposed for readoption with amendments and new rules affect administration, enrollment, contributions, withdrawals, insurance and death benefits, membership, eligible service, service-credit purchases, retirements, and transfers within the SPRS.

The following is a discussion of the rules proposed for readoption with amendments and new rules.

Subchapter 1. Administration

In Subchapter 1, the Board proposes to amend N.J.A.C. 17:5-1.1, Board meetings, to specify that the Board will meet on the fourth Tuesday of the month, every other month beginning in the month of January. The Board also proposes to add language to specify that persons audio- or video-recording a Board meeting shall inform the Secretary of the Board and provide their names and addresses. Additionally, the Secretary of the Board shall assist with identifying the appropriate location for any cameras and recording devices so that they do not obstruct or interfere with the conduct of business by the Board.

N.J.A.C. 17:5-1.2, Fiscal year, remains unchanged.

N.J.A.C. 17:5-1.3, Officers and committees, is proposed for amendment to delete the sentence regarding how the chairperson and vice chairperson of the Board are elected. Historically, the chairperson and vice chairperson of the Board were elected by a majority vote of the

members in attendance at the first meeting of July. As proposed for amendment, the Superintendent of the State Police will appoint two active or retired members to the Board pursuant to N.J.S.A. 53:5A-30.b(1). These members shall serve as chairperson and vice chairperson.

N.J.A.C. 17:5-1.4, Certifying officer (employer), remains unchanged.

N.J.A.C. 17:5-1.5, Records, is proposed for amendment to include reference to N.J.A.C. 17:1-1.2. Proposed new subsection (d) prohibits the release of any active or retired member's postal address, telephone number, or e-mail address, while proposed new subsection (e) prohibits the release of any active or retired member's beneficiary designations while the member is living. Proposed subsections (d) and (e) uphold current Division procedures for all State-administered defined contribution and defined benefit plans that protect a member's personal information and reflect similar verbiage already found in the Teachers' Pension and Annuity Fund (TPAF) rules at N.J.A.C. 17:3-1.6(b) and (c).

Proposed new N.J.A.C. 17:5-1.6(f) delegates authority to the Director of the Division to grant or deny requests to extend the time allowed for exceptions and replies and to request that the Office of Administrative Law extend the time for the Board, if necessary, to render final decisions to adopt, reject, or modify an initial decision. This will allow the Board to have time to receive all documentation pertinent to rendering a final decision.

Proposed new N.J.A.C. 17:5-1.7, Verified discrepancy in member's age, specifies that a member's active or retired account shall be reconstructed and all benefit entitlements and contributions shall be determined on the basis of the member's correct date of birth, in cases where proof of age documents establish a verified discrepancy between a member's proven age and the age on file with the Division.

N.J.A.C. 17:5-1.8, State employees; biweekly salaries, remains unchanged.

N.J.A.C. 17:5-1.9(a) is proposed for amendment to specify currently acceptable proof-of-age evidence that members may submit to the Division. Since proof of age is required for disbursement of retirement benefits and death claim settlements for SPRS members, the proposed amendment is necessary to expedite processing and payment of retirement benefits and death claims for active and retired SPRS members and their beneficiaries. The proposed amendment will modify the list of acceptable proof-of-age documents to include birth certificates with a visible seal, passports, U.S. passport cards, naturalization and immigration papers, digital non-driver identification cards from the New Jersey Motor Vehicle Commission (MVC), and valid New Jersey, Pennsylvania, or New York digital driver licenses. Affidavits of older members of a member's immediate family, Biblical records, baptismal certificates, and school records will no longer be accepted as proof-of-age evidence for members and beneficiaries, as their reliability is not always accurate. This change reflects similar language set forth in the Public Employees Retirement System (PERS) at N.J.A.C. 17:2-1.11.

Proposed new N.J.A.C. 17:5-1.9(d) specifies that if a member has already established proof of his or her age before a transfer into or out of the SPRS, no additional proof-of-age evidence will be required.

Subchapter 1A. Definitions

In N.J.A.C. 17:5-1A.1, Definitions, the Board proposes to add the following new definitions: "Employer Pensions and Benefits Information Connection," "Independent Medical Examiner," "Member Benefit Online System," "Medical Review Board," and "Treating Physician." The terms "Employer Pensions and Benefits Information Connection" and "Member Benefit Online System" are terms the Board frequently uses to refer to the Internet-based applications that are utilized by employers and employees to manage pension and health benefits information electronically. Employers who completed the certification requirements are able to perform a wide range of tasks online, such as: submit payroll certifications; check on the status of enrollment and/or retirement applications; generate a statement of account for active members; transmit electronic payments; submit purchase, withdrawal, and retirement certifications; complete a report of contributions; and generate a loan or retirement estimate. Registered employees and retirees are able to access member account information, beneficiary designation, request pension letters and statements, and health benefits account information (if applicable). Employees are able to obtain estimates and apply for pension

loans, submit purchase applications, generate retirement estimates, and submit online retirement applications, as well as view payroll certifications. Retirees are able to view retirement check information and check history, submit online direct deposit/electronic fund transfer applications, view and change Federal and State income tax withholding, view Form 1099-R information, and request duplicates. The Medical Review Board reviews all reports, hospital records, medical examination forms, and other medical records in support of a disability retirement application. "Treating physician" means someone who provides the member, or who has provided the member, with medical treatment on an ongoing basis. Generally, the Division will consider that a member has an ongoing treatment relationship with a physician when the medical evidence establishes that the physician is seeing, or has seen, the member with a frequency consistent with accepted medical practice for the type of treatment and/or reevaluation required for the member's medical condition(s). The Division in the past has used the term "attending physician," which in some cases only applied to a physician in a hospital setting or emergency room.

Subchapter 2. Insurance and Death Benefits

The Board proposes to amend N.J.A.C. 17:5-2.1(b) to add language regarding the computation of insurance and death benefits for members enrolled as Tier 2. For a Tier 2 SPRS member enrolled after May 21, 2010, final compensation means the average salary upon which pension contributions were based for any three fiscal years of membership preceding retirement that provide the largest possible benefit. The Board also proposes to amend subsection (d) to include verbiage for an overpayment and procedures for collecting such funds. The existing rule only addresses what would happen in the event of an underpayment. This amendment specifies that in the case of an overpayment, the beneficiary or beneficiaries would be required to reimburse the SPRS through the Division. The Board has long had the authority to recover overpayments under the statutory provision for Correction of Errors at N.J.S.A. 43:16A-18.

N.J.A.C. 17:5-2.2, Survivor benefits, remains unchanged.

N.J.A.C. 17:5-2.3, Leave for illness, remains unchanged.

Proposed new N.J.A.C. 17:5-2.4(a)3 specifies the required information needed for beneficiary designations to include a full name, Social Security number, tax identification number (for estates or trusts), address, and date of birth. This information assists the Division with locating beneficiaries in an efficient manner. In turn, this assists the Division with processing claims in a timely fashion. Also, subsections (b), (c), and (d) are proposed for amendment to specify how benefits are paid out upon the death of an active member. These amendments are needed because death benefits for retirees are different. When a retiree dies and there is no surviving spouse, children, or parents, there is no return of aggregate contributions.

N.J.A.C. 17:5-2.5 remains reserved.

Subchapter 3. Membership

N.J.A.C. 17:5-3.1(a) is proposed for amendment to add language that is consistent with N.J.S.A. 53:5A-3 and 6. Specifically, that credible compensation shall be limited to base salary that is consistent with the salary policies of the State for all employees in the same position and shall not include any individual adjustments in anticipation of retirement. Moreover, subsection (c) is proposed for amendment to remove the wording regarding longevity, terminal leave, and vacation pay. SPRS members are no longer paid longevity pay. Terminal leave is only available for certain ranks and is limited to one month while the member continues to receive regular pay. Vacation payments and compensatory time are only paid in a lump sum.

N.J.A.C. 17:5-3.2, Enrollment after May 21, 2010; maximum compensation limit, remains unchanged.

N.J.A.C. 17:5-3.3, Deductions, remains unchanged.

N.J.A.C. 17:5-3.4, Minimum adjustment, remains unchanged.

N.J.A.C. 17:5-3.5, Suspension, remains unchanged.

N.J.A.C. 17:5-3.6 remains reserved.

The Board proposes new N.J.A.C. 17:5-3.7(c) and (d), which clearly specify the IRS regulations regarding the repayment of loans that are taken from a qualified plan. Specifically, the IRS (I.R.C. § 72 (p)(2)(C)) requires that all loans be repaid within five years and, if the member fails to make

payments on the plan loan within this timeframe, it will be deemed a distribution.

Finally, the Board proposes new N.J.A.C. 17:5-3.8(a)5 to add an additional reason for rejecting a withdrawal application. If the member has a pending retirement application, it must be rescinded before the processing of the withdrawal application can proceed. Since the retirement allowance is comprised of employer and employee contributions, a member cannot withdraw and simultaneously collect a monthly retirement allowance.

Subchapter 4. Purchases and Eligible Service

The Board proposes to amend N.J.A.C. 17:5-4.1(a) to clarify that the purchase request must represent active service in a State-administered system for which the member would have otherwise been eligible to be enrolled. The Board also proposes to amend subsection (b) to bring it into conformance with current practice. Since April 1, 2011, the Division has required all purchase requests to be submitted using the Purchase Application program of the Member Benefit Online System (MBOS). MBOS provides registered members with fast, efficient processing of purchase requests, and members receive immediate confirmation and a follow-up e-mail indicating that the application was received.

Subparagraph (a)3i of N.J.A.C. 17:5-4.2, Optional purchases of eligible service, is proposed for amendment to explain that maternity leave may consist of two separate leave components. Further, subparagraph (a)3ii is proposed for amendment to expound upon the qualifications for purchasing maternity leave as personal illness. This amendment is needed to make it clear that without a physician certifying that the member was disabled during the requested purchase period (due to pregnancy or childbirth) the maximum allowable period of purchase for maternity leave for personal reasons is three months.

Proposed new N.J.A.C. 17:5-4.2(a)4 references P.L. 2013, c. 87, which allows SPRS members to purchase SPRS credit for military service in the Armed Forces of the United States prior to becoming a member, provided the member is not receiving or eligible to receive a military pension or a pension from any other state or local source for such military service. Proposed new paragraph (a)4 also sets forth the procedures for purchasing credit for military service after enrollment was added to comply with the Federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) found at N.J.A.C. 17:1-3.10.

N.J.A.C. 17:5-4.3, Methods of repayment for purchase of service credit, remains unchanged.

Subchapter 5. Retirement

The Board proposes to amend N.J.A.C. 17:5-5.1(a) to update the Division's current method for applying for retirement electronically using the member's secure account through MBOS. Likewise, subsection (b) is proposed for amendment to reflect the change of the required method to submit a SPRS Application for Retirement Allowance. The Board also proposes to amend N.J.A.C. 17:5-5.1(d)1 and 2 to include the defined term "treating physician" and to specify that the two required medical reports for a disability retirement must be completed on a form prescribed by the Division. The Board also proposes new subsection (e) to clarify when a disability retirement application is ripe for consideration by the Board.

N.J.A.C. 17:5-5.2, Effective date; death prior thereto, remains unchanged.

N.J.A.C. 17:5-5.3, Effective date; changes, remains unchanged.

N.J.A.C. 17:5-5.4, Willful negligence, is proposed for amendment to clarify the definition is used for purposes of determining accidental disability and to add additional language to paragraph (a)1 to emphasize what a deliberate act or failure to act entails: namely, one that reflects an intentional or purposeful deviation from the standard of care exercised by a reasonable person in similar circumstances.

N.J.A.C. 17:5-5.5, Outstanding loan, remains unchanged.

The Board proposes new N.J.A.C. 17:5-5.6, Disability retirement application and termination of service. This proposed new section is necessary to emphasize that the applicant is responsible for proving that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment.

Furthermore, this section lists a series of reasons that would preclude one from applying for a disability retirement and the Division's procedures for verifying whether an applicant is eligible once an application is filed. These reasons include: removal for cause or total forfeiture of public service; settlement agreements reached due to pending administrative or criminal charges (unless the underlying charges relate to the disability for which the member is seeking a benefit); loss of licensure or certification required for the performance of the member's specific job duties; voluntary separation from service for reasons other than a disability; and job abolishment.

N.J.A.C. 17:5-5.7, Disability determination, remains unchanged.

N.J.A.C. 17:5-5.8 remains reserved.

N.J.A.C. 17:5-5.9, Determination of final compensation, remains unchanged.

The Board proposes to amend N.J.A.C. 17:5-5.10(a)1 to update the method by which an employer can initiate a disability retirement application on behalf of a member. Since all retirement applications are now submitted online, a Certifying Officer or other designated officer who wishes to complete an involuntary disability retirement application must authorize an application online through the Employer Pensions and Benefits Information Connection (EPIC). Also, paragraph (a)2 is proposed for amendment to reflect that the employer must submit an electronic statement as to the grounds for the employer's request for the member's involuntary disability retirement and all available medical documentation. Further, paragraph (a)4 is proposed for amendment to reflect that a written statement must be provided to the Board within 30 days to contest the involuntary disability retirement. Proposed new subsection (b) indicates that additional documentation in the form of a letter from the Superintendent of the State Police certifying that the employee is disabled and unable to perform the employee's regular or assigned duties must accompany any applications for an involuntary disability retirement.

N.J.A.C. 17:5-5.11, Service retirement; eligibility, remains unchanged.

N.J.A.C. 17:5-5.12 remains reserved.

N.J.A.C. 17:5-5.13, Compulsory retirement, remains unchanged.

N.J.A.C. 17:5-5.14, Employer and employee notices, remains unchanged.

The Division proposes to amend the section heading of N.J.A.C. 17:5-5.15 to "Disability retirement applications; medical examinations; physicians." This amendment is needed to accurately reflect additional information regarding disability retirement applications, which is added as proposed new subsections (a) through (g). Specifically, subsection (a) lists all the documentation a member who files for a disability retirement must provide prior to the Board's determination of eligibility. Paragraph (a)1 necessitates all required documentation must be provided within six months of submitting the application or the application will be canceled and the member will be required to submit a new disability retirement application for a future retirement date.

The existing information at N.J.A.C. 17:5-5.15 is codified as subsection (b). Proposed new subsection (c) sets forth the Division's reservation of the right to require a member to sign a sworn certification that no known underlying condition existed related to the disability for which the member seeks the benefit and that all available medical records related to the disability have been disclosed to the Independent Medical Examiner prior to the examination. Subsection (d) prohibits a member filing for a disability retirement from filing for any other type of retirement while an application for an ordinary or accidental disability retirement is pending. In addition, subsection (e) explains that if the member is denied a disability retirement, but is eligible for any other type of retirement benefit, the member must submit a written statement to receive that benefit. If this is received within 30 days of the Board's decision, the member may retain the retirement date on the disability retirement application.

Subsection (f) clarifies that a disability retirement application will be processed on the basis of the medical conditions described on the submitted application. If the application is denied, the member may file an appeal within 45 days, based on the medical conditions described on the submitted application. Finally, proposed new subsection (g) sets forth the process of reapplying for a disability retirement based on a new incident date or different or additional medical conditions. This will

require submitting a new application for disability retirement with a new retirement date and supplying all supporting documentation in support of the new incident or medical condition listed on the application.

N.J.A.C. 17:5-5.16, Work-related travel; accidental disability retirement and accidental death benefit coverage, remains unchanged.

N.J.A.C. 17:5-5.17, Waiver, remains unchanged.

Subchapter 6. Transfers

The Board proposes to amend the heading for N.J.A.C. 17:5-6.1 to read Honorable services; interfund transfers; State-administered retirement systems. This amendment is consistent with the verbiage from other State-administered retirement systems, such as the Public Employees' Retirement System and Teachers' Pension and Annuity Fund. Additionally, this heading now adequately describes the information under this subchapter. Further, paragraph (d)1 is proposed for amendment to clarify that once a transfer is completed, all rights and benefits under the former system terminate. This alleviates the confusion of some members who believed they could maintain rights under both systems. Finally, paragraph (d)3 is proposed for amendment to exclude unnecessary language regarding deferred retirement. After an account has expired it is not eligible for transfer regardless of vested status.

The Board has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

Social Impact

The rules proposed for readoption with amendments and new rules benefit SPRS members, retirees, and survivors of members and retirees. Members, retirees, and survivors of members and retirees rely on the efficient operation of the SPRS to provide them with a monthly distribution in retirement, proper crediting of contributions and earnings, death benefits, and information regarding their individual accounts.

Economic Impact

The rules proposed for readoption with amendments and new rules promote the effective and efficient administration of enrollments, retirements, transfers, purchases, withdrawals, and other areas of membership in the System. They uphold the laws governing the State-administered retirement systems, especially in the area of recent pension reform. They will not impose any adverse economic effects on the public; in fact, they will have a positive economic impact by protecting the SPRS and monies that are contributed to the SPRS by New Jersey taxpayers by computerizing and modernizing the application process. They also clarify the procedural steps required on the part of both an employee seeking to file a disability or accidental disability claim, and an employer that has decided to file an involuntary disability retirement application for a member. By clarifying what is needed, the rules should reduce overall time between application filing and an SPRS Board decision. While the proposed new rules and amendments may impose additional recordkeeping requirements, they will serve to preserve and improve the efficient administration and operation of the SPRS by helping to prevent members who are ineligible for specific retirement benefits from collecting such benefits. The rules proposed for readoption with amendments and new rules will also promote operational efficiency by upholding the maximum compensation limits established by recent pension laws. The rules will enable the Division to continue to provide benefits in a manner that meets both statutory and contractual requirements.

Federal Standards Statement

The rules proposed for readoption with amendments and new rules meet the applicable Federal standards at 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of these rules.

Jobs Impact

The operation of the rules proposed for readoption with amendments and new rules will not result in the generation or loss of jobs. The Division invites any interested parties to submit any data or studies concerning the jobs impact of the proposed new rules and amendments with their written comments.

Agriculture Industry Impact

The rules proposed for readoption with amendments and new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments and new rules affect members and retirees and survivors of SPRS members and retirees. Thus, the rules proposed for readoption with amendments and 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 rules proposed for readoption with amendments and new rules will have no impact on the affordability of housing in New Jersey, nor will they evoke a change in the average costs associated with housing, because the rules pertain to administration of the SPRS for members, retirees, and survivors of members and retirees.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and new rules will have no impact on the achievement of smart growth, nor will they evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the rules pertain to administration of the SPRS for members, retirees, and survivors of members and retirees.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board has evaluated this rulemaking and determined that it will have no 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 rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:5.

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

SUBCHAPTER 1. ADMINISTRATION

17:5-1.1 Board meetings

(a) The Board shall meet [at the call of the chairperson and secretary] **on the fourth Tuesday of each month, beginning in January and every other month thereafter, or** at such **other** time as may be deemed necessary by the Board.

(b) **Persons audio- or video-recording a Board meeting shall inform the Secretary of the Board and provide their names and addresses. The location of cameras and recording devices shall not obstruct or interfere with the conduct of business by the Board and the Secretary shall assist in identifying an appropriate location for such devices.**

17:5-1.3 Officers and committees

(a) The chairperson and vice chairperson of the Board will be [elected by a majority vote of the members in attendance at the first meeting of July, not less than three members to be present at such a meeting] **appointed by the Superintendent of State Police pursuant to N.J.S.A. 53:5A-30.b(1).** The chairperson of the Board shall preside at all meetings, or in the absence of the chairperson, the vice chairperson shall assume the chairperson's responsibilities. If both are absent, another member selected by the majority of the members in attendance will preside for that single meeting.

(b)-(c) (No change.)

17:5-1.5 Records

(a) [The] **In addition to the provisions of N.J.A.C. 17:1-1.2, the** approved minutes of the Board are a matter of public record and may be inspected during regular business hours in the Office of the Board Secretary.

(b)-(c) (No change.)

(d) The mailing address, telephone number, or e-mail address of any active or retired member is considered to be a part of the member's confidential files and shall not be released for any purpose.

(e) The beneficiary designations of an active or retired member are considered to be a part of the member's confidential files and shall only be released after the member's death.

17:5-1.6 Appeal from [board] Board decisions

The following statement shall be incorporated in every written notice setting forth the Board's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative:

"(a) If the member disagrees with the determination of the Board, the member may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for the member's disagreement with the Board's determination and shall include any relevant documentation supporting the claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

(b) The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(c) Administrative hearings will be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1.

(d) If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law.

(e) If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final administrative determination which shall include detailed findings of fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division.["]

(f) **The Director of the Division may authorize or deny requests to extend the time allowed for exceptions and replies, and to seek an extension of the time for the Board to render a final decision adopting, rejecting, or modifying an initial decision."**

17:5-1.7 [(Reserved)] Verified discrepancy in member's age

If proof of age documents establish a verified discrepancy between a member's proven age and the age on file with the Division, the member's account, active or retired, shall be reconstructed and all benefit entitlements and contributions shall be determined on the basis of the member's correct date of birth.

17:5-1.9 Proof of age

(a) All members shall establish proof of their age with the System. Acceptable proof[s] of age documents include birth [or baptismal] certificates with a visible seal, passports, U.S. passport cards, naturalization or immigration papers, [Biblical records, affidavits of older members of the immediate family or primary school records] valid New Jersey, New York, or Pennsylvania digital driver licenses, or digital non-driver ID cards from the New Jersey Motor Vehicle Commission (MVC), indicating a member's age.

(b)-(c) (No change.)

(d) **If a member is transferring into the SPRS from another State-administered retirement system where proof of age was already secured, no additional proof of age will be required. This subsection shall also apply for members transferring into another State-administered retirement system from the SPRS.**

SUBCHAPTER 1A. DEFINITIONS

17:5-1A.1 Definitions

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

... **"Employer Pensions and Benefits Information Connection" is a set of Internet-based applications that allow registered employers who have obtained authorization by the certifying officer of the location access to manage their employees' pensions and, if applicable, health**

benefit account information. The specific group of application buttons that are visible will depend on the type of employer and the level of access authorized by the certifying officer of the location.

... **"Independent Medical Examiner" or "IME" means the physician or group of physicians contracted by the Division to perform an independent medical evaluation on disability retirement applicants.**

"Member Benefits Online System" is a set of Internet-based applications that allow registered members access to manage their pension and, if applicable, health benefit account information.

"Medical Review Board" consists of three physicians, each responsible for reviewing all medical documentation submitted in relation to any applications submitted for ordinary or accidental disability retirement.

... **"Treating physician" is defined as someone who provides the member, or has provided the member, with medical treatment on an ongoing basis.**

SUBCHAPTER 2. INSURANCE AND DEATH BENEFITS

17:5-2.1 Computation of insurance benefits

(a) (No change.)

(b) [Death] **For members who enrolled on or before May 21, 2010, death benefits and noncontributory insurance benefits shall be based on the base salary upon which contributions to the Annuity Savings Fund were actually made during the 26 biweekly pay periods immediately preceding the member's death, plus maintenance received by the member concurrent with such salary. Biweekly pay periods in which no salary was paid shall not be used in the calculation. For members who enrolled after May 21, 2010, death benefits and noncontributory insurance benefits shall be based on the average salary upon which pension contributions to the Annuity Savings Fund were made for any three fiscal years of membership preceding the member's death as an active member that provides the largest possible benefit.**

(c) (No change.)

(d) Where a post-audit of insurance claim payments indicates the pension contributions reported by an employer were incorrect and resulted in the underpayment of an insurance claim to the member's designated beneficiary or estate, an additional check would be sent to the beneficiary for the value of the underpayment. **Should any change or error in the records result in any member receiving from the pension fund more than he or she would have been entitled to receive had the records been correct, the Board of Trustees shall correct such error, as far as practicable, and shall adjust the payments payable to the member's designated beneficiary or estate pursuant to N.J.A.C. 17:1-2.10.**

(e)-(f) (No change.)

17:5-2.4 Acceptable designations of beneficiaries

(a) A member's designation of beneficiary or beneficiaries of group life insurance on a duly executed retirement application:

1. Is effective upon filing with and acceptance by the Division, even if the retirement date on the application is in the future or the member withdraws the retirement application; [and]

2. Supersedes any previous beneficiary designation on file[.]; and

3. Such designation shall include: full name, Social Security number, tax identification number (for estates or trusts), address, and date of birth.

(b) If a deceased active member has an eligible surviving spouse, child, or parent, then the deceased member's aggregate contributions at the time of death shall be applied toward the payment of the benefit established pursuant to N.J.S.A. 53:5A-[12a]12.a.

(c) If a deceased active member has no eligible surviving spouse, child, or parent, then pursuant to N.J.S.A. 53:5A-[12b]12.b, the deceased member's designated beneficiary or beneficiaries of group life insurance also shall be the beneficiary or beneficiaries of the deceased member's aggregate contributions at the time of death.

(d) If a deceased active member has no eligible surviving spouse, child, or parent, and the deceased member has not made an effective designation of beneficiary or has designated no beneficiary for group life insurance,

then the Division shall pay the group life insurance and the deceased member's aggregate contributions to the deceased member's estate.

SUBCHAPTER 3. MEMBERSHIP

17:5-3.1 Creditable salary

(a) "Creditable compensation" or the phrase "compensation upon which contributions by the member to the Annuity Savings Fund were based" shall be limited to base salary that is in accordance with established salary policies of the State for all employees in the same position but shall not include [retroactive salary adjustments if the increases are not of a normal, overall, published program of increases] individual salary adjustments that are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday or shift.

(b) (No change.)

(c) [Longevity, terminal leave or vacation payments will not be considered if paid] Payments made in a lump sum, stipend, or other than as a regular salary disbursement will not be considered.

(d) (No change.)

17:5-3.7 Loans

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

(c) All pension loans must be repaid within a period not to exceed five years. If the member has an outstanding loan balance and applies for a new loan, the entire balance must be repaid within five years of the date of the first loan. Furthermore, the new loan amount, when added to the highest balance due (without interest) during the prior 12-month period for all loans from all retirement plans cannot exceed \$50,000. The \$50,000 maximum limit includes all retirement plans the member has an interest in due to his or her employment relationship with the State and/or any other governmental plans sponsored or administered by a public sector employer in New Jersey. Loan amounts above the \$50,000 aggregate limit shall be declared a deemed distribution, which is subject to additional tax.

1. If a member's loan is treated as a distribution, the member is still required to repay the loan, unless the member terminates his or her account by withdrawing his or her contributions. If the member withdraws from the retirement system, the settlement will be the net amount of the member's contributions minus the outstanding loan. If the member returns to work and the member's account is reactivated or the member retires, the member must repay the full amount of the outstanding loan with additional interest computed from the date the member stopped making loan payments.

(d) Under I.R.C. § 72 (p)(2)(C), members must make regular periodic payments to repay their outstanding loans. If a member takes out a loan and fails to make required loan repayments for three consecutive months, the Division will send a letter to the member requesting payment within 30 days. If the payment is not made, the Division will treat the outstanding loan as a deemed pension distribution. A deemed distribution cannot be canceled by resuming loan payments or repaying the loan in full. Unlike a normal pension distribution, a loan treated as a distribution cannot be rolled over to an Individual Retirement Account (IRA) or another qualified retirement plan.

17:5-3.8 Termination; withdrawal

(a) Under the terms of the statutes, a member may withdraw from the Retirement System only if the member terminates all employment. No application shall be approved if:

1.-2. (No change.)

3. The member has been dismissed or suspended from employment. In this event, such a member will be eligible to withdraw if the member has formally resigned from the position and there is no legal action contemplated or pending and the dismissal has been adjudged final. If the member or employer does not advise the Division that there is an appeal and the withdrawal application is processed, the member must repay the Retirement System the full amount of contributions with interest before the account may be reinstated; [or]

4. The member has a claim pending for Workers' Compensation benefits, unless the member signs a waiver indicating that the member still wishes to withdraw[.]; or

5. The member has a pending retirement application, unless the member agrees to rescind such application.

SUBCHAPTER 4. PURCHASES AND ELIGIBLE SERVICE

17:5-4.1 Eligibility for purchase

(a) Only active members of the system shall be eligible to make application for purchase of credit. Active members who are not currently contributing to the system must purchase their requested service in a lump sum. The purchase request must represent active service in a State-administered retirement system for which the member received a salary and was eligible for enrollment, but the information must be verified by the employer as to salary information, service, and title.

(b) In order to be eligible to purchase service, a member must submit a request to purchase [such] service [and such] over the Internet, through a secure account established by the member and using the Purchase Application program of the Member Benefits Online System (MBOS). If eligible to purchase service credit, the member will subsequently receive a letter from the Division quoting the terms of the purchase. Such purchase must be authorized by the member before the expiration date indicated on the purchase cost quotation letter, which quotes the terms of the purchase. If the purchase cost quotation expires prior to authorization and subsequently the member requests the purchase of such service, the purchase cost will be subject to recalculation based upon all cost factors in effect at the time of the new purchase request.

(c)-(d) (No change.)

17:5-4.2 Optional purchases of eligible service

(a) The types of purchases indicated below will be calculated on the basis of the actuarial factor established for the member's age at the time of the purchase times the member's current salary:

1.-2. (No change.)

3. Leaves of absence without pay: A member must request to purchase a leave of absence without pay within one year following the member's return to service. A member may purchase:

i. All or a portion of the period of the leave for personal reasons [which] that is less than three months. Maternity leave may consist of a personal leave component and a personal reasons component (for child care). Child care is considered a leave for personal reasons.

ii. All or a portion of the period of the leave up to two years for personal illness. The Division may require proof that the illness existed for the length of the leave. Members who apply to purchase any period of maternity leave as personal illness must provide certification from their physician, verifying that the member was disabled during the requested purchase period, due to pregnancy or childbirth. Absent physician certification, three months is the maximum allowable period of purchase for maternity leave for personal reasons.

4. Military service: A member may purchase credit in the retirement system for military service in the Armed Forces of the United States prior to becoming a member. A member may purchase credit for all or a portion of such service, up to 10 years, plus an additional five years if the member qualifies as a veteran with certain wartime military service. All members must provide the Division with a DD-214 Form, which includes a member's character of service, active/entry dates of service, and discharge/ending dates of service. The SPRS credit purchased for prior military service will be equivalent to service in the State Police as a member of SPRS in qualifying for retirement benefits.

i. The Federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides that a member who leaves employment to serve on active duty is entitled to purchase service credit for the period of uniformed service. If the member makes the pension contributions that would have been normally required upon return and within the time frames specified under USERRA, the military service will count for vesting, retirement eligibility, the calculation of the retirement benefit and, if applicable, health benefits eligibility, as though the member had not left. When a member returns from uniformed military service to

SPRS-covered employment, the employer should notify the Division no later than 30 days after the member's return by submitting a Request for USERRA-Eligible Service form. Once notified, the Division will provide the member with a quotation for the cost for purchasing the service credit pursuant to N.J.A.C. 17:1-3.10.

SUBCHAPTER 5. RETIREMENT

17:5-5.1 Applications

(a) Applications for retirement must be made [on] **over the Internet, using the online forms** required by the System **through a member's secure account established through the Member Benefit Online System (MBOS)**. Such forms must be completed in all respects and filed with the Division before the requested date of retirement. A member's retirement application becomes effective on the first of the month following receipt of the application unless a future date is requested. Applications can be filed no more than one year in advance unless filing for a deferred retirement and the member's SPRS eligible employment has ended.

(b) Except for a disability retirement application, in the event a member files an incomplete application, all deficiencies, except the employer certification, shall be brought to the member's attention and the member shall be required to provide the additional information within 90 days to enable processing. If there is no response within the 90-day time frame, the application will expire and the member will be required to re-file **pursuant to the requirements set forth in (a) above**. This subsection shall not apply to information provided by the employer.

(c) (No change.)

(d) As to an application for disability retirement, the following shall apply:

1. An application for a physical disability retirement must be supported by at least two medical reports, one by the member's personal or [attending] **treating** physician [and the] **on a form prescribed by the Division**. The other may be either hospital records supporting the disability or a report from a second physician **on a form prescribed by the Division**. The required documentation must be received within six months of the date [of filing] **the member filed the disability retirement application on MBOS, thus, receiving confirmation of the filing**. If [it] **the required documentation is not received in its entirety**, the retirement will be canceled and the member must complete a new disability **retirement** application for a future retirement date;

2. An application for a mental health medical disability retirement must be supported by at least two medical reports, one by the member's personal or [attending] **treating** psychiatrist or psychologist [and the] **on a form prescribed by the Division**. The other in the form of either hospital records supporting the disability [or], a report from a second psychiatrist or psychologist **on a form prescribed by the Division**, or from the member's personal or [attending] **treating** physician or licensed clinical social worker. The required documentation must be received within six months of the date of filing the disability **retirement** application. If [it] **the required documentation is not received**, the retirement will be canceled and the member must complete a new disability **retirement** application for a future retirement date;

3.-4. (No change.)

(e) **An application for a disability retirement will be forwarded to the Board for consideration only when all documentation is received.**

1. **The Division will schedule a medical examination for the purpose of providing additional information to the Medical Review Board to make a determination about a disability retirement application. The initial IME scheduled by the Division will be provided at no cost to the applicant.**

17:5-5.4 Willful negligence

(a) [Willful] **For purposes of determining an accidental disability, willful negligence is defined as follows:**

1. **Deliberate act or deliberate failure to act that reflects an intentional or purposeful deviation from the standard of care exercised by a reasonable person in similar circumstances; or**

2.-3. (No change.)

17:5-5.6 [(Reserved)] Disability retirement application and termination of service

(a) **Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; and the member must prove the disability is the reason for leaving employment.**

(b) **Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:**

1. **Removal for cause or total forfeiture of public service;**

2. **Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;**

3. **Loss of licensure or certification required for the performance of the member's specific job duties;**

4. **Voluntary separation from service for reasons other than a disability; and**

5. **Job abolishment.**

(c) **The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the member's application is eligible for processing, pursuant to (a) above.**

17:5-5.10 Employer initiated disability retirement application; employee notice

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by the Division of State Police for an employee, the member will be promptly notified by letter that:

1. The Division of State Police has properly initiated a disability **retirement application online through the Employer Pensions and Benefits Information Connection (EPIC) authorized by the certifying officer or other designated officer**, on the member's behalf;

2. The Division of State Police has submitted [a written] **an electronic statement** as to the grounds for the employer's request for the member's involuntary disability retirement and all available medical documentation;

3. (No change.)

4. The member has a period of 30 days to contest the involuntary **disability retirement by submitting a written statement** before the Board acts on the employer's application;

5.-7. (No change.)

(b) **Applications for the involuntary disability retirement of a SPRS member must be accompanied by a letter from the Superintendent of the State Police, certifying that the employee is disabled and unable to perform the employee's regular or assigned duties.**

17:5-5.15 [Medical] Disability retirement applications; medical examinations; physicians

(a) **In addition to the reports required with the application pursuant to N.J.A.C. 17:5-5.1(d)1 and 2, applicants for a disability retirement shall submit with their applications all the medical information they can supply relative to their disability, including reports of their personal physicians and consulting physicians, hospital records, diagnostic test results, and any other medical information that would assist the Independent Medical Examiner, Medical Review Board, and the Board in determining eligibility of the applicants for a disability retirement. The Division shall forward the applications and the accompanying medical information to the Medical Review Board.**

1. **The applicant must submit all required documentation within six months of submitting the disability retirement application, or the application will be canceled. The member will then be required to complete a new application for a future retirement date.**

(b) N.J.S.A. 53:5A-11 requires the Retirement System or the Board to designate physicians to perform medical examinations. A designated physician shall not be a member's personal physician, except in the case of a member whose personal physician has identified the member as

having a probable abbreviated life expectancy if sufficient corroborating medical evidence of the diagnosis can be obtained.

(c) **The Division reserves the right to require a member to sign a sworn certification that no underlying condition existed related to the disability for which the member is seeking a benefit and that all available medical reports related to the disability have been disclosed to the IME prior to the examination.**

(d) **A member filing for any type of disability retirement shall not file a separate application for any other type of retirement while an ordinary or accidental disability retirement application is pending.**

(e) **If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit, the applicant will be required to submit a written statement to receive that benefit. If the applicant amends the application for retirement within 30 days of the Board’s decision, the applicant may retain the retirement date designated on the disability retirement application.**

(f) **The member’s disability retirement application will be processed on the basis of the medical conditions described on the submitted application. If the disability retirement application is denied, the member may file an appeal within 45 days, based on the medical conditions described on the submitted application.**

(g) **If a disability retirement application is denied by the Board and the applicant wishes to reapply for a disability retirement based on a new incident date or different or additional medical condition, the applicant will be required to submit a new application with a new retirement date. The applicant must also continue to meet the requirements of N.J.A.C. 17:1-6.4(a). All supporting documentation required must be submitted in support of the new incident or medical conditions listed on the application.**

SUBCHAPTER 6. TRANSFERS

17:5-6.1 [Interfund] **Honorable service; interfund** transfers; other State systems

(a) (No change.)

(b) The member is not eligible to transfer service credit if any of the following conditions apply:

1.-2. (No change.)

3. The account has expired; that is, it has been more than two years from the date of the last contribution [and there was not sufficient service credit to be eligible for deferred retirement].

(c) (No change.)

(d) The system will transfer membership to any State-administered system as follows:

1. A member, desiring to transfer service credit and contributions from one State-administered retirement system to another shall file an Application of Interfund Transfer and an “Enrollment Application” in place of the customary “Application for Withdrawal.” This application will void all possible claims against the [present] **former system and all rights and benefits under the former system** when approved and the new membership is commenced in the new system.

2.-4. (No change.)

(e)-(g) (No change.)

(a)

STATE INVESTMENT COUNCIL

Rules of the State Investment Council

Proposed Amendments: N.J.A.C. 17:16-1.2, 3.1, 5.3, 23.4, 32.1, 32.2, 32.4, 48.3, 69.9, 71.4, 81.3, 90.4, 95.4, and 100.4

Authorized By: State Investment Council, Corey Amon, Acting Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91 and P.L. 2018, c. 55.

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

Proposal Number: PRN 2019-029.

Submit written comments by May 3, 2019, to:

Corey Amon
 Administrative Practice Officer
 Division of Investment
 PO Box 290
 Trenton, New Jersey 08625-0290
 e-mail: Susan.sarnowski@treas.nj.gov

The agency proposal follows:

Summary

N.J.A.C. 17:16 provides the regulatory framework that governs the methods, practices, or procedures for investment, reinvestment, purchase, sale, or exchange transactions followed by the Director of the Division of Investment (Division) for the funds under the supervision of the State Investment Council (Council). On July 3, 2018, the Governor signed P.L. 2018, c. 55 (Act) which, among other changes, transfers the authority to direct investment policy of the Police and Firemen’s Retirement System (PFRS) to a newly constituted 12-member PFRS Board of Trustees (New PFRS Board). The Act further provides that all functions, powers, and duties relating to the formulation, establishment, amendment, modification, or repeal of any policy, procedure, method, or practice on the investment or reinvestment of moneys of PFRS shall be performed by the New PFRS Board. However, the purchase, sale, or exchange of any investments or securities under the control and management of the New PFRS Board shall continue to be exercised by the Division. In addition, the Act provides that the Division, the Director of the Division, and the Council shall retain all functions, powers, and duties relating to Common Pension Fund L assigned to the Division, the Director of the Division, and the Council by P.L. 2017, c. 98 (N.J.S.A. 5:9-22.5 et seq.). The Council is proposing amendments to its rules to reflect the provisions of the Act. The Council is also proposing amendments to the subchapter governing investment in certificates of deposit.

N.J.A.C. 17:16-1, General Provisions, includes the overall purpose of the chapter and definitions for general terms used throughout the chapter. The proposed amendment to N.J.A.C. 17:16-1.2 adds a definition for proportionate interest. Proportionate interest means the percentage calculated by dividing one or more eligible fund’s units of participation in a Common Pension Fund by the total number of units of participation outstanding of the Common Pension Fund. The term “proportionate interest” is also proposed to be added to the investment limitations set forth in N.J.A.C. 17:16-23.4, 71.4, 90.4, 95.4, and 100.4, which respectively govern investment in global diversified credit investments, real assets, private equity, opportunistic investments, and absolute return strategy investments, the asset classes in which Common Pension Fund E is currently invested.

N.J.A.C. 17:16-3, Classification of Funds, establishes classifications for funds sharing similar investment characteristics and objectives. Proposed new N.J.A.C. 17:16-3.1(b) provides that until the transition date, Pension and Annuity Funds include the Consolidated Police and Firemen’s Pension Fund, Judicial Retirement System of New Jersey, Police and Firemen’s Retirement System, Prison Officers Pension Fund, Public Employees’ Retirement System, State Police Retirement System, and Teachers’ Pension and Annuity Fund. It further establishes that transition date means the date on which assets, other than any assets held by Common Pension Fund E and any assets that, for administrative reasons, cannot be transferred until a later date, have been transferred to the PFRS in accordance with the Act. The transition date will be determined by the Director and the assets will be transferred as soon as practicable in accordance with the Act, but in no event earlier than July 5, 2019, as specified by the Act. Any assets, other than assets held by Common Pension Fund E that are not transferred by the transition date, shall be transferred as soon as administratively practicable. Proposed new N.J.A.C. 17:16-3.1(c) establishes that beginning with the transition date, PFRS is no longer included in the definition of Pension and Annuity Funds, provided that, with respect to any assets, other than assets held by Common Pension Fund E that are not transferred in accordance with the Act, the Pension and Annuity Funds shall include PFRS. The proposed amendments will provide for a transition period. They also provide clarity for the manner in which investment limitations are applied since