

reemployed and works [four] **eight** weeks in employment and has earned at least [six] **10** times the individual's weekly benefit rate. The individual will have no benefit rights based upon wages from that employer for services rendered prior to the day upon which he or she was discharged.

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

**(f) To sustain disqualification under this section, the burden of proof is on the employer to show through written documentation that the employee's actions constitute misconduct. However, in the case of gross misconduct, the following apply:**

**1. Where an employer provides sufficient evidence to establish that a claimant was discharged for gross misconduct connected with the work, prosecution, or conviction shall not be required to sustain that the claimant has engaged in gross misconduct; and**

**2. If an individual has been convicted of a crime of the first, second, third, or fourth degree under the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., in a court of competent jurisdiction, such conviction shall be conclusive as to a finding of gross misconduct.**

#### SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

##### 12:17-21.2 Reasons for separation

(a) A base year employer may obtain relief from the charges for benefits paid to a former employee if the claimant was separated from his or her work with such employer due to any of the following reasons:

1. (No change.)

2. The claimant was discharged for willful misconduct [or gross misconduct] connected with the work;

3.-6. (No change.)

## PUBLIC UTILITIES

### (a)

#### BOARD OF PUBLIC UTILITIES

##### Procedures for Determining the Confidentiality of Submitted Information

##### Proposed Amendments: N.J.A.C. 14:1-12.1 and 12.9

Authorized By: New Jersey Board of Public Utilities, Robert M. Hanna, President, Jeanne M. Fox, Joseph L. Fiordaliso, Nicholas Asselta, and Mary-Anna Holden, Commissioners.

Authority: N.J.S.A. 48:2-1 et seq., specifically 48:2-21.32, and 47:1A-9(a).

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

BPU Docket Number: AX12050465.

Proposal Number: PRN 2013-001.

Comments may be submitted through March 8, 2013 by email in Microsoft Word format, or in a format that can be easily converted to Word, to: [rule.comments@bpu.state.nj.us](mailto:rule.comments@bpu.state.nj.us) or on paper to:

Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
ATTN: BPU Docket Number: EO12010025  
44 South Clinton Avenue, 9th floor  
PO Box 350  
Trenton, NJ 08625-0350

The agency proposal follows:

##### Summary

The Board of Public Utilities (Board) is proposing multiple amendments to the rules governing its authority to make a determination of the confidentiality of submitted information.

The proposed amendment to N.J.A.C. 14:1-12.1(e) would bind the custodian to any confidentiality determination made by the Board.

The proposed amendment to N.J.A.C. 14:1-12.9(b)1 clarifies that the written notice required by N.J.A.C. 14:1-12.9(a)2 must include the date on which the disclosure will be made.

The proposed amendments to N.J.A.C. 14:1-12.9(d) and (e) recognize judicial authority to declare information confidential. The proposed amendments require that when a claimant is seeking a declaratory judgment of confidentiality, or other court order, they must notify the custodian and any requestor of any action or order seeking a declaration of confidentiality immediately upon filing with the court.

Additionally, the proposed amendments recognize that any judicial determination will be independent of any confidentiality determination by the custodian and the court will not be bound by any determination by the Board or the custodian. Finally, except as otherwise required by the Open Public Records Act or the common law right to know, the proposed amendments state the custodian will not release any information while a judicial confidentiality determination is pending.

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

##### Social Impact

The Board anticipates that the proposed amendments will have a positive social impact as the amendments will clarify the process for the determination of confidentiality.

##### Economic Impact

The Board anticipates that minor administrative costs may be incurred as a result of the proposed amendments. There may be costs associated with obtaining a court order pertaining to the determination of confidentiality, if such order is sought.

##### Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. requires State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. There are no Federal standards applicable to the proposed amendments. Accordingly, a Federal standards analysis for the proposed amendments is not required.

##### Jobs Impact

The Board does not expect the proposed amendments to have any effect on job creation or loss in New Jersey.

##### Agriculture Industry Impact

The Board does not expect the proposed amendments to have any effect on the agriculture industry in New Jersey.

##### Regulatory Flexibility Analysis

The proposed amendments impose reporting and compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but do not impose recordkeeping requirements. The reporting and compliance requirements are as discussed in the Summary above and any costs are as discussed in the Economic Impact above. No lesser standards are possible as the proposed amendments are the minimum possible to affect the protections of making determinations of confidentiality.

##### Housing Affordability Impact Analysis

The proposed amendments will have no impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to the Board's management of confidential information.

##### Smart Growth Development Impact Analysis

The proposed amendments will have no impact on smart growth in New Jersey and there is an extreme unlikelihood that 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 in New Jersey because the rules pertain to the Board's management of confidential information.

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

SUBCHAPTER 12. PROCEDURES FOR DETERMINING THE CONFIDENTIALITY OF SUBMITTED INFORMATION

14:1-12.1 Scope

(a)-(d) (No change.)

(e) Nothing in this subchapter shall limit the Board’s authority to make a confidentiality determination within the context of a hearing or other proceeding or with regard to any other matter the Board may deem appropriate. **Any confidentiality determination by the Board shall bind the custodian when reviewing confidentiality claims pursuant to this subchapter.**

(f) (No change.)

14:1-12.9 Final confidentiality determination

(a) (No change.)

(b) The written notice required under (a)2 above shall include the following:

1. The date on which the disclosure was made **or will be made**;
2. The name of the agency or other person to which the custodian disclosed **or will disclose** the information that was [claimed] **asserted, or will assert, as confidential**;
3. A brief description of the information [disclosed];
- 4.-5. (No change.)

(c) (No change.)

**(d) Notwithstanding a custodian’s determination that information submitted pursuant to this subchapter is not confidential information, the custodian will not release such information if a court of competent jurisdiction, in accordance with the court rules, declares the information confidential and not subject to disclosure.**

**1. If claimant seeks a declaratory judgment regarding confidentiality, or other court order, claimant shall notify the custodian and any requestor of any action or order seeking a declaration of confidentiality immediately upon filing with the court.**

**i. Any such judicial determination shall be independent of any confidentiality determination by the custodian. The court shall not be bound by any prior determination by the Board or the custodian.**

**2. Except as otherwise required pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or the common law Right-to-Know, the custodian shall not release any information while a judicial confidentiality determination is pending as set forth in this subsection.**

[d] (e) The custodian’s determination under this section shall constitute final agency action. **Notwithstanding that a claimant may seek a declaratory judgment regarding confidentiality under (d) above, any challenge or appeal of a final agency action shall be made in accordance with the court rules or as set forth in the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.**

TREASURY — GENERAL

(a)

**OFFICE OF THE PUBLIC DEFENDER  
DISPUTE SETTLEMENT OFFICE  
Notice of Administrative Corrections and Extension  
of Public Comment Period  
Alternative Dispute Resolution Process for  
Underground Facility Protection Act Damages  
Claims**

**Proposed New Rules: N.J.A.C. 17:39**

**Take notice** that the Office of the Public Defender, Dispute Settlement Office discovered that an omission occurred in the text of proposed new N.J.A.C. 17:39-1.1(c), and that the omitted text was not discussed in the Summary statement, in above-referenced notice of proposal published in the December 17, 2012 New Jersey Register at 44 N.J.R. 3056(a). This notice of administrative corrections, published pursuant to N.J.A.C. 1:30-2.7, revises the first paragraph of the Summary statement and N.J.A.C. 17:39-1.1(c) to provide the additional information inadvertently left out of the notice of proposal. By this notice, the Summary statement and N.J.A.C. 17:39-1.1(c) are being revised and the comment period on the notice of proposal is being extended, from February 15, 2013 to March 8, 2013.

Submit comments by March 8, 2013 to:

Jessica L. Miller, Esq.  
NJ Dispute Settlement Office  
PO Box 853  
25 Market Street  
Trenton, NJ 08625-0853

**Full text** of the corrected Summary paragraph and N.J.A.C. 17:39-1.1(c) follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

**Summary**

The Office of the Public Defender and its Dispute Settlement Office (DSO) are proposing new rules governing the Underground Facility Protection Act Arbitration Program. This chapter outlines the rules and procedures for arbitration in the DSO’s Underground Facility Protection Act Arbitration Program **and allows for parties, by mutual consent, to opt to use an alternative dispute resolution provider other than the DSO.** The chapter lays out the procedures for service; initiating an arbitration; payment of fees; qualifications and role of the arbitrator; information exchange between the parties; the arbitration proceeding; appearances at arbitrations; failure to appear; arbitration decisions; and the disposition of claims in excess of \$25,000.

...

17:39-1.1 Purpose

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

(c) Notwithstanding anything in this subchapter to the contrary, the parties may:

**1. [negotiate] Negotiate** or otherwise resolve or withdraw some or all issues relating to a dispute submitted to DSO pursuant to this subchapter [at any time through direct negotiation]; **or**

**2. By mutual consent of all parties, choose an alternative dispute resolution provider other than DSO, in which case, this subchapter shall not apply.**