

section. The purpose of this review is not to pass judgment on the accuracy or completeness of the facts relating to the allegation or on the merits of the claim, but rather to ensure its completeness. If the review determines that the submitted claim is incomplete, the claimant will be notified and provided an opportunity to resubmit the claim.

16:74-2.2 Conferences

(a) Settlement conferences may be held in accordance with the provisions at N.J.A.C. 1:1-4.2.

(b) Settlement discussions and unaccepted proposals of settlement or of adjustment will be privileged and will not be admissible in evidence against either NJ TRANSIT or the carrier.

16:74-2.3 Transmittal to Office of Administrative Law (OAL)

When the carrier has satisfied all of the requirements at N.J.A.C. 16:74-2.1, the matter will be considered a contested case and the President and CEO shall, within 30 days of receipt of the completed claim, refer the complaint to the OAL to be processed in accordance with the Administrative Procedure 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.

16:74-2.4 Factors to be considered

(a) The following factors shall be considered in determining whether NJ TRANSIT has engaged in destructive competition:

1. Whether NJ TRANSIT or the carrier was the first to provide the service in question;
2. Whether the action of NJ TRANSIT was a significant factor in causing the alleged adverse impact on the carrier;
3. Whether NJ TRANSIT is complying with all applicable Federal and State laws, its Certificates of Public Convenience and Necessity and applicable tariffs, in providing the service alleged to be destructively competitive;
4. The inherent benefits of the service to the riders, including, but not limited to, destination, door to door travel time, frequency of service, comfort, cost, transfer frequencies, or proximity to the riders' residences;
5. Whether the NJ TRANSIT service alleged to be destructively competitive is in the public interest; and
6. Whether the level of service and fares of NJ TRANSIT are destructively competitive.

(b) For purposes of this section, when considering whether the NJ TRANSIT service alleged to be destructively competitive is in the public interest, implementation and operation of any new mass transit service or any service improvements resulting from any of the projects contained in the "Circle of Mobility" as defined at P.L. 1984, c. 73 (N.J.S.A. 27:1B-3) or amendments thereto shall be deemed to be in the public interest and not a violation of N.J.S.A. 27:25-1 et seq., or this chapter. As defined in that law, "Circle of Mobility" means an essential group of related transit projects that include:

1. The New Jersey Urban Core Project, as defined in section 3031 of the "Intermodal Surface Transportation Efficiency Act of 1991" Pub. L. 102-240, and consisting of the following elements:
 - i. Secaucus Transfer;
 - ii. Kearny Connection, that is, the NJ TRANSIT service known as MidTOWN Direct;
 - iii. Waterfront Connection;
 - iv. Northeast Corridor Signal System;
 - v. Hudson River Waterfront Transportation System, that is, the Hudson Bergen Light Rail System, including advancing extension of Hudson Bergen Light Rail service along Northern Branch in Bergen County;
 - vi. Newark-Newark International Airport Elizabeth Transit Link;
 - vii. A light rail connection between Penn Station Newark and Broad Street Station, Newark; and
 - viii. New York Penn Station concourse;
2. The modification and reconstruction of the West Shore Line in Bergen County connected to Allied Junction/Secaucus Transfer Meadowlands Rail Center; the construction of a rail station and associated components at the Meadowlands Sports Complex; the modification and reconstruction of the Susquehanna and Western Railway, as defined and provided in section 3035(a) of the "Intermodal Surface Transportation Efficiency Act of 1991"; the modification and reconstruction of the

Lackawanna Cutoff Commuter Rail Line connecting Morris, Sussex, and Warren Counties to the North Jersey Transportation Rail Centers;

3. Commuter rail service in the central New Jersey region terminating at the proposed Lakewood Transportation Center in Ocean County or another location as determined by NJ TRANSIT; and

4. The equipment or facilities needed to operate revenue service associated with the improvements made by the above projects.

(c) For the purposes of this section, when considering whether the NJ TRANSIT service alleged to be destructively competitive is in the public interest, implementation and operation of any new mass transit service or service improvements resulting from any of the projects contained in a Regional Transportation Plan (RTP) of a Municipal Planning Organizations (MPOs) in this subsection, shall be deemed to be in the public interest and not in violation of N.J.S.A. 27:25-1 et seq. and this chapter. MPOs and RTPs include:

1. Projects covered pursuant to the North Jersey Transportation Planning Authority Regional Transportation Plan;
2. Projects covered pursuant to the South Jersey Transportation Planning Organization Regional Transportation Plan; and
3. Projects covered pursuant to the Delaware Valley Regional Planning Commission Connections Plan for Greater Philadelphia for Major Regional Transit System Expansion Projects.

(d) Nothing in this section should be construed to preclude additional factors from being considered in determining whether NJ TRANSIT has engaged in destructive competition.

16:74-2.5 Remedy and order

(a) The sole remedy that may be considered pursuant to this chapter and N.J.S.A. 27:25-7(b) is to direct NJ TRANSIT to cease and desist in whole or part from using its equipment or facilities in a destructively competitive manner. No monetary damages may be awarded by the administrative law judge (ALJ).

(b) Upon receipt of the initial decision of the ALJ, the President and CEO shall present the matter to the Board and the Board shall adopt an order or final decision accepting, rejecting, or modifying the initial decision by the ALJ or remanding the decision to the OAL for further action, all in accordance with N.J.A.C. 1:1-18.6 and 18.7.

TREASURY—GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Proposed Readoption with Amendments: N.J.A.C. 17:2

Authorized By: Public Employees' Retirement System Board of Trustees, Jeff Ignatowitz, Secretary.

Authority: N.J.S.A. 43:15A-1 et seq.

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

Proposal Number: PRN 2025-004.

Submit comments by March 22, 2025, to:

Danielle Schimmel
Assistant Director
Division of Pensions and Benefits
PO Box 295
Trenton, NJ 08625-0295
DPB.regulations@treas.nj.gov

The agency proposal follows:

Summary

The Board of Trustees of the Public Employees' Retirement System (Board) is responsible for maintaining N.J.A.C. 17:2. Additionally, the rules are periodically reviewed by the Division of Pensions and Benefits (Division) and the Board's staff to determine whether the current rules are necessary, cost-efficient, reflect the current policies and procedures of the

Division, and maintain qualified-plan status in compliance with Federal IRS regulations. Upon a periodic review, it was revealed that the current regulations need to be updated to reflect the current procedures and practices of the Division. Therefore, the Board proposes the following amendments that affect retirements in the Public Employees' Retirement System ("PERS" or "System"). When clarification or revision is required, the affected rules are amended accordingly. Finally, when the rules at N.J.A.C. 17:2 are approaching expiration, they must be reviewed and amended, as needed.

The Board proposes to readopt the current rules at N.J.A.C. 17:2, which were scheduled to expire on December 13, 2024, with the following proposed amendments. As the Division filed this notice of readoption with amendments with the Office of Administrative Law prior to December 13, 2024, the expiration date was extended 180 days to June 11, 2025, pursuant to N.J.S.A. 52:14B-5.1.c(2). The rules proposed for readoption with amendments affect the administration, enrollment, contributions, withdrawals, insurance and death benefits, membership, eligible service, service-credit purchases, retirements, and transfers within the PERS. The substantive provisions of the rules proposed to be readopted with amendments by the Board are summarized below.

Subchapter 1, Administration, outlines the administrative procedures of this chapter. This includes the provisions related to board meetings, fiscal year, committees, election of officers, appeals from board decisions, and contribution rates required to implement and maintain the PERS Fund.

Subchapter 1A, Definitions, provides the meaning of the terms used within this chapter text, unless the context indicates otherwise.

Subchapter 2, Enrollment, sets forth the PERS enrollment process, determining eligibility, based on employment status, date of hire, location, and multiple employers.

Subchapter 3, Insurance and Death Benefits, provides the requirements for insurance and survivor benefit eligibility and distribution. At N.J.A.C. 17:2-3.6(b), the Board proposes to amend the survivor benefits outlined to clarify when survivor benefits are distributed and terminated.

Subchapter 4, Membership, provides the provisions of a member's eligibility and the requirements to maintain membership.

Subchapter 5, Purchases and Eligible Service, describes the eligibility, purchase rates, and methods of payment for service credit. At N.J.A.C. 17:2-5.1, the Board proposes amendments that provide an explanation that, on impact of a service credit purchase to a member's enrollment date or membership tier and the circumstances pursuant to which an exception will be made to the requirement that the purchases be submitted through Member Benefit Online System (MBOS) and that only honorable services are eligible for purchase. At N.J.A.C. 17:2-5.5, the Board proposes to clarify eligible service time for optional purchases. In addition, a proposed amendment adds a reference to P.L. 2008, c. 89. At N.J.A.C. 17:2-5.8, it is proposed by the Board to clarify the service requirements to purchase per diem credit. At N.J.A.C. 17:2-5.11, the Board proposed amendments to clarify the qualification of service previously determined ineligible for credit and that service for which the purchase criteria are not verifiable is ineligible for purchase.

Subchapter 6, Retirements, sets forth the standards and procedures to apply for a retirement benefit. This includes the application process, effective dates, outstanding loans, type of retirement, approved allowance, and veteran determination. At N.J.A.C. 17:2-6.1(g), the Board proposes amendments to clarify when an individual applying for disability retirement can amend their retirement application to include a change to the claimed medical condition. At N.J.A.C. 17:2-6.10 and 6.26, the Board proposes amendments to clarify the process for the provision of the information to support the application when the application is not contested. This may include signing a HIPAA release and medical questionnaire.

Subchapter 7, Transfers, outlines the standards and procedures for intrafund transfers within State-administered retirement systems, including those for Workers' Compensation Judges.

Subchapter 8, Prosecutors Part, sets forth the provisions of eligibility for membership, guidelines for service credit, loan provisions, term definitions, contribution rates, effective dates, benefit descriptions, and retirement options.

Subchapter 9, World Trade Center Accidental Disability, provides the requirements that allow certain members or PERS retirees to receive an accidental disability retirement allowance.

Subchapter 10, COVID-19 Accidental Disability, provides an expansion of accidental disability and accidental death benefits to active eligible law enforcement officers, firefighters, and emergency medical technicians enrolled in the PERS.

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

Social Impact

The members, retirees, beneficiaries, and employers of the Public Employees' Retirement System rely on the efficient operation of the PERS to provide proper service credit, death benefits, monthly retirement benefits, withdrawals, group life insurance, and information needed regarding individual accounts. The citizens of the State of New Jersey also rely on established protections that ensure that the System is administered efficiently, through rules that guard against pension fraud and abuse, and waste of taxpayer dollars. PERS members rely upon the presence and predictability of rules that guide the efficient administration of their benefits and promote the stability of the System, while citizens rely on the presence of rules that minimize abuses of New Jersey's public pension systems. The protections and guarantees that these rules afford both members and citizens mandate their continued existence. The rules proposed for readoption with amendments clarify benefit eligibility and provide predictability to PERS members, retirees, and beneficiaries.

Economic Impact

The rules proposed for readoption with amendments promote the effective and efficient administration of enrollments, retirements, transfers, purchases, withdrawals, and other areas of membership in the PERS. The proposed amendments for PERS members have no negative impact on the retirement system.

Federal Standards Statement

The rules proposed for readoption with amendments meet the applicable Federal standards, that is, 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of this chapter.

Jobs Impact

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

Agriculture Industry Impact

The rules proposed for readoption with amendments will not have any impact on the agriculture industry.

Regulatory Flexibility Statement

N.J.A.C. 17:2 affects PERS members, retirees, and survivors of members and retirees. Thus, the rules proposed for readoption with amendments do not impose any reporting, recordkeeping, or other compliance requirements upon small businesses, as defined in 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 will have no impact on the affordability of housing in New Jersey, nor will they involve a change in the average costs associated with housing, as the rules proposed for readoption with amendments pertain only to the administration of the PERS for members, retirees, and survivors of members and retirees.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will not have any impact on the achievement of smart growth, nor will they involve a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey, as the rules proposed for readoption with amendments pertain

to administration of the PERS for members, retirees, and survivors of members and retirees.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

PERS 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 rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:2.

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

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:2-3.6 Survivor benefits

(a) (No change.)

(b) In the instance of an active member who dies in the performance of duty (accidental death), [the initial pension payment will be for the month following the month in which the member died, and the last payment will cover the month the survivor dies or ceases to qualify for the continuance of benefits.] **eligible survivors shall be entitled to benefits on the first day of the month following the member's death. The pension payment shall begin on the first day of the month following the member's death. Survivor benefits shall terminate as of the last day of the month in which the survivor no longer qualifies for such benefits.**

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

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

17:2-5.1 Eligibility for purchase

(a) Only active members of the System who are currently contributing, or who have contributed within the last two years to the System, shall be eligible to make application for purchase of service credit. Active members who are not currently contributing to the PERS, 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. **Any service credit purchased will be added to a member's total service credit; however, purchasing service credit does not change a member's enrollment date or membership tier.**

(b) (No change.)

(c) The Division will make an exception to the MBOS Purchase Application requirement and accept a Purchase Application in printed form [under] **pursuant to** the following circumstances only:

1. (No change.)

2. A member is applying to purchase a leave of absence for union representation, as this type of purchase must be purchased quarterly[.]; **or**

3. A member, who is within the 30-day period after the date the Board approved the application for retirement or after the date of the retirement, whichever is later.

(d) (No change.)

(e) The receipt of a public pension or retirement benefit is expressly conditioned upon the rendering of honorable service by a public officer or employee. **Only honorable service can be purchased.** Therefore, the Board shall disallow the purchase of all or a portion of former service it deems to be dishonorable, in accordance with N.J.S.A. 43:1-3c.

17:2-5.5 Optional purchases of eligible service

(a) A shared-cost purchase is one in which the member pays only the employee's share and not the employer's share of the purchase. A member may purchase all or a portion of such eligible service. A shared-cost purchase will be calculated on the basis of the actuarial purchase factor established for the member's age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The following types of purchases are shared-cost purchases:

1.-2. (No change.)

3. Continuous temporary service without interruption, substitute service, or intermittent service immediately preceding enrollment is eligible for purchase, provided the following conditions are met:

i. (No change.)

ii. Substitute service is eligible provided the employment immediately precedes enrollment in the PERS. Immediately preceding enrollment is defined as employment rendered during the month or biweekly pay period prior to the date of enrollment. The period(s) of substitute service that a member can request to purchase must meet the following criteria:

(1) A year of substitute service wherein a 10-month employee worked [an average of] **at least 10 days per month [and] in each month of employment for an aggregate of 100 days during a regular work year.** A 12-month employee is required to have worked [an average of] **at least 10 days per month [and] in each month of employment for an aggregate of 120 days per year;**

(2) Substitute service for a period of less than one year immediately preceding enrollment is eligible for purchase provided the member works [a minimum average of] **at least 10 days per month for each month of substitute service immediately preceding enrollment;** and

(3) (No change.)

iii. (No change.)

4.-8. (No change.)

(b) The types of purchases indicated [in] **at** (b)1 through 3 below are considered to be full-cost purchases. A member may purchase all or a portion of such eligible service. The lump sum purchase cost shall be calculated on the basis of the actuarial purchase factor established for the member's nearest age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The computed lump sum purchase cost shall then be doubled to establish the full cost to the member. This cost is calculated in this manner, as N.J.S.A. 43:15A-73.1 provides that the employer shall not be liable for any costs of purchasing this service; therefore, the member must pay both the employee and employer share.

1. (No change.)

2. Employment with the Federal government, provided the member is not receiving or eligible to receive a retirement benefit from the Federal retirement system for the same period of time.

i. (No change.)

ii. For purchase applications received November 1, 2008 or later, U.S. Government purchases, military purchases **pursuant to P.L. 2008, c. 89**, and out-of-State purchases cannot be used to qualify for post-retirement medical benefits, pursuant to N.J.S.A. 43:15A-73.1; and

3. (No change.)

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

17:2-5.8 Per diem credit

For the purchase of granting prior service credit for service performed on a per diem, hourly, on-call, or as-needed basis, credit shall be prorated and granted on the basis of **at least 10 days in one calendar month** equals one month of credit.

17:2-5.11 Service ineligible for purchase

(a) A member will not be granted, nor may a member purchase, prior service or membership credit, including, but not limited to, the following situations:

1.-4. (No change.)

5. A period of time when a member was on a suspension without pay during his or her employment; [or]

6. Any public service that was not eligible for either compulsory or optional enrollment in a public-administered retirement system at the time the service was rendered[.];

7. A period of service deemed not creditable by the retirement system; or

8. Any service for which the criteria for purchase is unable to be verified.

(b) Private employment is not eligible for purchase.

SUBCHAPTER 6. RETIREMENTS

17:2-6.1 Applications

(a)-(f) (No change.)

(g) In addition to the requirements at (a) through (f) above, the following shall apply when an application for disability retirement is filed:

1. An application for a physical disability retirement must be supported by at least two medical reports. One must be provided by the member’s personal or treating physician on a form prescribed by the Division. The other may be either hospital records supporting the claim of disability or a report from a second physician on a form prescribed by the Division. The medical condition described on the member’s retirement application must correspond to the medical reports submitted in support of the member’s disability retirement application. Further, in the case of a member filing for an accidental disability retirement, only those disabilities associated with the purportedly disabling event shall be considered. **A member applying for disability retirement may only amend or change the medical condition on their application prior to evaluation by an independent medical examiner arranged by the Division. Once the member has been evaluated by an independent medical examiner as arranged by the Division, the member seeking to amend or change their claimed medical condition must withdraw their application and file a new application for a future retirement date.** If the member is denied an accidental disability retirement application, but qualifies for an ordinary disability retirement based on the disabilities associated with the purportedly disabling event identified on the original accidental disability application, no additional application needs to be filed, pursuant to (g)6 below. The required documentation must be received within six months of the date of filing the disability retirement application. If it is not received, the retirement will be canceled and the member will be required to complete a new disability application for a future retirement date;

2. An application for a mental health disability retirement must be supported by at least two medical reports. One must be provided by the member’s personal or treating psychiatrist or psychologist on a form prescribed by the Division. The other “medical report” may be in the form of either hospital records supporting the claim of disability, a report from a second psychiatrist or psychologist on a form prescribed by the Division, or a report from the member’s personal or 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 is not received, the retirement will be canceled and the member will be required to complete a new disability retirement application for a future retirement date. The medical condition described on the member’s retirement application must correspond to the medical reports submitted in support of the member’s disability retirement application. **A member applying for disability retirement may only amend or change the medical condition on their application prior to evaluation by an independent medical examiner arranged by the Division. Once the member has been evaluated by an independent medical examiner, as arranged by the Division, the member seeking to amend or change their claimed medical condition must withdraw their application and file a new application for a future retirement date. Further, in the case of a member filing for an accidental disability retirement, only those disabilities associated with the purportedly disabling event shall be considered;**

- 3.-6. (No change.)
- (i)-(j) (No change.)

17:2-6.10 Involuntary disability application

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of its employees enrolled in the System before May 21, 2010, the member will be promptly notified by letter that:

- 1.-2. (No change.)
- 3. 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[;]. **If not contested, the member may be required to submit additional documentation upon request to assist in processing the application. This may include signing a HIPAA release and medical questionnaire, when requested as part of the application process;**
- 4.-6. (No change.)

17:2-6.26 Disability retirement applications; examinations; physicians

(a) In addition to the reports required with the application pursuant to N.J.A.C. 17:2-6.1(g)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. **Further, the member may be required to sign a HIPAA release and medical questionnaire, when requested as part of the application process.**

- 1. (No change.)
- (b)-(e) (No change.)
- (f) The member’s disability retirement application will be processed on the basis of the medical conditions described on the submitted application. **The member may only amend or change the medical condition on their application prior to evaluation by an independent medical examiner arranged by the Division. Once the member has been evaluated by an independent medical examiner, as arranged by the Division, the member seeking to amend or change their claimed medical condition must withdraw their application and file a new application for a future retirement date.** 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. An applicant who files an appeal of a denial of disability retirement may qualify for a deferred retirement during the pendency of the appeal in the Office of Administrative Law. An applicant that wishes to accept the deferred retirement must include a written statement accepting deferred retirement at the time of the appeal.
- (g) (No change.)

OTHER AGENCIES

(a)

**PUBLIC EMPLOYMENT RELATIONS COMMISSION
Representation Procedures**

Proposed Readoption with Amendments: N.J.A.C. 19:11

Authorized By: Public Employment Relations Commission, Mary E. Hennessy-Shotter, Chair.

Authority: N.J.S.A. 34:13A-5.4.e, 34:13A-6.d, and 34:13A-11.

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

Proposal Number: PRN 2025-008.

Submit comments by March 22, 2025, to:
Mary Beth Hennessy-Shotter, Chair
Public Employment Relations Commission
PO Box 429
Trenton, New Jersey 08625-0429

Comments may also be submitted through email at rulecomments@perc.nj.gov or by facsimile to 609-777-0089.

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1, the Public Employment Relations Commission (Commission) proposes to readopt N.J.A.C. 19:11 with non-substantial amendments. N.J.A.C. 19:11 was scheduled to expire on January 25, 2025. As the Commission submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to July 24, 2025, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., at 34:13A-5.3, provides that when a majority of public