

SUBCHAPTER 1. GENERAL PROVISIONS

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12.a, the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being \$921.00 per week.

(b) The maximum compensation shall be effective as to injuries occurring in the calendar year 2019.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Advertising Relating to Real Property

Adopted New Rule: N.J.A.C. 13:9

Proposed: June 4, 2018, at 50 N.J.R. 1335(a).

Adopted: November 16, 2018, by Rachel Wainer Apter, Director, Division on Civil Rights.

Filed: November 16, 2018, as R.2018 d.205, **without change**.

Authority: N.J.S.A. 10:5-8, 10:5-12, and 10:5-18.

Effective Date: December 17, 2018.

Expiration Date: December 17, 2025.

Summary of Public Comment and Agency Response:

The official comment period ended on August 3, 2018. The Division on Civil Rights (DCR) received one comment from Co-Chief Counsels Linda Babecki and Alice Kwong of Legal Services of New Jersey.

COMMENT: The commenters expressed support for the proposed changes to N.J.A.C. 13:9-1.1(a), which add "pregnancy," "breastfeeding," and "liability for service in the Armed Forces of the United States" as categories for which discriminatory advertising is prohibited.

RESPONSE: DCR thanks the commenters for their support.

Federal Standards Statement

A Federal standards analysis is not required because the substance of the expired rule adopted herein as a new rule does not exceed Federal standards. The Federal Fair Housing Act (FHA) prohibits discriminatory advertising related to the sale or rental of real property. See 42 U.S.C. § 3604(c). The expired rule adopted herein as a new rule is consistent with the FHA's prohibitions against discriminatory advertising. To the extent that the prohibitions against discrimination based on marital status, civil union status, sexual orientation, gender identity or expression, source of lawful income used for rent or mortgage payments, pregnancy, breastfeeding, and liability for service in the U.S. Armed Forces exceed the scope of the FHA, such provisions are mandated by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 et seq.

Full text of the expired rule adopted herein as a new rule follows:

CHAPTER 9

ADVERTISING RELATING TO REAL PROPERTY

SUBCHAPTER 1. GENERAL PROVISIONS

13:9-1.1 Discriminatory advertising regarding realty

(a) It shall be a violation of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., for any person, including any newspaper or publication published or circulated within this State, to make, print, publish, circulate, issue, display, post, utter or disseminate or to cause to be made, printed, published, circulated, issued, displayed, posted, uttered or disseminated any print or electronic notice, listing, statement, sign or advertisement regarding the sale, lease, sub-lease, rental or assignment of any real property, which expresses, overtly or subtly, directly or indirectly, any preference, limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, pregnancy, breastfeeding, gender identity or expression, familial status, nationality, disability, affectional or sexual

orientation, source of lawful income used for rental or mortgage payments, or liability for service in the Armed Forces of the United States, as such terms may be defined in the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

(b) This section applies to real property as defined in the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., public housing and the rental of:

1. A single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence at the time of such rental; and

2. A room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental.

TREASURY—GENERAL

(b)

UNCLAIMED PROPERTY ADMINISTRATION

Unclaimed Personal Property

Adopted Amendment: N.J.A.C. 17:18-3.1

Adopted New Rule: N.J.A.C. 17:18-3.3

Proposed: December 4, 2017, at 49 N.J.R. 3665(a).

Adopted: November 13, 2018, by Steven R. Harris, Administrator, Unclaimed Property Administration.

Filed: November 13, 2018, as R.2018 d.204, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 46:30B-107.

Effective Date: December 17, 2018.

Expiration Date: November 20, 2020.

Summary of Public Comments and Agency Responses:

1. Brian Tate, President & CEO, Network Branded Prepaid Card Association (NBPCA)

2. Michael D. Gruehut, General Counsel, Incomm

3. Toni Nuernberg, Executive Director, Unclaimed Property Professionals Organization

4. John Holub, President, New Jersey Retail Merchants Association

5. Ky Tran-Trong, Vice President, Global Regulatory Affairs, Visa

6. Russ Lemieux, Executive Director, Retail Gift Card Association

7. Phillip C. Rouse, Chairman, Card Compliant

N.J.A.C. 17:18-3.1

1. COMMENT: The commenter asked that proposed regulations include in N.J.A.C. 17:18-3.1, a definition of "general purpose reloadable card" that is identical to that in the Act. (3)

RESPONSE: The Uniform Property Administration ("UPA" or "UPA") agrees that a definition should be added as suggested by the commenter, identical to N.J.S.A. 46:30B-1 et seq. (the Act), for the ease of use of N.J.A.C. 17:18.

2. COMMENT: One commenter asked that the proposed regulations either define the term "value" to take into account cards sold at a discount or delete the definition of "face value" in its entirety. Another commenter expressed that the regulations use the terms "face value" and "value" interchangeably and without consistency, urging the Division to use the term "value" exclusively and define it appropriately. (2 and 3)

RESPONSE: The Division thanks the commenter. Based on the comment and after further research, the Division believes that the definition of "face value" should be deleted and replaced with "net card value," as this will provide greater clarity as to the agreed upon value of the stored value card to a purchaser. This change also conforms the term and definition to the recommended definition in the 2016 Uniform Unclaimed Property Act, which is used in a number of states, including Kentucky, Tennessee, and Utah. This change will be a benefit to purchasers as it will eliminate any potential confusion and ensure consistency. "Net card value" will be defined as "the amount of value of a stored value card subject to becoming 'unclaimed property' is the original

issued value of the card, including additional amounts subsequently loaded onto the card that have not been withdrawn, less any amounts used or withdrawn from the card and any service charge, fee, or dormancy charge permitted by law.”

3. COMMENT: Commenters state that wage pay cards should be included in the definition of “general purpose reloadable cards” and should escheat in five years. (3 and 7)

RESPONSE: The intention of the Legislature was to treat “wage pay cards” differently from regular stored value cards. These funds do not represent compensation held by the employer. These funds represent the account into which wages and other compensation can be paid and accessed electronically by the employee, whether held by a bank or other financial institution. Accordingly, these wage pay cards have the same three-year holding period as bank accounts. In fact, payroll cards are included with bank accounts when referenced under the 2016 Uniform Unclaimed Property Act. They are subject to being turned over to the State if they are unclaimed and abandoned after the relevant three-year abandonment period in accordance with N.J.S.A. 46:30B-18.

4. COMMENT: A commenter states that the paragraph applying to “cards issued for merchandise credits” under the definition of “stored value cards” at N.J.A.C. 17:18-3.1, Definitions, is misleading, as that section applies not just to cards issued for credit balances, but to a variety of other cards. (3)

RESPONSE: Stored value cards are sold as gift cards and they are also issued for merchandise that is returned without a receipt. These cards are specifically covered under the parameters of N.J.S.A. 46:30B-42.1. However, stored value cards are also being issued in place of checks for return of funds due to credit balances, customer overpayments, security deposits, refunds, credit memoranda, unused tickets (as a result of cancelled events), and other similar circumstances that occur in the ordinary course of business. These types of property are specifically covered under N.J.S.A. 46:30B-42 (three-year abandonment period). The type of instrument used did not change the nature of the obligation. The underlying obligation determines the abandonment period.

However, the Division agrees that the title should be changed to “Cards issued in payment of other liabilities that occur in the ordinary course of business and that are redeemable for cash.”

N.J.A.C. 17:18-3.3

5. COMMENT: One commenter stated that the rule include a new definition for the term “consideration” that would have a significant impact on charitable, loyalty, and promotional programs (LAP), which are currently exempt from escheatment requirements. Several commenters stated that the regulations appear to omit certain statutory exemptions to the escheatment requirement for stored value cards and drastically reduced the scope to the statutory exemption for LAP cards and should be revised to conform to the statutory provision. (2, 3, 4, and 6)

RESPONSE: The Division agrees that the subsection inadvertently omits certain statutory exemptions to the escheatment requirement related to cards for which no direct monetary consideration is paid by the owner, thereby reducing the statutory scope of exemption for loyalty, awards, or promotional cards. Not making this change could have a significant negative impact on these programs, which are statutorily exempt from escheatment requirements pursuant to N.J.S.A. 46:30B-42.1.e(2) and (3), but were not exempt under the rules. Therefore, the subsection should be revised to include the exemptions, specifically, including: “cards donated or sold below face value to a nonprofit or charitable organization or an educational organization” and “cards redeemable for admission to events or venues, if the event was held as scheduled.”

6. COMMENT: One commenter asked for enhanced clarity as it relates to issuance of LAP cards. Several commenters stated that promotional, customer loyalty, and charitable programs, where the owner has not paid direct monetary consideration, should be specifically excluded from the regulation. An additional commenter indicated that the new rule may overreach and negatively impact New Jersey residents and card issuers. Further, a commenter indicated that “other consideration” should not limit the application of the exemption. (1 through 7)

RESPONSE: The UPA agrees that the new rule, regarding LAP cards should be revised to provide enhanced clarity to remove “monetary or

other consideration,” and replace it with “direct monetary consideration” and to change “tendered” to “paid.”

7. COMMENT: The commenters asked that the new rule be clarified to not create a data collection obligation. (2 and 5)

RESPONSE: When the Legislature repealed N.J.S.A. 46:30B-42.1.c, it addressed the collection of name and address information (including zip code) for stored value gift cards. It did not address the provision of name and address information by an issuer where such information is available. This information may be available where a stored value card is issued for refund purposes, in instances where a merchandise credit is given, where the actual retailer collects the information, or where it is stored in an app or online. If an issuer has this information available, it should be turned over to the Division. To clarify this, the Division will change the definition of “last known address” at N.J.A.C. 17:18-3.3(a)1 to specify those instances where information should be provided, as follows (additions in bold, deletions in brackets): “Are exempt from reporting stored value cards that are redeemable for merchandise or services only that were issued or sold prior to July 1, 2010, the effective date of the act. [Stored] **Holders of stored value cards** redeemable for merchandise or services [only] that were issued or sold on or after that date as well as all stored value cards **sold that are** redeemable for cash regardless of date of sale, **are not required to obtain the apparent owner’s last known address at the point of transaction. However, unredeemable balance stored value cards or any card** must be reported to the State if the last known address on the records of the issuer or seller is located in New Jersey **and the information is available on the books and records of the seller**, pursuant to N.J.S.A. 46:30B-46 et seq., except ...”

8. COMMENT: Several commenters seek a revision to the rule to make it more clear that only one entity is responsible for the escheat of stored value cards, and that the entity is the “holder” of the cards. Two commenters requested that the regulations not include the concept of “seller” to provide clarity (1, 2, 3, 6, and 7)

RESPONSE: The Division agrees that the provision lacks clarity, therefore, the Division will change N.J.A.C. 17:18-3.3(b) to make it consistent with N.J.S.A. 46:30B-6.g, specifying that the “holder,” rather than the “retailer,” is the person responsible for escheat, as the legal debtor. Given this, plus the subsequent revision associated with Comment 9 below, the definition of “seller” need not be deleted from the rules.

9. COMMENT: Commenters indicate that the definition of “issuer of a stored value card” should track the statute more closely. (1, 2, 3, 6, and 7)

RESPONSE: The Division agrees that the definition of “issuer of a stored value card” should be revised to match the definition at N.J.S.A. 46:30B-42.1.k, with the addition of “institution,” as was proposed. The revisions, based on the statute, better specify that an “issuer of a stored value card” has the obligation of a “holder of a stored value card,” pursuant to N.J.S.A. 46:30B-6.g, to accept a stored value card for redemption for merchandise and report and deliver proceeds of a stored value card.

10. COMMENT: Several commenters questioned whether promotional, incentive, rewards, and loyalty program cards are exempt from the reporting requirements under the new rule. (1, 2, 3, 4, 6, and 7)

RESPONSE: Yes, promotional, incentive, rewards, and loyalty program cards are exempt from reporting requirements under the new rule, as consistent with N.J.S.A. 46:30B-42.1, which would retain the requirement that stored value cards sold as gift cards at a discount are subject to reporting at 60 percent of the full unused value of the card. In light of this potential confusion, the Division plans to change N.J.A.C. 17:18-3.3(d) to explicitly state this exemption and delete the current language in subsection (j) and reorganize it with the addition that stored value cards sold as gift cards at a discount are subject to reporting at 60% of the full unused value of the card. In addition, the definitions of “charitable program” and “consideration” will be deleted from N.J.A.C. 17:18-3.1, as unnecessary, because of the modifications at N.J.A.C. 17:18-3.3(d).

11. COMMENT: The commenters asked that the Division distinguish between general purpose reloadable (GPR) cards and other stored valued cards, particularly where provided by banks or financial service companies. (3 and 7)

RESPONSE: The Division thanks the commenters for the recommendation and will change N.J.A.C. 17:18-3.3(c) to use the term “general purpose reloadable cards” and remove its defined meaning in the subsection.

12. COMMENT: Commenters questioned whether banks and other financial services companies that issue GPR cards could assess dormancy, inactivity, escheat, and similar fees in addition to activation, card replacement, and other fees. The commenters also expressed concern over a perceived conflict between the provisions in N.J.A.C. 17:18-3.3(b)2 and (c)2. (1, 2, 3, 5, and 7)

RESPONSE: The Division thanks the commenters for the question. The intent of the rules is that fees can be charged on general purpose reloadable (GPR) cards, pursuant to the exemption at N.J.S.A. 46:30B-42.1.j. Therefore, the Division is changing N.J.A.C. 17:18-3.3(c)2 to better clarify this intent. The Division is also changing N.J.A.C. 17:18-3.3(i) to specifically exclude GPR cards from the requirements of subsection (i).

13. COMMENT: A commenter states that the proposed regulations should be revised to make clear that open-loop cards, other than “general purpose reloadable cards,” are escheatable at 60 percent of their value rather than 100 percent of their value, unless exempt. (2)

RESPONSE: The Division acknowledges the commenter’s concern and, as discussed in the Response to Comment 1, will add a definition for “general purpose reloadable card” that matches the definition at N.J.S.A. 46:30B-42.1. In addition, as discussed in the Response to Comment 11, the Division will revise N.J.A.C. 17:18-3.3(c).

14. COMMENT: Several commenters expressed concern related to the proposed regulation’s requirement of issuers of stored value cards to obtain last known zip codes. (1, 2, 4, and 6)

RESPONSE: When the Legislature repealed N.J.S.A. 46:30B-42.1.c, it addressed the collection of name and address information (including zip code) for stored value gift cards. It did not address the provision of name and address information by an issuer where such information is available. This information may be available where a stored value card is issued for refund purposes, in instances where a merchandise credit is given, where the actual retailer collects the information, or where it is stored in an app or online. If an issuer has this information available, it should be turned over to the Division. To clarify this, the Division plans to amend the rule as set forth in the Response to Comment 7.

15. COMMENT: One commenter expressed concern that the proposed regulations define the term “last known address” to include the zip code. Another commenter expressed that the definition of “last known address” conflicts with the reasoning of the Supreme Court in *Texas v. New Jersey*, 379 U.S. 674 (1965), wherein the Court held that intangible property was “subject to escheat only by the State of the last known address of the creditor, as shown on the debtor’s books and records.” *Id.* at 682. A final commenter questioned whether the proposed regulation could be read as an attempt to circumvent common law priority rules. (2, 3, 5, 6, and 7)

RESPONSE: It is important to include a definition of “last known address” to identify the state that has the right to escheat abandoned property under the priority rules established under *Texas, supra*. The first priority right to escheat abandoned property goes to the state of last known address of the creditor as shown on the debtor’s books and records. The Supreme Court did not indicate that the records of the holder must indicate a complete address.

A zip code is sufficient to identify the state of the creditor’s last known address. Retaining the zip code of the owner rationally furthers the State’s legitimate interest in determining which state has the right to escheat abandoned property under the first priority rules (*New Jersey Retail Merchants Association v. State of New Jersey*, 669 F.3d 374 (3d Cir. 2012)).

In addition, the 2016 Uniform Unclaimed Property Act (2016 UUPA) added Section 301 regarding “Address of Apparent Owner to Establish Priority.” The U.S. postal zip code associated with the apparent owner is given great weight in determining the state of last known address of the owner. In fact, all zip codes beginning with “07” or “08” are located in New Jersey only. However, the 2016 UUPA goes further by indicating that any “description, code or other indication of location” is sufficient for “last known address” determinations.

The Uniform Law Commission appropriately stated in its comments the following:

“The policy underlying the rules establishing priority among the states is that unclaimed property should be held by the administrator of the state where the owner is most likely to look for it, which is the state in which the owner resided, i.e. had his or her “last known address”, if that state can be determined. It follows that limiting the first priority only to states determined to have an address suitable for mailing frustrates that policy when the owner’s state of last known address can be determined another way.”

When the Legislature repealed N.J.S.A. 46:30B-42.1.c, it addressed the collection of name and address information (including zip code) for stored value gift cards. It did not address the provision of name and address information by an issuer where such information is available. This information may be available where a stored value card is issued for refund purposes, in instances where a merchandise credit is given, where the actual retailer collects the information, or where it is stored in an app or online. If an issuer has this information available, it should be turned over to the Division. The Division is making changes to N.J.A.C. 17:18-3.3(a)1 to clarify this, as set forth in the Responses to Comments 7 and 14.

16. COMMENT: Commenters state that there is no statutory authority for New Jersey to require collection and maintenance of name and address information of the recipients of stored value cards. (3 and 4)

RESPONSE: Stored value cards are sold as gift cards and they are also issued for merchandise that is returned without a receipt. These cards are specifically covered under the parameters of N.J.S.A. 46:30B-42.1. N.J.A.C. 17:18-3.3(h) specifically addresses stored value cards issued for merchandise returned without a receipt that is redeemable for merchandise or services only and will be subject to the reporting requirements under N.J.S.A. 46:30B-42.1.

When the Legislature repealed N.J.S.A. 46:30B-42.1.c, it addressed the collection of name and address information (including zip code) for stored value gift cards. It did not address the provision of name and address information by an issuer where such information is available. This information may be available where a stored value card is issued for refund purposes, in instances where a merchandise credit is given, where the actual retailer collects the information, or where it is stored in an app or online. If an issuer has this information available, it should be turned over to the Division. The Division has clarified N.J.A.C. 17:18-3.3 to this end, as discussed in the Responses to Comments 7, 14, and 15.

17. COMMENT: A commenter requests that the definition of “stored value card” within the proposed regulations be revised to be consistent with the definition in the Act or remove the definition in its entirety. Another commenter argued that sans change, the proposed regulation could have a chilling effect on issuing merchandise credits on stored value cards. (2 and 5)

RESPONSE: Stored value cards are sold as gift cards and they are also issued for merchandise that is returned without a receipt. These cards are specifically covered under the parameters of N.J.S.A. 46:30B-42.1. However, stored value cards are also being issued in place of checks for return of funds due to credit balances, customer overpayments, security deposits, refunds, credit memoranda, unused tickets (as a result of cancelled events), and other similar circumstances that occur in the ordinary course of business. These types of property are specifically covered under N.J.S.A. 46:30B-42 (three-year abandonment period). The type of instrument used did not change the nature of the obligation. The underlying obligation determines the abandonment period.

N.J.A.C. 17:18-3.3(h) specifically addresses stored value cards issued for merchandise returned without a receipt that is redeemable for merchandise or services only and will be subject to the reporting requirements under N.J.S.A. 46:30B-42.1.

However, there is a need to differentiate between stored value cards that are redeemable for goods and services only and stored value cards redeemable for cash. Credit balances, customer overpayments, security deposits, refunds, and funds due for tickets to events originally scheduled on dates that needed to be cancelled all involve moneys owed at 100 percent. These are all covered under N.J.S.A. 46:30B-42 and are subject to reporting after three years. Although a stored value card is being used

to pay these funds instead of a check, the nature of the liability will hold priority over the type of instrument used to make payment when determining the abandonment period.

The intention of the Legislature was to treat “wage pay cards” differently from regular stored value cards. These funds do not represent compensation held by the employer. These funds represent the account into which wages and other compensation can be paid and accessed electronically by the employee, whether held by a bank or other financial institution. Accordingly, wage pay cards have the same three-year holding period as bank accounts. In fact, payroll cards are included with bank accounts when referenced under the 2016 UUPA. They are subject to being turned over to the State if they are unclaimed and abandoned after the relevant three-year abandonment period in accordance with N.J.S.A. 46:30B-18.

18. COMMENT: Several commenters remarked on the proposed regulations as they relate to “cash back” requirements pursuant to the Act. One commenter stated that they do not think the “cash back” requirement applies to open-loop cards. Another commenter remarked that the regulations significantly change the scope of the statutory exemptions relating to the “cash-back” requirement in the Act, in addition to omitting several statutory exemptions, and urge deletion or amendment to conform to the statutory provisions. Two further commenters remarked that the cash back requirement should not apply to those stored value cards exempt under the Act. (1, 2, 3, and 7)

RESPONSE: The Division thanks the commenters for their thoughts and questions. The new rule should apply to closed-loop stored value cards as the statute, as amended in 2012, applies to closed-loop stored value cards issued beginning July 1, 2010. However, the right to a refund does not apply to stored value cards covered under N.J.S.A. 46:30B-42.1.e, therefore, N.J.A.C. 17:18-3.3(e) will be changed to specifically state this exemption. The Division also noted that the proposed language of “\$5.00 or less” should be changed to “less than \$5.00” to make it consistent with N.J.S.A. 46:30B-42.1.h.

19. COMMENT: The commenters state that the proposed regulations are contrary to the Act, by improperly requiring some stored value cards issued prior to July 1, 2010, to be subject to escheat. (1 and 2)

RESPONSE: Stored value cards are sold as gift cards and they are also issued for merchandise that is returned without a receipt. These cards are specifically covered under the parameters of N.J.S.A. 46:30B-42.1 (cards issued beginning July 1, 2010).

However, stored value cards are also issued in place of checks for return of funds due to credit balances, customer overpayments, security deposits, refunds, credit memoranda, unused tickets (as a result of cancelled events), and other similar circumstances that occur in the ordinary course of business. These types of property were specifically covered under N.J.S.A. 46:30B-42 (three-year abandonment period) prior to the amendments enacted effective July 1, 2010. The type of instrument used did not change the nature of the obligation that was, and is, required to be reported under the Act. The underlying obligation determines type of property and the abandonment period.

N.J.A.C. 17:18-3.3(h) specifically addresses stored value cards issued for merchandise returned without a receipt that is redeemable for merchandise or services only and will be subject to the reporting requirements under N.J.S.A. 46:30B-42.1.

However, there is a need to differentiate between stored value cards that are redeemable for goods and services only and stored value cards redeemable for cash. Credit balances, customer overpayments, security deposits, refunds, and funds due for tickets to events originally scheduled on dates that needed to be cancelled all involve moneys owed at 100 percent. These are all covered under N.J.S.A. 46:30B-42 and are subject to reporting after three years. Although a stored value card is being used to pay these funds instead of a check, the nature of the liability will hold priority over the type of instrument used to make payment when determining the abandonment period.

20. COMMENT: Several commenters stated that conversion of card funds to a bank account should constitute owner activity for purposes of the Act, and as such, the proposed regulations should be amended. (1 and 2)

RESPONSE: The Division thanks the commenter for their suggestion and agrees with the commenter. As such, N.J.A.C. 17:18-3.3(i) will be

changed to specifically state that conversion to a bank account that is initiated by the owner will restart the dormancy period, rather than conversion not representing owner activity.

21. COMMENT: A commenter stated that issuers of cards for merchandise credits should not be required to obtain and maintain the name and address of the recipient of these cards. A commenter also requested that this provision regarding merchandise credits be clarified. (4 and 6)

RESPONSE: Stored value cards are sold as gift cards and they are also issued for merchandise that is returned without a receipt. These cards are specifically covered under the parameters of N.J.S.A. 46:30B-42.1. N.J.A.C. 17:18-3.3(h) specifically addresses stored value cards issued for merchandise returned without a receipt that is redeemable for merchandise or services only and will be subject to the reporting requirements under N.J.S.A. 46:30B-42.1.

When the Legislature repealed N.J.S.A. 46:30B-42.1.c, it addressed the collection of name and address information (including zip code) for stored value gift cards. It did not address the provision of name and address information by an issuer where such information is available. This information may be available where a stored value card is issued for refund purposes, in instances where a merchandise credit is given, where the actual retailer collects the information, or where it is stored in an app or online. If an issuer has this information available, it should be turned over to the Division. See, also, the Responses to Comments 7, 14, 15, and 16.

22. COMMENT: A commenter urges the proposed regulations be amended to clarify requirements related to merchandise credits. (7)

RESPONSE: N.J.A.C. 17:18-3.3(h) specifically addresses stored value cards issued for merchandise returned without a receipt that is redeemable for merchandise or services only and will be subject to the reporting requirements under N.J.S.A. 46:30B-42.1. However, there is a need to differentiate between stored value cards that are redeemable for goods and services only and stored value cards redeemable for cash. Credit balances, customer overpayments, security deposits, refunds, and funds due for tickets to events originally scheduled on dates that needed to be cancelled all involve moneys owed at 100 percent. These are all covered under N.J.S.A. 46:30B-42 and are subject to reporting after three years. Although a stored value card is being used to pay these funds instead of a check, the nature of the liability will hold priority over the type of instrument used to make payment when determining the abandonment period.

23. COMMENT: A commenter states that retroactive application of the new rule would be an unconstitutional violation of the contract clause. (5)

RESPONSE: The new rule does not deprive stored value card issuers of their expectations based on the amendment that took effect July 1, 2010. The original legislation amending the New Jersey Uniform Unclaimed Property Act applied to stored value cards issued beginning July 1, 2010. The new rule further reflects the requirements of the Act as amended on June 29, 2012, and on February 2, 2015.

Federal Standards Statement

The adopted new rule and amendments do not contain requirements that exceed any requirements imposed by Federal law, rather they represent policies of the State of New Jersey regarding implementation of N.J.S.A. 46:30B-1 et seq., that are independent of Federal requirements or standards. Accordingly, no Federal standards analysis is required.

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

SUBCHAPTER 3. DORMANCY FEES AND STORED VALUE CARDS

17:18-3.1 Definitions

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

*[“Charitable program” means a program that provides money, goods, or services to accomplish a social benefit or to promote the welfare of a community in whole or as individuals, usually without anticipating or receiving consideration or anything of value in return. It employs all its

resources to those charitable activities under its direct control, does not distribute any part of income generated for the benefit of any trustee, trustor, member, or other private individual and does not contribute to or associate with political organizations. A charitable program may be one that is run by an organization with a 26 U.S.C. § 501(c)3 status.

“Consideration” means a right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by another. It can also be the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid. A discount offered for a promotional stored value card would be considered consideration. For example, a card with a \$10.00 face value given to a consumer as a result of the consumer purchasing a minimum amount of goods or services, would be deemed to have been given for consideration, and any unused balances would be reportable to New Jersey as five-year property.]*

“Customer loyalty program” means a structured marketing effort designed to reward, and, therefore, encourage loyal buying behavior that is potentially beneficial to the program initiator, by encouraging the continued patronage of customers. It is designed to lower the turnover among users of a product or service by providing customers with incentives and other benefits for remaining a customer. It may involve the gathering of data on customer behavior in order to decipher trends, reward loyalty, and influence shopping behavior, including, but not limited to, providing rewards cards and pay-for-membership cards.

...
["Face value" means the agreed-upon value of the stored value card to the purchaser, which may not necessarily equal the amount paid by the purchaser for the card.]

****“General purpose reloadable card” means a stored value card issued by a bank or other similarly regulated financial institution or by a licensed money transmitter that is:**

1. Usable and honored upon presentation at multiple merchants or service providers that are not under common ownership or control for goods or services or at automated teller machines;
2. Issued in a requested prepaid amount, which amount may be, at the option of the issuer, increased in value or reloaded, if requested by the cardholder; and
3. Not marketed or labeled as a gift card.

The term “general purpose reloadable card” includes a temporary non-reloadable card issued solely in connection with a reloadable card.*

“Holder” means an entity, wherever organized or domiciled, that is the original obligor indebted to another on an obligation and that has the ultimate responsibility of reporting abandoned stored value card information and remitting the unredeemed balance to the Administrator of unclaimed property.

“Issuer of a stored value card” is any person, retailer, merchant, vendor, provider, institution, or business association *[that:

1. Sells the stored value card directly to the purchaser and is also responsible for honoring the liability represented by the face value of the card that may be redeemable for, solely or in a combination of, merchandise, services, or cash; said issuer is also responsible for reporting and delivering proceeds of the stored value card if abandoned; or
2. Acts as an agent, distributor, or retailer for the holder and is not directly responsible for honoring the liability represented by the face value of the stored value card, but must sell the card under the same terms and conditions as required of the holder of the stored value card.]* ***with the obligations of a holder to accept the stored value card as redeemable for, solely or a combination of, merchandise, services, or cash, and to report and deliver proceeds of the stored value card if abandoned.***

“Last known address” means a description of the location of the apparent owner, sufficient for the purpose of determining which state has the right to escheat the abandoned property and the zip code of the apparent owner’s (creditor’s) last known address is sufficient.

****“Net card value” means the amount of value of a stored value card subject to becoming “unclaimed property.” “Net card value” is the original issued value of the card, including additional amounts subsequently loaded onto the card that have not been withdrawn, less any amounts used or withdrawn from the card and any service charge, fee, or dormancy charge permitted by law.***

“Promotional program” means a program designed to influence, inform, or persuade a potential buyer’s purchasing decision. It is developed with the intention to increase demand for merchandise or services and/or to differentiate a product. It may include incentives such as discounts, free items, or a contest with the intent of increasing the sales of a given product.

“Purchaser” means a recipient of the stored value card at the point of sale.

...
“Seller” means the entity or person who sells or tenders to the purchaser the stored value card at the point of sale or transaction.

“Stored value card” means a record that evidences a promise, made for monetary or other consideration, for the face value of the card by the holder, issuer, or seller of the record that the purchaser/owner of the record will be provided, solely, or for a combination of, merchandise, services, or cash in the value shown in the record, which is pre-funded and the value of which is reduced upon each redemption. The term “stored value card” includes, but is not limited to, the following items: paper gift certificates, records that contain a microprocessor chip, magnetic stripe, or other means for the storage of information, general purpose reloadable cards, gift cards, electronic gift cards, rebate cards, credits for merchandise returned without a receipt, stored value cards, or certificates, store cards, and similar records or cards. A card is not to be considered a “stored value card” for the purposes of this subchapter when it is used for the following purposes:

1. Wage pay cards. These are cards that are issued for wages owing in the ordinary course of business. A related bank account is opened for the employee when a stored value card is issued for the purpose of wage payments. The bank holding the funds will have the primary obligation of identifying and reporting any funds that are deemed abandoned. The deposit is presumed abandoned three years from the last transaction in accordance with N.J.S.A. 46:30B-18; or

2. Cards issued *[for merchandise credits]* ***in payment of other liabilities that occur in the ordinary course of business and that are redeemable for cash***. Cards issued for credit balances, customer overpayments, security deposits, refunds, credit memoranda, unused tickets, or in payment of other liabilities that occur in the ordinary course of business that are redeemable for cash are deemed credits and have three-year abandonment periods pursuant to N.J.S.A. 46:30B-42. Issuers of stored value cards issued for the above-mentioned purposes are required to obtain and maintain the name and address of the recipients of these cards.

“Uniform Unclaimed Property Act” or “Act” means the act found at N.J.S.A. 46:30B-1 et seq.

17:18-3.3 Stored value cards

(a) Issuers and holders of stored value cards:

1. Are exempt from reporting stored value cards that are redeemable for merchandise or services only that were issued or sold prior to July 1, 2010, the effective date of the Act. *[Stored]* ***Holders of stored*** value cards redeemable for merchandise or services *[only]* that were issued or sold on or after *[that date]* ***July 1, 2010,*** as well as all stored value cards ***sold that are*** redeemable for cash, regardless of date of sale, ***are not required to obtain the apparent owner’s last known address at the point of transaction. However, unredeemed balances on any card*** must be reported to the State if the last known address on the records of the *[issuer or seller]* ***holder*** is located in New Jersey ***and the information is available on the books and records of the seller***, pursuant to N.J.S.A. 46:30B-46 et seq., except for those stored value cards *[issued]*:

- i. *[Under]* ***Issued under*** a promotional, customer loyalty, or charitable program for which no ***direct*** monetary *[or other]* consideration has been *[tendered]* ***paid*** by the owner; *[or]*

- ii. *[By]* ***Issued by*** any issuer that in the preceding year beginning July 1 through June 30, sold stored value cards with an aggregate total value of \$250,000 or less*[.]*;*;

- *iii. Donated or sold below face value to a nonprofit or charitable organization or an educational organization; or**

- iv. Redeemable for admission to events or venues, if the event was held as scheduled.***

2. For purposes of this subsection, sales of stored value cards by businesses that operate either under the same trade name as, or under common ownership or control with, another business or businesses in the State or as franchised outlets of a parent business, whether in or outside of New Jersey, shall be considered sales by a single issuer.

(b) ***[Retailers that issue]* *Holders of*** stored value cards*, **including retailers that are issuers of cards*** that may be redeemed for goods or services only at their stores or on their websites:

1. Will be required to escheat 60 percent of the value of the unused balance if there is no consumer-generated activity for five years or longer; and

2. Shall not impose any dormancy charges or fees, abandoned property charges or fees, unclaimed property charges or fees, balance inquiry fees, escheat charges or fees, inactivity charges or fees, or any similar charges, fees, or penalties for inactivity with respect to the card. Neither the property nor an agreement with respect to the property may contain language suggesting that the property may be subject to these kinds of charges, fees, or penalties for inactivity. Fees may only be assessed for activation and for each occurrence of adding value to an existing stored value card, as well as for replacement of a lost or stolen card.

(c) Banks and other financial service companies that issue ***[stored value cards that may be redeemed at multiple merchants (]*general purpose reloadable cards*[])*:**

1. Will be required to escheat the full value of the unused balance if there is no consumer-generated activity for five years or longer; and

2. May charge ***any*** fees ***[other than]* *in addition to fees*** for activation or replacement.

(d) Funds associated with stored value cards issued on or after December 1, 2012, shall be valid until redemption and shall not expire. Even though a stored value card may contain an expiration date, it applies only to the card or other tangible medium through which the underlying funds may be accessed. However, the underlying liability for the funds does not expire. ***Cards issued as a result of promotional, incentive, rewards, and loyalty programs are exempt from this subsection.***

(e) Beginning September 1, 2012, if a stored value card is issued as a gift card or gift certificate that*,* as a result of its usage*,* has a residual value of ***less than* \$5.00*[or less]***, at the owner's request the merchant or other entity redeeming the card must refund the balance in cash to the owner. ***The right to a refund does not apply to stored value cards covered under N.J.S.A. 46:30B-42.1.e.***

(f) Issuers and holders of stored value cards are not required to report abandoned stored value cards under (a)1i and ii above or as deemed exempt from the reporting requirements by the State Treasurer pursuant to N.J.S.A. 46:30B-42.1.f.

(g) Since stored value cards issued for purposes of wage payments result in the funds being placed in a related bank account in the name of the employee, the bank has the primary responsibility for compliance with the Act. The appropriate dormancy period is three years from the date of the last customer generated transaction or contact in accordance with N.J.S.A. 46:30B-18.

(h) Stored value cards issued as a result of merchandise that is returned without a receipt that are redeemable for merchandise or services only shall be subject to the reporting requirements of N.J.S.A. 46:30B-42.1. The unused balances are subject to reporting five years from the date of last activity at 60 percent of the value of the card, in money, on the date such stored value cards are deemed abandoned, pursuant to N.J.S.A. 46:30B-42.1. Holders are prohibited from imposing on these cards dormancy charges or fees, abandoned property fees, unclaimed property charges or fees, escheat charges or fees, inactivity charges or fees, or any similar charges, fees or penalties for inactivity with respect to the card. Neither the card nor an agreement with respect to the card may contain language suggesting that the card may be subject to these kinds of charges, fees, or penalties.

(i) Conversion of the stored value card to a bank account ***[does not represent owner activity]* *must be initiated by the owner of the card in order to restart the dormancy period for the card***. Unused stored value card balances are subject to reporting five years from the last customer generated activity pursuant to N.J.S.A. 46:30B-42.1 The Act does not provide for a holder of a stored value card to impose on the card dormancy charges or fees, abandoned property fees, unclaimed property charges or fees, escheat charges or fees, inactivity charges or fees, or any similar charges, fees, or penalties for inactivity with respect to the card. Neither the card nor an agreement governing use of the card may contain language suggesting that the card may be subject to these kinds of charges, fees, or penalties. ***A general purpose reloadable card shall not be subject to the provisions of this subsection.***

[(j) For the purposes of (a) above, any monetary or other consideration that has been tendered by the recipient/owner for the stored value card obtained under a promotional, customer loyalty, or charitable program may consist of, but is not limited to, a rebate for a purchase made, a credit to be given by the issuer or holder in return for taking certain action, or an incentive for taking some other action. Such action or incentive on the part of the recipient/owner may include providing a service, making a purchase, or taking some other action beneficial to the issuer or holder, such as agreeing to promote the issuer's or holder's merchandise or services or entering a contest to increase the sales of a given product, even if no cash or other item of monetary value was exchanged, in reliance on the stored value card being offered to the owner. Stored value cards obtained under these circumstances are not exempt and, therefore, must be reported under N.J.S.A. 46:30B-1 et seq.]

[(j) For the purposes of (a) above, a card given to a consumer as a result of the consumer purchasing a minimum amount of goods or services is exempt from N.J.S.A. 46:30B-42.1, since no direct monetary consideration is paid by the owner. However, stored value cards sold as gift cards at a discount are subject to reporting at 60 percent on the full unused value of the card.