

While the regulation of pilots working in navigable waters of the United States is clearly a regulation of commerce within the powers of Congress, there is a concurrent system of state pilotage regulation. States have jurisdiction over foreign vessels and vessels sailing under register. Federally licensed pilots are, in general, required to be used on coastwise (domestic trade) vessels that are “enrolled,” but not sailing under register, 46 U.S.C. § 8502. States may regulate pilotage on foreign vessels and U.S. vessels operating on register in the bays, rivers, harbors, and ports of the United States (46 U.S.C. § 8501). Thus, New Jersey pilotage laws and rules are controlling in situations regulated by this chapter.

Accordingly, these amendments do not contain any standards or requirements which exceed the standards or requirements imposed by Federal law and no further analysis is required.

**Jobs Impact**

The Commission does not anticipate that any jobs will be lost or generated as a result of the proposed amendments.

**Agriculture Industry Impact**

The proposed amendments have no impact on the agriculture industry.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since the proposed amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since the proposed amendments concern changes to the current grades of licenses and grade advancements for maritime pilots, who are not small businesses.

**Housing Affordability Impact Analysis**

Since the proposed amendments concern changes to the current grades of licenses and grade advancements for maritime pilots, the proposed amendments would have no impact on the number of housing units or the average cost of housing in New Jersey.

**Smart Growth Development Impact Analysis**

Since the proposed amendments concern changes to the grades of licenses and grade advancements for maritime pilots, the proposed amendments would have no impact on smart growth or on new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

SUBCHAPTER 3. MARITIME PILOTING LICENSING

16:64-3.9 Grades of licenses and grade advancement

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

(e) For all pilots who obtain a certificate of appointment from the Commission pursuant to N.J.A.C. 16:64-3.7(a) on or after October 1, 2001, the pilot licensed for a specific grade shall not pilot any vessel of draft or registered gross tonnage greater than that indicated below. The registered gross tonnage of a vessel shall be the highest tonnage published in Lloyd’s Register of Ships. A pilot whose license is not of a grade that would allow assignment to the deepest vessel in a tow shall not be assigned to the towing vessels.

1. (No change.)

2. Grade 6: A Grade 6 pilot shall complete a minimum of one year length of service in Grade 6. The draft may not exceed 33 feet and the registered gross tonnage may not exceed [25,000] **26,000**.

3. Grade 5A: A Grade 5A pilot shall complete a minimum of [one year] **a six-month** length of service in Grade 5A. The draft may not exceed 36 feet and the registered gross tonnage may not exceed [30,000] **33,000**.

4. **Grade 5B: A Grade 5B pilot shall complete a minimum of a six-month length of service in Grade 5B. The draft may not exceed 36 feet and the registered gross tonnage may not exceed 36,000.**

[4.] 5. Grade 5: A Grade 5 pilot shall complete a minimum of one year length of service in Grade 5. The draft may not exceed 39 feet and the registered gross tonnage may not exceed [40,000] **42,000**.

Recodify existing 5.-8. as **6.-9.** (No change in text.)

TREASURY — GENERAL

(a)

STATE INVESTMENT COUNCIL

Real Assets

Definitions; Permissible Investments

Proposed Amendments: N.J.A.C. 17:16-71.1 and 71.2

Authorized By: State Investment Council, Timothy M. Walsh, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

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

Proposal Number: PRN 2012-025.

Submit comments by April 6, 2012 to:

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Division of Investment  
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The agency proposal follows:

Summary

N.J.A.C. 17:16-71 currently permits the Director to invest in real assets on behalf of certain eligible funds. The proposed amendments would expand the types of permissible real asset investments to provide the opportunity for an increase in the risk adjusted returns of the pension and annuity funds.

The proposed amendments to N.J.A.C. 17:16-71.1 would modify the definitions of “commodity-linked investments,” “core real estate,” “non-core real estate,” “real assets,” and “royalty trust,” accordingly, to allow for debt investments in addition to equity investments. Additionally, the proposed amendments to the “real assets” definition would (a) modify “oil and gas” investments to include the broader category of energy, (b) broaden the “farmland” category to include the broader category of agriculture, (c) broaden the “metals” category by deleting the word “precious,” (d) add utilities, water, mining, and commodity-related investments as permissible investments, and (e) provide that real asset investments include investments in products, services, and technology related to real assets. A definition for commodity-related investments is being added to N.J.A.C 17:16-71.1. The definition of “real assets” includes the investment categories of common and preferred stocks and issues convertible into common stock and exchange-traded funds; this portion of the definition is being deleted since it is duplicative of the permissible investments included in N.J.A.C. 17:16-71.2.

The proposed amendment to the definition of “commodity-linked investments” would also clarify that futures are a permissible investment. The definition of “exchange-traded funds” is being modified to more inclusively define the term as funds that invest in underlying securities, a commodity, or a basket of assets like an index fund.

The proposed amendments to N.J.A.C. 17:16-71.2(a)1 and the proposed deletion of N.J.A.C. 17:16-71.2(a)2 would clarify that investments in real assets, and not just the subcategory of real estate, can be made through direct investments, separate accounts, commingled funds, co-investments, and joint ventures.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments shall have a positive social impact, because the opportunity for increased overall risk-adjusted returns for the State-administered funds will benefit the funds’ beneficiaries and lessen the long-term burden on the State’s taxpayers.

Economic Impact

The proposed amendments shall have a positive economic impact by providing an opportunity for increased overall risk-adjusted returns in the State-administered funds.

**Federal Standards Statement**

A Federal standards analysis is not required because the investment policy rules of the State Investment Council are not subject to any Federal requirements or standards.

**Jobs Impact**

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the proposed amendments.

**Agriculture Industry Impact**

The proposed amendments will have no impact on the agriculture industry. While the proposed amendments will permit pension and annuity fund assets to be invested in the broader category of agriculture, it is unlikely that such investments will significantly impact the agriculture industry within the State of New Jersey.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since the proposed amendments will have no effect on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

**Housing Affordability Impact Analysis**

The proposed amendments will have no impact on the affordability of housing in the State of New Jersey. The proposed amendments will expand the scope of permissible real asset investments.

**Smart Growth Development Impact Analysis**

The proposed amendments are not anticipated to have an impact on the availability of affordable housing or housing production within Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan in New Jersey. The proposed amendments will expand the scope of permissible real asset investments.

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

17:16-71.1 Definitions

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

...  
“Commodity-linked investments” means **equity or debt** investments from which all or a portion of the return is linked to the price of a particular commodity or equity security, or to an index of such prices. These include commodity-indexed deposits, loans, debt issues, and derivative products, such as forwards, **futures**, options, and swaps. In these transactions, the interest, principal, or both, or payment streams in the case of swaps, are linked to the price of a commodity.

“**Commodity-related investments**” mean **equity or debt investments in the exploration, production, processing, transportation, storage, or trading of commodities, or other similar activities.**

...  
“Core real estate” means [equity] investments in existing, stabilized (meaning at least 80 percent occupied), well-leased assets.

...  
“Exchange-traded funds” means [mutual] funds that **invest in underlying securities that track a predetermined index, a commodity, or a basket of assets like an index fund**, and can be traded like shares of common stock.

...  
“Non-core real estate” means [equity investments in] value-added or opportunistic strategies, including direct property investment with lease-up, development, or redevelopment risk. Non-core real estate includes recapitalizations across capital structures and property types and access to niche markets.

...  
“Real asset[s] **investments**” mean **equity or debt** investments in real estate, infrastructure, [oil and gas] **energy, utilities, water**, timber, [properties, farmland,] **agriculture**, [precious] metals, **mining and royalty trusts, and commodity-related** and commodity-linked investments. [Real assets include the common and preferred stocks and issues convertible into common stock of U.S. and international corporations and U.S. and international exchange-traded funds that primarily invest in real assets.] **Real asset investments include investments in products, services, and technology related to the above.**

...  
“Royalty trusts” mean[s] [equity] investments that generate an income stream for investors; these primarily include natural resource assets, and pharmaceuticals and medical devices.

17:16-71.2 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any eligible fund in real assets in any of the following ways:

- 1. Investment in real [estate] assets through direct investments, separate accounts, commingled funds, co-investments, and joint ventures.
- [2. Investments in real assets other than real estate.]

Recodify existing 3. and 4. as **2. and 3.** (No change in text.)

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