

3:1-2.13 Prehearing conference

(a) Prior to any hearing, or oral presentation, the presiding officer may, in his or her discretion, direct all parties and counsel to appear before him or her for a prehearing conference for any or all of the following purposes:

1. Simplification and clarification of the issues;
2. Admission and stipulations of fact and of the contents and authenticity of documents; and
3. Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or in (b) below.

(b) Such conference, in the discretion of the presiding officer, need not be recorded, but the presiding officer shall enter in the record an order signed by the parties which recites the results of the conference. Such order, a copy of which shall be furnished to each party, shall include the presiding officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties; and such order shall control the subsequent course of the proceedings unless notified at the oral presentation for good cause shown by appropriate order of the presiding officer.

Recodified from 3:1-2.12 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.13 "Procedure for oral presentation", recodified to 3:1-2.14.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Substituted "presiding" for "regulatory" throughout.

3:1-2.14 Procedure for oral presentation

(a) Both applicant and objector may raise issues and present information only if same have been affirmatively raised in the application, the objection, or the comprehensive objection. All other matters will be excluded unless the person presiding rules otherwise, and then only for good cause shown.

(b) All studies, reports or the like may be offered only if previously submitted to the Department and other interested persons pursuant to the presiding person's direction.

(c) The applicant and the objector shall each be permitted to make an opening statement, stating precisely what information they will present. The applicant and participants may then present witnesses, materials and data. Questions may be addressed to the applicants, objectors and witnesses after each of their presentations by the presiding officer, applicant or objector. The applicant and objector shall then concisely summarize their positions. Witnesses shall not be sworn.

(d) The applicant and objectors shall bear a pro rata share of the transcript costs for the transcripts required by the department and all other regulatory agencies requesting same.

Recodified from 3:1-2.13 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former section, "Priority", repealed.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (c), substituted "presiding" for "regulatory".

Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding (citing former rule). In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

Charter hearings for a capital stock association should be conducted by an administrative law judge, unless the commissioner of banking deems it appropriate to himself act as the hearing officer. Atty.Gen. F.O.1979, No. 15.

Branch banking proceedings are not contested cases within the meaning of the Administrative Procedure Act and need not be conducted by administrative law judges. Atty.Gen.F.O.1979, No. 6.

3:1-2.15 Closing of branch offices

(a) A bank, savings bank or savings and loan association shall notify the Department not less than 30 days before closing a full branch office. The institution shall include in this notice the following:

1. The name of the institution and the location of its principal office;
2. The location of the branch office which will be closed;
3. The prospective date of closing;
4. A statement of reasons leading to the decision to close the branch;
5. A map of the general area served by the branch showing all remaining branches of State or Federally chartered banks, savings banks and savings and loan associations within such area; and
6. A statement indicating the effect the branch closing will have on the availability of financial services in the area.

(b) If a bank, savings bank or savings and loan association acquires a branch or deposits of a branch from the Federal Deposit Insurance Corporation or has an option to purchase a branch, and closes it within 180 days, or if it sells a branch to another depository which operates the office as a branch, it may comply with this rule by filing a Certificate of Discontinuance with the Commissioner along with the required fee.

(c) A bank, savings bank or savings and loan association may submit to the Department a copy of the branch closing notice filed with its Federal regulator in lieu of the filings required by (a)1 through 4 above.

(d) Notice requirements for closing of branch offices are as follows:

1. Beginning within 10 calendar days after notification of the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for two successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in the notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution.

2. A bank, savings bank or savings and loan association which notifies its customers of the branch closing in accordance with Federal law is exempt from the publication requirement in (d)1 above.

3. For at least 30 days prior to the branch closing, the bank, savings bank or savings and loan association shall conspicuously post notice of the proposed branch closing in the branch to be closed. This notice in the branch shall contain at least the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments regarding the closing of the branch may be made to the institution and to the Department along with the mailing address of the institution and the Department.

4. The notice requirements of this subsection shall not apply to a branch relocation within the same neighborhood where the customers served by the closed branch would be substantially unaffected by the move. In addition, the notice requirements of this subsection shall not apply to a consolidation of branches after a merger or acquisition if the branches are located in the same neighborhood and the nature of the business or customers served is not affected.

(e) If the Commissioner determines that there are valid concerns regarding the effect of the closing upon the local community, the Commissioner shall be authorized to conduct such meetings with the institution closing the branch, and with banks, savings banks, savings and loan associations, community leaders and others, as are necessary in his or her judgment to explore the effect of the branch closing on the community and the possibility of replacing such branch office with other adequate facilities.

(f) The Commissioner may suspend the notice requirements on this rule in the event of an emergency or a supervisory merger or acquisition, or when otherwise in the public interest.

(g) Banks, savings banks and savings and loan associations shall maintain a file in their principal office which is open to the public and which contains a description of any meetings or hearings which occurred pursuant to this section in the past two years.

Repealed by R.1988 d.472, effective October 3, 1988.

See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).

Section "Fees; conversion from mutual to capital stock association" repealed.

New Rule, R.1991 d.392, effective August 5, 1991.

See: 23 N.J.R. 801(a), 23 N.J.R. 2305(a).

Amended by R.1991 d.523, effective October 21, 1991.

See: 23 N.J.R. 2208(b), 23 N.J.R. 3133(b).

Posting of closure notice in branch offices required; maintenance of file for public inspection, new (e).

Amended by R.1994 d.318, effective July 5, 1994.

See: 26 N.J.R. 883(b), 26 N.J.R. 2779(a).

Recodified from 3:1-2.17 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former section, "Population", repealed.

Recodified from N.J.A.C. 3:1-2.16 and amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (b), deleted "Resolution Trust Corporation or the" preceding "Federal Deposit Insurance Corporation"; in (d)3, substituted "regarding" for "to", "institution" for "Department" and "Department" for "institution". Former N.J.A.C. 3:1-2.15, Relaxation or dispensation of requirements of subchapter, repealed.

Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

3:1-2.16 Officially recognized data sources

(a) The Department shall take official notice of one or more of the following data sources to test the accuracy of data submitted in connection with applications and objections, to resolve factual discrepancies and to weigh the accuracy, reasonableness and applicability of documentary and oral evidence before it:

1. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Census of Housing (published decennially);

2. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Census of Population (published decennially);

3. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Census of Business (published every five years);

4. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Census of Manufacturers (published every five years);

5. Population Estimates for New Jersey—Official State Estimates, New Jersey Department of Labor, PO Box 056, Trenton, NJ 08625-0056, www.state.nj.us/labor/lra (published annually);

6. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Construction Review (published monthly);

7. New Jersey Department of Community Affairs, Division of Local Government Services, PO Box 800, Trenton, NJ, www.state.nj.us/dca/lgs, Annual Report (published annually);

8. New Jersey Department of Labor, Division of Labor Planning and Analysis, PO Box 056, Trenton, NJ 08625-0056, www.state.nj.us/labor/lra, State of New Jersey—Residential Construction Authorized by Building Permits (published annually and available also on a monthly basis);

9. United States Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Suitland, MD 20746, www.census.gov, Current Population Reports (published monthly);

10. United States Internal Revenue Service, 31 Hopkins Plaza, Baltimore, MD 21203, www.irs.ustreas.gov, Statistics of Income (published annually);

11. New Jersey Department of Community Affairs, Division of Local Government Services, PO Box 800, Trenton, NJ, www.nj.us/dca/dcahome.htm, United States Census Data for New Jersey Townships (provides tables of statistical information from the most recent United States Census paralleling those available for non-townships in printed census reports);

12. New Jersey Industrial Directory (published annually);

13. Local zoning ordinances and master plans;

14. Federal Deposit Insurance Corporation, 20 Exchange Place, New York, NY 10005, www.fdic.gov, Operating Banking Offices (published annually);

15. Federal Deposit Insurance Corporation, 20 Exchange Place, New York, NY 10005, www.fdic.gov, Bank Operating Statistics (published annually);

16. Federal Deposit Insurance Corporation, 20 Exchange Place, New York, NY 10005, www.fdic.gov, Changes Among Operating Banks and Branches (published annually);

17. Federal Deposit Insurance Corporation, 20 Exchange Place, New York, NY 10005, www.fdic.gov, Summary of Deposits in All Commercial and Mutual Savings Banks (published annually);

18. Federal Home Loan Bank Board, 7 World Trade Center, 22nd Flr., New York, NY 10048-1185, www.fhlbny.com, Summary Savings Accounts by Geographic Area (published annually);

19. Thomson Financial Publishing, 4709 W. Gulf Road, Skokie, IL 60076, www.tpf.com, Polk's World Bank Directory (published semiannually);

20. Department of Agriculture, PO Box 330, Trenton, NJ 08625-0330, www.state.nj.us/agriculture, Soil Conservation Services Studies and Reports;

21. New Jersey Department of Labor, Division of Employment Security, PO Box 056, Trenton, NJ 08625-0056, www.state.nj.us/labor/lra, Covered Employment Trends (published annually and available on a monthly basis);

22. Various County Planning Board Reports, for example, population studies and projections, employment trends, industrial-commercial development studies, and so forth; and

23. New Jersey Department of Banking and Insurance, PO Box 325, Trenton, NJ 08625-0325, www.njdo-bi.org, Annual Report.

(b) Other officially noticeable data will be considered when applicable and relevant.

(c) Any applicant or objector(s) shall, simultaneously with the filing of an application or objection, indicate which of the foregoing sources they object to and detail in writing their reasons for objecting.

Amended by R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

(a): Stylistic revision; (a)22-23: Stylistic revision; deleted (a)24. Recodified from 3:1-2.18 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.17, "Closing of branch offices", recodified to 3:1-2.16.

Recodified from N.J.A.C. 3:1-2.17 and amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote (a). Former N.J.A.C. 3:1-2.16, Closing of branch offices, recodified to N.J.A.C. 3:1-2.15.

3:1-2.17 Applications; copies

An original and one copy of all submissions relative to any application shall be filed with the Department.

Recodified from 3:1-2.19 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.18, "Officially recognized data sources", recodified to 3:1-2.17.

Recodified from N.J.A.C. 3:1-2.18 by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Former N.J.A.C. 3:1-2.17, Officially recognized data sources, recodified to N.J.A.C. 3:1-2.16.

3:1-2.18 Charter applications; conditions for approval

(a) The Commissioner shall condition approval of a charter application by a depository on the following factors:

1. If the depository is authorized to take deposits, on the depository becoming a member of the Federal Deposit Insurance Corporation;

2. The depository will issue and sell shares of its authorized capital stock in sufficient amount to raise its capital base before commencement of operations to at least the minimum amount set forth in N.J.A.C. 3:1-2.19, and will obtain prior approval from the Department for any person purchasing more than five percent of the authorized capital stock;

3. The depository shall comply with all requirements with respect to loans and transactions involving the depository and its directors, offices and other persons set forth in subtitles 1 and 2 of Title 17 of the New Jersey Statutes Annotated and Title 3 of the New Jersey Administrative Code, including, but not limited to, N.J.S.A. 17:9A-71, 17:9A-72, and 17:9A-195, and N.J.A.C. 3:1-11, 3:6-3, 3:6-15, and 3:7-5;

4. For the first three years after issuance of the certificate of authority, the depository shall obtain prior approval from the Commissioner before installing any person on the board of directors or employing any person with the depository in an executive officer position as defined in N.J.A.C. 3:6-3.1;

5. For the first five years after issuance of the certificate of authority, the depository shall maintain a tier 1 capital-to-assets ratio, as that ratio is defined in 12 C.F.R. § 325.2(k), that is at least 10 percent of the bank's total assets unless prior written consent has been received from the Commissioner permitting a lower ratio; and

6. Such other conditions for a specific applicant as the Commissioner identifies as appropriate.

Repealed by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 947(a), 16 N.J.R. 1967(a).

Section was "Sharing limited facility branch offices; notice, fee".

New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Recodified from 3:1-2.20 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.19, "Applications; copies", recodified to 3:1-2.18.

Amended by R.1998 d.336, effective July 6, 1998.

See: 30 N.J.R. 1112(a), 30 N.J.R. 2421(a).

Rewrote (a)3.

Recodified from N.J.A.C. 3:1-2.19 and amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a), inserted "factors" at the end of the introductory paragraph, amended the N.J.A.C. reference in 2, substituted "New Jersey Statutes Annotated" for "Revised Statutes" in 3, deleted former 4 and recodified former 5 as 4, inserted a new 5, and substituted "identifies as" for "deems" in 6. Former N.J.A.C. 3:1-2.18, Applications; copies, recodified to N.J.A.C. 3:1-2.17.

3:1-2.19 Minimum and maximum stock subscriptions

(a) Each charter application for a depository shall provide for stated capital of at least \$5,000,000 which shall include at least \$2,500,000 in capital stock, or such other amount as required by the Commissioner; except that an application for a charter for a trust company, which does not have authority to take deposits, may provide for a stated capital of \$2,000,000 in capital stock; and except that an application for a charter incident to the purchase of a failed institution or a branch or branches of a failed institution, may provide for stated capital of \$4,000,000, or more, or six percent of deposits acquired, whichever is greater, with at least \$2,000,000 in capital stock, so long as the depository agrees to raise additional capital to reach \$5,000,000 within one year following issuance of the Certificate of Authority while also satisfying the capital requirements set forth in N.J.A.C. 3:4.

(b) The incorporators of a depository shall subscribe to all stock listed as issued on the certificate of incorporation, which shall be at least 25 percent of the total capital required by (a) above.

(c) After a charter application is accepted, the balance of the capital stock, if any, shall be offered to the general public in the area to be served by the depository. The proceeds of such sale shall be placed in escrow and remain in escrow and not released until the bank obtains a Certificate of Authority. The form of the escrow agreement shall be approved by the Department.

(d) No individual shall subscribe for stock in excess of 24.9 percent of the total capital required by (a) above.

(e) No company may subscribe for stock in excess of 24.9 percent of the total capital required by (a) above, except a holding company that has registered in accordance with state and Federal law and regulations if required.

Amended by R.1984 d.119, eff. April 16, 1984.

See: 16 N.J.R. 174(a), 16 N.J.R. 870(a).

Specific minimums deleted, Commissioner granted greater discretion; (d) deleted.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Minimum changed from \$2,000,000 to \$7,000,000.

Amended by R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Revised heading and (a)-(c); added (d)-(e).

Amended by R.1993 d.258, effective June 7, 1993.

See: 25 N.J.R. 1033(a), 25 N.J.R. 2248(a).

Revised (a).

Recodified from 3:1-2.21 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.20, "Charter applications; conditions for approval", recodified to 3:1-2.19.

Recodified from N.J.A.C. 3:1-2.20 and amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote (c). Former N.J.A.C. 3:1-2.19, Charter applications; conditions for approval, recodified to N.J.A.C. 3:1-2.18.

3:1-2.20 Criteria for branch approval: Public interest

(a) In reaching a determination as to whether an applicant meets the requirement that "the interests of the public will be served to advantage by the establishment of such full branch" as required by N.J.S.A. 17:9A-20(A)(1)(b), the Commissioner shall consider only the following factors:

1. The availability of the proposed office to the general public or that segment of the public to be served as the case may be;
2. The presence and experience of a newly-chartered institution or an institution subject to supervisory review by the Department within the trade area of the proposed office;
3. The conditions set forth in Departmental regulations regarding insider real estate transactions, if any; and