

TRANSPORTATION

(a)

PLANNING, MULTIMODAL, AND GRANTS ADMINISTRATION MULTIMODAL SERVICES

Air Races, Meets, and Exhibitions

Proposed Readoption with Amendments: N.J.A.C. 16:59

Authorized By: Diane Gutierrez-Scaccetti, Commissioner,
Department of Transportation.

Authority: N.J.S.A. 6:1-20, 6:1-29, 6:1-42, 27:1A-5, and 27:1A-6.

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

Proposal Number: PRN 2019-161.

Submit written comments by February 14, 2020, to:

Paul F. Sprewell
Administrative Practice Officer
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625-0600
Fax: (609) 530-4638
Submit electronically at njdotRules@dot.state.nj.us.

This rule may be viewed or downloaded from the Department's
website at <http://www.state.nj.us/transportation/about/rules/proposals.shtm>.

The agency proposal follows:

Summary

The rules at N.J.A.C. 16:59 were scheduled to expire on November 29, 2019, pursuant to N.J.S.A. 52:14B-5.1. As the Department of Transportation (Department) has filed this notice of readoption prior to that date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date is extended 180 days to May 27, 2020. The rules govern the conduct and operation of air races, air meets, and aerial exhibitions in this State. All persons who conduct or operate air meets and aerial exhibitions in New Jersey are required to obtain a license from the Bureau of Aeronautics prior to conducting or operating an air meet or aerial exhibition. Closed-course air races are prohibited by this chapter.

The Department of Transportation has reviewed the rules and determined that they are necessary, reasonable, and proper for the purposes for which they were originally promulgated. The Department is proposing to readopt the rules with amendments as set forth below. Throughout the chapter, all references to "air races" are proposed for deletion. Due to the populous nature of the State, closed course air races (short races in which participants race between pylons on a specific course) are already prohibited by rule. Open course races (long races between airports) do not require licensing. Therefore, the use of the term "air races" is unnecessary. Amendments are necessary in order to clarify and simplify language, correct contact information, remove redundancy, and add a required letter of approval (as proposed new N.J.A.C. 16:59-3.1(c)5). This letter must be signed by the airport manager for applicants other than airport managers or representatives. Pursuant to this chapter, air meets and exhibitions are held at public use airports. The manager needs to know how many planes will participate in the event, how much extra fuel may be required, and whether other resources will be used. There is also a safety factor since, during the events, the airports are still open for other flights.

As the Department has provided a 60-day comment period for 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.

The subchapters are summarized as follows:

Subchapter 1, General provisions, describes the purpose and scope of the chapter.

Subchapter 2, Definitions, provides the definitions relevant to this chapter.

Subchapter 3, License, includes the requirements and standards necessary to obtain a license and the sanctions for violations.

The amendments proposed as part of this rulemaking are as follows:

The heading of the chapter is proposed for amendment to delete the word "races." The heading of Subchapter 1 is proposed for amendment to delete "General Provisions" and replace it with "Purpose and Scope." The heading of N.J.A.C. 16:59-1.1 is proposed for amendment to delete "and scope." Existing N.J.A.C. 16:59-1.1(b) is proposed to be recodified as N.J.A.C. 16:59-1.2, Scope. This recodified section is further proposed for amendment to simplify language and include the correct Department bureau. Recodified N.J.A.C. 16:59-1.2(c) is proposed for amendment to add a statutory cross-reference.

At N.J.A.C. 16:59-2.1, the definitions of "aerial exhibition," "applicant," and "event" are proposed for amendment to delete the unnecessary words "air race." The definition of "air race" is proposed for deletion because the Department does not license air races.

N.J.A.C. 16:59-3.1(a) is proposed for amendment to correct the name of the necessary application form, correct the section of the Department from "division" to "bureau," and correct the contact information. N.J.A.C. 16:59-3.1(b)2 is proposed for amendment to delete the word "sponsor's" and include the words "applicant representative's." N.J.A.C. 16:59-3.1(c)4 is proposed for amendment to clarify the requirement by incorporating elements from existing subsection (f), which is proposed for deletion. Proposed new N.J.A.C. 16:59-3.1(c)5 establishes a requirement for a letter of approval signed by the airport manager if the applicant is someone other than the airport manager or representative.

Social Impact

Persons who wish to conduct or operate air meets and aerial exhibitions must obtain authority from the Department through a process of making an application for a license. Applicants typically are airport owners and operators. Commonly, the applicant hires a company or organization that is in the business of organizing and running all aspects of air shows to run and manage the operation of the event. They are identified as "sponsors" on the license application.

The rules proposed for readoption with amendments establish standards commensurate with the needs for public safety, the safety of persons operating or using aircraft, and the safety of persons and property on the ground. The public, the event operators, and participants benefit from the enhanced safety of the operation of the regulated events and activities. Further, the rules allow for local governments to participate in the license approval process, as the applicant must obtain approval, which is indicated by the co-signature of the local governing authority on the application. For these reasons, the rules have a positive social impact.

Economic Impact

The Department believes that accidents, along with costs associated with personal injury and property damage, are prevented by the implementation of safety measures required by the rules proposed for readoption with amendments.

The applicant benefits from the revenue generated from public admission and related spectator expenditures at the event. The applicant's revenue is offset by the costs of operation and production of the event. Neither operating costs nor revenue is reportable to the Department under this chapter. Consequently, no more specific economic data is available.

The only cost to the applicant directly attributable to this chapter is a \$25.00 application fee. No professional services are required to prepare the license application. The applicant has no recordkeeping or reporting costs attributable to this chapter. The applicant will incur costs associated with the event, such as providing policing, emergency facilities, and additional air and ground operations and support. An applicant may incur costs associated with obtaining approval of the local municipality.

The Department incurs the costs of administration of the chapter.

Federal Standards Statement

The rules proposed for readoption with amendments come within the authority of State statute only. Concurrently, licensees must generally meet the requirements of Federal Aviation Regulations found at 14 CFR Part 61, Certification: Pilots, Flight Instructors, and Ground Instructors; and 14 CFR Part 91, General Operating and Flight Rules. The rules proposed for readoption with amendments do not exceed any Federal

laws, standards, or requirements. Therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65 is not required.

Jobs Impact

The rules proposed for readoption with amendments are not anticipated to result in the loss or generation of jobs in New Jersey.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry in New Jersey. This chapter is not intended to regulate farming, crop, or animal production.

Regulatory Flexibility Analysis

Some applicants for licensure may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments do not impose reporting or recordkeeping requirements on businesses. All persons who wish to conduct or operate air meets and aerial exhibitions are required to submit an application in conformance with this chapter.

Applicants will not require any professional services to complete an application, nor will applicants incur initial capital costs associated with compliance, other than those discussed in the Economic Impact above. Applicants will incur costs associated with the conduct and operation of an air meet or aerial exhibition. These costs include providing policing, emergency facilities, and additional air and ground operations and support. An applicant may incur costs associated with obtaining approval of the local municipality.

The information presented in the application process is needed by the Department to determine that the applicant has established the appropriate safeguards. The Department cannot otherwise evaluate an application without this information. Small business applicants must comply in the same way as other applicants.

Less demanding standards for small businesses would erode the level of accountability and safety necessary for the Department to protect the public interest. Uniform application of the rules proposed for readoption with amendments is necessary due to the overriding need to promote safety. For this reason, the rules do not provide a differing or lesser compliance standard based upon business size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on the affordability of housing in New Jersey. The rules govern the conduct and operation of air meets and aerial exhibitions in this State. The Department believes that it is extremely unlikely that the rules proposed for readoption with amendments would bring about a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no impact on smart growth. The Department believes that it is extremely unlikely that the rules proposed for readoption with amendments would bring about a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules proposed for readoption with amendments will govern the conduct and operation of air meets and aerial exhibitions in this State.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The rules proposed for readoption with amendments will govern the conduct and operation of air meets and aerial exhibitions in this State. The rules have no impact on Racial and Ethnic Community Criminal Justice and Public Safety in New Jersey and the Department believes that it is extremely unlikely that the proposed amendments would have any impact on pretrial detention, sentencing, probation, or parole policies concerning adults or juveniles in the State. Therefore, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:59.

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

CHAPTER 59. AIR [RACES,] MEETS[,] AND EXHIBITIONS

SUBCHAPTER 1. [GENERAL PROVISIONS] PURPOSE AND SCOPE

16:59-1.1 Purpose [and scope]

[a] This chapter provides minimum standards for the conduct and operation of [air races,] air meets[,] and aerial exhibitions.

16:59-1.2 Scope

[(b)] (a) [No air meet, air race or aerial exhibition shall be conducted or operated in this State without the] **The person responsible for the conduct and operation of [the event first obtaining] an air meet or aerial exhibition shall obtain** a license from the [Commissioner of the Department of Transportation] **Bureau of Aeronautics prior to the commencement of the event.**

[(c)] (b) (No change in text.)

[(d)] (c) [Aerial] **Pursuant to N.J.A.C. 16:54, aerial** exhibitions and air meets may be held at other than a licensed aviation facility provided the facility is suitable and properly licensed for such an event.

16:59-[1.2]1.3 (No change in text.)

SUBCHAPTER 2. DEFINITIONS

16:59-2.1 Definitions

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

“Aerial exhibition” means a demonstration other than an [air race or] air meet[,] in which aircraft are utilized for public exhibition, including, but not limited to, air shows and balloon festivals.

...
[“Air race” means any competition inviting, directly or indirectly, public attention, involving the flight of two or more aircraft for the purpose of exhibiting relative speed or performance capabilities.]

“Applicant” means a person who submits an application for a license to conduct an air meet[, air race,] or aerial exhibition.

...
“Event” means an aerial exhibition[, or an air meet[, or an air race].

...

SUBCHAPTER 3. LICENSE

16:59-3.1 Requirements for license

(a) The application for a license to conduct an air meet[, air race,] or aerial exhibition shall be made on New Jersey Department of Transportation Form DA-27, “Application for [Air Meets, Air Races,] Aerial Exhibition[s] **License.**” A completed application must be submitted to the [Division] **Bureau** of Aeronautics at least 30 days in advance of the proposed event. The application form (DA-27) may be obtained from the [Division] **Bureau** of Aeronautics at:

[Division of Aeronautics]
New Jersey Department of Transportation
Bureau of Aeronautics
[P.O.] PO Box 600
Trenton, NJ 08625-0600

or **online at:**

[<http://www.state.nj.us/transportation/airwater/aviation/forms.shtm>.]
<https://www.state.nj.us/transportation/airwater/aviation/documents/da27.pdf>

(b) The application shall contain:

1. (No change.)
2. The [sponsor’s] **applicant representative’s** name and address;
- 3-6. (No change.)

(c) The application shall also include, but is not limited to, the following required documentation:

1-3. (No change.)

4. A letter of permission from the municipality for the event or an acknowledgement from the municipality that the event is **either** not subject to local ordinances **or is in compliance;** [and]

PROPOSALS

TRANSPORTATION

5. A letter of approval signed by the airport manager (if the applicant is someone other than the airport manager or representative); and
[5.] **6.** (No change in text.)
(d)-(e) (No change.)

[(f) Signatures of the applicant and of an authorized representative of the governing authority as to compliance with local ordinances, shall be affixed to the application.]
