

due to ratepayers were provided to the EDCs and that all of those revenues have been credited to the ratepayers as directed by the Board;

6. The OREC administrator shall review and report on all OREC administrator transactions and accounts, including those that took place during the annual true up. All reports or findings of this review shall be provided to the Board, each of the EDCs, Rate Counsel, and shall be made available to the public on a website;

7. The OREC administrator, in consultation with the Board shall, at the end of the annual true up, conduct a review of the OSW carve-out and annual ratepayer surcharge amount and, if necessary, recommend adjustments to the OSW carve-out and the ratepayer surcharge;

8. All adjustments to the RPS shall be made three years in advance, if at the end of the annual true up it is determined that:

i. All qualified OSW projects have submitted no more than their annual OREC allowance, but have ORECs remaining; and

ii. All suppliers have met their OSW carve-out requirement through the purchase of ORECs. Qualified OSW projects may hold any ORECs for an additional two years or sell the ORECs for Class I RPS compliance;

9. Adjustments to the OSW purchase percentage if set too low, within 30 days following the receipt of a notice of insufficient OREC demand by the OREC administrator, EDC, or a qualified OSW project, the Board shall direct the OREC administrator to adjust the OSW purchase percentage;

10. If the OREC administrator determines that there are not enough ORECs in a given year to meet the suppliers' obligation, and there are no banked ORECs available, the OREC administrator may direct the EDCs, as the suppliers' payment agent, to make OACP payments to satisfy the RPS; and

11. The qualified OSW project shall retain ownership of any excess ORECs. The qualified OSW project, at its sole discretion, may use excess ORECs in either of the following ways:

i. Hold the excess ORECs in order to submit them to the EDC for payment in a future month or year in which the project might have a production deficit; or

ii. Apply the excess ORECs toward the OSW carve-out during the OREC lifetime.

TRANSPORTATION

(a)

DIVISION OF MULTIMODAL SERVICES

BUREAU OF AERONAUTICS

Licensing of Aeronautical Activities

Proposed Amendments: N.J.A.C. 16:55-3.2, 6.1, and 6.2

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

Authority: N.J.S.A. 6:1-29, 6:1-43, 6:1-44, 27:1A-5, and 27:1A-6.

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

Proposal Number: PRN 2018-073.

Submit written comments by October 19, 2018, 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 found at N.J.A.C. 16:55 govern aeronautical activities required to be licensed in the State of New Jersey. The activities are generally conducted at locations away from an airport and include aerial advertising, aerial application of fertilizers for agricultural uses, aerial mosquito control, and operation of parachute centers. The Department of Transportation (Department) proposes amendments necessary to clarify provisions related to banner towing and to update contact information and to provide information related to appeals and contested cases.

The proposed amendments are as follows:

N.J.A.C. 16:55-3.2(a)lviii is proposed for amendment to clarify the provisions related to banner towing both on and off an airport. Applicants are now required to submit a scaled area photograph in addition to a sketch of the proposed banner pickup and drop area(s) for locations both on and off airports. Several of the airports governed by this rule cannot support banner tow operations at the airport itself due to changes in the location of banner tow areas. In one instance, hangers were built where the pickup and drop off areas were located. New areas were chosen that the Department determined caused safety concerns. For locations off an airport, the sketch and photograph must include depictions of any obstructions within 500 feet of the pickup and drop areas. The location may be inspected by the Bureau and may require FAA approval to determine suitability.

N.J.A.C. 16:55-6.1(a) is proposed for amendment to simplify language and to delete language related to court reporters, as such is unnecessary. N.J.A.C. 16:55-6.1(b) is proposed for amendment to add contact information. N.J.A.C. 16:55-6.1(c) is proposed for amendment to clarify the informal hearing process. Proposed new N.J.A.C. 16:55-6.1(d) is added to provide that applicants and licensees will be notified in writing if a request for a hearing is denied. Recodified N.J.A.C. 16:55-6.1(e) is proposed for amendment for clarity. Existing N.J.A.C. 16:55-6.1(e), (f), (g), and (h) are proposed for deletion because the processes are no longer completed under current Department policy. Proposed new N.J.A.C. 16:55-6.1(f) is added to establish that the licensee or applicant will receive a written decision within 30 calendar days of the informal hearing. Recodified N.J.A.C. 16:55-6.1(g) is proposed for amendment for clarity. Proposed new N.J.A.C. 16:55-6.1(h) is added to establish provisions for appeals of the decisions from informal hearings.

N.J.A.C. 16:55-6.2(a) is proposed for amendment to clarify language. Proposed new N.J.A.C. 16:55-6.2(b), (c), (d), and (e) set time limits for the supplying of the judges initial decision, exceptions to the decision, response to the exceptions, and final written agency action. Existing subsection (b) is recodified as new subsection (f).

This notice of proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5, since the Department is providing a 60-day comment period for this notice.

Social Impact

The proposed amendments promote public confidence in the State by demonstrating the State's responsibility in ensuring aviation safety. The rules establish standards commensurate with the needs of public safety, the safety of persons operating or using aircraft, and the safety of persons and property on the ground.

Economic Impact

The economic impact of maintaining public safety for the conduct of aeronautical activities cannot be specifically determined. However, accidents and injuries are prevented by these safety measures, thus decreasing potential medical costs and property damages. In addition, promotion of aeronautical activities has the potential to generate revenue for the State's economy. The proposed amendments will have a positive economic impact. License applicants may incur costs relating to the requirement for scaled aerial photographs.

Federal Standards Statement

The proposed amendments are governed by State law. The rules meet, but do not exceed, any Federal law, standards, or requirements. Therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1994), P.L. 1995, c. 65, is not required.

Jobs Impact

The proposed amendments are not expected to result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments are not intended to regulate farming, crop, or animal production.

Regulatory Flexibility Analysis

The proposed amendments impose reporting, recordkeeping, and other compliance requirements on businesses that may be considered "small businesses," as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and are discussed in the Summary above. Uniform application of these proposed amendments, however, is necessary due to the overriding need to promote aviation safety. Therefore, lesser requirements for small businesses have not been provided.

Housing Affordability Impact Analysis

The proposed amendments govern aeronautical activities required to be licensed in the State of New Jersey. The proposed amendments, as they refer only to banner towing and hearing requirements, will have no impact on the affordability of housing in New Jersey, and the Department believes that it is extremely unlikely that the proposed amendments will have any impact on the average costs of housing in New Jersey.

Smart Growth Development Impact Analysis

The proposed amendments govern aeronautical activities required to be licensed in the State of New Jersey. The proposed amendments, as they refer only to banner towing and hearing requirements, will have no impact on Smart Growth Development in New Jersey, and the Department believes that it is extremely unlikely that the proposed amendments will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

This chapter governs aeronautical activities required to be licensed in the State of New Jersey. The proposed amendments, as they refer only to banner towing and hearing requirements, will not 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 proposal follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

SUBCHAPTER 3. LICENSING

16:55-3.2 Specific requirements

(a) In addition to complying with the general requirements listed in N.J.A.C. 16:55-3.1, all persons engaged **in** one or more of the aeronautical activities listed in this chapter shall comply with the applicable specific requirements listed below. Where any requirement listed below calls for the maintenance of any data or other information, no particular method of recordkeeping is specified. No change in the system of records customarily kept by the person concerned is required, so long as the records supply an adequate basis for examination.

1. Aerial advertising:

i.-vi. (No change.)

vii. Maintain records of all aerial advertising flights made, which shall be retained for 12 months. These records shall contain the following information including, but not limited to:

(1)-(3) (No change.)

(4) Name of pilot; **and**

(5) Flight of coverage area[.];

viii. For banner towing, submit [a sketch] with the **license** application [for license], **a sketch and scaled aerial photograph** of the proposed banner pickup and drop area(s). [This] **If the proposed area(s) is located on an airport, this** sketch must include the regular airport traffic pattern and the banner tow pattern, if different **from the regular airport traffic pattern. If the proposed area(s) is not located on an**

airport, submit a sketch and scaled aerial photograph of the proposed banner pickup and drop off area(s) and depict any obstructions within 500 feet of these areas. The location may be inspected by the Bureau and may require FAA approval to determine if the area(s) are suitable for these operations. Written approval **of the location** by the facility management, the property owner or lessee, and the controlling municipal authority must appear on the sketch **or the scaled aerial photograph** or by separate letter[. Banner towing is only authorized at a licensed aeronautical facility]; **and**

ix. (No change.)

2.-3. (No change.)

SUBCHAPTER 6. INFORMAL HEARINGS AND CONTESTED CASES

16:55-6.1 Informal hearings

(a) Licensees or applicants may request an informal hearing with the [Department] **Director** regarding **any of the following actions**: a denial of a petition for exemption, **a license suspension**, [or revocation of] a license **revocation**, or [license application denial] **a denial of an application for a license**. [A court reporter shall not be present at an informal hearing.]

(b) Requests for an informal hearing shall be made in writing to the Director [of Multimodal Services (Director)] within 20 calendar days of **receipt of the notice** related to any matters described in (a) above.

Requests shall be addressed to:

**Director, Division of Multimodal Services
New Jersey Department of Transportation
1035 Parkway Avenue
PO Box 600
Trenton, NJ 08625-0600**

(c) If the [Department] **Director** determines that an informal hearing is appropriate, it shall be scheduled within 30 calendar days **of receipt of the request**.

(d) If the Director determines that an informal hearing is not appropriate, the applicant or licensee shall be informed in writing of the denial of the request for a hearing.

[(d)] (e) Informal hearings will be heard by the Director. The Director shall hear and review all evidence presented. Any records or documents produced or referred to by the licensee or applicant in an informal hearing shall be provided by the licensee or applicant to the [Department] **Director** at no cost.

[(e)] (e) Within 45 calendar days of the close of the hearing, the Director shall submit recommendations to the Commissioner regarding the matter. The recommendation shall be advisory in nature and not binding on the Commissioner. A copy of the recommendation shall be mailed to the licensee or applicant concurrently with its submittal to the Commissioner.

(f) Within 15 calendar days from the date the recommendation is mailed to the licensee or applicant, the licensee or applicant may submit written exceptions to the Commissioner. No additional submissions shall be allowed.

(g) Within 45 calendar days of the mailing of the recommendation to the licensee or the applicant, the Commissioner shall issue a final agency decision regarding the matter.

(h) Time extensions for submitting recommendations, exceptions, or replies and for the issuance of the final decision may be extended by the Commissioner for good cause pursuant to the provisions of N.J.A.C. 1:1-18.8.]

(f) The Director shall, within 30 calendar days of the close of the informal hearing, provide the licensee or applicant with a written decision to rescind, modify, or retain the original action.

[(i)] (g) The [Department] **Director** may, in instances where public exigency exists or where there is potential for substantial savings to the Department, [modify] **change** the time frames or any other requirements provided for in this section. In these instances, the Department shall document, for the record, the rationale for [such amendment] **the change** and give adequate notice to the licensee or applicant.

(h) If the licensee or applicant intends to challenge the decision in (f) above, an intent to appeal letter must be sent to the Director

within 60 calendar days of the close of the hearing. The proceeding shall then be handled as a contested case. The intent to appeal letter shall be addressed to:

Director, Division of Multimodal Services
New Jersey Department of Transportation
1035 Parkway Avenue
PO Box 600
Trenton, NJ 08625-0600

16:55-6.2 Contested cases and uncontested cases

(a) The Department shall [determine whether a matter constitutes a contested case and shall] refer [any such matter] **each contested case** to the Office of Administrative Law for a hearing pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the] **The contested case shall be handled according to** Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Within 45 calendar days of the close of the hearing, the administrative law judge (ALJ) shall submit a written initial

decision to the Commissioner and shall serve the parties of record with an indication of the date of receipt by the Commissioner.

(c) Within 13 calendar days from the date the ALJ's initial decision was mailed to the parties, any party may submit written exceptions to the Commissioner. No further evidence or submissions will be allowed. A copy of the exceptions must also be served on the other parties.

(d) Within five calendar days of receipt of exceptions, any party may submit a reply to the Commissioner and must also serve the other parties. Replies may include submissions in support of the initial decision.

(e) Within 45 calendar days of receipt of the initial decision, the Commissioner shall issue a written decision which adopts, modifies, or rejects the initial decision. The decision shall be considered a final agency action.

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