

Therefore, pursuant to the authorities cited above, and in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

TRANSPORTATION

(a)

DIVISION OF CAPITAL PROGRAM MANAGEMENT OFFICE OF OUTDOOR ADVERTISING SERVICES Tourist Oriented Directional Signs Program (TODS) Readoption with Amendments: N.J.A.C. 16:41D Adopted Repeal and New Rule: N.J.A.C. 16:41D Appendix

Adopted Repeal: N.J.A.C. 16:41D-3.5

Proposed: July 2, 2018, at 50 N.J.R. 1469(a).

Adopted: September 14, 2018, by Diane Gutierrez-Scaccetti,

Commissioner, Department of Transportation.

Filed: September 17, 2018, as R.2018 d.184, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:7-21.12.

Effective Dates: September 17, 2018, Readoption;
October 15, 2018, Amendments, Repeals, and
New Rule.

Expiration Date: September 17, 2025.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

Pursuant to N.J.S.A. 39:4-183.6, all official highway signs must conform to the Manual of Uniform Traffic Control Devices (MUTCD). The MUTCD is the national standard for signs installed on any street, highway, bikeway, or private road open to public travel. 23 U.S.C. §§ 109(d) and 402(a); 23 CFR Part 655, Subpart F. The rules readopted with amendments, repeals, and new rule are in conformity with the requirements, therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65 is not required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 16:41D.

Full text of the adopted amendments and new rules follows:

SUBCHAPTER 1. PURPOSE AND SCOPE

16:41D-1.1 Purpose

(a) The purpose of this chapter is to establish procedures and standards for participation in the Tourist Oriented Directional Signs (TODS) Program as administered by the New Jersey Department of Transportation (Department). This program enhances motorist safety and supports tourism by providing signs that identify facilities of particular interest to tourists and provides directional information to those facilities.

(b) TODS signs are placed along State highways to direct motorists to local attractions, services, and businesses located off the State system of highways and are erected in compliance with the Manual on Uniform Traffic Control Devices (MUTCD). These signs are not considered off-premise advertising, requiring compliance with N.J.A.C. 16:41C.

16:41D-1.2 Scope

(a) The program will be implemented only on conventional roads and only on those routes and route segments that the Department has identified as available for TODS signs. A list of the routes is available in N.J.A.C. 16:41D Appendix, incorporated herein by reference, and online at <http://www.state.nj.us/transportation/business/signs/tods/>.

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

SUBCHAPTER 2. DEFINITIONS

16:41D-2.1 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the text clearly indicates otherwise:

... “Commissioner” means the Commissioner of the New Jersey Department of Transportation or such person as the Commissioner may designate, when legally permissible.

... “Conventional road” means a multi-lane or divided State highway where direct access is provided to adjoining properties. The term excludes freeways, expressways, limited access highways, service roads to a limited access highway, interchange ramps, urban streets, and any highway segment having an access classification of Access Level (AL)-1 by the State Highway Access Management Code, N.J.A.C. 16:47 Appendix B.

... “Limited access highway” means a highway especially designed for through traffic over which abutters have no easement or right of light, air, or direct access, by reason of the fact that their property abuts such right-of-way, including any highway segment classified as AL-1 by the State Highway Access Management Code, N.J.A.C. 16:47 Appendix B.

... “Specific service sign” means a sign erected in conformance with the MUTCD, which identifies one or more of the following service types: gas, food, lodging, camping, or attraction, and that displays logo sign panels of eligible facilities that provide the identified type of service. Specific service signs are placed along the main line of a highway.

... “Tourist oriented directional sign” or “TODS” means an official guide sign with one or more sign panels that displays the business identification of, and directional information for, tourist-oriented businesses and activities that draw a major portion of their visitors or income from outside the immediate area of the business or activity, pursuant to N.J.A.C. 16:41D-3.1(a)2.

...

SUBCHAPTER 3. ELIGIBILITY AND GENERAL REQUIREMENTS

16:41D-3.1 Eligible facilities

(a) An eligible facility shall:

1. Be a place that is primarily of interest to tourists including, but not limited to, a cultural site, a commercial tourism site, a recreational site, and a civic area;

2. (No change in text.)

3. Comply with all applicable laws, rules, and regulations concerning the provisions of public accommodations without regard to race, religion, color, age, sex, national origin, disability or other category protected by Federal or State law including, but not limited to, all required governmental licenses and permits.

(b) The following facilities are eligible to participate in the TODS program:

1. Cultural sites, including, but not limited to:

i.-iii. (No change.)

iv. Concert halls, amphitheatres, theaters, arenas, auditoriums, or performing arts centers;

v.-vii. (No change.)

2.-3. (No change.)

4. Civic areas, for which a TODS sign shall not identify any individual businesses, including, but not limited to:

i.-iv. (No change.)

(c) (No change.)

16:41D-3.2 Participation requirements

(a) An eligible facility must satisfy the following general requirements:

1. Possess all valid licenses and permits necessary for its operation;

2. (No change in text.)

Recodify existing 6.-7. as 3.-4. (No change in text.)

(b) In addition to the requirements in (a) above, eligible agri-tourism sites, camping facilities, fuel facilities, lodging, and restaurants shall satisfy the following specific requirements.

1. Agri-tourism sites shall:
 - i.-ii. (No change.)
2. Camping facilities shall:
 - i.-ii. (No change.)
3. Fuel facilities shall:
 - i.-iii. (No change.)
- iv. Provide tire repair service or information on available local tire repair facilities; and
 - v. (No change.)
4. Lodgings shall:
 - i. (No change.)
5. Restaurants shall:
 - i. Be open a minimum of 12 hours each day, six days each week, unless designated as seasonal; and
 - ii. Have a primary entrance from the public parking area, which is dedicated for the restaurant's exclusive use.

(c) Eligible facilities other than those described in (b) above shall, in addition to the requirements in (a) above, satisfy the following requirements:

1. Be located within five miles of the State highway on which the intersection approach sign is erected; and
2. Be open a minimum of six hours each day, five days each week for a minimum of 20 consecutive weeks each year. This requirement does not apply to facilities that are not customarily open to the public on a daily basis or typically provide scheduled events including, but not limited to, amphitheaters, arenas, auditoriums, civic centers, community farm markets, fairgrounds, flea markets, racetracks, speedways, theaters, and performing arts centers.

16:41D-3.3 Closure of a facility

(a) A facility may close for up to seven consecutive days in order to make repairs or to address an emergency with no changes to signs by the Department.

(b) (No change.)

(c) If a facility is closed for 90 consecutive days, the Department will permanently remove the signs. If there is a waiting list for this location, the next eligible facility from the waiting list will be admitted in accordance with N.J.A.C. 16:41D-4.2.

(d) If a closed facility wants to be reinstated into the program, it must submit a new application. If a waiting list exists for the requested location, it will be placed on the list in the order that it was received, provided that the facility still meets the eligibility requirements of this chapter.

16:41D-3.4 General conditions

(a)-(c) (No change.)

(d) No TODS sign will be erected, unless each intersection in the path to the facility can be marked by a trailblazer sign or other official highway sign. A private sign will not be sufficient to mark the path to the facility. Where a trailblazer sign must be erected in a right-of-way that is not under the jurisdiction of the Department, approval must be obtained from the governmental entity that has jurisdiction. If the governmental entity with jurisdiction does not grant approval for the sign, the TODS application will be denied.

(e)-(f) (No change.)

(g) Where both a TODS sign and a specific service sign would be needed at the same intersection, the design of the TODS signs shall be used, and the needed specific service information shall be incorporated therein in accordance with Section 2J.10 of the MUTCD.

(h) (No change.)

(i) A facility requesting a straight-ahead intersection approach sign will only be allowed to participate in the TODS program when there is a sign for a similar business or activity in either the right or left direction and only if space is available on the existing structure. If a straight ahead sign is provided and space is subsequently required for a business or activity requiring a left or right turn, the straight ahead sign will be removed at the end of its contract duration. If there is more than one business with a straight ahead sign on the intersection approach sign and a straight ahead

sign must be removed, the straight ahead sign of the business or activity furthest from the intersection will be removed.

16:41D-3.5 (Reserved)

SUBCHAPTER 4. APPLICATION, APPROVAL, AND PARTICIPATION PROCEDURES

16:41D-4.1 Application

(a) To qualify for participation in the TODS program, an eligible tourist-oriented business must complete an application on a form provided by the Department's vendor. Information regarding the application may be found on the Department's website at: <http://www.state.nj.us/transportation/business/signs/tods/> or can be obtained from the vendor.

(b) Applications shall include, but are not limited to, the following information: corporate or company name of applicant, address and phone number of applicant, contact person for the application, name and physical address of facility, and the requested location of the sign. Incomplete applications will be returned to the applicant.

(c) A single application may be submitted for two intersection approach signs for both directions of travel on a single roadway. A business or activity seeking intersection approach signs for multiple roadways must submit multiple applications.

Recodify existing (b)-(c) as (d)-(e) (No change in text.)

16:41D-4.2 Waiting list

Where the number of approved applicants exceeds the spaces available on a TODS sign, those who cannot be provided a space will be placed on a waiting list. When a space becomes available, priority for admittance to the program will be given to the earliest approved applicant.

16:41D-4.3 General contract requirements

(a) All approved applicants who elect to participate in the TODS program shall do so by entering into a contract with the vendor that has been approved by the Department. The applicant will be required to enter into a separate contract for each intersection and for each direction of travel.

(b) The contract will provide for the fabrication and erection of up to two intersection approach signs and all trailblazer signs that are needed to mark each intersection along the path to the facility.

(c) All contracts will terminate on a single date of the year, as specified by the Department. If the termination date would result in a contract duration of less than 12 months, the contract duration will be the balance of the existing contract year and the next complete contract year. The cost of the contract will be the fee for the complete contract year and a prorated amount for the remaining months of the current year. The fees for the prorated year must be paid immediately and the fees for the next complete contract year shall be paid at the beginning of that year.

(d) A participating facility may elect to renew its contract each year if it has paid all fees, meets all eligibility requirements, and is not otherwise required to have its TODS signs removed pursuant to other provisions of this chapter or any other applicable law. When a participating facility does not meet all eligibility requirements for any reason, it may not renew its contract.

(e) (No change.)

SUBCHAPTER 5. FEES

16:41D-5.1 Fees

(a) Annual fees for each contract are as follows:

1. For one intersection approach sign and up to three trailblazer signs:

i.-ii. (No change.)

2. For one additional intersection approach sign:

i. Regular facility - \$800.00; and

ii. Non-profit, civic area, or agri-tourism facility - \$400.00.

(b) Additional fees shall be as follows:

1. Re-fabrication and re-installation of sign panel caused by a participating facility's name change or change of artwork - \$150.00 per sign panel;

2. Covering of a sign panel due to seasonal closing, temporary closure, or other reason - \$50.00 per occurrence; and

3. Erection of more than three trailblazer signs - \$50.00 for each additional trailblazer sign.

(c) (No change.)

(d) Where a TODS sign panel is used in place of a specific service trailblazer sign pursuant to N.J.A.C. 16:41D-3.4(g), there will be no fees, except the fees required for the specific service sign.

SUBCHAPTER 6. DESIGN, CONSTRUCTION, AND MAINTENANCE OF SIGNS

16:41D-6.1 Location and design of signs

(a) TODS signs will be erected after the application has been approved, the contract is executed and all fees have been paid by the participating facility.

(b) TODS signs shall be designed, fabricated, located, and installed in accordance with the standards and guidance of the MUTCD, subject to the Department's engineering judgment.

(c) The Department may relocate an intersection approach sign or trailblazer sign for any reason, if it determines that the sign will be more effective at a new location.

(d) The content of the TODS sign cannot in any way compromise the safety of the driving public. All determinations as to the safety of the driving public shall be made at the sole discretion of the Department.

16:41D-6.2 Seasonal facilities

Except for agri-tourism facilities, any facility that is open less than 16 consecutive weeks each year shall have a designation on its TODS sign panel indicating that the facility is seasonal. This designation shall be determined by the Department and will be uniform throughout the State.

16:41D-6.3 Inspection, maintenance, and replacement of signs

(a) All TODS sign panels and trailblazer signs will be inspected by the Department in accordance with a schedule approved by the Department.

(b) Damaged or missing TODS signs, TODS sign panels, and trailblazer signs, will be repaired or replaced, as determined by the Department, as soon as practicable by the vendor, at no cost to the facility.

(c) Where a Department highway improvement causes the removal of a TODS sign for more than 30 days, a credit, pro-rated on a monthly basis, will be applied on behalf of the participating facility towards the renewal of its contract for the following year.

(d) No credit will be given for the loss of trailblazer signs.

SUBCHAPTER 7. DETERMINATIONS AND APPEALS

16:41D-7.1 Departmental determinations

(a)-(b) (No change.)

(c) If the Department's determination is not appealed or the participating facility has not complied with the requirements within the time provided, the Department may deem the facility to be in breach of its contract and send written notice to the facility. After the expiration of any time periods set forth in the notice, the Department may terminate the contract and remove or cover the TODS sign panel and trailblazer signs. The space on the TODS sign may be allocated to another eligible business.

(d) (No change.)

(e) Where a participating facility ceases to satisfy any requirements due to a change in the policies, guidance, rules, or regulations of the Department, Federal Highway Administration, or MUTCD, the TODS sign panel may be maintained until the end of the contract duration, if permitted by the changed policy.

16:41D-7.2 Appeals

(a) An applicant may appeal the denial of its application to the program or a determination that it does not satisfy the requirements of this chapter by submitting a letter requesting an appeal to the Manager of the TODS program at:

New Jersey Department of Transportation
Office of Outdoor Advertising and Wireless Services
TODS PROGRAM
PO Box 600
Trenton, NJ 08625

1. (No change.)

(b) Within 15 days of the receipt of an appeal letter, the Manager of the TODS program will schedule an informal meeting to resolve the dispute. A written decision will be issued within 30 days of the meeting.

(c) If the dispute is not fully resolved at the informal meeting, the applicant may appeal the written decision by submitting a letter requesting a hearing. The letter must include all disputed material facts and legal issues that the applicant intends to raise. The request must be sent to the Director of the Division of Right-of-Way within 30 days of the date the written decision is received and should be submitted to:

Director, Division of Right-of-Way
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625.

1. If the letter does not contain the disputed material facts and legal issues the applicant intends to raise at a hearing, or if the disputed material facts and legal issues do not warrant a hearing, the Director, in his or her sole discretion, may decline to grant a hearing.

(d) The Director will determine if a hearing is required based on the statement and facts submitted. If a hearing is required, the Director will schedule a hearing within 15 days of receipt of the written request. The Director may conduct the hearing or designate a hearing officer. If a hearing officer conducts the hearing, he or she will make written recommendations to the Director and provide any other information requested by the Director.

(e) At the hearing, the person requesting the appeal will be accorded an opportunity to present information regarding the denial or determination. The Director's decision will be based on the information presented at the hearing, any recommendation of the hearing officer, the purposes and criteria set forth in this chapter and the MUTCD. The written decision will be issued within 30 days of the hearing and shall be sent to the person who requested the appeal. The Director's decision is the Department's final agency decision.

APPENDIX

Eligible Routes

The following State highway routes have been designated for Tourist Oriented Directional Signs (TODS) signs:

9*	28	38	50	71*	124	181
9w	29	40	52	72*	130*	182
10	30*	41	53	73*	138	183
12	31	44	54	77	147	202*
15	33	45	56	79*	152	206
17*	34	46*	57	83	166	284
22*	35*	47	66	88	168	322
23*	36*	48	68	94	173	
27	37*	49	70*	109	179	

*Portions of these highways, as determined by the New Jersey Department of Transportation's Bureau of Traffic Engineering and Safety, will not be eligible due to traffic volumes, speed, and/or location.