

- i. The project maximizes the conservation of energy and reduction in emissions by promoting the use of efficient freight systems;
 - ii. Supports energy efficient aspects of rail freight and intermodal transportation; and
 - iii. Supports rail freight and intermodal services that minimize detrimental environmental impacts; and
4. Highway congestion mitigation as follows:
- i. The project reduces vehicular traffic by providing a viable alternative to long-haul over-the-road freight shipments;
 - ii. Supports the development of team track with freight distribution and storage facilities; and
 - iii. Supports the development of facilities where shipments are transferred from one mode of transportation to another and intermodal services.

16:53C-[5.5]5.6 Project agreement

(a) After an applicant has been notified of selection and has accepted financial assistance for a project, a project agreement shall be executed.

[(a)] (b) The project agreement will include, but not be limited to, the following terms and conditions:

- 1.-6. (No change.)
- 7. That the sponsor shall provide professional engineering plans at the discretion of the Department; [and]
- 8. That the sponsor shall agree to retain and make available to the Commissioner, for the purpose of audit and examination, any financial records, supporting documents, papers, statistical records, contracts, and all other records pertinent to, arising out of, or connected with the implementation of the project. The records shall be available for a period of three years after project closeout, or for any longer period necessary to resolve audit findings, following the payment by the Commissioner of the final invoice under the agreement[.]; and
- 9. A certification signed by the applicant, or the owner of the property if other than the applicant, agreeing that the State may record a lien against the property in an amount equivalent to the full value of the Rail Freight Assistance Program funding as a guarantee that the applicant, or owner of the property if other than the applicant, will cause or use its best efforts to cause common rail freight service to be provided using the rail freight facilities or right-of-way that is the subject of assistance for a period of no less than five years from the date the State provides written notification of acceptance of the funded project is complete.

SUBCHAPTER 6. ANNUAL LISTING OF ELIGIBLE PROJECTS

16:53C-6.1 Listing of eligible projects

(a) Annually, the Department shall publish a list of projects that are eligible for assistance from the State Rail Freight Assistance Program on its website at <http://www.state.nj.us/transportation/freight/rail/>.

(b) The list shall include project descriptions and cost.

(c) Notice of the list's publication shall be provided to elected officials representing communities where the projects are located. Requests for hard copies may be addressed to:

New Jersey Department of Transportation
Bureau of Multimodal Grants and Programs
Division of Multimodal Services
Main Office Building, 3rd Floor
1035 Parkway Avenue
PO Box 600
Trenton, NJ 08625-0600
Phone: (609) 530-2847

SUBCHAPTER [6.] 7. (No change in text.)

TREASURY — GENERAL

(a)

DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION

State Leasing and Space Utilization

Proposed Amendments: N.J.A.C. 17:11-1.3, 2.4, 4.3, 6.4, 7.5, 8.1, 8.2, 8.3, and 9.4

Authorized By: Ford M. Scudder, Acting State Treasurer, through Steven M. Sutkin, Director, Division of Property Management and Construction.

Authority: N.J.S.A. 52:18A-191.1 et seq., specifically 52:18A-191.8.
Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-025.

Submit comments by April 16, 2016, to:

Charles Connery, Assistant Deputy Director
Division of Property Management and Construction
33 West State Street, P.O. Box 034
Trenton, New Jersey 08625-0034
Fax: (609) 984-8495
E-mail: Charles.connery@treas.state.nj.us

The agency proposal follows:

Summary

The Division of Property Management and Construction (DPMC) proposes to amend N.J.A.C. 17:11, which governs the State's space leasing process. The technical and substantive amendments are intended to improve the administration of the State's leasing program and are as follows:

Subchapter 1. General Provisions

DPMC proposes to amend N.J.A.C. 17:11-1.3, Definitions, to correct the misspelling of the word "coterminous" in the definition of the term "conterminous amendment." The current definition spells the word "co-terminus."

DPMC also proposes to amend N.J.A.C. 17:11-1.3 to change the defined term "Request for Space Proposal (RFP)" to "Request for Leased Space Proposal (RFP)." This change will more accurately represent the title of the document as it is used by DPMC.

Subchapter 2. Rules of General Applicability

DPMC proposes to amend subsection (a) of N.J.A.C. 17:11-2.4, Negotiation of leases in special circumstances, to substitute the acronym "RFPs" for the defined term "leased space proposals," and to substitute the acronym "SPR" for the defined term "space planning request." As these acronyms are used consistently throughout the rules, these changes are being made for the sake of internal consistency.

DPMC proposes to amend N.J.A.C. 17:11-2.4(b)6 to correct the misspelling of the word "coterminous" in the term "co-terminous amendment."

Subchapter 4. State Agency Requests for Space

DPMC proposes to amend subsection (c) of N.J.A.C. 17:11-4.3, Occupancy of space after approval of SPR, to correct the citation of N.J.A.C. 17:11-5.1, Advertising process, incorrectly cited in the current rule as N.J.A.C. 17:11-5.

Subchapter 6. Site Evaluation and Recommendation

DPMC proposes to amend N.J.A.C. 17:11-6.4, Prices, paragraph (c), to correct the citation of N.J.A.C. 17:11-6.10, Negotiations, incorrectly cited in the current rule as N.J.A.C. 17:6-6.11.

Subchapter 7. State Leasing and Space Utilization Committee Approval

DPMC proposes to amend N.J.A.C. 17:11-7.5, Cancellation of an NPL, to clarify the first sentence by changing the phrase "subsequent to Committee approval and prior to execution" to "subsequent to Committee approval and prior to execution of the lease."

Subchapter 8. Hearings

DPMC proposes to change the heading of N.J.A.C. 17:11-8.1 from “Informal hearings/subject matter” to “Hearings/subject matter.” The Administrative Procedure Act, N.J.S.A. 52:14B-1. et seq. (the “APA”), abolished the dichotomy between “informal hearings” and “formal hearings” by creating a category of “contested cases” to which a variety of procedural consequences attach. N.J.S.A. 52:14B-2(b). Administrative matters not deemed “contested cases” are not subject to the same stringent procedural requirements. Challenges or protests relating to the award of a lease by an unsuccessful applicant or bidder are not “contested cases” under the APA. N.J.A.C. 17:11-8.1(b). As such, the change to the heading of this section reflects the APA’s abolition of the formal/informal hearing distinction and its replacement by a regulatory scheme consisting of “contested cases” and administrative hearings in matters not considered “contested cases.”

DPMC also proposes to change N.J.A.C. 17:11-8.1(b) by adding the words “or challenges” after “[p]rotests.” This will clarify that neither “protests” nor “challenges” to lease award decisions are considered “contested cases” under the APA and that the rule covers both types of hearings.

DPMC proposes to amend both paragraph (c)2 of N.J.A.C. 17:11-8.2, Protest procedures; rejection of a leased space proposal, and paragraph (d)2 of N.J.A.C. 17:11-8.3, Challenge procedures; challenge to a notice of proposed lease. The language of both paragraphs is identical. The proposed amendments replace “may” with “shall either” and delete reference to a hearing officer and language concerning a hearing officer’s report.

Under N.J.A.C. 17:11-8.1(a), all references to the DPMC Director with regard to the conduct of hearings “include the Director’s designee.” This allows the DPMC Director to either conduct hearings and issue final agency orders personally or delegate the authority to an appropriate designee. The current language that DPMC proposes to delete from the rule describes a procedure whereby the Director’s designee conducts the hearing and then issues an advisory opinion, to which the parties may provide comments and exceptions in advance of formal action taken by the Director personally. In view of the authority granted to the Director under N.J.A.C. 17:11-8.1(a) to delegate the issuance of final agency orders to a designee, the hearing procedures outlined in the text proposed for deletion are superfluous and unnecessary.

DPMC also proposes to amend N.J.A.C. 17:11-8.2(c) to change the word “sites” to “site.”

DPMC also proposes to amend N.J.A.C. 17:11-8.3(d) to correct a typographic error in the spelling of “statutes.”

Subchapter 9. Construction

DPMC proposes to amend N.J.A.C. 17:11-9.4, Requests for renovation, to correct the citation of N.J.A.C. 17:11-12.3, Renovations, incorrectly cited in the current rule as N.J.A.C. 17:11-11.3.

As DPMC has provided a 60-day comment period on 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.

Social Impact

The proposed amendments consist of minor non-substantive changes in verbiage, correction of typographical errors, and clarification of DPMC’s administrative hearing procedures. Beyond an improved understanding of DPMC’s hearing procedures, no social impact is anticipated.

Economic Impact

The proposed amendments consist of minor non-substantive changes in verbiage, correction of typographical errors, and clarification of DPMC’s administrative hearing procedures. No economic impact is anticipated.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are authorized by the provisions of N.J.S.A. 52:18A-191.1 et seq., and are not subject to any Federal requirements or standards.

Jobs Impact

The Division does not anticipate that the proposed amendments will have any impact on job generation or loss.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments consist of minor non-substantive changes in verbiage, correction of typographical errors, and clarification of DPMC’s administrative hearing procedures. None of the prospective changes would impose additional compliance requirements on small businesses, as that term is defined within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The types of small businesses affected by the rules are those that are potential lessors responding to State advertisements requesting leased space proposals.

Housing Affordability Impact Analysis

The Division does not anticipate that the proposed amendments will have any impact on the availability of affordable housing, as the amendments consist of minor non-substantive changes in verbiage, correction of typographical errors, and clarification of DPMC’s administrative hearing procedures.

Smart Growth Development Impact Analysis

The proposed amendments consist of minor non-substantive changes in verbiage, correction of typographical errors, and clarification of DPMC’s administrative hearing procedures. None of the prospective changes would negatively impact the principles of smart growth, implementation of the State Development and Redevelopment Plan, or affect housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

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

17:11-1.3 Definitions

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

...
 “[Co-terminus] **Coterminous** amendment” means a change that amends the substance of an existing lease to include additional space and provides that the lease term for the additional space will terminate on the same date as the original lease.

...
 “Request for [Lease] **Leased Space** Proposal (RFP)” means the solicitation document developed by DPMC for a specific space requirement. The RFP consists of a Scope of Work based on the SPR, the time and date specified for the submission, the format of the proposal, and other information specified by DPMC.

17:11-2.4 Negotiation of leases in special circumstances

(a) DPMC may elect not to advertise for [leased space proposals] **RFPs** when the Director of DPMC determines that the [space planning request] **SPR** involves such specialized, unique, or mandated characteristics or requirements that a competitive process would be unlikely to result in a more cost effective proposed lease agreement.

(b) The requisite specialized, unique, or mandated characteristics or requirements are present in, but are not limited to, the following circumstances:

- 1.-5. (No change.)
- 6. A [co-terminus] **coterminous** amendment to an existing lease for additional space to house expansion of existing programs that cannot function independently at a separate location;
- 7.-11. (No change.)
- (c) (No change.)

17:11-4.3 Occupancy of space after approval of SPR

- (a)-(b) (No change.)
- (c) In the event DPMC determines that leasing of additional space is in the best interests of the State, DPMC will advertise for available

properties in accordance with N.J.A.C. 17:11-5.1, unless it determines not to advertise pursuant to N.J.A.C. 17:11-2.4.

(d) (No change.)

17:11-6.4 Prices

(a) (No change.)

(b) Unless the RFP states otherwise, the prices submitted shall remain effective for 90 days after the opening date, subject to any negotiations conducted in accordance with N.J.A.C. 17:11-[6.11]6.10.

17:11-7.5 Cancellation of an NPL

Any request by a State agency for cancellation of an NPL subsequent to Committee approval and prior to execution of the lease, must be submitted in writing to the Director of DPMC. The Director may, at his or her discretion, grant or deny the request and assess the State agency for any expenses to the State resulting directly from the cancellation, including, but not limited to, planning [and or] and/or construction costs and any rent payable.

17:11-8.1 [Informal hearings] Hearings; subject matter

(a) (No change.)

(b) Protests or challenges of the type described in this subchapter, for the purpose of this chapter, are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

17:11-8.2 Protest procedures; rejection of a leased space proposal

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

(c) The Director shall, upon receipt of a timely protest to the rejection of a proposed lease agreement, issue a final written decision on the protest prior to making a determination of the most cost effective site[s].

1. (No change.)

2. The Director [may] shall either perform a review of the written record or conduct an oral presentation directly, [or may appoint a hearing officer. In the case of the latter, the hearing officer's report shall be

advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10-day period for comments or exceptions, the Director] and thereafter shall make a final written decision on the matter.

17:11-8.3 Challenge procedures; challenge to a notice of proposed lease

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

(d) Any challenge which satisfies all requirements set forth in (a) through (c) above, shall be resolved by written decision of the Director on the basis of the Director's review of the written record including, but not limited to, the written challenge, the terms, conditions, and requirements of the RFP and Scope of Work, the proposals submitted in response to the RFP, pertinent administrative rules, [statues] statutes, and case law, and any associated documentation the Director deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

1. (No change.)

2. The Director [may] shall either perform a review of the written record or conduct an oral presentation directly, [or may appoint a hearing officer. In the case of the latter, the hearing officer's report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10-day period for comments or exceptions, the Director] and thereafter shall make a final written decision on the matter.

(e) (No change.)

17:11-9.4 Requests for renovation

Any State agency requesting renovations to a leased building in which it is a tenant shall conform to the provisions of N.J.A.C. 17:11-[11.3]12.3.
