

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY, MARCH 9, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule Waiver/Extension adopted by Diane Gutierrez-Scaccetti, Commissioner, New Jersey Department of Transportation

Date: April 21, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy) (“EO 103”)

Effective Date: April 21, 2020

Expiration Date: Concurrent with end of EO 103

This is an emergency adoption of a temporary rule waiver/extension of the New Jersey Department of Transportation (“NJDOT”) regulations at N.J.A.C. 16:44-3.4(d). Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the NJDOT is waiving/extending its rules as follows:

N.J.A.C. 16:44-3.4(d) requires that contractors must reclassify every 18 months to remain eligible to bid on NJDOT work. This classification expires 18 months “after the close of business date of the financial statement accompanying the [original classification] Questionnaire.” N.J.A.C. 16:44-3.4(d) further requires that contractors submit a new questionnaire at least 15 days prior to the expiration date of their 18 month classification. Failure to do so will result in a contractor’s classification expiring, and the contractor’s inability to bid on NJDOT projects unless the contractor then submits, and the NJDOT receives, a “completed and satisfactory Questionnaire” at least 15 days prior to the date on which bids are received.

It is necessary due to the current COVID-19 emergency to waive these rule requirements and extend the NJDOT classification expiration dates and renewal period by an additional 3 months for any firm whose classification is set to expire on or before June 30, 2020 in order for contractors to effectively continue to operate and bid on public works projects without additional hardship while practicing social distancing guidelines. Failure to extend these dates would render firms unable to bid and compete for various public works projects, creating additional hardships, and deprive the public of the benefits of competitive bidding on state projects.

The specific waiver provision provides:

The requirement set forth in N.J.A.C. 16:44-3.4(d), that a contractor’s classification expires 18 months after the close of business date of the financial statement accompanying its original classification questionnaire, is extended by 3 months.

This waiver, providing for the 3 month extension, is effective immediately. For classifications expiring on or after July 1, 2020, this waiver shall have no effect absent further waiver by the Commissioner of the NJDOT.

I find that waiver/extension of the rules included above are necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

April 23, 2020
Date



Diane Gutierrez-Scaccetti, Commissioner
New Jersey Department of Transportation