

CHAPTER 56

AIRPORT SAFETY IMPROVEMENT AID

Authority

N.J.S.A. 6:1-29, 6:1-44, 27:1A-5, 27:1A-6 and "Airport Safety Act of 1983" P.L. 1983, c.264, effective July 11, 1983 (N.J.S.A. 6:1-89 et seq.).

Source and Effective Date

R.1999 d.207, effective June 10, 1999.
See: 31 N.J.R. 928(a), 31 N.J.R. 1820(a).

Executive Order No. 66(1978) Expiration Date

Chapter 56, Airport Safety Improvement Aid, expires on June 10, 2004.

Chapter Historical Note

Chapter 56, Aircraft Registration, was adopted prior to September 1, 1969.

Subchapter 3, Aircraft Registry Log, was repealed by R.1981 d.341, effective September 10, 1983. See: 13 N.J.R. 457(b), 13 N.J.R. 616(b).

Chapter 56, Aircraft Registration, was repealed by R.1983 d.476, effective June 4, 1984.

Chapter 56, Airport Safety Improvement Aid, was adopted as new rules by R.1984 d.207, effective June 4, 1984. See: 16 N.J.R. 694(a), 16 N.J.R. 1372(a). Pursuant to Executive Order No. 66(1978), Chapter 56 expired on June 4, 1989.

Chapter 56, Airport Safety Improvement Aid, was adopted as new rules by R.1989 d.413, effective August 7, 1989. See: 21 N.J.R. 1502(a), 21 N.J.R. 2299(b).

Pursuant to Executive Order No. 66(1978), Chapter 56, Airport Safety Improvement Aid, was readopted as R.1994 d.372, effective June 22, 1994. See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

Pursuant to Executive Order No. 66(1978), Chapter 56, Airport Safety Improvement Aid, was readopted as R.1999 d.207, effective June 10, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. DEFINITIONS

16:56-1.1 Definitions

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

“Airport Safety Fund” means the special fund established by the “Airport Safety Act of 1983” to help finance improvements to air safety and travel.

“Applicant” means any person seeking funds from the Airport Safety Fund.

“Commissioner” means the Commissioner of the New Jersey Department of Transportation.

“Department” means the Department of Transportation.

“Division” means the Division of Aeronautics.

“Executive Director” means the Executive Director of the Division of Aeronautics.

“Person” means any corporation, company, association, society, firm, partnership, or joint stock company, as well as any individual, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

“Sponsor” means any person in receipt of funds from the Airport Safety Fund.

“State Aid” means funds disbursed from the Airport Safety Fund for the purposes of this chapter.

“Unrestricted public use airport” means any area of land, water, or both, either publicly or privately owned, which is licensed for the landing or takeoff of aircraft and open to the public for aeronautical operations that does not have restrictive covenant on operational use by the general public for reasons other than safety.

“Waiver” means relief from application requirements of this rule or temporary relief from other provisions of this rule for a specified time period.

Amended by R.1994 d.372, effective July 18, 1994.
See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

Case Notes

Airport statute renders property used for or reasonably necessary for or incidental to a municipal airport immune from zoning regulations; municipality cannot invade immunity by inhibiting appropriate uses of such property; township ordinance prohibiting use of airport by commercial air carriers held invalid (citing former rule). *Town of Morristown, v. Tp. of Hanover*, 168 N.J.Super. 292, 402 A.2d 983 (App.Div. 1979).

SUBCHAPTER 2. PURPOSE

16:56-2.1 Purpose and general policy

(a) The legislature has found that:

1. New Jersey’s public use general aviation airports are an integral part of the State’s transportation network and promote mobility and economic activities of common public benefit. These public use general aviation transportation facilities must be improved in order to realize their full benefit.

2. There is a need to improve general aviation airports, which require such improvements and equipment as radar, instrument landing aids and weather-reporting equipment to enable them to safely handle modern general aviation aircraft.

3. Many publicly owned general aviation airports are unable to obtain all of the federal funds available to them for airport development because they are unable to raise money for their local matching requirements.

4. Many privately owned public use general aviation airports which are essential to the State’s economic development are in danger of conversion to non-aviation uses, and it is in the public interest to provide State assistance to preserve these airports, through acquisition or other means.

(b) The Commissioner of Transportation is therefore establishing programs:

1. To provide grants to publicly and privately owned unrestricted public use airports to obtain federal funds for airport assistance. The Commissioner is authorized to provide up to 50 percent of the required local match; except that the Commissioner is authorized to provide up to 100 percent of the required local match when he deems that an emergency situation exists.

2. To provide grants or loans to publicly owned and private unrestricted public use airports for safety projects, including but not limited to engineering, planning, construction and rehabilitation of lighting runways, aprons, airport approach aids and obstruction removals.

3. To provide grants or loans to publicly owned airports or counties or municipalities to acquire airports or lands, rights in land and easements, including aviation easements necessary for clear zones or clear areas, which are owned, controlled or operated, or to be owned, controlled or operated by municipalities, counties or other political subdivisions of this State.

4. To acquire lands or rights in lands adjacent to privately owned public use airports which are found necessary for airport or air safety purposes, and while retaining title to that land or right in land, the Commissioner may lease those lands or rights to airports or airport authorities for use in the furtherance of airport, air safety, or air transportation purposes. The Commissioner shall establish terms in any lease so as to protect the State's interest in the promotion of aviation and the State's investment in lands and property.

(c) Under these programs the Commissioner is to establish requirements to ensure that having received aid:

1. The airport will be owned or effectively controlled, operated, repaired and maintained adequately during the improvement's full useful life, for the benefit of the public.

2. In connection with the operation of the airport, during the improvement's full useful life, the public will not be deprived of its rightful, fair, equal and uniform use of the airport.

3. The airport will adhere to State and federal laws and regulations. If an airport ceases operations or fails to continue to comply with the provisions of this chapter before the predetermined life of the financially assisted improvements, as the life is determined by the Commissioner at the time the financial assistance is granted, the State shall be reimbursed for the unused portion of the predetermined life and, if not fully reimbursed, the claim shall be a first lien of the airport property to the extent of the unpaid balance or subject to other penalty or liability.

4. If a county or municipality or other public body received financial assistance for acquisition of real property, that property shall not be sold or used for any non-aviation purpose without the approval of the Commissioner.

(d) In addition to accepting applications for aid from airport authorities, the Commissioner may, after having reviewed State needs and transportation infrastructure requirements, propose to interested parties concepts for airport improvement projects which the Commissioner deems to have potential merit. Any project concept proposed by the Commissioner shall be a matter of public record and be made available for persons wishing to inspect any of the conceptual recommendations. The furtherance of any conceptual recommendations of the Commissioner shall be made by the applicable local sponsors under the provisions of this chapter and may not receive preferential consideration over other applications for aid made under the provisions of this chapter.

(e) In the management of the "Airport Safety Fund" the Commissioner may institute budgeting, management and fund allocation procedures and practices so as to insure the solvency of the fund at all times and availability of funds for the various classes of aid available from the Airport Safety

Fund. At any given time, the Commissioner may place a ceiling on the disbursement of any one class of aid within the fund so as to insure the availability of funds for any other class of aid, or to provide for sufficient resources to meet future or anticipated funding requirements.

(f) Under these programs of airport aid, it is the express intention of the Department to promote:

1. Good engineering practice in the design and construction of aeronautical facilities, current and future.

2. Site plan analysis at aeronautical facilities which considers both immediate needs and the potential for future site modification.

3. Comprehensive, coordinated, and cooperative planning and development of the State's air transportation resources.

4. Ongoing conformance with all rules and regulations, applicable to the design and operation of aeronautical facilities.

5. Exploration of alternative designs in the ongoing improvement of aeronautical facilities so as to maximize potentials for efficient use of resources.

SUBCHAPTER 3. ELIGIBILITY

16:56-3.1 Eligible facilities

(a) Airports eligible for aid under this chapter are unrestricted public use airports which are not international airports by classification or service characteristics.

(b) Projects eligible for consideration for funding under the provisions of this chapter include, but are not limited to, the following:

1. Runway construction.
2. Taxiway construction.
3. Runway overlays or rehabilitation.
4. Taxiway overlays or rehabilitation.
5. Runway and taxiway lighting.
6. Aeronautical and airport beacons.
7. Runway identification and approach lighting.
8. Electronic and visual aids to aircraft navigation.
9. Wind indicator devices.
10. Tree clearing.
11. Runway/Taxiway safety/security fencing.
12. Acquisition of interests in land for clear zone purposes.

13. Equipment dedicated to aircraft Crash/Fire/Rescue purposes.
14. Equipment dedicated to aircraft search and rescue purposes.
15. Runway obstruction removal and marking.
16. Public use (non-revenue generating) aprons.
17. Necessary airport engineering/planning/environmental studies.

(c) Airport and aviation safety projects other than those listed above may at the discretion of the Commissioner be considered for funding under the provisions of this chapter providing they are in conformance with the purposes of "The Airport Safety Act of 1983" and Title 6 and 27 of the New Jersey Statutes. The purpose of this paragraph is to allow a procedure for which applicants may apply for consideration for funding of a project which, while consistent with the provisions of applicable statutes, may not otherwise be referenced directly within this chapter.

Amended by R.1994 d.372, effective July 18, 1994.
See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 4. CLASSIFICATION

16:56-4.1 Classification of State aid

(a) There are three major classifications of State aid made available under the provisions of this chapter. These forms of aid are:

1. State grants for matching Federal funds.
2. State airport safety improvement loans.
3. State airport safety improvement grants.

(b) The classification of aid established in (a) above are three forms by which the State may authorize aid in the funding of improvements to the air transportation infrastructure and for the purposes of improvement of air and flight safety. Projects specifically eligible for consideration for funding under certain provisions of this chapter are identified in N.J.A.C. 16:56-3.1 of this chapter. Aid given or offered under N.J.A.C. 16:56-8.1 of this chapter shall also be authorized in the form of one of the three classifications established in this section. Additionally, aid for aviation planning purposes may be authorized under N.J.A.C. 16:56-11.2.

(c) State grants for matching Federal funds are grants offered to eligible recipients of Federal aid to airports for the purpose of assisting local sponsors in attracting Federal funds for airport improvement. Grants for this purpose may be given or offered subject to the following parameters:

1. Routinely, the Commissioner may grant up to 50 percent of local sponsor's share in a Federally funded project.

2. In an emergency situation, the Commissioner may grant up to 100 percent of the local sponsor's share in a Federally funded project.

3. While there is no dollar limitation on the amount the Commissioner may grant in either (c)1 or 2 above, the Commissioner may not grant an amount exceeding 10 percent of a total project cost to a local sponsor matching Federal funds.

(d) State airport safety improvement loans are two percent annual interest loans given or offered to an eligible local sponsor for the purpose of assisting local sponsors in funding the improvement of the air transportation infrastructure. Loans for this purpose may be given or offered subject to the following parameters:

1. Airport safety improvement loans are given or offered solely to fund the physical materials used in an airport project. Loans may not be used to fund engineering, planning, labor, or construction equipment rental/acquisition costs associated with an airport project.

2. Airport safety improvement loans are limited to \$90,000 maximum authorization to any eligible local sponsor (airport).

3. The improvements made using airport safety improvement loans shall be given a useful life of 10 years unless the plans and specifications for the improvement indicate to the satisfaction of the Commissioner that the time period should be greater or lesser than 10 years.

4. Airport safety improvement loans shall be repaid to the State in a time proportional to the useful life of the project it helps fund. A 10 year useful life would require that 10 percent of the principal amount of the loan be repaid to the State annually. A 20 year useful life, for example, would require that five percent of the principal amount of the loan be repaid to the State annually until such time that the debt to the State is retired.

5. Airport safety improvement loans may be used to fund only those materials actually used in the named project. Waste, rejected, spoiled, or excess materials not actually used in the as built construction may not be funded in any manner with State funds.

6. All airport safety improvement loans must be fully secured by property equity or other assets satisfactory to the Commissioner, or his representatives, so as to insure payment to the State of financial aid it has rendered in its programs.

(e) All airport safety improvement grants are grants given or offered to an eligible recipient or local sponsor for the purpose of assisting in the funding of the improvement of the air transportation infrastructure or for the purpose of promoting air or flight safety. Grants for this purpose may be given or offered subject to the following parameters:

1. Airport safety improvement grants may be authorized for projects and sponsors eligible under N.J.A.C. 16:56-3.1.

2. Grants for routine airport safety improvement projects are generally limited to a \$100,000 maximum authorization biennially (24 month period) to any eligible sponsor. Project grants in excess of \$100,000 may be authorized by the Commissioner on a case-by-case basis when such aviation development is in the best interests of the State and will benefit the flying public as a whole. The State's participation in grants exceeding \$100,000 shall not exceed 90 percent of the total project cost and the sponsor's participation shall not be less than 10 percent of the total project cost.

3. Airport safety improvement grants may be developed or conditioned as to the specific provisions on a case by case basis by the Commissioner. The Commissioner may not, however, develop or offer a grant which funds operational costs or debt service financial needs of a project or eligible recipient of aid.

4. The improvements made using airport safety improvement grants shall be given a useful life of 10 years unless the plans and specifications for the improvement indicate to the satisfaction of the Commissioner that the time period should be greater or lesser than 10 years.

(f) The Commissioner, when authorizing aid from the Airport Safety Fund, retains absolute discretion within the limits of the applicable statutes to determine thresholds of State participation in any project funded under the provisions of this chapter. Maximum thresholds and percent of State participation determinations in State funded projects may be made by the Commissioner on either a categorical or case by case basis. The Commissioner may promulgate Departmental Policies, Procedures, and orders to aid in the implementation of the provisions of this chapter.

(g) These shall be absolute upper limits to the aid authorized under this chapter. The purpose of these limits is to help ensure that there are sufficient resources available for state aid to the greatest number of eligible airports and that State resources for any one year are not expended on a limited few airport projects. The absolute upper limit of aid as authorized to an eligible sponsor shall be as follows:

1. The biennial limit on State Airport Safety Improvement grants is \$100,000, except when specifically exempted by the Commissioner under N.J.A.C. 16:56-4.1(e)2.
2. The limit on State Airport Safety Improvement Loans is \$90,000.
3. The limit on State Grants for Matching Federal Funds is 10 percent of any total project cost.
4. The limit on aid for aviation planning purposes shall be determined by the Commissioner under the provisions of N.J.A.C. 16:56-11.2.

Amended by R.1985 d.366, effective July 15, 1985.

See: 17 N.J.R. 1067(a), 17 N.J.R. 1779(a).

Improvement grants raised from \$7,500 to \$15,000.

Amended by R.1986 d.246, effective July 7, 1986.

See: 18 N.J.R. 933(b), 18 N.J.R. 1402(a).

Annual maximum raised from \$15,000 to \$50,000.

Amended by R.1987 d.465, effective November 16, 1987.

See: 19 N.J.R. 1634(b), 19 N.J.R. 2200(a), 19 N.J.R. 2200(a).

Substantially amended section and a correction deleting "an annual" in (d)2.

SUBCHAPTER 5. APPLICATION FOR MATCHING FEDERAL FUNDS

16:56-5.1 Application for receipt of State grants for matching Federal funds

(a) Persons seeking State grants for matching funds may request application and agreement forms by writing to the following address:

Division of Aeronautics
N.J. Department of Transportation
1035 Parkway Avenue
PO Box 610
Trenton, New Jersey 08625-0610

(b) If the intended project is a construction or facility modification project the applicant shall:

1. Engage a professional engineer registered in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.
2. Provide certified maps, reports, construction plans and specifications and contract documents as may be required by the State.

(c) For construction or installation projects, the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration," as required under N.J.A.C. 16:54.
2. A copy of the Federal Aviation Administration approved Airport Layout Plan.
3. Detailed construction plans and specifications of the project and materials used therein and a construction schedule. These submissions are to be prepared by the applicant's engineer.
4. Detailed cost sheets for the materials to be used in the project to include required as built quantities, material specifications and unit prices.
5. Completed application and agreement forms as provided by the Department.
6. Any other materials or information deemed necessary by the Department.

(d) For aid applications requesting equipment for crash/fire/rescue or aid for necessary airport engineering/planning/environmental studies, the application shall submit the completed forms, provided by the Department and supply additional information as requested.

(e) The Commissioner may waive the requirement to submit specific maps, reports, or plans normally required for an aid application. The waivers may be granted only after a written request to the Executive Director and formal written response to the applicant by the Executive Director prior to submission of the completed application to the Division.

Amended by R.1994 d.372, effective July 18, 1994.

See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

Amended by R.1999 d.207, effective July 6, 1999.

See: 31 N.J.R. 928(a), 31 N.J.R. 1820(a).

SUBCHAPTER 6. APPLICATION FOR SAFETY IMPROVEMENT LOANS

16:56-6.1 Application for receipt of State Airport Safety Improvement Loans

(a) Persons seeking State Airport Safety Improvement Loans may request application and agreement forms by writing to the following address:

Division of Aeronautics
N.J. Department of Transportation
1035 Parkway Avenue
PO Box 610
Trenton, New Jersey 08625-0610

(b) If the intended project is a construction or facility modification project the applicant shall:

1. Engage a professional engineer registered in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

2. Provide certified maps, reports, construction plans and specifications and contract documents as may be required by the Department.

(c) For construction or installation project(s), the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration," as required under N.J.A.C. 16:54.

2. A legal deed or instrument verifying ownership including a narrative legal description of the metes and bounds of the airport property certified as accurate by a New Jersey registered land surveyor or professional engineer.

3. A statement or certificate from the appropriate governing body that the proposed facility or the construction, demolition, or modification of an existing facility as submitted in the application is not contrary to current zoning codes or ordinances. If the proposed facility or the construction, demolition, or modification of an existing facility is contrary to current zoning codes or ordinances, the applicant shall submit a statement detailing the conflict and explaining the need for the proposed facility alteration, together with copies of all relevant provisions of the pertinent zoning laws and applications which have been made for local zoning approval.

4. A completed copy of "Notice of Landing Area Proposal" or "Notice of Proposed Construction or Alteration" (FAA Forms 7480-1 or 1460-1 as it may be amended or superseded) at the same time it is forwarded to the Federal authorities.

5. Detailed construction plans and specifications of the project and materials used therein and a construction schedule. These submissions are to be prepared by the applicant's engineer.

6. Detailed cost sheets for the materials to be used in the project to include required as built quantities, material specifications, unit prices and source vendors. These costs sheets to be prepared by the applicant's engineer.

7. Completed application and agreement forms as provided by the Department.

8. Any other materials or information deemed necessary by the Department.

(d) For aid applications requesting equipment for crash/fire/rescue or search and rescue purposes, the applicant shall submit the completed forms provided by the Department and supply additional information as requested.

(e) The Commissioner may waive the requirement to submit specific maps, reports, or plans normally required for an aid application. The waivers may be granted only after a written request to the Executive Director and formal written response to the applicant by the Executive Director prior to submission of the completed application to the Division.

Amended by R.1994 d.372, effective July 18, 1994.

See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

Amended by R.1999 d.207, effective July 6, 1999.

See: 31 N.J.R. 928(a), 31 N.J.R. 1820(a).

SUBCHAPTER 7. APPLICATION FOR SAFETY IMPROVEMENT GRANTS

16:56-7.1 Application for receipt of State Airport Safety Improvement Grants

(a) Persons seeking State Airport Safety Improvement Grants may request application and agreement forms by writing to the following address:

Division of Aeronautics
N.J. Department of Transportation
1035 Parkway Avenue
PO Box 610
Trenton, New Jersey 08625-0610

(b) If the intended project is a construction or facility modification project the applicant shall:

1. Engage a professional engineer registered in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

2. Provide certified maps, reports, construction plans and specifications and contract documents as may be required by the Department.

(c) For construction or installation projects, the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration," as required under N.J.A.C. 16:54.

2. A legal deed or instrument verifying ownerships including a narrative legal description of the metes and bounds of the airport property certified as accurate by a New Jersey registered land surveyor or professional engineer.

3. A statement or certificate from the appropriate governing body that the proposed facility or the construction, demolition, or modification of an existing facility as submitted in the application is not contrary to current zoning codes or ordinances. If the proposed facility or the construction, demolition, or modification of an existing facility is contrary to current zoning codes or ordinances, the applicant shall submit a statement detailing the conflict and explaining the need for the proposed facility alteration, together with copies of all relevant provisions of the pertinent zoning laws and applications which have been made for local zoning approval.

4. A completed copy of "Notice of Landing Area Proposal" or "Notice of Proposed Construction or Alteration" (FAA Forms 7480-1 or 7460-1 as it may be amended or superseded) at the same time it is forwarded to the federal authorities.

5. Detailed construction plans and specifications of the project and materials used therein and a construction schedule. These submissions are to be prepared by the applicant's engineer.

6. Detailed cost sheets for the material to be used in the project to include required as built quantities, material specifications, unit prices, and source vendors. These cost sheets are to be prepared by the applicant's engineer.

7. Completed application and agreement forms as provided by the Department.

8. Any other materials or information deemed necessary by the Department.

(d) For aid applications requesting equipment for crash/fire/rescue, search and rescue purposes, or aid for necessary airport engineering/planning/environmental studies, the applicant shall submit the completed forms provided by the Department and supply additional information as requested.

(e) The Commissioner may waive the requirement to submit specific maps, reports, or plans normally required for an aid application. The waivers may be granted only after a written request to the Executive Director and formal written response to the applicant by the Executive Director prior to submission of the completed application to the Division.

Amended by R.1985 d.719, effective February 3, 1986.
See: 17 N.J.R. 2017(a), 18 N.J.R. 308(b).

(c) vii: "1,500" changed to "500".
Amended by R.1994 d.372, effective July 18, 1994.
See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).
Amended by R.1999 d.207, effective July 6, 1999.
See: 31 N.J.R. 928(a), 31 N.J.R. 1820(a).

SUBCHAPTER 8. APPLICATION FOR EMERGENCY OR SPECIAL AID

16:56-8.1 Application for emergency or special State airport safety aid

(a) In the event that an applicant is unable to meet the deadlines of N.J.A.C. 16:56-9.1 and/or the process of N.J.A.C. 16:56-13.1, or requests alternate consideration of an application, an applicant may petition the Commissioner for emergency aid under the provisions of this chapter. An application filed for emergency aid may be processed in an expedited manner, but within the normal application procedures to the greatest degree possible.

(b) An applicant whose project would not qualify under the definitions of eligible projects under N.J.A.C. 16:56-3.1, of this chapter may petition the Commissioner for Special Aid. A project may be considered for funding provided it is determined consistent with those aviation purposes which the Department is empowered to undertake under "The New Jersey Airport Safety Act of 1983" (P.L. 1983, c.264), Title 6 and Title 27. An application for Special Aid will be processed within the normal application procedures processes unless otherwise so determined necessary by the Commissioner.

(c) Funding for special projects may not be made for projects which do not further the purposes of air or flight safety, the protection of the health and safety of the flying public, or the improvement or public acquisition of the infrastructure of airport operational areas open to the public for the takeoff and landing of aircraft. The State, under

this chapter, may not fund projects which have the primary purpose of generating revenue for a local sponsor. This provision does not preclude, however, a local sponsor from charging equitable landing fees at an airport.

(d) At the discretion of the Commissioner, funding for special projects may be made conditional upon any conditions of audit, bonding, or any other condition deemed necessary to insure protection and proper use of State resources.

Amended by R.1994 d.372, effective July 18, 1994.
Sec: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 9. DEADLINES

16:56-9.1 Deadlines for applications for State aid

(a) Applications for State aid are considered on an annual basis, based on information received under the Five-Year Capital Improvement Program (CIP). From the completed CIP's on file for any given year, projects will be selected for State aid participation.

(b) The deadline for submission of projects under the Five-Year Capital Improvement Program is the close of business on the 1st Monday of February.

(c) Any application for aid made under the provisions of this chapter shall be considered, at the time of filing, a document(s) of public record and shall be made available to persons wishing to inspect applications for State aid. Any portion of an application which is requested to be withheld from public inspection may not be considered as part of the application as filed. Should a required portion of an application be requested to be held as confidential, that application shall be deemed incomplete and may not be further considered for funding.

Amended by R.1994 d.372, effective July 18, 1994.
Sec: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 10. PROJECT SELECTION PROCESS AND CRITERIA

16:56-10.1 Airport aid project selection process and criteria considered

(a) Following the closing date for the receipt of Capital Improvement Program (CIP) information, all proposed projects will be reviewed by the Department to determine their eligibility for funding. Proposed projects found to be eligible may be considered for funding. If, following the initial determination of eligibility, it is found that additional information is necessary, the applicant shall provide that additional information so as to allow further consideration of the project.

(b) The Executive Director shall review all Capital Improvement Program projects to be considered for funding and evaluate those proposed projects in respect to applicable criteria for project funding, available State resources, current priorities for development of the air transport infrastructure, and significant environmental or economic factors.

(c) Within 60 days of the closing date for Capital Improvement Program projects, the Executive Director shall forward to the Commissioner the list of projects considered for funding that year, and the list of those projects recommended by the Executive Director to be funded from all projects considered. The recommendations of the Executive Director are to be provided exclusively to the Commissioner for review. The Executive Director may not otherwise release recommendations as they do not constitute a public commitment for Department action.

(d) Within 30 days of receipt of the lists of projects considered and projects recommended for funding, the Commissioner may order the preparation of offers for State aid from the projects selected by the Department for State funding. The Commissioner may extend this 30 day period as he determines necessary to allow full project reviews.

(e) In extending an offer for State aid, the Commissioner may offer to fund a complete eligible project as proposed, or any percent or portion of a proposed project.

(f) An applicant who receives an offer for State aid has 14 days to respond to indicate acceptance of the offer for State aid. Acceptance of an offer for State aid is nonbinding on an applicant until a grant agreement has been signed and accepted by the State and the sponsor. Failure to respond will be considered as rejection of the State aid offer.

(g) The applicant shall have 60 days after accepting an offer for State aid to submit a completed application. Applicants may request an extension of this deadline from the Executive Director. Extensions may be granted if the applicant demonstrates that additional time is required to prepare and submit a complete application based on project complexity or pending administrative approvals. The Division will review the application for completeness. Grant agreements will be prepared by the Division for complete applications received for approved projects.

(h) In considering Capital Improvement Program projects or any application for aid, the Executive Director and Commissioner shall give weight and consideration to the following criteria:

1. The common public benefit to be derived from the improvement.
2. The effect(s) of the project on both the local airport, and the overall system of airports.

3. Current State policy on transportation infrastructure improvement and economic development.
4. The impact of the project on the area surrounding the airport.
5. Availability of local funds for airport development.
6. The capture of federal funds.
7. Current and future demands for passenger service, based aircraft, and freight services.
8. Assuring that there is a viable network and reasonable distribution of services and state facilities throughout the State.
9. The extent to which the project would contribute to the welfare of the citizens of the State.

(i) In consideration of the various criteria applicable to the review of a Capital Improvement Program projects or application, the Commissioner reserves the right to evaluate the matrix of criteria in a manner which may take into account unique or special factors at any airport. Factors making an airport unique from any others may include the character of the market it serves, the type and use of based aircraft, the current or future role of the airport, nearby facilities offering similar services, or any other significant elements contributing to the character or utilization of the facility. To take into consideration special or unique factors, the Commissioner may evaluate criteria for individual applications giving differing weights to applicable criteria on a case-by-case basis.

(j) In evaluating Capital Improvement Program projects or applications for State Aid, the Commissioner may establish Department internal review procedures, review committees, or any other administrative mechanisms sufficient to handle in an expeditious manner the responsibilities of the Department in these programs. The Commissioner is required, however, to maintain an ongoing record of the specific review mechanisms used for the consideration of airport aid applications and to make available to applicants an outline of the current applicable internal review procedures.

Amended by R.1994 d.372, effective July 18, 1994.
See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 11. COMMISSIONER'S POWER

16:56-11.1 Discretion of the Commissioner in the selection of airport aid projects

(a) Unless otherwise restricted by law, the Commissioner has absolute discretion in the selection of airport aid projects and in the determination of funding levels, priorities, critical project selection criteria, project phasing, project

design and specifications, and local sponsor performance criteria.

(b) In the consideration of an airport aid project, the Commissioner may determine that a proposed project should be amended to accommodate available funding, applicable airport design criteria, anticipated use, or to better accommodate potential user needs. The Commissioner may offer State funding for a project whose specifications, terms, scope, or magnitude have been amended by either the Commissioner or by agreement of the Commissioner and the local sponsor.

(c) In the event that the Commissioner (or any representatives) confers with an applicant or local sponsor to amend a proposed project, the applicant or local sponsor is hereby put on notice that this process of consultation and amendment does not insure ultimate selection or granting of aid for that project.

(d) The Commissioner may withdraw, at any time, an offer to aid an applicant or airport sponsor in an airport project.

16:56-11.2 Funding of aviation planning studies

(a) In addition to the eligibility criterion for sponsors and projects outlined in N.J.A.C. 16:56-3, the Commissioner may fund from the Airport Safety Fund aviation planning studies including, but not limited to, feasibility studies, system plan studies, master plan studies, facility siting studies and aviation economic studies. The Department, county governments and municipal governments shall be eligible to sponsor aviation planning studies.

(b) The funding of construction and safety projects may have general priority over aviation planning studies, unless determined otherwise by the Commissioner.

(c) The Commissioner shall have discretion in the selection of sponsors, project funding levels, project phasing, scope and specification of work programs and local sponsor performance criteria.

(d) Unless otherwise specified in any planning project agreement, a local sponsor shall generally be deemed to have fulfilled his obligations to the Department upon the final acceptance by the Commissioner of all planning study reports and the finding by the Commissioner of satisfactory completion of the project work program. This does not, however, relieve a sponsor of audit and recordkeeping requirements specified under N.J.A.C. 16:56-14.1 of this chapter or any other specified performance, recordkeeping or audit requirements.

(e) Application, approval and payment or transfer of funds for aviation planning studies shall be done on the forms and in the manner which may be prescribed by the Commissioner, or when applicable, by the Treasurer of the State of New Jersey.

New Rule, R.1987 d.465, effective November 16, 1987.
See: 19 N.J.R. 1634(b), 19 N.J.R. 2200(a).

SUBCHAPTER 12. STANDARDS, METHODS, TECHNIQUES AND DESIGNS

16:56-12.1 Specifications of standards, methods, techniques, and designs acceptable in State funded projects

(a) The Commissioner reserves the right to specify or make determinations as to the standards, methods, techniques, designs and dimensional criteria acceptable in State funded airport aid projects.

(b) The Department may publish, as necessary, standard specifications for the construction of airport projects funded with State aid. The Department may also at its discretion establish, as necessary, site specifications for the construction of airport projects funded with State aid on a case-by-case basis.

(c) The Department in its promulgation of standards may consider, in an effort to control construction costs, the allowance of non-standard specifications or the use of on-hand or low cost materials or techniques for airport projects. When non-standard specifications or low cost materials or techniques are used for airport project construction, the applicant or local sponsor assumes liability for the suitability and/or longevity of the applicable materials and/or techniques used.

SUBCHAPTER 13. SPECIAL CONDITIONS

16:56-13.1 Specifications of special conditions or performance criteria in any State funded project

(a) The Commissioner reserves the right to specify special conditions or performance criteria other than those outlined in this chapter on a site specific or project specific basis.

(b) Special conditions or performance criteria which may be attached as a condition of receipt of State aid may include by way of example, but not by way of limitation:

1. The sequencing or phasing of construction in a special manner;
2. The construction or demolition of other projects or structures;
3. The purchase of additional property;
4. The clearing of land;

5. Achieving a specified level of based aircraft or attraction of new facility users;

6. Completion of certain preventive maintenance procedures at specified intervals;

7. Maintaining a specified level of minimum available services;

8. Maintaining specified hours of service when the airport is both open and attended;

9. Maintaining the general grounds and property of a facility in an orderly, efficient, and safe manner;

10. The acquisition of permits or licenses which may be necessary from other agencies;

11. For those specific materials, professional services, or work purchased with State aid, compliance with the applicable provisions of the Local Public Contracts Law, N.J.A.C. 40A:11-1 et seq., is required.

(c) Special conditions or performance criteria which may be a binding condition of State aid may be outlined and specified within any contracts or agreements under the aid offering, letters or memorandums of agreement, any document, letter, site plan, or drawing relating to the aid project.

(d) Any failure to meet conditions or performance criteria under an airport aid project may result in the withdrawal of airport aid, disqualification from current or future aid consideration, or the declaration of an applicant or local sponsor to be in default of the terms of an airport aid contract(s). Any such action may result in further legal actions by the State as applicable under the laws of New Jersey.

SUBCHAPTER 14. AUDIT AND RECORDKEEPING REQUIREMENTS

16:56-14.1 Audit and recordkeeping requirements for State funded projects

(a) Provisions for audit of grants to sponsors are as follows:

1. The sponsor shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

2. A single audit of the sponsor shall be performed annually by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State audit policy.

3. Department agreements governed by this chapter shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

4. Audit costs incurred by sponsors to comply with this subchapter are not reimbursable.

(b) General provisions for audit and recordkeeping requirements are as follows:

1. Each sponsor shall keep records as the Commissioner may prescribe, including records which fully disclose the amount and the disposition of the proceeds of the aid, the total cost of the plan or program in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the plan or program supplied by other sources, and records as will facilitate effective audit.

2. The Commissioner or any duly authorized representatives, shall have access to any books, documents, papers, and records that are pertinent to aid received under this chapter, for the purpose of audit and examination. This includes progress audits at any time during the project.

3. To fulfill statutory and regulatory requirements each sponsor shall establish and maintain an adequate accounting record for each individual project, which will allow the State to determine the allowability of costs incurred for the project.

4. Each sponsor shall maintain effective control over and accountability for all funds, property, and other assets. Sponsors shall adequately safeguard all assets and shall assure that they are used solely for authorized purposes.

5. Each sponsor shall establish procedures to minimize the time elapsing between the transfer of funds from the State and the disbursement by the sponsor, whenever funds are advanced by the State. Should this elapsed time exceed the standards of this chapter, the Commissioner may require the return of all interest earned on those payments made by the State.

6. The sponsor shall include in each contract, a clause which allows the Commissioner access to the contractor's records for purposes of accounting and audit.

(c) Retention of records shall be as follows:

1. Each sponsor shall obtain and retain, for a period of three years after the date of submission of the final State payment, documentary evidence such as invoices, cost estimates, appraisal reports and negotiation documents relating to each item of project cost. These documents typically include, but are not limited to, vendor's invoices; applicable purchase orders; receiving reports; inventory records; method of pricing; returns; produc-

tion cost reports; weight tickets; physical inventories production cost accounts; final inspection report showing acceptance of the airport development performed under the project; and a record of disposition or correction of all unsatisfactory work, if any.

2. Each sponsor shall retain for a period of three years after the date of the submission of the final State payment, evidence of all payments for items of project costs including vouchers, cancelled checks or warrants, and receipts for cash payments.

3. If audit findings have not been resolved, records shall be retained until the findings have been received.

Amended by R.1987 d.327, effective August 17, 1987.

See: 19 N.J.R. 921(a), 19 N.J.R. 1567(c).

New (a); old (b) recodified to (c).

Amended by R.1994 d.372, effective July 18, 1994.

See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 15. INSPECTION

16:56-15.1 Inspection of State funded projects

(a) The Commissioner, Executive Director, or any other person designated or authorized by the Commissioner has the absolute right to inspect, without notice, the sites, proposed sites, records, construction or materials related to an airport aid project.

(b) Any inspection ordered by the Commissioner or conducted under his authority may include, but not by way of limitation, the reproduction and examination of records, the taking of samples applicable to site evaluation or project quantity control, the validation of metes and bounds, use of a site or project, or the assessment of any factor relevant to an airport aid project, application, or contracts and terms related to the airport aid process.

(c) Any denial of access to records, failure to produce records, or obstruction with an inspection may result in the withdrawal of aid, disqualification from current or future aid consideration, or the declaration of an applicant or local sponsor to be in default of the terms of an airport aid contract(s). Any such action may result in further legal actions by the State as applicable under the laws of New Jersey.

Amended by R.1994 d.372, effective July 18, 1994.

See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 16. PERFORMANCE REQUIREMENTS

16:56-16.1 Performance requirements for persons receiving State airport safety improvement aid

(a) All persons receiving aid under the provisions of this chapter are bound to comply with all criteria, provisions,

and terms of contract and/or agreement under the granting of that aid. Modification to the terms of any contract and/or agreement can be made only after the sponsor, or their legally designated representative or successor, and the Department agree to the modification in writing.

(b) The Department may allow, by formal contract of reassignment, the transfer of the rights and obligations assumed by one person under an aid grant or loan to another person. An example is when an airport is sold and continues to operate as an airport under a new owner. The Department may agree by contract to reassign the aid agreement to the new owner. The Department is not, however, obliged in any way to seek reassignment of any agreement or obligation.

(c) Failure to comply with the criteria, provisions and terms of contract or agreement under the granting of aid under this chapter by a person receiving aid is cause for the Commissioner to declare that person in default of the terms of aid and subject to the provisions of default.

(d) In the event of default of a person receiving State aid, the Commissioner may seek to reassign to another person by new contract the terms of agreement and obligation of the aid granted and declared in default.

Amended by R.1994 d.372, effective July 18, 1994.
See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 17. PAYMENT PROCEDURES

16:56-17.1 Payment procedures

(a) Unless otherwise specified, by the Department, the following general procedures are to be used as the procedures for monetary transfers between the State and other persons. The procedures outlined hereafter apply to the following classes of transactions:

1. State Grants for Matching Federal Funds;
2. State Airport Safety Improvement Grants;
3. State Airport Safety Improvement Loans (disbursement);
4. State Airport Safety Improvement Loans (repayment to the State).

(b) Prior to any disbursement of funds, the State reserves the right to conduct site inspections, tests, or review and audit records or accounts to validate to the satisfaction of the State that disbursement of funds is warranted.

(c) Sponsors having received State aid shall disburse those monies and make payments to outside vendors or services and materials properly invoiced under the applicable project within 10 calendar days.

(d) Sponsors receiving State aid for matching Federal funds shall forward to the Department, on the forms provided by the Department, requests for matching funds along with signed completed copies of Federal forms requesting reimbursement for airport aid projects as forwarded to the Federal Aviation Administration. When the Federal Aviation Administration releases payments to the sponsor, the State may thereafter forward to the sponsor its share of project participation as provided for in its contractual assurances with the sponsor.

(e) Sponsors receiving State aid shall forward to the Department, on the forms provided by the Department, the request for disbursement of State aid. The sponsor shall attach valid copies of applicable vendor invoices for payment under the project in the manner prescribed by the Department. In the case of construction or installation projects at an airport, these invoices shall be certified by the project's engineer as accurate and properly invoicing the "as built" resources used in the project. In nonconstruction or installation projects, the sponsor shall attach valid copies of applicable vendor invoices for payments under a project. These invoices shall be certified by the sponsor as accurate and properly invoicing the resources used in the project. Upon receipt of all local certifications under a project, the State may thereafter forward payments for its share of a project to the sponsor as provided for in its contractual assurances with the sponsor.

(f) Sponsors receiving State Airport Safety Improvement Loans (disbursement) shall forward to the Department, on the forms provided by the Department, the request for disbursement of State aid loan monies. This request shall include valid copies of applicable vendor invoices for payment under the project in the manner prescribed by the Department. In the case of construction or installation projects at an airport, these invoices shall be certified by the project's engineer as accurate and properly invoicing the "as built" resources used in the project. Requests forwarded to the Department for monies shall be in increments of not less than 25 percent of the authorized State loan participation in the project. Upon receipt of all local certifications under a project, the State may thereafter forward payments for its share of a project to the sponsor as provided for in its contractual assurances.

(g) Sponsors who have received State Airport Safety Improvement Loans shall repay that loan to the State in the manner provided for in its contractual agreements. Unless otherwise provided for in the, contract Airport Aid Loan repayments to the State shall be due on a quarterly basis on the first day of the months of March, June, September and December.

Amended by R.1994 d.372, effective July 18, 1994.
See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 18. LIABILITY

16:56-18.1 Liability and penalties

(a) Any failure by a sponsor to meet the conditions or performance criteria under an airport aid project may result in the withdrawal of State Aid, disqualification from current or future aid consideration, or the declaration that a sponsor is in default of the terms of an airport aid contract(s).

(b) If a sponsor fails to continue to comply with its contractual assurances before the end of the predetermined life of the financially assisted improvements, as the life is determined by the Commissioner, the State shall be immediately reimbursed for the unused portion of the predetermined life and, if not fully reimbursed, the claim shall be a first lien on the airport property to the extent of the unpaid balance.

(c) Any person who knowingly or willfully makes a misrepresentation or false statement in an application or violates the provisions of this chapter shall be subject to the fines and penalties as provided by Title 6 of the New Jersey statutes.

Amended by R.1994 d.372, effective July 18, 1994.
See: 26 N.J.R. 1607(a), 26 N.J.R. 2916(a).

SUBCHAPTER 19. FUELS

16:56-19.1 Fuels subject to taxation

(a) Under the taxation purposes of the "Airport Safety Act of 1983" P.L. 1983 c.264, approved July 11, 1983, it is hereby determined that "aircraft" and "turbine fuels" are fuels distributed to general aviation airports for the purpose of propulsion of aircraft through the air including, without limitation thereto, fuels known or sold as:

1. Grade 80 gasoline (Red).
2. Grade 100 gasoline (Green).
3. Grade 100 LL Gasoline (Low Lead) (Blue).
4. Grade 115 gasoline.
5. Jet A—kerosene, freeze point - 40°C.
6. Jet A-1—kerosene, with icing inhibitor, freeze point - 50°C.
7. Jet B—Wide-cut turbine fuel, freeze point - 50°C.
8. Jet B—Wide-cut turbine fuel with icing inhibitor, freeze point - 50°C.