

3. An instructor designated by the academy director will conduct the pre-academy fitness requirement up to 12 weeks prior to the commencement of the course to which the potential trainee seeks admission, but no less than three weeks prior to the commencement of the course. A potential trainee must pass the pre-academy fitness requirement prior to the commencement of any class in which the trainee seeks admission.

4. A trainee must successfully complete all five components of the pre-academy fitness requirement, as follows:

- i. A vertical jump of 15 inches or more;
- ii. 28 sit-ups in one minute or less;
- iii. A 300-meter run in 70.1 seconds or less;
- iv. 24 push-ups in one minute or less; and
- v. A 1.5-mile run in 15 minutes and 55 seconds or less.

5. There shall be a rest in between each component of the pre-academy fitness requirement that shall be no less than those mandated by Directive 4-2016.

6. The pre-academy fitness requirement shall be conducted, in accordance with the PTC Physical Conditioning Directive.

7. All pre-academy fitness requirement tests shall be conducted within one continuous eight-hour period.

8. All running events in the pre-academy fitness requirement shall be conducted on a level running track or roadway previously approved by the PTC staff.

9. All remaining events shall take place on a level surface previously approved by the PTC staff.

10. During both the sit-up and push-up components of the pre-academy physical requirement, the designated instructor shall verbally notify the trainee of each successful repetition completed (that is, "one complete, two complete, three complete").

11. A potential trainee is required to successfully complete all five components of the pre-academy fitness requirement before each course to which the potential trainee seeks admission.

12. Retesting shall be, as follows:

i. Academy directors shall schedule a retest date for trainees who fail the initial pre-academy fitness requirement. The retest should be scheduled, when practicable, at least three weeks after the trainee's initial pre-academy test, but in any event, must be completed the day before the trainee begins their course. The trainee is allowed one opportunity to retest before the start of the academy. All trainees who fail the initial pre-academy fitness requirement must be retested before the start of the course to which they seek admission.

ii. Potential trainees must take and pass the entire test on the alternate test date. Previous passing results from any component shall not be counted toward any retest.

(e) Pre-academy psychological requirements, are as follows:

1. The pre-academy psychological requirement shall include a psychological examination by a licensed psychologist to determine whether the potential trainee is psychologically fit to perform the duties of the title that the potential trainee has been appointed.

2. The psychological examination shall include:

i. A written personality examination, such as NEO-PI-R, the Inwald Personality Inventory, or such other functionally equivalent examination; and

ii. A psychological evaluation conducted by a licensed psychologist no more than 12 months prior to orientation day for the class that the potential trainee seeks admission.

3. The licensed psychologist shall state, on a form prescribed by the PTC, whether the individual is psychologically fit to effectively perform the duties of the title that the individual has been appointed.

4. Only those individuals found to be psychologically fit to effectively perform the duties of the title that they have been appointed to may be admitted to any of the courses listed at (b) above.

5. The employer must provide certification of psychological fitness to the academy director prior to the orientation day for the course that the potential trainee seeks admission on a form prescribed by the PTC.

(f) Appeals by potential trainees shall be, as follows:

1. A potential trainee may appeal a designated instructor's determination that the potential trainee has failed one or more components of the pre-academy fitness requirement.

2. An appeal pursuant to this subsection will be sent to the PTC, and state, with particularity, the factual basis for the potential trainee's appeal.

(g) For each potential trainee, prior to admission to any academy for any course listed at (b) above, the academy director must complete and submit to PTC staff, a package that includes the following:

1. A PTC-prescribed form that includes the following information:

i. Certification that the potential trainee has successfully met, or exceeded, the minimum score requirements of all five components of the pre-academy fitness requirement;

ii. The potential trainee's score for each of the five components of the pre-academy fitness requirement; and

iii. Certification that the potential trainee has successfully passed the pre-academy psychological requirement as set forth at (e) above;

2. A certification by a licensed physician that the potential recruit is medically cleared to participate in the course that the potential recruit seeks admission; and

3. A certification by a licensed psychologist that the potential recruit is psychologically fit to effectively perform the duties of the title that the potential recruit has been appointed.

(h) The academy director shall submit the package as set forth at (g) above to the PTC staff no later than 15 working days after the commencement of the course that the trainee is enrolled in.

(i) Academy directors are expressly forbidden from allowing any trainee who has not successfully met, or exceeded, the minimum score of each component of the pre-academy fitness requirement and who has not also successfully passed the pre-academy psychological requirement and provided a certification by a licensed physician that the recruit is medically cleared to participate in the course, to participate in any course listed at (b) above. Failure to comply with the provisions of this subsection may, in the discretion of the PTC, result in suspension or revocation of the academy's credentials, as determined on a case-by-case basis.

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

Zone of Rate Freedom

Proposed Amendment: N.J.A.C. 16:53D-1.1

Authorized By: B. Sue Fulton, Chair and Chief Administrator, Motor Vehicle Commission.

Authority: N.J.S.A. 39:2-3, 39:2A-21, 39:2A-28, 48:4-2.21, and 48:4-2.25.

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

Proposal Number: PRN 2022-080.

Submit written comments by August 5, 2022, to:

Emily Armstrong, APO
 Attn: Legal Affairs
 Motor Vehicle Commission
 225 East State Street
 PO Box 162
 Trenton, NJ 08666-0162
 or through email to: MVC.rulecomments@mvc.nj.gov

The agency proposal follows:

Summary

The Motor Vehicle Commission (Commission) proposes to amend the provisions at N.J.A.C. 16:53D, Zone of Rate Freedom, to fulfill its statutory responsibility to establish an annual Zone of Rate Freedom (ZORF) for regular route private autobus carriers providing service within the State, pursuant to N.J.S.A. 48:4-2.21. The ZORF is the maximum

permitted percentage increase adjustment and the maximum permitted percentage decrease adjustment that a private autobus carrier may make to its rate, fare, or charge for intrastate regular route service without first having to petition the Commission for approval. If the autobus carrier's fare adjustments remain within the designated ZORF percentage range, the carrier need only give notice to the Commission and the bus-riding public of the rate, fare, or charge adjustment. However, should a regular route private autobus carrier seek a percentage fare adjustment other than that allowed by the ZORF, the carrier will be required to file a petition with the Commission and comply with the notice procedures set forth at N.J.A.C. 16:51-3.10 and 3.11. In proposing the ZORF for calendar year 2023, the Commission took into account several factors relevant to changes in the average costs of operating bus services, fares charged by public transportation, and the interests of the public who use private regular route bus services.

In assessing the effect of changes in the average costs of operating bus services, the Commission examined the average costs incurred by private autobus carriers in recent years for diesel fuel, commercial automobile insurance, health care, and labor. The Commission obtained data from the American Automobile Association, the New Jersey Department of Banking and Insurance, the New Jersey Department of Labor and Workforce Development, and the United States Social Security Administration. According to the historical data available, the average price per gallon of diesel fuel has increased significantly, by approximately 85 percent since 2020. Rates for commercial auto insurance policies providing coverage to commercial vehicles, including autobuses, increased in New Jersey on an average of almost 10 percent within the last two years. The average salary for bus drivers in New Jersey, including those employed by private autobus carriers has slowly increased on average by over two percent since 2020. The national average in the cost-of-living reflects an increase in general costs over the last two years, with the most recent increase of almost six percent taking place in 2021. Health care costs represent an important area of concern for autobus companies, impacting both small and large employers, as costs have increased by an average of just over nine percent since 2020.

In addition to changes in the average costs of operating private regular route bus services, the Commission reviewed the history of fare increases implemented by New Jersey Transit and the potential effect of fare changes on the public. New Jersey Transit's fares have remained unchanged since they were last increased by nine percent in 2015. Thus, New Jersey Transit has not increased its fares in almost seven years. While New Jersey Transit is not subject to the fare increase or decrease rules that private regular route bus carriers are and has a different funding mechanism than private regular route bus service, public transportation fare increases or decreases are nonetheless informative for comparative purposes. In addition, the Commission is aware of the effect that the recent pandemic has had on consumers and the economy, which must be balanced against the significant increase in the costs of operating a private bus service.

The Commission further notes that it has not received any requests from private autobus carriers in the last three years, seeking rate increases or decreases greater than the 10 percent adjustment allowed by the established ZORF.

Thus, in balancing the significant increases in operating a private bus service, and the interests of the public in being able to absorb modest fare increases, the Commission has determined that a 10 percent ZORF for 2023 is reasonable.

The ZORF percentage limitations set forth at N.J.A.C. 16:53D-1.1 apply only to regular route private autobus carriers. N.J.S.A. 48:4-2.25 authorizes the Commission to exempt rates, fares, and charges for regular routes in the nature of special (casino bus operations), charter, and special autobus operations from this rule, so long as carriers engaged in such operations file rate schedules annually with the Commission, pursuant to N.J.A.C. 16:53D-1.3.

The public comment period for this notice of proposal will be 60 days since the notice is not listed in an agency rulemaking calendar. This notice of proposal is, therefore, excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Commission anticipates that the proposed 10 percent ZORF will have a positive social impact in that this range will enable private autobus carriers to increase or decrease regular route fares marginally within established limits without the necessity of having to file costly, time-consuming, complex, formal tariff petitions with the Commission. The ZORF-controlled fare increases also encourage autobus carriers to invest in new buses and in the servicing and maintenance of their existing fleet of buses, while at the same time protecting the public from unreasonable fare increases. The ZORF percentage limit for fare decreases discourages predatory fare-reducing tactics designed to reduce or eliminate competition.

Economic Impact

The proposed amendments offer privately owned autobus companies a measure of flexibility in effectuating marginal adjustments to their regular route fares. Such companies can avoid the time-consuming and costly rate increase or decrease petition process, provided the fare adjustment remains within the percentage limits set forth in the rules. Although the ZORF provides a mechanism for regular route private autobus carriers to increase rates, fares, or charges, any adverse impact of such fare increases upon the public will be mitigated by the percentage limitations set forth at N.J.A.C. 16:53D-1.1. The ZORF percentage limitations are intended to ensure reasonable rate, fare, or charge adjustments. The exemption of charter, casino, and special bus operations from the ZORF rules will have no adverse economic impact on the public because the competitive nature of these markets due, in large part, to their elastic demand, protects consumers from unreasonable rate, fare, or charge adjustments.

Jobs Impact

The Commission does not anticipate that the proposed amendments will have any impact on jobs.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are dictated by State statutes and are not subject to Federal requirements or standards.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed amendments affect private autobus carriers that are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not impose any new reporting, recordkeeping, or compliance requirements on these autobus carriers. The proposed amendments set limits on rate modifications for which the petition procedure pursuant to N.J.A.C. 16:51-3.10 and 3.11 is not required.

Housing Affordability Impact Analysis

The Commission does not anticipate that the proposed amendments will have any impact on housing costs because the scope of the proposed amendments, to the extent that they apply only to procedures for adjusting private regular route autobus fares, is minimal, and there is an extreme unlikelihood that the amendments would evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The Commission does not anticipate that the proposed amendments will have an impact on smart growth as there is an extreme unlikelihood that they would evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will have no impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State, as the rules only pertain to the maximum permitted percentage adjustment that a private autobus carrier may make to its rate, fare, or charge for intrastate regular route service. Accordingly, no further analysis is required.

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

SUBCHAPTER 1 GENERAL PROVISIONS

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State, which carrier seeks to revise its rates, fares, or charges in effect as of the time of the promulgation of this rule, shall not be required to conform with N.J.A.C. 16:51-3.10, Tariff filings that do not propose increases in charges to customers, or 3.11, Tariff petitions that propose increases in charges to customers, provided the increase or decrease in the rate, fare, or charge, or the aggregate of increases and decreases in any single rate, fare, or charge is not more than the maximum percentage increase (10

percent for [2019] **2023**) or decrease (10 percent for [2019] **2023**), upgraded to the nearest \$.05.

1. For illustrative purposes, the following chart sets forth the [2019] **2023** percentage maximum for increases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

(No change in table.)

2. For [2019] **2023** purposes, the following chart sets forth the [2019] **2023** percentage maximum for decreases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

(No change in table.)

3. (No change.)
