

Board may authorize refunds for requests that are filed after this date, if the Board finds that there is good cause shown.

2. The regulated entity and the party requesting the refund must agree upon the appropriate recipient of the refund, which shall be the person, or entity, that paid the original contribution, or the appropriate successor entity as documented in (c)3 below.

3. Where necessary due to changes in control, ownership, assignment, or bankruptcy, the party requesting the refund must provide sufficient evidence, with supporting affidavits of entitlement to the regulated entity.

4. The regulate entity and the party requesting the refund must agree upon the appropriate amount of the refund. The refund shall be equal to the amount that would have been refunded had the extension been built to serve an area designated for growth under the rules in existence at the time the contribution was paid. Under no circumstances shall a regulated entity refund an amount in excess of a contribution paid to the regulated entity for an extension. The refund amount shall not include interest.

5. The regulated entity may require the party requesting the refund to submit proof of payment of the original contribution prior to issuing the refund. For example, the party requesting the refund may be required to provide a copy of the cancelled check for the contribution, a copy of a receipt from the regulated entity, or a bank record.

6. Within 30 days of receiving a refund claim, the regulated entity shall notify the applicant in writing that they received the claim. This notification shall indicate that the regulated entity accepts the claim and deems it complete or it shall identify any deficiencies in the claim

and notify the applicant that they have 60 days to correct any deficiencies in the claim. The regulated entity shall issue refund payments to the applicant within 30 days of deeming a claim to be complete.

7. If the parties cannot agree as to the amount, or appropriate recipient, of a refund, the party requesting the refund may petition the Board for an appropriate remedy pursuant to N.J.A.C. 14:1-1.5(b). Such party must prove that they are entitled to the refund and demonstrate proof of payment of the contribution. The Board will look to the refund formula for extensions in existence at the time of the extension request to determine the amount that would have been refunded if the extension were built to serve an area designated for growth.

(d) Reporting Requirements. Commencing (60 days after the effective date of this rule) and every 60 days thereafter until (two years after effective date of this rule), each regulated entity shall file a report with the Board Secretary and the director of the appropriate Board of Public Utilities' division (Water, Energy, or Telecommunications), providing an update on the regulated entity's refund process. Each regulated entity shall complete the below chart and include it in the report. For the "Total disputed refund requests" column, the regulated entity shall provide and identify two dollar amounts in the \$ Amount row, specifically, the total dollar amount requested by the applicants and the total dollar amount that the regulated entity believes is due to the applicants. The report shall also include a narrative describing the status of the regulated entity's refund process.

Regulated Entity Name						
Refunds of Contributions Paid for Extensions Built From March 20, 2005 Through December 30, 2009 to Serve Areas Not Designated For Growth						
Status Report, Dated _____						
	A	B	C	D	E	F
	Total refunds required	Total requests for refunds	Total refunds paid to date	Total of all refunds due, but not paid (A - C)	Total refunds requested, but not paid (B - C)	Total disputed refund requests
Quantity (Number of refunds, requests, etc.)						
\$ Amount (Dollar amount of refunds, requests, etc.)						

SUBCHAPTER 10. (RESERVED)

**TRANSPORTATION**  
**(a)**

**MOTOR VEHICLE COMMISSION**  
**REGULATORY AFFAIRS (COMMERCIAL PASSENGER TRANSPORTATION)**

**Zone of Rate Freedom**

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

Authorized By: Raymond P. Martinez, Chairman, Motor Vehicle Commission.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21, and 48:4-2.20 through 2.25.

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

Proposal Number: PRN 2014-218.

Submit written comments by January 30, 2015, to:

Kate Tasch, APO  
Attention: Regulatory and Legislative Affairs  
New Jersey Motor Vehicle Commission  
225 East State Street  
PO Box 162  
Trenton, New Jersey 08666-0162  
or electronically at: [rulecomments@mvc.nj.gov](mailto:rulecomments@mvc.nj.gov).

The agency proposal follows:

**Summary**

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

The Motor Vehicle Commission (the Commission) proposes to amend the provisions of N.J.A.C. 16:53D, Zone of Rate Freedom. The Commission is statutorily obligated to establish for each calendar year a Zone of Rate Freedom (ZORF) for regular route private autobus carriers providing service within the State. See N.J.S.A. 48:4-2.21, as amended by P.L. 2003, c. 13, § 98. See also N.J.S.A. 48:4-2.20 through 2.25.

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. The maximum ZORF percentage amounts for increases and decreases take into account the varying fares currently charged by intrastate regular route private autobus operators. In accordance with N.J.S.A. 48:4-2.21, relevant factors that must be considered by the Commission in setting the ZORF percentages include, but are not limited to, the availability of alternative means of transportation; fluctuations in operational bus costs; and rates, fares, and charges existing in the bus industry and in other related transportation services, as well as the interests of the users of bus service in this State.

As long as 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 need a percentage fare adjustment greater than that allowed by the ZORF, the carrier will be required to comply with the petitioning procedures set forth in N.J.S.A. 48:2-21 and 48:2-21.1.

The ZORF percentage limitations set forth in 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 annual tariffs with the Commission.

N.J.A.C. 16:53D-1.1 consists of general provisions and standards that regular route private autobus carriers must follow, and specifies the maximum ZORF percentages for rate, fare, or charge increases and decreases for the calendar year and exempts student, senior, transfer, interline and other unique rates, fares, or charges for a regular route from the requirements of this chapter provided they remain less than the current or adjusted regular route fare applicable to the route. This section is proposed for amendment to make no change in the ZORF, but to update the rule to indicate it is applicable for 2015.

#### **Social Impact**

The proposed amendments have a positive social impact in that they enable private autobus carriers to increase or decrease regular route fares marginally within established limits without having to undertake costly and time-consuming formal administrative proceedings. Since the ZORF fare adjustment mechanism allows autobus carriers to effectuate minor changes to their regular route fares without the necessity of making a complex, formal tariff filing with the Commission, the ZORF fare adjustment procedures result in cost and time savings for both the regulated industry and 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. In sum, the ZORF fare adjustment mechanism has a positive impact upon the autobus industry and the Commission while also benefiting the public interest.

#### **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 rate increase or decrease petition process set forth in N.J.S.A. 48:2-21 and 48:2-21.1, which is costly and time consuming, provided the fare adjustment that is sought remains within the percentage limits set forth in the ZORF 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 in N.J.A.C. 16:53D-1.1. The ZORF percentage limitations are intended to ensure that only reasonable rate, fare, or charge increases or decreases will occur. 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.

#### **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.

#### **Jobs Impact**

Although the ZORF rules could theoretically have an impact upon the jobs of private autobus carrier employees and the bus-riding public, no specific number of jobs generated or lost as a result of these amendments can be calculated. With limits on fare increases and decreases, private autobus carriers could conceivably adjust their employee levels to address financial constraints. Similarly, the ability of commuters to travel to their job sites could be affected by any changes made by such autobus carriers in bus routes or service to certain areas caused by shifts in employee staffing levels. However, it should be noted that rate change protection for both autobus carriers and commuters exists in other statutes and rules that govern rate changes outside the ZORF limits.

#### **Agriculture Industry Impact**

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

#### **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 procedure under N.J.A.C. 16:51-3 is not required.

#### **Housing Affordability Impact Analysis**

It is not anticipated that the proposed amendments will have any impact on housing costs because the scope of the proposed amendments, inasmuch as they apply only to procedures for adjusting 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**

It is anticipated that the proposed amendments will have only an insignificant impact, if any, on any new construction. Moreover, because the proposed amendments apply only to the procedures for adjustment of autobus fares, the amendments do not apply to housing units at all. Thus, the scope of the proposed amendments is minimal, and there is an extreme unlikelihood that they will evoke a change in the housing production within Planning Areas 1 or 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]):

(**Agency Note:** The text of N.J.A.C. 16:53D-1.1 below reflects the adoption of proposed amendments effective December 1, 2014, and published elsewhere in this issue of the New Jersey Register.)

### 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. 16:51-3.12, Tariff filings, that do not propose increases in charges to customers, or 3.13, 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 [2014] **2015**) or decrease (10 percent for [2014] **2015**), upgraded to the nearest \$.05.

1. For illustrative purposes, the following chart sets forth the [2014] **2015** percentage maximum for increases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

<u>Present Fare</u>	<u>Percent of Increase</u>	<u>Increase Upgraded To Nearest \$.05</u>
\$ 2.00 or less	10.0%	\$.20
\$ 2.05-\$ 2.50	10.0%	\$.25
\$ 2.55 upward	10.0%	\$.30+

2. For illustrative purposes, the following chart sets forth the [2014] 2015 percentage maximum for decreases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

<u>Present Fare</u>	<u>Percent of Decrease</u>	<u>Decrease Upgraded To Nearest \$.05</u>
\$.50 or less	10%	\$.05
\$.55 to \$ 1.00	10%	\$.10
\$ 1.05 upward	10%	\$.15+

3. (No change.)

## TREASURY — GENERAL

### (a)

#### OMBUDSPERSON FOR THE INSTITUTIONALIZED ELDERLY

#### Office of the Ombudsperson for the Institutionalized Elderly Practice and Procedure Rules

#### Proposed Readoption and Recodification with Amendments: N.J.A.C. 15A:3 as 17:39

#### Proposed New Rule: N.J.A.C. 17:39-1.1

#### Proposed Repeal: N.J.A.C. 15A:3-1.1

Authorized By: James W. McCracken, Ombudsman for the Institutionalized Elderly.

Authority: N.J.S.A. 52:27G-5.d and 26:2H-53 et seq.; and P.L. 2010, c. 34.

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

Proposal Number: PRN 2014-217.

Submit comments by January 30, 2015, to:

James W. McCracken, Ombudsman for the Institutionalized Elderly  
 28 West State Street, 4th Floor  
 P.O. Box 852  
 Trenton, NJ 08625-0852  
 E-mail Address: [James.McCracken@advocate.state.nj.us](mailto:James.McCracken@advocate.state.nj.us)

The agency proposal follows:

#### Summary

The Office of the Ombudsperson for the Institutionalized Elderly (OOIE) was transferred from the Department of the Public Advocate to the Department of the Treasury by P.L. 2010, c. 34, approved June 29, 2010. The law establishing the Department of Public Advocate was repealed and was rendered “null and of no effect” by P.L. 2010, c. 34. Because of the transfer to the Department of the Treasury, the rules proposed for readoption with amendments, a new rule, and a repeal in N.J.A.C. 15A:3 are also proposed to be recodified as N.J.A.C. 17:39.

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 15A:3 was scheduled to expire on October 29, 2014. In accordance with N.J.S.A. 52:14B-5.1.c(2), the submission of this notice of proposal to the Office of Administrative Law on or before that date extended the expiration date 180 days, to April 27, 2015. The Ombudsperson reviewed the rules and procedures and determined them to be necessary, adequate, reasonable, proper, and responsive for the purpose for which they were originally promulgated, as proposed for change herein. Thus, the Ombudsperson proposes the readoption of the rules, with the recodification and amendments, repeal, and new rule discussed in this Summary.

#### Subchapter 1. General Provisions

Subchapter 1 sets forth the policies and procedures for receiving complaints and conducting investigations of alleged abuse, neglect, and exploitation of elderly residents of nursing homes including, but not limited to, other specified types of long-term care facilities. This subchapter includes a “Disclosure Consent Form,” to be used by facilities when admitting residents, as required by the 2001 amendment to N.J.S.A. 52:27G-7.2 and 7.3 (P.L. 2000, c. 7).

N.J.A.C. 15A:3-1.1 is proposed for repeal and is replaced with new N.J.A.C. 17:39-1.1. The new rule expands the basic scope and objective of the Office of the Ombudsman. The new rule reflects the Federal statute, 42 U.S.C. § 3058g, that codifies the mission and scope of the Office of the Ombudsman. In September 2014, Federal regulations were approved and the new rule captures these regulations. The Federal statute and regulations refer to the Office of the Ombudsman as the Long-Term Care Ombudsman. In addition, the proposed new rule incorporates the terminology “programs within the Office,” to address the Ombudsman’s role in the State’s new Medicaid Comprehensive Waiver Contract.

N.J.A.C. 15A:3-1.2, proposed for recodification as N.J.A.C. 17:39-1.2, defines words and phrases deemed essential to establishing the operative intent of this subchapter. The definition of “caregiver” is proposed for amendment to include “friends and family” to recognize seniors’ reliance on family and friends as caregivers in addition to caregivers who are employed or contracted by facilities. “Caregiver,” along with “act” is proposed for amendment to include the terms “managed care representative” and “managed care organizations care managers,” to reflect the State’s rebalancing of health delivery services and supports for seniors.

An amendment is proposed to the definition of “government agency” to include the word “licensing,” to include all regulatory agencies involved in the care of the elderly. The term “institutionalized elderly” is proposed for amendment to include “or program” after “facility,” to include all activities in which an elderly person may participate in. This amendment is also proposed to the term “resident,” along with the deletion of “including outpatient services” at the end of that existing definition. The proposed amendment to the definition of “State Program Coordinator” replaces “trained and qualified” with “qualified” to more effectively speak to the qualifications and duties of the coordinator. The definition of “Volunteer Advocate” is proposed for amendment to include the sentence, “Volunteer Advocates receive extensive training and are subject to criminal background checks,” to ensure that the volunteer advocates possess the appropriate skills to assist and advocate for the residents. The volunteers are subject to criminal background checks to be consistent with the Office’s requirements for its employees. All employees of the Office of the Ombudsman must submit to a criminal background check because they have direct contact with the elderly. Prior to the amendment, Volunteer Advocates were not required to submit to such a background check. The Volunteer Advocates are designees of the Ombudsman and, therefore, need to submit to the process of a criminal background check.

A new definition, “Office Program,” has been added to further encompass new health care services and supports available to the elderly. The term “managed care organization” is proposed to be added to reflect the State’s philosophy on rebalancing healthcare for seniors through the State’s Comprehensive Waiver Program.

Amendments to “facility” are proposed, including the addition of programs and health care institutions offering health or health-related services to the institutionalized elderly; the additions of “licensing” and “funding” to “which is subject to regulation, visitation, inspection, or supervision by any government agency”; the addition of “social day care centers,” “the independent living section of continuing care retirement community,” “comprehensive rehabilitation hospital and separately licensed comprehensive rehabilitation units within general acute care hospitals,” “long-term acute care hospitals” and “Class ‘C’ and ‘D’ boarding homes” as examples of facilities; among the examples, the replacement of “mental hospitals, mental retardation centers or facilities” with “developmental centers”; and among the examples, the replacement of “day care facilities for the elderly” with “social day care centers for the elderly.” These amendments clarify the healthcare services and supports available to seniors. In the definition of “facility,” the addition of “the